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# INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

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## TEMPORARY NATIONAL ECONOMIC COMMITTEE

A STUDY MADE FOR THE TEMPORARY NATIONAL ECONOMIC COMMITTEE, SEVENTY-SIXTH CONGRESS, THIRD SESSION, PURSUANT TO PUBLIC RESOLUTION No. 113 (SEVENTY-FIFTH CONGRESS), AUTHORIZING AND DIRECTING A SELECT COMMITTEE TO MAKE A FULL AND COMPLETE STUDY AND INVESTIGATION WITH RESPECT TO THE CONCENTRATION OF ECONOMIC POWER IN, AND FINANCIAL CONTROL OVER, PRODUCTION AND DISTRIBUTION OF GOODS AND SERVICES

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### MONOGRAPH No. 26

## ECONOMIC POWER AND POLITICAL PRESSURES

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Printed for the use of the  
Temporary National Economic Committee



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\* \* \*  
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DEWEY ANDERSON, Executive Secretary  
THEODORE J. KREPS, Economic Adviser

\*Alternates.

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MONOGRAPH No. 26

## ECONOMIC POWER AND POLITICAL PRESSURES

DONALD C. BLAISDELL ASSISTED BY JANE GREVERUS

## ACKNOWLEDGMENT

This monograph was written by  
DONALD C. BLAISDELL

*Economic Expert, Temporary National Economic Committee*

ASSISTED BY

JANE GREVERUS

*Technical Assistant, Temporary National Economic Committee*

The Temporary National Economic Committee is greatly indebted to these authors for this contribution to the literature of the subject under review.

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(Signed) JOSEPH C. O'MAHONEY,  
*Chairman, Temporary National Economic Committee.*



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## LETTER OF TRANSMITTAL

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HON. JOSEPH C. O'MAHONEY,  
*Chairman, Temporary National Economic Committee,*  
*Washington, D. C.*

MY DEAR SENATOR: I have the honor of submitting the monograph, "Economic Power and Political Pressures," by Donald C. Blaisdell, assisted by Jane Greverus.

As its name implies, it is a study of lobbying. Mr. Blaisdell is a former professor of political science who, as a Government administrator, has had an unusual opportunity to observe the practical conduct of public affairs, and the monograph brings together timely and important information and judgments concerning the activities of representatives of pressure groups. It is, so far as I know, the first well-documented statement of the extent and character of lobbying and its relation to the concentration of economic power. As such, it raises questions which properly concern the Temporary National Economic Committee in its deliberations on the problems of concentration and competition. Its suggestions for lobby registration, publicity, and education of the voting public should be beneficial to the entire economy.

This report is the culmination of years of political science teaching and research. Mr. Blaisdell was loaned to the T. N. E. C. by the Department of Agriculture for the time necessary to condense and write up his voluminous materials. In this work he has been ably assisted by Jane Greverus, who is responsible for some of the text, and for organizational and editorial work on the monograph as a whole.

I believe the study will prove stimulating and informative to the members of the Committee.

Respectfully submitted.

THEODORE J. KREPS,  
*Economic Adviser.*

NOVEMBER 26, 1940.



## CHAPTER I

### THE DYNAMICS OF GOVERNMENT

The American people are confronted with the problem of who shall control the Government, by what means, and to what ends.

Since the founding of the Republic, the governmental process has been characterized by a struggle for control. With increasing stresses and strains as a result of internal maladjustments and foreign war, the struggle has taken on new and vital significance.

#### CONTROL VERSUS POWER

Governmental power is qualitatively different from control. Power is a political term, synonymous with authority. Control is dynamic and constantly seeks new methods of limiting or using power. Government may possess power and at the same time wield control, as in a totalitarian state; but ordinarily, in a democracy, power resides in the government, while control is exercised by the various pressure groups, chief of which is business. The extent of the Government's control is limited, not only by the Constitution but by our traditional belief that government should not "compete" with business but should act merely as an umpire in the struggle for control. Only in comparatively recent times, under stress of depression and greatly accelerated technological change, has this traditional belief yielded ground to the idea of increased government activity.

The role of business, on the other hand, has never been static. From the beginning, business has been intent upon wielding economic power and, where necessary, political control for its own purpose. The purpose, moreover, is not solely profit, but includes the exercise of control per se, as an attribute of ownership.

Even today, when the purposeful use of government power for the general welfare is more widely accepted than at any time in our history, government does not begin to approach the fusion of power and will characteristic of business.

#### THE CONTESTANTS

But economic power and political power are general terms. To understand them it is necessary to determine who uses them, how, for what purposes, and with what results.

Government itself is both a form of power and a situs of control. Government in a democracy, however, does not act independently of the electorate; nor does our Federal Government as now constituted proceed in a logical way toward the attainment of carefully thought out and consistent goals.

In the first place, our Government is established on a geographical basis of representation. State, county, and district lines provide an

easy way of securing representation, but the assumption that people living in a certain area on the map share, even in a general way, the interests of their neighbors is unjustified, if not actually false. Also, political representation is generally secured through the party system, and as such represents a compromise at the outset. A party platform, adopted to appeal to as large a sector of the electorate as possible, cannot follow completely the interests of any group. Lip service, at least, must be paid to the complex of interests represented in the community.

The relatively short time served by public officials is also a limiting factor on the effectiveness of government control. While 99 Congressmen in the Seventy-sixth Congress, for instance, have served 12 years or more in the House, 111 are in their first terms. Of the 96 Senators in the Seventy-sixth Congress, 20 have served 12 years or more, while 44 have served 6 years or less. The terms of office of State legislators are probably shorter than for national representatives, although no comprehensive analysis has been made.<sup>1</sup>

Philosophically, also, government is amorphous. Within broad limits there are nearly as many philosophies of government as there are men in it, while pressure groups have a tremendous unifying principle in the mere fact of their organization about a certain concept. Congressmen act in a multiple capacity, reflecting at different times a functional, sectional, personal, or partisan viewpoint, but with a few major exceptions, such as the Social Security Act and certain labor legislation, they appear to respond more readily to pressure from business than from other groups. There is probably a far greater difference in ideology between a high-tariff, industrialist Congressman from Massachusetts and a public ownership advocate from the Middle or Far West than there is between two members of the National Association of Manufacturers, or two members of the National Grange. The latter have at least a common economic interest, while the former are probably poles apart on most of the questions which they are called upon to decide.

While the business community may, on occasion, elect "its man" to Congress or to the Presidency, or secure his appointment to a governmental office or to the courts, its indirect influence is of far greater importance. Pressure groups generally find it more satisfactory to influence the votes of legislators in their behalf than to try to elect their own representatives to office. Furthermore, a large number of legislators are lawyers, and the bar is on most questions sympathetic to the views of the business community. As a result of both conviction and training, lawyers adhere to a business philosophy to nearly as great a degree as businessmen themselves. Farmers, laborers, distributors, and consumers, as such, have never appeared in legislative bodies in anything like the number of the lawyers.

At least one business organization has spoken out frankly in favor of a system of functional representation. The National Lumber Manufacturers' Association believes thoroughly in the theory and practice of occupational representation. It believes that a geographi-

<sup>1</sup>The terms for which administrators are appointed are likely to be shorter than those of legislators, since many legislators outlast shifts in the national administration. There was a large turn-over in Federal office holders in 1920, and another drastic shift in 1932, involving a large proportion of the policy making officials in Government; 16 Congressmen and 10 Senators now serving, however, were elected before the end of the Wilson administration, carried over the 12 years of Republican leadership, and have lasted through 8 years of another Democratic administration.



cal basis for representation in Washington is inadequate, and must be supplemented by extra-constitutional representation through an industry group. Congress and administrative officials not only listen to, but also, it is claimed, are anxious to hear industrial groups. The individual is of secondary importance. "The lobbyist of other days is about extinct; the voice of the individual is little heard, and when heard has, as a rule, little influence."<sup>2</sup> Officials prefer to have "the view of an industry, rather than to listen *ad infinitum* to the variant view of countless individuals."<sup>2</sup> "The representation of a territorial area or of a certain part of the population often counts for less in point of influence than the industrial representation marshalled in a given cause." The development of "industrial representation" is said to be inevitable. Moreover, "so important have these contacts become, and so indispensable the service rendered by associations' representatives, that they are sometimes spoken of as the Third House of Congress." According to this view, the individual citizen stands greater chance of obtaining recognition of his views at Washington by associating himself with like-minded persons in business and industry, than by trusting to direct representation through Congressman and Senator as provided by the Constitution. "It is largely true," the lumber manufacturers claim, "that an industry and its members get or do not get their dues at Washington, as they are, or are not, well represented."<sup>3</sup> The association has been called the "most influential and most competently represented association in Washington."

Economic power is rather widely diffused, although its control is concentrated, as pointed out above. In the struggle for dominance, it is exerted largely through pressure groups—groups organized for the purpose of applying political and economic pressure to secure their own ends. It is these pressure groups with which this study is largely concerned. By far the largest and most important of these groups is to be found in "business," which in this study means the business community, as dominated by the 200 largest nonfinancial and the 50 largest financial corporations, and the employer and trade associations into which it and its satellites are organized. These 250 corporations represent a concentration of economic power in the fields of manufacturing, transportation, electric and gas utilities, and mining, and, to a lesser extent, merchandising, the service industries, and even agriculture.<sup>4</sup>

Another large segment of pressure groups includes the patriotic and service organizations, such as the Daughters of the American Revolution, the American Legion, the Veterans of Foreign Wars, the Navy League, etc.

A third segment includes the reform groups—the Women's Christian Temperance Union, the National Civil Service Reform League, the League of Women Voters, etc.

The farm groups include the National Grange, the American Farm Bureau Federation, and the Farmers' Educational and Cooperative

<sup>2</sup> Highlights of a Decade of Achievement of the National Lumber Manufacturers' Association, p. 53. In 1929 five lumber industry leaders, all of whom had served at some time or other as president of the National Lumber Manufacturers' Association, engaged a person not connected with the lumber industry to prepare this review.

<sup>3</sup> *Ibid.*, p. 54.

<sup>4</sup> In 1935 the 200 largest nonfinancial corporations controlled over \$60,000,000,000 of physical assets. On the boards of these 250 corporations in 1935 there were 3,544 directorships, and these positions were held by 2,725 individual directors. National Resources Committee, *The Structure of the American Economy*, Washington, 1939, pt. I, pp. 105, 158.

Union, along with minor groups like the Tenants' and Sharecroppers' Union.

There are numerous labor groups, the most powerful being the American Federation of Labor, the Congress of Industrial Organizations, and the various railway brotherhoods. Their function as pressure groups is secondary to that of collective bargaining agents, but has come increasingly to the fore during the past quarter century.

Peace groups like the Women's International League for Peace and Freedom, the National Council for the Prevention of War, the Keep America Out of War Committee, etc., might well be included with the patriotic and service groups, except that there is a clear demarcation between the activities of the two which makes a separate classification desirable.

This enumeration by no means includes all the pressure groups. Some of them spring up for immediate purposes, and when those purposes are achieved disappear. Some of them are organized for purposes other than the wielding of political and economic power, and adopt that function only temporarily. The American Association of University Women is such an organization, which is politically active only on sporadic occasions.

A number of groups organized for the preservation of civil rights, the advancement of democracy, or for purely humanitarian motives, such as the American Civil Liberties Union, the National Association for the Advancement of Colored People, the various committees for the aid of refugees, or for Spain or China, the Red Cross, etc., should also be classified separately. They are normally active only for their own purposes, and do not lend themselves readily to alliances with other groups, except to the extent to which their membership is active politically.

There is another contestant in the struggle for power which cannot be ignored, although it is customarily treated by the pressure groups more as an instrument for securing and maintaining their own control than as a rival in the contest. This is the general public. The public is an amorphous mass, largely directionless, often easily swayed, gullible, and easily misled. Nevertheless, it possesses a tremendous potential strength and an enormous determination when it finds a channel for its energies. It would be a mistake to underrate mass opinion, however futile it may seem at any particular moment to try to goad it into effective action in its own behalf.

Mass opinion sets the stage for political action at any particular moment in this country, to a large degree. Gullible as it is, it cannot in ordinary times be pushed beyond a certain point. It is utterly impossible to return to the political conditions of 1800, or 1910, or even 1930, partly because economic conditions have changed and partly because it is impossible to set back the clock of public opinion. The gradual extension of suffrage, unionization, popular control of legislation, extension of social services—all these things are now in the realm of public policy and cannot be removed except by a violent revolution and the use of unexampled force. Even then, most of them would be retained.

Pressure groups attempt to mold public opinion to accomplish their own aims, and at any given moment it seems that government is the result of a compromise between conflicting pressure groups. Historically, however, the march of events in this country has been in the

direction of public betterment. It has been hindered, obstructed, and at times apparently completely stopped by pressure groups and selfish interests, but it has been impossible to stop it permanently.

That does not mean, however, that the struggle can be ignored. Events are moving faster and faster, and it is becoming more and more dangerous to permit a lag between the events themselves and the public perception of their significance. Often a generation elapses between an occurrence and the generalization of its import. Pressure groups have been able to play upon this lag in achieving their own purposes and have often managed to prolong it.

But as technology piles up its disruptive effects, and as its benefits are distributed too sparingly to the public as a whole, as the problem of distribution of goods becomes more and more serious, so it becomes more important that the public should understand its problems and use its power to solve them. It is no longer possible, if, indeed, it ever was, to trust in the eventual working out of the struggle.

In order to equalize the contest for the control of power, however, it is necessary to determine the objectives, methods, and results of control. This study is divided into 12 chapters, the first 5 of which are a general discussion of the problems of control and the methods used, while the next 6 discuss the individual problems of various fields. The last chapter contains recommendations for a plan of action.

#### METHODS OF CONTROLLING POWER

The methods by which control of power is sought are as varied as the groups which seek it. The role of the general public in the contest may to a large extent be ignored, since the public is generally too formless, too inchoate, to apply pressure at given points for a given purpose, and is largely the passive instrument which both business and government use to strengthen their own arms.

Our purpose is to discover the techniques by which power is directed by conflicting forces toward the attainment of specific goals. The chief contestants in this conflict are business and government. Government, usually in response to external stimuli, seeks to expand its functions, to put itself on an equal footing with business. Business seeks to hold back the rising tide of government activity, struggling to keep itself free from government regulation, so as to pursue its own ends unhampered. Both argue that they work in the interest of the general welfare.

While there has been some interest in this country in favor of government ownership of economic enterprises, it is a philosophy which has never been adopted as a program of action by any large group. The expansion of government activity has been along the lines of providing social services favorable to many groups which would otherwise not be furnished at all, and of regulating economic activity in the public interest.

Business, on the other hand, has fought such regulation and the expansion of social services, and even more bitterly has fought the idea of government ownership. The fight occurs largely in the political arena, but it does not end with the election of Congressmen and Senators. Election is but one phase of the process. The selection of candidates, the drafting of platforms, the party caucus, all function largely in advance of the legislative process. Pressures on Congress



while legislating and appropriating, manipulation of law enforcement and administration, and use of the judicial process to achieve individual or group ends, take place during or after the legislative process.

Through the press, public opinion, and pressure groups it is possible to influence the political process. While all three of these factors have played a part in the process since our beginnings as a nation, the extent and consciousness of their use has grown inordinately. They are employed by all contestants in the struggle for control, but reflect the viewpoint of business more accurately than that of others. The press today is not the same kind of factor in the political process that it was in Thomas Jefferson's day. Although the economic basis of politics today is in many respects similar to that outlined by Madison in the *Federalist*,<sup>5</sup> today's economic pressure groups have advantages which Madison never dreamed of. The revolution in communications, produced by American ingenuity and promoted by American business, makes the press, the radio, and other opinion-forming instruments far more important in the political process than ever before. Both press and radio are, after all, "big business," and even when they possess the highest integrity, they are the prisoners of their own beliefs.

The development of the corporation as a means of control of property necessitates ranking it, too, as an important factor in the political process. By means of the private corporation, ownership of much of American business property has been separated from effective control of that property. Ownership is diffused, at least to some extent; control is concentrated. This development is so recent (it has occurred within the last two decades or so) that its effect on the working of our governmental institutions cannot yet be accurately evaluated.<sup>6</sup> Enough is known, however, to justify the statement that it is warping the basic concepts of our Government. Extending beyond State lines in great national economic empires, business corporations have grown greater than the States which created them. By insisting on the principle of federalism—the division of power between the States and the Federal Government—as a basic tenet in our political philosophy, corporations have been able in large measure to limit the strength of the political power which might control them.<sup>7</sup>

#### CHARACTERISTICS OF THE STRUGGLE

Among the noteworthy characteristics of the struggle for power between government and business are—

1. The invisibility of most of the action.
2. The continuity of the struggle.
3. Its varying intensity.
4. Its constantly shifting battleground.

<sup>5</sup> No. 10.

<sup>6</sup> See note, p. 19.

<sup>7</sup> "The rise of the modern corporation has brought a concentration of economic power which can compete on equal terms with the modern state—economic power versus political power, each strong in its own field. The state seeks in some aspects to regulate the corporation, while the corporation, steadily becoming more powerful, makes every effort to avoid such regulation. Where its own interests are concerned, it even attempts to dominate the state." A. A. Berle and G. C. Means, *The Modern Corporation and Private Property*, Macmillan, New York, 1932, p. 357.

*Invisibility.*

Although any legislation under consideration in Congress is spotlighted in the daily news, although the President's activities and the administrative decisions of the various Government agencies are frequently headlined in press and radio, and although court decisions are a matter of widespread public interest, still it is true that a large, and extremely important, part of the governmental process is hidden from the public.

It is a commonplace that the work of Congress is done not in the Senate and House chambers, where the spectators come to watch, but in the committee rooms of the congressional committees. Even this, however, is but a faint indication of the extent to which governmental activity is carried on behind the scenes. The factors which influence legislators are only rarely the opinions of their colleagues, uttered in formal debate in Congress. They are the legislator's own political convictions, his mail from his district or State, the lobbyists who approach him in his office or in the halls of the Capitol, or the witnesses who appear before him in committee. None of these activities is carried on with the publicity devoted to formal congressional action. The callers at the White House rarely are even listed in the papers, although one or two Washington papers make a habit of printing the day's appointments. Still less are callers upon department administrators listed. The trade journal of a certain industry group may mention that its members went to Washington on a mission of benefit to the industry, but the news does not get into the general press. Letters, telegrams, telephone calls, personal visits, and the other contacts between contestants are rarely of enough immediate dramatic content to secure public attention, even if it were not usually made a point to conduct such activities without publicity.

Another strong reason for this invisibility is to be found in the geographical basis of legislative and judicial representation. This organization of government obscures the economic or functional basis for legislative decisions, which are frequently far more compelling than a geographical accident. The political process is invisible also because citizen groups, the most energetic and purposeful of the working forces of government, are completely unprovided for by the written Constitution. Only in the living Constitution are they recognized as having significance along with the formal Government agencies. They function in and through the Government structure, without, however, as a rule suffering from the white light of publicity which surrounds it.

*Continuity.*

In addition to being invisible, the political process, the struggle for de facto dominance, is continuous. From the first days of the Republic to the present, the contest has never ceased. The constant increase and centralization of economic power have been accompanied by an increase (although not a corresponding one) in governmental power. There have been periods which seemed relatively peaceful, but for the most part the peace was on the surface, and indicated temporary gains on the part of business when it controlled the Government and was not forced to resort to secondary weapons to accomplish its will.

Because business controls the instruments of propaganda, the periods when the control struggle favors business seem relatively quiet; when business seems to be losing ground, the struggle becomes more vociferous. In the 1920's Harding, Coolidge, and Hoover were sympathetic to the viewpoint of business, and Congress and the courts were generally Republican. There was relatively little surface indication of conflict, beyond the "red" scares and the activities of the farm bloc. The Bryan campaigns, however, Roosevelt's Bull Moose campaign, the election of 1920, and the period of the 1930's all mark times when the contest was not only bitter on both sides, but extremely vocal.

The struggle has constantly intensified over the past 50 years. The rise of modern technology has been a powerful indirect stimulus to increasing governmental oversight of activities once regarded as private. If this trend continues, and it shows no sign of slackening, the Government must continue to extend its activities, and to attempt to match the concentration of economic power in the hands of those not politically responsible to the electorate.

#### *Intensity.*

The intensity of the struggle for dominance depends on a number of factors. While the struggle is continuous over a long period of time, there are nevertheless lapses, or breathing spells. The strength and bitterness of the conflict are usually determined primarily by the philosophy of the temporary leaders of government. (Two, four, eight, or even twelve years, constitute temporary leadership as compared to the continuity of business management and philosophy.) Their interpretation of events, their political debts, their view of the future—all these things and many more determine the intensity of their participation. The philosophy of business is not subject to change to nearly the same extent. Business wants government to leave it alone, and also wants to be able to use governmental authority in its own internecine competitions. This is a pervasive, single-minded philosophy, adhered to by businessmen generally, and providing a real rallying point for their energies. As a result, the combat between the two is most active when political leaders are unsympathetic with, or critical of, business. President Roosevelt's case leaps to mind, but the same thing was true of Wilson, Theodore Roosevelt, and Cleveland.

#### *The Site of the Conflict.*

At what point the brunt of the battle is borne depends on a number of factors, at any particular time. It depends, among other things, on the nature and number of current issues, upon the personnel of the government agencies, Congress, or the Supreme Court, or upon the trend of dominant public opinion.

The first battle of the conflict occurs in the choice of legislators. The second takes place in the legislature itself. If business loses that, it resorts to the administrative agencies charged with the enforcement of the law; if it loses there, or sometimes while it is fighting there, it has recourse to the courts; and if it loses again, the struggle reverts to the legislature, taking the form of an attempt to amend or repeal the law. The forces of propaganda are, of course, in constant use. Business, for instance, first sought to defeat the National Labor Relations Act in Congress. Failing that, a number of trade journals, the publications of the National Association of Manufacturers and the United States Chamber of Commerce recommended that the act be ignored until it



was tested in the courts. (At that time, it seemed likely that a favorable court decision could be secured.) When the act was finally declared constitutional, however, the focus of the attack shifted first to the approaching congressional elections, in the hope of amending the act, and then to Congress itself.

Although by no means always favorable, the circumstances determining the site of the struggle usually favor business. Business is less restricted than government in choosing the place to fight. It can fight or not, secure in its conviction that "sixty billion dollars can't be wrong." If it feels itself compelled to fight it can accept the challenge, at the same time starting a back fire elsewhere.

In this connection the business orientation of the newspaper press is a valuable asset. In the nature of the things, public opinion is usually well disposed toward business. This is a natural consequence of the popular belief in the virtues of the American system, as understood by the business community. Business is more or less unconsciously assumed to be right. Government is the "prosecutor." But, in addition, newspapers have it in their power materially to influence public opinion on particular issues. When it comes to measuring particular situations of fact against general principles and presenting the comparison as news, newspapers are shapers of opinion as well as purveyors of fact. Editors are aware of this, of course, and many take special precautions to avoid it. With others, editorializing is practiced as a matter of course. And even where editors and publishers are men of the highest integrity, they are owners and managers of big business enterprises, and their papers inevitably reflect, at least to some extent, their economic interest. When organized business deliberately propagandizes the country, using newspaper advertising as one medium, the press is a direct means of channeling business views into the public mind.

Slogans and clichés have a special importance in rendering favorable the circumstances in which business chooses to stand against government. "Inalienable rights," "individual initiative and effort," "private ownership and control" are typical of those used by the National Association of Manufacturers. They are among the essential features of the "American System." They constitute the description of the economy which business prefers, but they seem to hark back to the days before the emergence of the modern corporation as a dominant institution. It stretches the imagination almost to the breaking point, for instance, to regard the operations of Standard Oil of New Jersey as those of an individual in the usually accepted sense of that word.

But the legal profession, at the bidding of business, has been equal to the task. By getting the courts to accept the contention that the corporation possesses a personality separate from those of the individuals acting for it and by getting them also to extend the operation of the Fifth and Fourteenth Amendments to these corporate personalities, lawyers have remade constitutional guarantees in the image of business.<sup>8</sup>

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<sup>8</sup> "Among conservative adepts in Federal jurisprudence the need for more efficient judicial protection had been keenly felt for some time; and when the problem of defining the rights of Negroes came before Congress in the form of a constitutional amendment, experts in such mysteries took advantage of the occasion to enlarge the sphere of control over the States, by including among the safeguards devised for Negroes a broad provision for the rights of all 'persons,' natural and artificial, individual and corporate." Charles and Mary Beard, *The Rise of American Civilization*, Macmillan, New York, 1937, vol. II, p. 111 ff.

This feat is the best example we have of business control of government. Language used by Thomas Jefferson to state the relationship between citizens and government necessary for the development of the individual personality, has been used by business to attract public support in its effort to avoid regulation. The law, the newspaper press, and the advertising profession have all helped business by spreading this changed conception of the Jeffersonian idea.

#### THE NEED

To cope with the problem of government by pressure groups, of which business is the strongest, requires the development of stronger democratic institutions than are now at hand. It is necessary to even up, to equalize, the unequal pressures to which government is subjected.

In agriculture, potentially significant steps have been taken since 1933 to extend democratic principles to the performance of economic tasks. Through a number of devices, agricultural producers' opinions, judgments, and advice are now being brought to bear much more effectively than heretofore on planning, production, and marketing problems. Labor union functions are similarly broadening in scope. There is little doubt that business fears that such developments may lead to a relaxation of its control. Its hostility to agricultural producers' referenda and to collective bargaining by organized labor are well known.

But there are doubts as to the permanence of these gains. Will their existence be tolerated long enough to demonstrate their usefulness? And even if they live up to their originators' highest hopes, can they, in the aggregate, diminish the control which business now exercises? So long as technology is the ally of business, can there be any effective attack upon the position of business? So long as the struggle is so largely invisible, can the public be sufficiently aroused to exert its full strength? And, what is the basic question, can our Federal system with its division of powers, its system of checks and balances, and its geographic basis of organization ever cope with the present concentration of economic power? These questions are not foremost in the minds of the people today, yet the future political development of the nation turns upon the answer to them.

From the political point of view, a minimum program to meet the problem of control of government should embrace three items. First, Congress should enact an effective lobby registration law. Second, voters should be given complete information regarding group pressure on government. If this cannot be provided as a public service feature by the radio chains and newspapers, it should be done by some adequately financed government office with the facilities of a government-owned and operated radio station. The third item would require the harnessing of technology to democracy's needs by developing a far-reaching program of governmental research. The Federal agricultural research program provides ample precedent for such a step. No adequate research, for instance, has ever been done in the field of low cost housing. The charges of suppression of patents by industry have been hotly denied, but they will probably continue to crop up until there is established a Federal agency for

the development and exploitation of inventions and discoveries. The experience of the University of Wisconsin in setting up a patent pool is of real interest in this connection.

This minimum program, as well as the idea of government planning and proposals to improve administration are discussed in the last chapter. It is perhaps sufficient to say here that many methods have been proposed to strengthen the democratic process. The problems are immediate, and most of the solutions seem to run outside the traditional pattern of political action. But the traditional American goal of equal opportunity is far more vital to our welfare than maintaining any established patterns of action.

The only real problem is to settle upon a program which seems reasonably calculated to advance us toward the goal.



## CHAPTER II

### PRESSURE GROUPS

The forces engaged in the struggle for the control of power were classified in chapter I as government, pressure groups, and the general public, with government and those pressure groups allied with business as the major contestants.

Theoretically, pressure groups compete with each other on equal terms, have equal bargaining power, with none enjoying an advantage over another. This assumes that the right of petition guaranteed by the Constitution is exercised by "free and equal" men. The most it assumes, under a broader interpretation, is that citizens, when they have grievances against their government, lend weight to their pleas by mobilizing their strength and directing it by organization to Congress. But it is assumed that such organization is temporary, and furthermore that the group wields no more economic power than that growing out of the aggregate resources of the individuals composing it.

Actually, the situation has changed radically. Relying on the individual's right of petition, lawyers today lobby for business, for labor, for farmers, just as they have done for decades. But beyond this surface similarity there is little resemblance to the situation of Washington's day. The membership organization, employing the lobbyist, directed by paid executives, exerts a degree of strength, cohesion, and mobility differing essentially from the fluctuating pressures of an earlier day. As for business, the corporations whose right as persons to petition the government is exercised by lawyer-lobbyists have behind them so much wealth, such concentrated control, and such a degree of impersonality as to challenge their right to function, under democratic theory, as individuals. In addition, corporations have marshaled behind them the bulk of the scientific brains of the country, a resource which labor, farmers, and government itself cannot equal. In the contest for government control, applied science is so weighty that it tips the scales in favor of business.

Theoretically, government participates in the struggle not as a contestant but as an umpire. If business long ago had not borrowed public power, government might still be able to function solely in the umpire's role. But with the attempt by Congress to balance the tremendous power which business has gained, government appears not only as an umpire but as a contestant as well. To every group aggrieved by government, Washington appears as more than a contestant: it seems to be an antagonist. And, since business has gained so large a share of public power, it is not surprising that business more than any other group regards the government as an antagonist.

#### CONTESTANTS IN THE STRUGGLE

It is difficult to enumerate the organizations which, together, are the antagonists in the struggle for power. A classification by func-



tion, on the basis of government, pressure groups, and the general public, apparently neglects the divergent interests making up the various groups, so that in many cases wider variations in aim, methods, and effectiveness are found within a single group than exists between any of the three groups. The abyss that separates the United States Chamber of Commerce from the Municipal Ownership League, for instance, is far wider and deeper than the separation between the Republicans and the conservative Democrats.

It is probably true that the ranks of the pressure groups shelter some who would prefer to live under a government in which their sole voice was that of individual citizens; and that government agencies and legislative bodies are honeycombed with men and women who feel that business is far better able to wield political control than the politicians. Still it is impossible to classify the interacting forces on a completely adequate basis, and the division here set up has the advantage of emphasizing the energetic, directional approach of pressure groups as against either government or the general public.

Government, of course, includes town, county, and State legislative bodies and administrative agencies, as well as the local courts. The Federal Government's scope of action is so different from the lower levels of government that it must be classified separately, although its general position in the contest is at least partly the same. One of the chief techniques by which pressure groups get and maintain their power is by insisting that a certain function legally belongs to the States, even though it is clear that the State cannot handle it adequately. By insisting that it belongs to the States, they manage to preclude the possibility of any effective action.

Among the pressure groups, business can be divided into two categories—principals and satellites. In the former are included the groups representing business and industry generally, and those representing distinctive parts of American business. In the latter are the professional associations which revolve around business, largely dependent upon it for support.

Chief among the organized groups representing business generally is the Chamber of Commerce of the United States. The outstanding employers' group is the National Association of Manufacturers. It acts not only on its own account, but has also, through the National Industrial Council, been instrumental in coordinating the activities of State industrial associations, local industrial relations organizations, and manufacturing trade associations. Twelve of the country's top-notch corporations keep informed of each other's activities in the industrial relations field through a special conference committee.

In the electric power industry, the Edison Electric Institute, successor to the National Electric Light Association, operates a well-known lobby. Legislative activities of the country's life insurance industry are under the direction of the Association of Life Insurance Presidents. On governmental matters the Association of American Railroads speaks for the railway industry. Iron and steel, petroleum, lumber, coal, copper are represented by the American Iron and Steel Institute, the American Petroleum Institute, the National Lumber Manufacturers' Association, the National Coal Association, and the Copper Institute, respectively. Of special importance, because of the national defense considerations involved in national policy regarding merchant shipping and air transport, are the American Merchant



Marine Institute (formerly the American Steamship Owners Association) and the Air Transport Association.

Among industry's satellites, commercial banking presents a united front to government through the American Bankers Association, while the Investment Bankers Association of America functions in the same capacity for investment banking.<sup>1</sup> Although it includes by no means all the country's lawyers, the American Bar Association is the part of the legal profession most closely allied in thought with American business. Through the American Newspaper Publishers Association the country's daily newspapers join their strength for business and against government. National groups in the accounting, engineering, auditing, and advertising professions share the general philosophy of business and shape their public activities accordingly.

The organizations through which laborers, farmers, distributors, and consumers direct their efforts in forming public policy are well known, although they vary considerably in effectiveness. The great bulk of the labor unions are organized into the American Federation of Labor, the Congress of Industrial Organizations, and the railway brotherhoods, although the independent unions are not necessarily inactive in politics. Among the important farm groups are the National Grange, which has been active in politics for 70 years, and the American Farm Bureau Federation and Farmers Educational and Cooperative Union, which have emerged as potent factors in lobbying since the World War. Farmers' membership cooperatives are active politically, working through the American Cooperative Council. Numerous farm commodity producers are organized on a national scale and engage in both National and State politics. The American National Livestock Growers Association is typical of this group. It is particularly difficult to distinguish between such producers' organizations and the pressure groups comprising "business." Their members are, in a sense, farmers, but they have far more in common with the business community than with agricultural groups.

Effective organization of retail distributors on a national basis was late in developing, the National Retail Federation dating only from 1935. Effectiveness of organized consumers is very limited, the only Nation-wide group claiming to represent consumers being the National Consumers League. However, organizations such as the American Association of University Women and the National League of Women Voters are becoming increasingly consumer-conscious and also increasingly active in endeavoring to shape public policy where it affects consumers.

This list of contestants contains only a few of the Nation's politically important pressure groups.<sup>2</sup> However, it includes most of the

<sup>1</sup> "It is often held that control over the larger nonfinancial corporations centers in the larger banks and insurance companies. This may have been the relationship which developed in other countries in which banking concentration has been carried to a very much greater extent than in the United States. In this country, however, there is much evidence that, though the larger banks and insurance companies are an integral part of the corporate community and are dominated by much the same group of individuals, the basis of controls in the corporate community is too diffuse to justify the statement that control centers in the banking institutions. A bank is quite as likely to be dominated by an industrial, railroad, or utility group as to dominate such a group. Unquestionably, the banks and insurance companies play a significant role in the structure of controls, but more as one of the many bases for the controls exercised by the dominant groups than as the center of such controls." National Resources Committee, *Structure of the American Economy*, Washington, 1939, p. 159, fn. 17.

<sup>2</sup> See appendix, pp. 197-201, for a more complete list.

strongest in the struggle for power. In later chapters the working out of this process is examined in some detail, and the contacts between pressure groups and government are explored.

#### CHARACTERISTICS OF THE CONTESTANTS

In the contest for domination of public policy, four characteristics are of primary importance. They are: length of life, cohesion, visibility, and resources. Length of life, or staying power, is vital because the contest is a continuing one, and an organization which continues to function over a long period of time gathers experience, techniques, and familiarity with the problems which are probably not shared by its opponents.

Cohesion in an organization makes for mutual support, which is invaluable under stress. The more an organization suffers from disunity, or internal dissension, the less is it able to direct its strength toward any particular goal, and the more easily its aims are defeated.

The extent to which the activities of a contestant, whether it is government or a pressure group, are invisible to the general public or to other groups often determines the outcome of a particular maneuver or a whole phase of the battle. A part of the struggle for power is carried on more or less openly, although even then it may be disguised, as propaganda frequently is. Congressional hearings provide another spotlight. The committee meetings in which policies are decided are not open to the public, however, a circumstance which fosters invisibility in political action.

In a conflict between economic and political forces it is inevitable that resources should play an important part. Propaganda is expensive, law suits are expensive, lobbies are expensive. The word "resources" should, of course, include more than money, as there have been occasions when money was of no avail against militant groups who worked with reforming zeal. The record indicates, however, that the side which spends the money usually wins the election.<sup>3</sup>

#### *Staying Power.*

Business has greater staying power than other pressure groups, or than government, because its constituent units have a longer lease on life. Most private corporations possess perpetual charters. When combined with such resources as those controlled by the 250 largest corporations, these charters enable business to stay in the political game indefinitely. A corporation may, as a result of voluntary or involuntary bankruptcy or merger, lose its identity and with it its charter. But the factors determining a corporation's ability to retain its individuality and thus stay in the political game are far more economic and legal than political. Most of the country's important business units have been in business, and in politics, for decades. Organizations of these business units are equally old. The National Association of Manufacturers was organized in 1895, and the predecessor of the National Industrial Council, the organization through which the lobbying, propaganda, information, and labor relations policies

<sup>3</sup> See H. D. Anderson, *Popular Government in California*, Stanford University Press, 1941.

of affiliated local, State, employers', and manufacturing trade associations are coordinated, in 1907.

On the surface it would seem that the power of organized labor, if not of farmers and consumers, to stay in politics would equal that of business, but it is doubtful if this is actually so.

Labor's stamina depends in the first instance on the authority to function, granted in union charters, and, in the second, on the general state of business. Labor union income rises with prosperity and falls with depression. Without resources, labor cannot use effectively the right to function granted them by charter. Also, labor's ability to take an active part in the governing process depends largely on the sympathy of government.

The relative staying power of labor and business is well illustrated by the experience of the National Association of Manufacturers. On three different occasions during the 45 years of its existence it has responded to alleged threats to the security of the American system of free enterprise. The threats were said to come from labor and its bid for Government assistance in its struggle for improved working conditions.

In its first "open shop" drive in 1905 and 1906 the association attempted to break the growing power of organized labor. A similar drive was conducted during the mid-twenties. The third attempt was begun after the legal recognition of labor's right to organize and bargain collectively, in 1933 (a recognition strengthened and made more permanent in the Labor Relations Act of 1935), and it has not yet ceased.<sup>4</sup>

A sympathetic attitude on the part of government toward farm groups is a tremendous factor in their effectiveness. These organizations almost completely lack the legal basis of longevity conferred upon business and labor groups by charter. Farmers' staying power is relatively low, although post-war experience with voluntary organization and recent legislation have improved it. Whether this will be a permanent improvement remains to be seen.

Government clearly lacks the staying power of business. It is subject to changes among its legislators and responsible officials much more frequently than business, and while such changes are inevitable in a representative democracy, they seriously compromise its power to govern. Even lengthening the term of public service to 4, 6, or 8 years, instead of the present 2, 4, and 6 years, would not begin to approach the decades during which businessmen are in office.

One instance of the effect of personnel changes and other shifts over a relatively short period appears in the history of the enforcement of the Federal anti-trust laws. In 1913 Congress placed the enforcement of the Clayton Act in the hands of the Federal Trade Commission. Twenty years later, according to a study made in 1932, enforcement appears to have been effective in the case of "small" but not of "big business." Because of—

the shift in political power within the legislative and executive branches of the Government, and the limitations placed on the Commission by the courts—

<sup>4</sup> The story of the two "open shop" drives and of the National Association of Manufacturers' opposition to collective bargaining under Federal law is told in detail in Report of the Committee on Education and Labor, pursuant to S. Res. 266, 74th Cong., U. S. Senate, 76th Cong., 1st sess., Rept. No. 6, pt. 6.



the Federal Trade Commission has, according to this study—

been little more than a body for the regulation of the trade practices of small business.<sup>5</sup>

### *Cohesion.*

Cohesion is a characteristic of great advantage to business. There is some doubt regarding the cohesiveness of all business, large and small, but there is unquestionably a marked degree of "sticking together" in the business community which is of primary importance in the governing process. How important their attachment to a uniformly accepted philosophy is in this respect it is difficult to say. Common observation would indicate that it has considerable weight. In any event, the extent of interlocking in the directorates of the country's leading business units is so great as to result inevitably in a considerable similarity of viewpoint. In 1935, out of 250 corporations (the 200 largest non-financial and the 50 largest financial) 151 companies were interlocked with at least 3 other companies in the group. The assets of these 151 companies amounted to nearly three-fourths of the combined assets of the 250.<sup>6</sup> While it would be easy to exaggerate the importance of this extensive interlocking in the matter of policy formation, it would be a mistake to underrate it, since 59 of the 83 directors who held 4 or more directorates were active in at least 1 of the companies they served. (Active positions include those of board chairman, executive or finance committee member, or executive officers.)<sup>7</sup>

The cohesion resulting from this overlapping is not only economic but political as well. It gives business management a big tactical advantage over business owners, over employees and farmers, and over government itself. Other pressure groups possess the political cohesiveness and single-mindedness of business, but they have not the economic cohesion, in the sense that businessmen all over the country are relatively easy to unite in a single movement. Other pressure groups are smaller, and less well integrated by their organs of communication.

In comparison with business, government appears to be almost completely lacking in cohesion. It can hardly be otherwise. The territorial organization of government is diffuse, particularized, if not atomized. Not even the executive branch is capable of the degree of cohesion possessed by business. It is too large, too diverse in origin and interest, and too lacking in mutual and common concern to be more than very loosely held together by President and Cabinet. Partisan politics inevitably involves some degree of cohesion, at least among the politically-responsible personnel, if the party is to be successful at the polls. But it cannot engender the kind of single-minded purposefulness which business possesses, and which would be so valuable an asset in the contest for power.

As an eminent legislator, later a Cabinet official, once pointed out, "The first law of politics is self-preservation." And any legislator knows that his reelection is primarily his own problem, which he will have to solve by making some compromise with the various groups in

<sup>5</sup> T. C. Blaisdell, Jr., *The Federal Trade Commission*, Columbia University Press, New York, 1932, p. 259.

<sup>6</sup> National Resources Committee, *The Structure of the American Economy*, Washington, 1939, p. 158.

<sup>7</sup> *Ibid.*

his district. A legislator with principles often draws a line beyond which he will not go in compromise; but as representative of a whole district, he cannot in the nature of things achieve the single-mindedness of any one of the pressure groups which tries to influence him.

### *Invisibility.*

The invisibility of the struggle was discussed in chapter I. Invisibility, however, is an advantage which accrues largely to business rather than to government. That part of the governmental process which goes on behind the scenes is largely the exertion of pressure on the legislative, administrative, or judicial branches, and the pressure is largely exerted by business.

In greater or less degree, of course, this invisibility is a characteristic of all the private groups which are active in government. It grows out of the longstanding fallacy that government is "public" and pressure groups "private." As a result, government operates under the strong light of publicity, while the other contestants are permitted to conduct their activities as if they were not of public concern.

### *Resources.*

Most important of all the factors in favor of business, however, are its resources—not so much because of their size, important as that is, as because of the circumstances surrounding their use. The extraordinary concentration of ownership in the 250 largest corporations, and the even greater concentration of control, enormously increase their mobility and effectiveness.<sup>8</sup>

The ownership and control of these large assets by the business community give point and meaning to the other characteristics of the contestants. They contribute to the comparative longevity of corporations. They also provide a very real basis for the cohesion displayed by the business community in its efforts to maintain the status quo, protect private property, and continue to control business assets, unhampered by public regulation. The darkness surrounding the political activities of nongovernmental groups in the contest is important to business largely because it permits the spending of these huge reserves almost entirely without accounting.

Government expenditures are made out of public revenues, and their use is subject to public scrutiny at all times. Hence, business, as part of the public, is able to challenge and keep to a minimum Government expenditures for propaganda purposes. Government, by means of the taxing power, congressional investigation, and use of antitrust statutes, and so forth, can to some extent limit business' expenditures for propaganda purposes. Compared to the glare of publicity that surrounds Federal expenditures, however, business carries on its activities in a dim and comforting gloom. In the last analysis it receives its funds from the public, allegedly for services rendered. Yet, because propaganda and lobbying expenditures are included in the cost of doing business, the public pays for these expenditures, and it pays for them not once but twice. As a cost of doing business they are deducted before figuring the net income out of which dividends are paid and against which income taxes are levied. This public quality inhering in business funds is to a large extent ignored. Rarely

<sup>8</sup> "The lack of significant stockholder control over corporate policies may be regarded as the typical condition toward which the large corporate units have been tending." Natural Resources Committee, op. cit., p. 157.

are business expenditures examined from the viewpoint of their effect on the general welfare. Rarely are even the total amounts expended made known, and almost never is there published an analysis of the way in which the total was distributed. Admitting the advisability of the existing strictures on the use of Government funds, it seems equally important, or more so, that they should also be applied to the political expenditures of business.

On occasion Congress and enterprising journalists have turned the spotlight of publicity on the political expenditures of business and given the public an opportunity to compare private and public expenditures for political purposes.

In 1913, Congress investigated the lobbying activities of the National Association of Manufacturers. Extensive hearings were held by a select committee of the House and by a subcommittee of the Senate Committee on the Judiciary. The tightly-knit organization of the N. A. M. and of its legislative pressure group, the National Council of Industrial Defense, excited the admiration of the majority of the House committee, but the association's many-sided program, and particularly its probable effect on the American governmental system, aroused apprehension.

It was disclosed that the association had placed an employee of the House of Representatives on its pay roll in order to obtain information not available to the public; the association's agents had contributed large sums of money to the reelection campaigns of congressional candidates, and had opposed representatives friendly to labor; the association had carried on a disguised propaganda campaign through newspaper syndicates and through the Chautauqua circuits, by employing publicists, and by distributing large quantities of propaganda to schools, colleges, and civic organizations throughout the country; the association's agents had promoted employees' alliances as an aid in opposing political candidates friendly to labor.<sup>9</sup>

In its report to Congress the House committee majority stated that the N. A. M. was shown "to have been an organization having purposes and aspirations along industrial, commercial, political, educational, legislative, and other lines, so vast and far-reaching as to excite at once admiration and fear—admiration for the genius which conceived them and fear for the ultimate effects which the successful accomplishment of all of these ambitions might have in a Government such as ours."<sup>10</sup>

The fears expressed in 1913 were echoed 26 years later by the La Follette Civil Liberties Committee, a sub-committee of the Senate Committee on Education and Labor. One part of its investigation of violations of the right of free speech and assembly and of interference with the right of labor to organize and bargain collectively dealt with the labor policy of the National Association of Manufacturers. The propaganda employed by the association to advance this policy gave the committee "serious concern." It found that between 1933 and 1938 the association—

blanketed the country with a propaganda which in technique has relied upon indirection of meaning, and in presentation upon secrecy and deception. Radio speeches, public meetings, news, cartoons, editorials, advertising, motion pictures,

<sup>9</sup> See the report of the Committee on Education and Labor, No. 6, pt. 6, 76th Cong., 1st sess., pp. 209-210.

<sup>10</sup> H. Rept. No. 113, 63d Cong., 2d sess., p. 5.



and many other artifices of propaganda have not in most instances disclosed to the public their origin with the association. \* \* \*<sup>11</sup>

The committee found, furthermore, that—

the purpose of this prodigious effort is in part to forestall union organization, and in part to sway public opinion in favor of a legislative program approved by the large corporations which control the association, and to influence the electorate in its choice of candidates for office.<sup>12</sup>

The controlling position of large corporations in the association's affairs and the connection between their resources and the association's propaganda struck the committee with particular force. It was found that the association—

is largely financed by a small group of powerful corporations, representing in 1937 less than 10 percent of its membership of 3,000 companies. A much smaller clique of large corporations, not more than 60 in number, have supplied it with active leadership \* \* \*<sup>13</sup>

Most of these companies are among the National Resources Committee's list of 250 dominant corporations.<sup>14</sup> It is the channelizing of corporate funds through the N. A. M. for propaganda and political purposes that causes the Committee concern.

The National Association of Manufacturers' campaign of propaganda—  
it states—

stems from the almost limitless resources of corporate treasuries. Not individuals but corporations constitute the membership of the association and supply its funds. It is this fact that makes the political aspects of the association's campaign of propaganda a matter of serious concern. In effect the National Association of Manufacturers is a vehicle for spending corporate funds to influence the opinion of the public in its selection of candidates for office. It may be questioned whether such use of the resources of corporate enterprise does not contravene the well established public policy forbidding corporations to make contributions in connection with political elections.<sup>15</sup>

In the opinion of the N. A. M., the expenditure was well made—

\* \* \* officials of the association have boasted that its propaganda has influenced the political opinions of millions of citizens, and affected their choice of candidates for Federal offices.<sup>16</sup>

Emasculating amendments to the National Labor Relations Act were adopted in June 1940 by the House of Representatives elected in November 1938.

This alliance of corporate resources and propaganda is not an isolated instance of the lavish use of business resources for political purposes. Omitting such a shocking example as the Teapot Dome scandal of the Harding administration, there are numerous cases of apparently routine perversion of the political process. The extent of the propaganda issued by the electric power industry for private ownership and freedom from regulation during the 1920's was so great that the Federal Trade Commission said: "No campaign approaching it in magnitude has ever been conducted except possibly by governments in wartime."<sup>17</sup> The pressure which the utility industry exerted on Congress in 1935 in its effort to defeat the Utility Holding Company Act is still fresh in the minds of many citizens.

<sup>11</sup> Report of the Committee on Education and Labor, op. cit., No. 6, pt. 6, p. 218.

<sup>12</sup> *Ibid.*, p. 219.

<sup>13</sup> *Ibid.*, p. 220.

<sup>14</sup> Structure of the American Economy, op. cit., pp. 100-101.

<sup>15</sup> *Ibid.*, pp. 221-222.

<sup>16</sup> *Ibid.*, p. 221.

<sup>17</sup> Sen. Doc. 92, pt. 71-a, 70th Cong., 1st sess., p. 18. See also ch. X.



The life insurance industry also has spent large sums to keep itself free from Federal regulation, despite the interstate character of its operations.<sup>18</sup>

In none of these areas of public policy would the business community have been able to operate as it did without the financial resources of corporate treasuries.

Indeed, a well-placed Washington correspondent has expressed the view that "property has not hesitated to corrupt government, when necessary to preserve its precious advantages and to extend them,"<sup>19</sup> and adds:

This has been going on for so long that we scarcely notice it. Here in Washington we are casehardened; we take it for granted that the property lobbies will push our legislators around whenever the interests of their principals are threatened.<sup>20</sup>

*Technology a major resource of business.*—While the volume of physical assets controlled by business gives it a great advantage over other groups and over government, scientific research and technology are also of great weight. The control over applied science which business holds is the key to the explanation of its dominant position in the process of government. Two interacting factors make this position possible. Business, enabled by the corporate mechanism to raise the large funds necessary for mass production, to concentrate control over their use in a few hands, and to build up its research laboratories, has worked its way into a dominant position in economic life. By its control over technology it is able to perpetuate that position.

Economic pre-eminence means economic independence, and independence means relative freedom from political control. Business enlists technology for economic reasons, primarily to lower unit costs.<sup>21</sup> This is done deliberately. A less conscious reason is the desire to attain a commanding competitive, even a semi-monopolistic or monopolistic, position in the industry. Technology facilitates the realization of that ambition. It not only facilitates it, it is the essential prerequisite to successful competition. Research, indeed, is necessary to industrial survival. Large-scale industry as it is known today would be impossible without scientific research and the technological improvements in products and processes flowing from it.

The consequences of industry's alliance with technology are important not only in the economic but also in the political sense. To a great extent industry's political formidability can be traced to its dominant position in scientific research. For business, this is a by-product, albeit an important one. But for the student of politics and government it ranks as a primary factor of highest significance. Interested as he is in innovations affecting the ability of government to use effectively the power of the State, he must recognize the invention

<sup>18</sup> Hearings before the Temporary National Economic Committee, Part 10.

<sup>19</sup> Kenneth G. Crawford, *The Pressure Boys*, Messner, New York, 1939, p. ix. The value of this book would have been greatly enhanced if the many instances of the success of the property lobby had been documented and if an index had been provided. However, it is readily understood why Mr. Crawford felt unable to supply the former deficiency. Short of the subpoena power and the witness stand, it is practically impossible to obtain authentic evidence of lobbyists' activities. Even when armed with such powers, congressional committees have frequently been rebuffed in their efforts to get the facts by recalcitrant and evasive witnesses.

<sup>20</sup> *Ibid.*, pp. ix-x.

<sup>21</sup> "The primary purpose of businessmen in introducing new machinery or new methods is, of course, to reduce costs of production. That is first \* \* \*." Testimony of Dr. T. J. Kreps, Hearings before the Temporary National Economic Committee, pt. 30, p. 16213.

of the art of invention<sup>22</sup> as a political factor of primary importance.

As media of propaganda, of information, and of opinion formation, the talking picture and the radio are now recognized as new and permanent factors in the political equation. As such, they take their places alongside the newspaper press, a new factor a hundred years ago, but now of traditional importance. Similarly, air transport and the automobile are now recognized together with the railroad as means of transportation, affecting profoundly, perhaps essentially, both the substance and the form of governmental authority. Politically such inventions as the telephone, telegraph, radio, air transport, the automobile, etc., have been overemphasized in relation to the art of invention. They are merely particular examples of an art which is on its way to perfection. And effective domination of this greatest of all modern scientific achievements is in the hands of business.<sup>23</sup> The controls centralized in the business community extend to both pure and applied science. It is the domination in both fields which gives business its key position. No other group, not even government, controls and enjoys this asset to the same extent. It is a resource of the first magnitude, endowing business with unique influence in the social process, and making its political strength almost unassailable.<sup>24</sup>

The problem thus created is a baffling one. Basically government does not compete with industry in research. In fact, much of the Federal Government's present research in the physical sciences is of direct or indirect value to business. The research which it conducts in carrying out its constitutional responsibilities of national defense and of determining standards is of this kind.<sup>25</sup> By aiding business in this way, government fortifies one of the greatest forces possessed by business in the struggle for power. Federal research in national defense has undoubtedly been of value to the iron and steel industry, and in highway construction and maintenance (not to mention construction subsidies to the States) to the automobile manufacturing industry. Yet in these two industries government efforts to improve labor conditions have been persistently rebuffed. In agricultural research, government assistance is of such long standing, is so comprehensive, and absorbs such a volume of funds as practically to dominate the field. Such recent legislation as that of 1938, establishing laboratories to find new uses for agricultural products, has been necessitated at least in part by the spectacular results of earlier work, both government and private, in increasing agricultural production. Also, recent efforts to bring farm and urban income more nearly into balance spring in part from a recognition of the unbalance caused in no small degree by inflexible industrial prices made possible by centralized control over resources and technology. These fruits of governmental research nourish business in greater measure than gov-

<sup>22</sup> "By far the most significant invention made in the nineteenth century was \* \* \* the invention of the art of invention." *Ibid.*, p. 16212.

<sup>23</sup> "It is this technique of scientific blueprinting by means of involved chemical and mathematical formulas which has made the industrial research laboratory the creator of new processes and new products, the critic of existing techniques; in short, the industrial and commercial intelligence section of a modern business \* \* \*." *Ibid.*, p. 16213.

<sup>24</sup> An analysis of the consequences of technology and the concentration of economic power is made in another monograph in this series, No. 22, *Technology in Our Economy*.

<sup>25</sup> See, in this connection, Report of the Science Committee to the National Resources Committee, Research—A National Resource, Washington, 1938. 1. Relation of the Federal Government to Research; sec. 1, Summary of Memoranda on the Research of the Federal Government in the Natural Sciences and Technology, pp. 25-46.

ernment; they add to the weapons of business, and do not provide government itself with an opposing weapon. Some alleviation of this situation is necessary, if the respective contestants in the political process are to engage each other on more nearly equal terms.

## CHAPTER III

### BUSINESS OUTPOSTS IN WASHINGTON

#### CHAMBER OF COMMERCE OF THE UNITED STATES

Two of the pressure groups speaking for business are of sufficient importance to justify fuller description.

The Chamber of Commerce of the United States claims to be the outstanding organization for the crystallization of business opinion. Its value as such is probably greater than as a lobbying group. While its importance as a lobby should not be neglected, it usually operates more as a force for discovering and expressing business opinion than for putting pressure on Congressmen and Senators, leaving that role, for the most part, to its constituent members acting independently or through other groups.

But as a constant factor in political opinion-forming, the Chamber of Commerce is probably not surpassed by any other group. Without doubt other propaganda campaigns sometimes exceed the chamber's program in cost, subtlety and indirection, scope, and ramifications. The National Association of Manufacturers put on such a campaign between 1933 and 1938, and the National Electric Light Association a decade earlier. However, as a pipe line for steady, relentless, and timely opinion dissemination, the chamber of commerce is probably unequalled. It could be called organized business' Washington press agent.

The reason for the founding of the Chamber of Commerce is shrouded in no mystery. It was set up primarily to let the Federal Government know what business was thinking. Back in 1911, it seems, a member of the United States Senate was being pulled different ways by members of two business groups in his State. The chamber of commerce of his city had urged him, by wire, to vote against a bill then before the Senate, stating that its passage would work great hardship to business in the State. Later in the same day he received another telegram from another association of businessmen pressing him to support the bill, arguing that it would benefit greatly his State and the surrounding region. In his dilemma he posed the question which the Chamber of Commerce, ever since, has been answering, "What," he inquired, "does business think?"

Help in answering this question came from President William H. Taft and from Secretary of Commerce and Labor Nagel. In 1912 they invited businessmen and representatives of their organizations to Washington "to work out a plan by which government could get the advice and counsel of the business nation by means of a national clearing house of business opinion." In response to this invitation some five hundred representatives of commercial organizations, trade associations, and individual industrial establishments gathered in the



Capital and laid the foundation upon which the chamber of commerce was erected.<sup>1</sup>

To use its own words, the Chamber of Commerce of the United States is "the spokesman at Washington for its membership." From its national headquarters across LaFayette Square from the White House emanate the opinions constituting the voice of the Nation's business. The desire of the Senator to know the thoughts of business would now be fully satisfied. Not only Congress but also the President and his Cabinet, bureau chiefs and heads of the independent agencies are thus informed of collective business opinion. Federated in the chamber are 1,500 commercial organizations and trade associations, including as members more than 7,000 of the most important corporations, firms, and individuals of the country. Representing such a constituency, and having under its direction in Washington a competent staff experienced in all phases of business activity, the chamber is indeed in a strategic position to dispense its product—"service to American business."

#### *Crystallizing Business Opinion.*

The Chamber of Commerce provides elaborate means for consulting, crystallizing, and disseminating the beliefs and desires of its members. Like most other groups who claim to serve the public as well as their constituents, the chamber adopts resolutions at its annual meetings. In this way points of view are expressed, attitudes are probed, and hopes and fears are aired. In addition, the chamber's board of directors from time to time frames a question on a specific issue, and through a referendum system polls the chamber's membership on the question. Through a continuous process of fact finding, organizing, and digesting, the president and board of directors keep its members supplied with material on at least two sides of public questions and provide for periodic consultation of the chamber's collective mind, thus constantly fertilized. At the same time, they employ the press, the radio, and the chamber's own organ, *The Nation's Business*, in a never-ending campaign to get the American people and their governmental agencies to accept as their own the philosophy thus developed.

The research department of the chamber conducts legislative, legal, and economic research for its members, committees, and departments. It transmits to members, upon request, accurate and comprehensive information concerning bills in Congress, court decisions, rulings, and other facts emanating from governmental bureaus, departments, and commissions. Committees set up by the 11 service departments<sup>2</sup> are constantly studying timely and urgent subjects falling within their respective spheres. When the directors order submission of a committee report to the membership for a referendum vote, the research department must combine with the committee's report the facts neces-

<sup>1</sup> Chamber of Commerce of the United States, *Its Organization, Functions, and Services*, p. 3. This is a publication issued by the chamber in Washington, 1935. The Senate Civil Liberties Committee is authority for the statement that the United States Chamber of Commerce was organized by the National Association of Manufacturers. "In order to carry out its program, the National Association of Manufacturers, together with other associations, organized in 1916 the Chamber of Commerce of the United States and the National Industrial Conference Board, the latter to provide factual data for the association's "educational campaign." Report of the Committee on Education and Labor, pursuant to S. Res. 266, 74th Cong., Rept. No. 6, 76th Cong., 1st sess., pt. 6, p. 210.

<sup>2</sup> Agriculture, commercial organization, construction and civic development, domestic distribution, finance, foreign commerce, insurance, manufacture, natural resources production, trade associations, and transportation and communication.

sary for a complete and impartial presentation. Each service department is headed by a manager with experience in his field and he is aided by an advisory committee. These departmental committees report to the board of directors their recommendations concerning the programs of their respective departments.

The research department, in addition to assisting the departmental committees, furnishes the membership with current information through periodic general and legislative bulletins. The former are issued weekly and present concise information about the governmental activities of special concern to businessmen. The Legislative Bulletin is issued weekly, while Congress is in session. It describes each bill of business importance and follows it through all of its legislative stages, thus affording authoritative information about its contents and status.

Important as they are, the research and information programs of the national chamber are not its first interest. Its—

primary function is to obtain the matured judgment of business upon national questions, and to present and interpret those views to the agencies of government and to the public.<sup>3</sup>

The chamber says it is—

not autocratic. It serves, rather, as the agency through which the opinion of business is canvassed and is given point and emphasis. It speaks the business language in relation to national policies of essential concern to business.<sup>4</sup>

Membership opinion is canvassed by referenda and resolutions. At that point the national chamber's resolutions and referenda department, its press department, and its monthly magazine, *The Nation's Business*, "present and interpret these views to the agencies of government and to the public." When a policy has once been adopted by the membership "it is not allowed to slumber in the archives. When proposed legislation or other public action in point calls for it, the chamber actively publishes and presents the point of view which its members have expressed."

In promoting policies determined by referenda or by resolutions adopted at annual meetings, the resolutions and referenda department keeps in touch with the progress of legislation and presents to Congress the views of the national chamber on principles involved. The chamber maintains that it "does not sponsor specific legislative measures. It gives counsel as to policies." In performing this role of adviser, the resolutions and referenda department arranges for the appearance before congressional committees of delegations to present chamber views. Also it appeals to member organizations for cooperative support by representation to Congressmen and Senators.<sup>5</sup> Finally, it advises the membership of the progress of legislation in relation to which the national chamber has enunciated a definite policy.

The publicity department's sphere of action is "interpreting and promoting the program of organized business as crystallized by the

<sup>3</sup> *Ibid.*, p. 4.

<sup>4</sup> *Ibid.*

<sup>5</sup> This frank admission of lobbying differs somewhat from the statement made by a chamber representative before a committee of the House of Representatives. After describing the way in which the referendum system works, it was said, referring to the result of the vote, that it "is tabulated, and a record showing how each member voted, together with the statement and argument of the case as presented, is given to Government officials, Senators, Congressmen, and to the public. There it rests. No buttonholing of legislators is engaged in; no pressure brought to bear. Representatives of government can take it or leave it; each is free to assay its worth." (*Ibid.*, p. 8.)

national chamber." The publicity program which it carries out is not unlike that of the press departments of trade associations, commercial organizations, and other citizen groups. "It reports activities, expounds principles, and gives utility to other chamber activities." News of chamber activities and results of departmental and committee research are furnished to daily newspapers, the trade press, organization publications, the periodical press, and to member organizations of the national chamber. It makes available to writers on economic subjects special material from the mass of business information within the chamber.

The publicity department also prepares a fortnightly Washington review. All the chamber's sources of information are drawn upon in thus making available to the membership a summary of current development in national business affairs, in legislative and administrative policy, the more important Government activities affecting trade and industry, and the activities of the national chamber in the formulation of national business policy.<sup>6</sup>

#### The Nation's Business—

is the medium through which the chamber, each month, puts before its members and before a large number of business readers not only facts covering chamber activities but facts in relation to national and international questions vitally affecting commerce and industry.

The policy of Nation's Business, as described in the chamber's own words, is to create a national viewpoint for American business, to break down provincialism and narrowness, to stimulate community development, to emphasize the value of organization teamwork, to promote a better understanding between Government, business, and public—to interpret each to the others and to expound the sanity, integrity, and stability of American business.<sup>7</sup>

#### *The Philosophy of Business.*

The real significance of the chamber's place among the informal units of our Government is not disclosed by saying that it was founded to convey the thoughts of businessmen to the Government; that it is the outpost in Washington of its membership; and that it exists to serve American business. Valuable as such statements are, they will be made more significant by determining the kind of thoughts conveyed to the Government.

The purpose in probing behind these statements is to make clear the working of the Chamber of Commerce as one of the forces of government. Like other citizen groups, it is not mentioned in the Constitution. Yet to consider our governmental system without including it is to deal with the form of government and not its substance.

The Constitution enumerates the formal organs of Government, distributes public power among them, and defines in general terms the relations existing between these organs and the citizens. But, although this description of the Constitution may be adequate from the legal angle, it fails to touch the vital forces which make it live. In the American system, the Constitution, as Chief Justice Hughes has said, is what the judges say it is. The important points, then, are: Who asks the questions? And how are they framed? While the formal procedures of making and interpreting the laws are important,

<sup>6</sup> *Ibid.*, pp. 31, 32.

<sup>7</sup> *Ibid.*, p. 32.



equally important is a knowledge of the groups who are economically affected by governmental action, whose awareness of that relationship is keen, and whose financial resources are sufficient to enable them to frame legislation, file suits, appeal decisions of the courts, and generate public opinion. The Chamber of Commerce is a meeting place for such a segment of the American people.

*Economics in the chamber's philosophy.*—The widest possible scope for the development of individual personal initiative and enterprise is the central feature of the chamber's economic philosophy. According to this concept, Government restraint is admissible only to the extent necessary to prevent encroachment upon the rights of others.

The true function of government is to maintain equality of opportunity for all, to preserve the sanctity of contracts, and to assume those collective activities which society must conduct as a whole.

Underlying this principle is the chamber's belief regarding the function of business. This function—

is to provide for the material needs of mankind and to increase the wealth of the world and the value and happiness of life.

This function, however, is not discharged without an incentive.

In order to perform its function it [business] must offer sufficient opportunity for gain to compensate individuals who assume its risks.

A warning is uttered against identifying this incentive with the laudable function just noted. “\* \* \* the motives which lead individuals to engage in business are not to be confused with the function of business itself.” The criteria for judging the value of this function to the public are price, quality, and treatment of the various elements in the economic process.

When business enterprise is successfully carried on with constant and efficient endeavor to reduce the cost of production and distribution, to improve the quality of its products, and to give fair treatment to customers, capital, management, and labor, it renders public service of the highest value.<sup>8</sup>

This statement, while suggestive of the philosophy of business as interpreted by the Chamber of Commerce, lacks definition. It needs considerable amplification and clarification to render it meaningful. The chamber's annual statement of policy partially supplies this need (in its 1940 revision it amplifies it to the extent of 55 pages) but it is not entirely unambiguous. In the field of industrial relations the chamber's position is most unequivocal, advocating outright repeal of the National Labor Relations Act (p. 10), the Fair Labor Standards Act (p. 13), and the Public Contracts (Walsh-Healey) Act (p. 14). On the other hand, its opposition to publicly-subsidized housing is obliquely expressed in the section on Government competition (p. 16), its approval of cooperative Federal-State employment exchanges is vague (p. 26), and the “satisfactory international monetary standard” which it advocates (p. 35) is nowhere defined.

*Government-business relations.*—Recovery measures bulk large in Government-business relations policies advocated by the United States Chamber of Commerce. Obstacles to the flow of capital into private enterprise should be removed by Congress. “Congress,” it is said,

<sup>8</sup> The chamber's publication, *Policies Supported as in the Public Interest*, Washington 1936, passim. Except where otherwise noted, quotations in the remainder of this section on the chamber of commerce are taken from the pamphlet, *Policies Advocated by the Chamber of Commerce of the United States*, Washington, 1940.

"should remove deterrents from the laws regulating the issuance of private securities," without diminishing essential safeguards for investors. The deterrents are not specified. However, the principal one seems to be what the chamber regards as excessive authority delegated by Congress to agencies.

This viewpoint extends to the entire field of Government-business relations. Congress, it says, should take away the opportunity for administrative agencies to impose theories and restrictions of their own. To this end—

all statutes, State or Federal, dealing with the supervision or regulation of financial institutions and similar fields of business should define the powers given to the supervisory authority—

and in particular—

should be specific about the place where management's responsibility ends and the supervisor's begins.<sup>9</sup>

Special opposition is registered to—

the enactment of further Federal legislation based upon the formula of an administrative agency possessing broad discretionary authority to issue rules and regulations, and in addition possessing the powers of investigator, prosecutor, and judge.

Wherever this formula exists in present legislation—

the chamber asserts—

there should be reexamination and such a recasting of provisions as to administrative authority as will preserve to citizens both the substance and the form of their rights.<sup>10</sup>

If Congress were to follow such a course, according to the chamber, Government revenues would be raised and tax burdens lessened; the number of public employees could be reduced. Moreover, it would permit Government reorganization to improve service and decrease cost. It would make possible the earlier balancing of the Budget and reduction of the national debt.

So important in Government-business relations is this "intolerable" union of legislative, executive, and judicial functions in "many" Federal agencies that the chamber of commerce singles it out for special reference. An "appropriate test of the exercise of legislative functions by these agencies" would be provided by the Walter-Logan bill (H. R. 6324, 76th Cong.) approved by the House April 18, 1940, and by the Senate on November 26, 1940.<sup>11</sup>

Congress should also refuse to consider "proposals having for their object the control of industries by Government agencies."<sup>12</sup> Specifically, the chamber "unalterably" opposes the imposition of codes controlling production in private enterprise by Federal administrative or executive authority.<sup>13</sup> On the contrary, "invention and research should

<sup>9</sup> Policies Advocated by the Chamber of Commerce of the U. S., op. cit., p. 5.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*, p. 6. This legislation is discussed further on pp. 191-194.

<sup>12</sup> *Ibid.*, p. 7.

<sup>13</sup> *Ibid.*, p. 8. Instead of control of production by Government the chamber has advocated control by trade associations under Government supervision. In 1936 the chamber believed the anti-trust laws should be modified so as to "permit agreements increasing the possibilities of keeping production related to consumption." Each industry should then be permitted to formulate and put into effect rules of fair competition. When formulated by a clearly preponderant part of an industry such rules "should be enforceable against all concerns in the industry." In this process the role of the Government would be supervisory. It would be limited (1) to indicating to businesses desiring to combine whether the proposed combination is illegal; (2) calling attention to agreements which are not in the public interest in stabilization of business operation and employment, in

be encouraged," and "no obstacles should be placed in the way of the most intensive utilization of the results of invention and scientific discovery." The patent system "should be maintained without impairment, including freedom of patentees to grant licenses restricted as to use."<sup>14</sup>

The existing antitrust laws are thought to be adequate, and additional civil remedies are opposed. Such rights as these laws contain "to permit reasonable arrangements" [unspecified] should be preserved. Trade associations should be supported and encouraged, particularly in continuing the development of "methods of cost-finding designed to aid each member of the industry in determining its own true costs." Also, there should be added opportunities for each enterprise—

to test the elements of its costs, and the methods of determining them, by checking with the costs of the rest of the industry. There should also be available to the members of the industry and to the public information about the operations of the industry as to volume of output, stocks, and markets.<sup>15</sup>

The Federal Trade Commission should not be given "authority as to acquisition of assets by corporations."

"Proposals for Federal licensing of State-chartered corporations as a condition to their engaging in interstate commerce \* \* \* should be opposed." The Temporary National Economic Committee would "best promote the public interest by devoting its attention to the antitrust laws in aspects in which they may be improved." Its allegedly "ex parte presentations so far used" should be replaced by "a procedure better adapted to establish the facts upon which any recommendations for legislation should be based."<sup>16</sup>

The chamber continues to advocate as fundamental principles legislation and enforcement of legislation against unfair competition, and—

condemns every expression [not further specified] that falsely represents existing conditions of competition as calculated to cause confusion and to obscure the true causes [not further specified] of decline in business activity and decrease in employment.

That these causes of business repression [not further specified] should be removed, and that fair competition may be promoted, businessmen \* \* \* should have means [not further specified] for ascertaining clearly the courses which, without being unethical or morally reprehensible, are contrary to a definite policy laid down in law, and have means for protecting themselves properly from the consequences of departures by others.<sup>17</sup>

Businessmen themselves should carry "most of the burden" of "policing of competition," and "new legislation should be clearly limited to businesses engaged in, or directly affecting competition in, interstate commerce." The chamber urges the Federal Trade Commission—

to concentrate its attention and energies upon the elimination of trade practices which are unfair and which are detrimental to the public interest.

The trade practice conference procedure is endorsed.<sup>18</sup>

order that they "may be nullified"; and (3) approving or vetoing the rules of fair competition drawn up by members of an industry, with power to indicate conditions of approval, but without power to modify or impose such rules on the members. In this scheme of industrial self-government the trade association plays the dominant role.

<sup>14</sup> *Ibid.*, p. 4.

<sup>15</sup> *Ibid.*, pp. 9-10.

<sup>16</sup> *Ibid.*, p. 7.

<sup>17</sup> *Ibid.*, pp. 8-9.

<sup>18</sup> *Ibid.*, p. 8.



"Sellers in every field are entitled to have the applications of the [Robinson-Patman] statute made plain." But "any attempt through legislation or otherwise, to prohibit selling at delivered prices should be opposed." Retail merchandising, in its legitimate forms, should be free from discriminatory laws. Government competition is "destructive and should be ended." "The Government should refrain from entering any field of business which can successfully be conducted by private enterprise."<sup>19</sup>

Instead of a Federal compulsory law to give workers social security, the chamber has advocated voluntary measures. It urges correction of certain unspecified burdens upon savings and life insurance. The Social Security Act's provisions for old-age insurance and assistance should be carefully watched, particularly from the cost angle. The employer's burden of providing unemployment benefits should be lightened. Federal grants in aid for improving local health facilities are opposed.<sup>20</sup>

Many of the stands taken on public problems by the Chamber of Commerce are not clear. This cannot be said, however, of its position regarding the place of the judiciary in our governmental system. The judiciary should be kept independent of the other branches of government. The chamber is opposed to any "influence" by Congress or the Executive which would change the size of the Supreme Court, minimize its power, diminish its jurisdiction, or limit its methods of decision.<sup>21</sup>

*Industrial relations.*—In the controversial field of industrial relations the Chamber of Commerce stands for a system in which employers and employees act in response to "the free play of economic forces," and Government activity is limited to "the protection of the rights arising from employment relations in production and distribution." Such governmental action, however, is not proper for the Federal Government but is "within the province of the State."<sup>22</sup> In 1936 the chamber argued that regulation of hours of labor by law is contrary not only to business principles but also to wise public policy; in 1940 they asked for the repeal of the wage-hour law "for the benefit of employers, employees, and the general public."

These views on industrial relations reflect certain basic beliefs. The Chamber of Commerce holds that the interests of employers and of employees are "mutual." Preferably, the Labor Relations Act should be wholly withdrawn; if it is not, mutuality of obligations and responsibilities should be written into it. In discussing the responsibility of the worker the chamber in 1936 argued that he should "refrain from the arbitrary imposition of any terms and conditions of employment" which would "tend to impair or destroy the inherently mutual interests of both employers and employees." All employer-employee relationships, it was maintained, should promote the recognition of these mutual interests and "should be so conducted as to make this recognition effective."

Flowing from this belief is the further principle of freedom of discussion and of negotiation in determining conditions of employment and work. In these matters both laborers and employers should have "full freedom." Furthermore, this freedom may be used "either

<sup>19</sup> *Ibid.*, pp. 3-9, 14.

<sup>20</sup> *Ibid.*, pp. 25-26

<sup>21</sup> *Ibid.*, p. 27

<sup>22</sup> From the 1936 statement of policies.

through individual negotiation or through representatives of their own selection." On examination, this apparently equal power of negotiation emerges as heavily weighted in the employer's favor, as is also the case in analysis of the chamber's attitude toward outside coercion and restraint: "Employees in exercising their rights should not be exposed to coercion from any source." "Through use of majority rule the National Labor Relations Act now denies to minority employees freedom to select their own representatives for collective bargaining. An amendment should make it explicit that an employer is required to bargain with any labor organization only as representative of employees who are its own members." Likewise, when negotiations are being conducted through representatives "it is proper that either side be permitted to object to any representatives of the other that are chosen or controlled by any outside group or interest in the questions at issue." In these terms does the chamber define its position on collective bargaining.<sup>23</sup>

By these statements, as well as explicitly, the Chamber of Commerce advocates the "open shop." By this phrase is meant "employment without regard to membership or nonmembership in any organization of lawful purpose." In other words, union membership is not necessary for employment. By the open shop is also meant what the chamber refers to as—

freedom of individuals, or groups of employees, in their employment relations from domination by a majority or any other part of their fellow-workers or workers in other establishments.<sup>24</sup>

Thus the chamber sets its face against the local shop union organized on a craft basis, against majority rule in the negotiation of wage contracts, and against negotiations by union organizers and union officials, as well as against the organization of workers into industrial unions for purposes of collective bargaining.

There has been no relaxation of the chamber's attitude toward industrial relations since 1936. In fact, experience under the National Labor Relations Act has intensified it. It urges outright repeal, but short of that it wants the act amended to conform to its general statement of beliefs. Specifically, among the amendments recommended by the Smith investigating committee<sup>25</sup> was a provision for a new board with judicial functions only, a recommendation already favorably acted upon by the House.

Additional drastic amendments are advocated by the chamber. Every form of coercion and intimidation of employees should be outlawed. To the act should be added definitions and prohibitions of unfair labor practices on the part of employees, their representatives, and any persons acting for labor organizations. The act's protection should be withdrawn from employees while in violation of agreements arrived at through collective bargaining. Employers should have the express right to petition the Board for an election. The law's sanction of the closed shop should be removed. An amendment should be passed laying down standards indicating the extent to which an employer is to be engaged in interstate commerce before becoming subject to the Board's jurisdiction. Moreover, legislation should be adopted curbing the right of employees' representatives outside the

<sup>23</sup> Policies Advocated by the Chamber of Commerce of the United States, op. cit., pp. 10-11.

<sup>24</sup> *Ibid.*, p. 13.

<sup>25</sup> H. Rept. No. 1902, pts. 1 and 2, 76th Cong., 3d sess.



employees themselves to call strikes, outlawing strikes to promote collective bargaining, establishing responsibility for the acts of labor organizations, and forbidding employees' organizations to make political contributions. Any attempt to provide double penalties in connection with the Labor Relations Act should be opposed, as well as attempts to extend the act to recipients of Government contracts and those dealing with Government instrumentalities. All of the Labor Relations Board's findings and decisions should be subject to judicial review. And the right to picketing should be limited to giving information.<sup>26</sup>

*Taxation and expenditures.*<sup>27</sup>—The Chamber of Commerce approaches fiscal problems with the assumption that taxes are too high and cannot be raised further, and that, therefore, expenditures must be cut if annual deficits are to be stopped. All its specific observations fit into this general framework. The statutory limit of the Federal debt should not be raised. A mere appropriation of money is no justification for making expenditures under that appropriation. Congress should direct the President to designate in the budget which activities he feels should be discontinued; to reduce expenditures of the executive branch below appropriations if necessary to prevent a deficit; and to disapprove individual items in appropriation bills. Since the demand for Federal funds for the benefit of States and communities is an important factor in excessive Federal expenditures, businessmen's organizations should refrain from requesting Federal funds for local or specialized purposes and should use their influence to dissuade local and State authorities from asking or accepting such funds. Moreover, Congress should reestablish and maintain its control over fiscal affairs by providing a body of its own to consider the budget as a whole, and propose to Congress a total within which revenues and expenditures should be kept. Stating its belief that "financial preparedness is just as necessary as military preparedness," and that "we should carry our defense on a pay-as-we-go-basis," the Chamber of Commerce holds that "positive steps" toward placing the fiscal affairs of the Federal Government on an orderly basis constitutes "one of the most essential preparations for national defense."

The revenue side of the Federal Budget also needs revamping, in the opinion of the Chamber of Commerce. Use of the Federal tax power to compel conformity to social or economic readjustment is "contrary to sound public policy." The corporate income tax should be applied at a flat rate, irrespective of size. Capital-stock and excess-profits taxes should be repealed. Reorganization of corporate structures undertaken for business purposes should not be subject to tax. Income tax returns should not be made public, and estate and inheritance taxes, both Federal and State, should be revised, along

<sup>26</sup> In addition, in the chamber's opinion, all persons should be subject to State laws against breaches of the public peace; protection of personal rights should be maintained against all unlawful interference; organizations of employers and of employees, negotiating labor agreements, should be registered; strikes and lock-outs against Government should be placed "beyond the possibility of occurrence"; and the laws of the States should be extended to include provisions directed specifically against concerted action, whether or not accompanied by disorder, directed by individuals, groups, or organizations, to bring any degree of coercion through economic channels upon the public or upon public authorities. Settlement of all employment disputes with public utilities should be through arbitration.

<sup>27</sup> The material in this section is taken from pp. 17-24 of the 1940 statement of policies. For a further account of taxation and business policy see T. N. E. C. Monograph No. 20, *Taxation, Recovery, and Defense*, by Dewey Anderson.

with the whole internal revenue structure.<sup>28</sup> The chamber supports the continuation of the Board of Tax Appeals, an "independent agency for the protection of the taxpayer." The "Government should give continued attention to relief from burdens imposed by international double taxation."

While relief expenditures are a part of the larger problem of Government expenditures, the chamber gives them special treatment. It holds that "the Nation's relief problem is the aggregate of a large number of State and local situations" and that "Federal participation in relief should be confined to rendering supplementary assistance to State and local governments when their resources are inadequate to finance essential relief." The Work Projects Administration and its predecessors have "not reduced unemployment," and work relief "should be brought to a close." An "impartial Government agency" should replace the W. P. A., and Federal financial aid should be in the form of reimbursable advances to States or municipalities.<sup>29</sup> Control of emergency expenditures necessary for the relief of the destitute unemployed should be in the hands of the States of their residence.

*Money, banking, insurance.*<sup>30</sup>—In its position on money, banking, and insurance, the Chamber of Commerce is sometimes clear, sometimes vague. On money it is vague. After stating as "vital needs" the restoration of a satisfactory international monetary standard and strict maintenance of the integrity of the world's currencies, the chamber fails to describe such a standard. Repeal of the 1934 Silver Purchase Act is advocated, insofar as it relates to the purchase of foreign silver. Power to alter the content of the dollar should always repose in Congress; it should never be delegated. Power to issue "greenbacks," conferred on the Treasury in 1933, should be repealed. The chamber stands firm against "any attempts to impose political or partisan dictation upon the management and operation of the [Federal Reserve] System." In particular should be resisted "all endeavors to centralize undue powers over reserves and commercial banking." The easy-money policy "which has been imposed upon the country for 11 years should undergo \* \* \* gradual but determined correction." Amendment of the 1935 Banking Act is advocated "to permit commercial banks to participate in the underwriting of those classes of securities they are legally entitled to own."

All forms of insurance are outside the Federal power and are "a proper subject of State regulation."

*The chamber on other public problems.*—The Chamber of Commerce also takes a stand on many other public problems. Its position on transportation and communication, for example, takes up nearly eight

<sup>28</sup> Specific revisions urged are reduction in individual surtaxes, a shorter holding period for capital gains, and an extension of the period for carrying over net losses; corporate rate of not over 15 percent, with consolidated returns restored; depletion, depreciation, and obsolescence provisions that will protect capital against impairment; assurance that legitimate business needs will be considered in administering the conditional tax on surplus; elimination of double taxation of dividends; and repeal of excise taxes that are "unduly restrictive, disturb competitive relationships, or cause annoyance or inconvenience out of proportion to yields."

<sup>29</sup> The impartial governmental agency would (1) determine the needs of the respective States and (2) see that State organizations spending Government funds meet satisfactory administrative and personnel standards. Projects financed wholly or in part by Federal funds would be let by competitive bids, and determinations of the manner in which the remaining unemployed would be cared for would rest with the States and communities.

<sup>30</sup> The material in this section is taken from the 1940 statement of policies, pp. 35-37, 53.

pages in its 1940 statement of policies. There it argues that all forms of transportation—rail, highway, water, and air—should be regulated by the Interstate Commerce Commission. This regulation, however, should be confined to assurance of fair rates, adequate service, and public safety.<sup>31</sup>

Among other things the chamber believes that water as well as highway transportation should be opened to railroads; that direct construction and operating subsidies from the Government to private owners and operators of merchant shipping are justified because of its defense value; and that air mail compensation for interstate air transport fixed by the I. C. C. should be continued. Radio is essentially a problem for Federal rather than State control, but “no regulation should attempt to force upon the public undesired program matter.”<sup>32</sup>

Considerable space is also given to defining the Chamber of Commerce position on agriculture and on natural resources.<sup>33</sup> Although believing in “as great a volume of output of farm products as is consistent with foreign and domestic demand,” the chamber argues that “curtailment \* \* \* should be initiated only by the voluntary decision of the farm peoples themselves.” If Government financial aid is linked to this curtailment it should be limited to the domestically consumed portion of the crop. The processing tax in any form, as a means of financing such aid, is opposed.

The wisdom of Government handling or marketing of surplus farm products, and of making crop loans except at values substantially below the market range, is questioned. Cotton export subsidies and barter of loan stocks are strongly opposed. The Farm Credit Administration should be returned to its former independent status, and the original principle of borrower control of Federal land banks should be maintained.

As regards natural resources, the general position of the Chamber of Commerce is one of supporting private ownership and development and, where regulation is necessary, accomplishing it through State law and interstate compacts backed, if necessary, by Federal law. Thus, stream pollution problems should be dealt with through State compacts, and control of petroleum production through the existing pattern of compact and Federal law. Federal policy toward forestry, however, should not include control of commercial practices. On the contrary, by prevention of fire and insect damage and fostering of equitable tax systems it should support a privately owned and operated system, run on the principle of sustained yield.

Effective regulation of privately owned electric utilities by State commissions, supplemented by the Federal Power Commission where it has jurisdiction, “will best promote the public interest.” Regulation by competition, and substitution of public for private ownership are contrary to the chamber’s conception of the public interest.

<sup>31</sup> *Ibid.*, p. 27. Preservation of private ownership and operation of the railroads and unalterable opposition to train-length, full crew, and 6-hour day proposals are among those aspects specifically mentioned. A detailed statement on highways is included, as well as one on postal service.

<sup>32</sup> *Ibid.*, pp. 27-34.

<sup>33</sup> *Ibid.*, pp. 43-51.



The Chamber of Commerce also refers briefly to other, more general public problems. National defense is "the most important question in the United States today," and the chamber says:

We must have an Army of adequate size and training provided with the most modern arms and equipment, a Navy sufficient to protect the interests of the United States, and an air force with superior personnel and equipped with planes of the latest types.<sup>34</sup>

While recognizing the war-time dislocation in foreign trade, the chamber urges the Government to protect American rights and increase the volume of export trade, maintaining opportunities in China and increasing them in South America. The principle of equality in treatment should guide Government efforts in promoting favorable economic relationships among all nations at the end of the war. In the meantime, our tariff laws should continue to assure reasonable protection for industries subject to destructive competition from abroad. The reciprocal trade agreements program wins a qualified endorsement from the chamber.<sup>35</sup>

#### THE AMERICAN BAR ASSOCIATION

If the Chamber of Commerce is the spokesman at Washington for American business, its special pleader before Government and people is the American Bar Association. Collectively, the association rarely lobbies for or against a particular bill, although in 1937 it made no secret of its pressure activities against President Roosevelt's Supreme Court reorganization plan. From the point of view of business control of Government, the Bar Association is important, aside from the obvious value of its membership as individual lawyers to business, because it has assumed the role of trustee of American institutions. It is in this latter sense that its influence is felt beyond Washington, extending over the country and redounding, on the whole, to the advantage of business. The Chamber of Commerce makes a special point of standing against any proposal which would alter the independence of the judiciary, and, particularly, of the Supreme Court's right to review acts of Congress. The Bar Association bases its claim to trusteeship on the ground of its special qualifications to defend the Constitution and the Supreme Court which interprets it. In their attachment to the Court, the Chamber of Commerce and the Bar Association are as one.

Former Governor Ritchie, of Maryland, described the role in which lawyers of America have cast themselves. In a speech before the Maryland Bar Association, June 29, 1935, he exclaimed: "\* \* \* it is no mere figure of speech to say that the American bar and the American courts should, in a very real sense, regard themselves as trustees and guardians of American institutions."<sup>36</sup> The admonition is well phrased and well directed. From the beginning of our history as a nation, lawyers have set the tone and shaped the structure of many of our institutions. A majority of the members of the Con-

<sup>34</sup> *Ibid.*, p. 37.

<sup>35</sup> *Ibid.*, pp. 39-42. By its stand against subversive activities, for educational systems supported by State funds, for postponement of changes in immigration policy, and for equal treatment of American citizens in the Territories with those on the mainland, the Chamber shows its interest in these phases of public policy.

<sup>36</sup> *New York Times*, June 30, 1935.

stitutional Convention of 1787 were lawyers. The Constitution was largely the work of lawyers. The power of the Supreme Court to invalidate acts of Congress was read into the Constitution by a lawyer. Hence, the power (or impotence) of Congress to deal with national problems is derived ultimately not from the Constitution but from the Supreme Court's interpretation of the Constitution.

Congress has always had more Members from the legal than from any other profession. As a consequence, our laws are made by lawyers. Not only governmental institutions and public powers but also our economic and social institutions have responded to the touch of lawyers. Today the corporation, using the powers attributed to it originally by lawyers, and later supplemented and expanded by lawyers, overshadows with its financial and economic powers all our other institutions. It is small wonder, then, that Mr. Ritchie speaks so feelingly of lawyers as "trustees and guardians of American institutions." Those institutions are in no small measure the lawyers' handiwork.

*Theme of the Bar's Philosophy.*

In a phrase, the American Bar Association's philosophy is respect for the Supreme Court's interpretation of the Constitution. Herein are embodied three fundamental beliefs: First, that the Constitution contains all the principles needed for the maintenance and preservation of national unity; second, that the Supreme Court's power to give meaning to these principles must be protected at all costs; and, finally, that respect for the Constitution and for the Supreme Court are duties incumbent on all Americans.

Governor Ritchie's is a typical expression of faith. "We [lawyers]", he says, "must show our faith in this great reservoir of human experience we call the Constitution and the law, with their accumulated traditions of stability, of morality, of justice, of government, and of human and spiritual well-being in State and family."<sup>37</sup>

Since the principles of the Constitution, however, must be applied to specific sets of facts at a given time, it is the agency determining what the Constitution means which is important. Hence the central place occupied, in Bar Association philosophy, by the Supreme Court and the doctrine of judicial review of congressional acts. The president of the bar association's references to the Court as "the main source and protection of our liberties"; "that protector of our individual liberties"; "that bulwark of liberty" convey the extent of the association's devotion to the Supreme Court.<sup>38</sup>

The doctrine of judicial review, originated by John Marshall in 1803, evokes similar feeling. The anniversary of Marshall's accession to the chief justiceship was the occasion in 1934 of "an appeal to the American bar to use its great influence in reviving faith in our form of government." But the lawyers lay store by not only a separate but an independent judiciary. While "based upon the fundamental theory of effectual counterpoise among the legislative, executive, and judicial departments, the Constitution yet leaves it within the power of Congress and the executive to overcome that balance." This is called "the Achilles heel of the Constitution." "All that is necessary [to overcome the balance] is a single act of Congress increasing the membership of the Court, executive appointment, and senatorial con-

<sup>37</sup> Ibid.

<sup>38</sup> Frederick H. Stinchfield, *American Bar Association Journal*, June 1937, pp. 425-428.



firmation.”<sup>39</sup> By so doing the balance would be upset and the judiciary’s independence would be destroyed. It was against President Roosevelt’s plan of February 5, 1937, to increase the Court’s membership that the Bar Association fought so bitterly.

Respect for the Constitution and for the court on the part of all Americans is implicit in two other beliefs of the association. An association president has expressed one of them thus:

It is impossible \* \* \* to think of the American Bar Association as a thing apart from this America in which we live. It isn’t apart. Undoubtedly it carries the stamp of America. I wish it could be the opposite, that America could bear the stamp of lawyers, and that that stamp should spell dependability, sincerity, unselfishness, and patriotic devotion to country \* \* \* we must forever be careful that, being in a minority as we are, we do not yield to the force of the majority and ourselves carry the stamp of the majority.<sup>40</sup>

The association’s belief that proper respect for the Constitution is the American’s duty is shown again in the expressed purpose of the association’s citizenship committee: “To restore the Constitution to the minds and hearts of the American people.”

#### *Disseminating the Philosophy.*

The principal means of spreading these beliefs and attitudes are the standing committee on American citizenship and, until 1936, the committee on publicity.

The leadership needed by the country must, according to the 1932 speech of Guy A. Thompson, the association’s president, “come from the body of the bar.”<sup>41</sup> This conviction explains the association’s propaganda activities, most of which are carried on by the standing committee on American citizenship. The duty of this committee is “to inspire in the people of the United States a proper appreciation of the privileges as well as the duties of American citizens.” Among other things the committee supervises the annual celebration of Constitution Week, distributes pamphlets, conducts essay contests, and surveys the extent and nature of teaching of the Constitution.<sup>42</sup>

Circulation of pamphlets is a continuous activity of the committee. A vest pocket edition of the Declaration of Independence and of the Constitution; a suggested by-law creating a committee on American citizenship for bar associations; and Suggestions to Citizenship Committees are some of the pamphlets distributed in large quantities. The pamphlets, the committee reported in 1933, “have become standard authorities,” and “have widely advertised this altruistic gesture of the association.”<sup>43</sup> Furthermore, financial contributions have been made to teachers colleges to reprint acceptable material on the teaching of the Constitution. Teacher training institutions in various States have also been the scene of essay contests on designated aspects of the Constitution. On one occasion the prize offered was \$1,000.

<sup>39</sup> Report of the Special Committee on Supreme Court Proposal, American Bar Association Journal, June 1937, pp. 401-405.

<sup>40</sup> Stinchfield, op. cit., p. 425.

<sup>41</sup> Reports of the American Bar Association, vol. 57, 1932, p. 266.

<sup>42</sup> In 1932, for example, the American Legion cooperated with the bar association committee to celebrate Constitution Week. Legion posts arranged for the meetings, while the members of the bar made the speeches. Another feature was the distribution during the week of some 12,000 pamphlets on the Constitution. Report of American Bar Association, 1932, p. 392.

<sup>43</sup> Report of the American Bar Association, 1933, p. 388.

The teaching of the Constitution in nearly 600 colleges and universities has been examined by the citizenship committee. In analyzing the replies received, it was not "impressed with the textbooks used," and doubted "whether there are competent teachers." But the committee did not stop here. In addition, it "made recommendations where necessary," recommendations questioning the suitability of text books and qualifications of teachers.<sup>44</sup>

These activities only suggest the methods employed by the bar association and its State and local affiliates to impress its views upon the country. In the course of a year many addresses containing these views are made by bar members. Speeches are delivered over broadcasting chains. Many handouts are given to newspapers. The Journal of the American Bar Association assures the membership of monthly information from the officers and committees. Members of the bar occupy positions of leadership and influence in their communities, so that their views are sought and listened to with respect. When all these activities are summed up, they make easily understandable the popular loyalty to Constitution and court. It is hardly open to doubt that the activities are part of an organized program to cover the country with the association's views, to keep track of public opinion, and to pull it up short when it shows signs of wandering. The bar association has "a public aspect," to use the words of a former president, and, therefore, in his opinion, it becomes the association's "duty to watch carefully the tendency of public opinion, and, where the trend is inimical to the welfare of the Nation or to the detriment of society, to direct the attention of our people to it."<sup>45</sup> The successful opposition to the President's Supreme Court reorganization plan in 1937 indicates the association's idea of the extent of this duty, and how it can be performed.

#### *Composition of the Bar Association.*

Only about 6 out of every 10 lawyers in the country are represented, even indirectly, in the American Bar Association. Less than 2 out of 10 belong to the association and take part in its operations. When it comes to those who take an active and influential part in the determination of association attitudes and policies, the percentage drops very low.<sup>46</sup> These facts can profitably be borne in mind in connection with the association's educational activity, or in references to the bar as "the trustees and guardians of American institutions." There is an inverse ratio, in the Bar Association, between the number of citizens who really count in its business and the amount of influence on public affairs which they wield. This is often true of citizen groups operating in the governmental field.

<sup>44</sup> Report of American Bar Association, 1934, pp. 423-438.

<sup>45</sup> Report of the American Bar Association, 1933, p. 224.

<sup>46</sup> Of the 175,000 lawyers in the United States, about 16 percent, or 27,000, are members of the American Bar Association. Forty-three percent, or 75,000, are members of State bar associations, and about 115,000, or upward of 60 percent, of some bar association, state or local. There are 3,500 members of the American Bar Association who are not members of any State or local bar association. The national organization has been in existence since 1878. Control and administration of the association's affairs and determination of its policies are lodged in the house of delegates, a body whose membership is composed of State delegates, State bar association delegates, delegates from approved affiliated organizations, officials of other organizations of bench and bar, and the association's own officers, as provided by its constitution. Hence the membership of the house of delegates amounts to but a small minority of the total membership. The president and other officers are elected by this minority; the officers constitute the board of governors, which appoints the members of the sections, the standing committees, and the special committees. They deal with various types of law and with continuing and special legal problems, and is by and through them that the membership's professional interests are drawn out. Fifty members of the house of delegates constitute a quorum.

## CHAPTER IV

### PUBLIC POLICY AND GROUP AIMS

In an enlightening article published in 1931, Prof. Howard L. McBain, of Columbia University, divided the laws of the nation into three groups.<sup>1</sup> In the first group he put those which an overwhelming majority approve, such as our criminal laws. The second includes those in respect of which the public is either ignorant or indifferent, while in the third are those which a considerable number of the people oppose. In the second and third classifications, and especially in the second, he placed the great bulk of our social and economic legislation. He said:

\* \* \* in the complicated economic society in which we are now living, our conduct is regulated directly or indirectly by a host of laws that the majority have never heard of. Not in the remotest sense do such laws express the will of the majority, for the very simple reason that there is no such will to be expressed. These laws are made by the few. Regrettably enough they are sometimes made in whole or in too large part for the few. But even when they are made in the interest of the many, as perhaps most of them are or are ostensibly intended to be, the many are seldom consulted directly or indirectly and could not be of much help if they were consulted.

Here we have implied, if not explicitly stated, the thing which it is the purpose of this chapter to discuss, the nature of public problems and of public opinion and the place of pressure groups in American political life.

#### PUBLIC PROBLEMS

For better, for worse, Americans have on the whole accepted the idea that their economic welfare and spiritual happiness should be actively promoted by the Federal Government. Never totally absent from the Nation's political philosophy, it is only within the past half century that it has really captured the minds and imaginations of the people, however.

At least three stages in the idea's development may be noted. After the Civil War the railroads abused their publicly-approved rights and privileges by demanding excessive rates, by discriminating between shippers, and by granting secret rebates. As a consequence there emerged the doctrine that the public interest should be guarded by regulating those enterprises which provide essential public services. Later, under the exigencies of war in 1917 and 1918, the scope of the doctrine was enormously widened to include not only public services but also many of the conditions of the production and distribution of the necessities of life. In the post-war period there was some contraction, followed by a great expansion after 1930. The depression years saw a tremendous broadening of the field of Federal supervision,

<sup>1</sup>H. L. McBain, "Does a Minority Rule America?" New York Times Magazine, June 7, 1931.



regulation, and control, and the conscious use of Federal power to stimulate economic recovery and to effect economic and social reform.

The extraordinary number of fields which the administration has entered to achieve recovery and reform are an evidence of the extent to which Americans have come to feel that their government has a large and legitimate role to play in furthering their welfare.

Of course, these three periods of the expansion of Federal power are not the only significant stages in its growth. But they are particularly important—the first because it marks the beginning of a trend, the second and third because they indicate how and to what extent the idea has been implemented.

For half a century the multiplying functions of both Federal and State Government have reflected the growing popular approval of government as a factor in the conduct of human affairs. But since World War I, and especially since 1929, the Federal Government has assumed new functions more rapidly than have the States. This is in large part because the problems arising since that time have been national in scope, and the States have been incapable of dealing adequately with them.

As the area of public activity has expanded, it has come into contact with the economic order at more and more points. The result has been a notable increase in the number of citizen groups affected, the strength of their interest, and the pressure which they are willing and able to apply. As formulators and advocates of measures they surpass the political parties in significance.<sup>2</sup> They are the originators of many of the proposals which later become the law of the land. Their aims and interests pervade the whole sphere of Federal legislation, both domestic and foreign.

#### *Domestic problems.*

Many domestic problems, especially economic problems, have assumed a public aspect because organized groups strive to realize their objectives through legislation.

The outstanding issues in the sphere of industrial relations are those raised by the groups into which labor and management are organized. Both the A. F. of L. and the C. I. O. seek the "American standard of living" for their members. In seeking Government help to achieve it, they project into the area of public concern such matters as the worker's rights to organize, to bargain collectively, and to strike. These matters have, therefore, become public problems of the first order. Resort to the "sit-down" strike by the C. I. O. quickly made that variation of labor's traditional weapon a public problem. The A. F. of L. has long fought for the recognition of the worker as "a partner in production" and, hence, as "entitled to an equal voice with management in shaping industrial destinies." The political strength of the millions of federation members removes such an objective from the position of a minority aim, and makes it a matter of public interest and concern.

The efforts of organized management to achieve certain aims likewise lift them to the plane of public importance. Maintenance of the "American system," especially as regards freedom of enterprise

<sup>2</sup> "Of equal or greater significance (than the parties as formulator and advocate of measures) is a long series of professional and trade associations, which are from time to time interested in the programs of political parties and the course of legislation." C. E. Merriam, and H. F. Gosnell, *The American Party System*, Macmillan, New York, 1929, p. 218.



and the private ownership and control of production, is an objective of the National Association of Manufacturers. The United States Chamber of Commerce seeks control of industrial production in private enterprise by trade associations under Government supervision. The National Catholic Welfare Conference sponsors a plan for an economic system of occupational groups under Government supervision. A major purpose of the Institute of American Meat Packers is to secure cooperation in lawfully furthering and protecting the interests and general welfare of the industry—a simple statement of purpose which inevitably involves problems of monopoly.

Allied problems with a public aspect inhere in the American Petroleum Institute's stand on marketing pacts. Such agreements should be permitted, says this interest group, when made voluntarily by any industry in order to eliminate unfair competition. Other examples can be cited. The National Lumber Manufacturers Association advocates production control. The National Coal Association approves of retail price fixing. The National Association of Wool Manufacturers opposes tariff bargaining by the President. Because of the first amendment to the Constitution, the American Newspaper Publishers Association regards newspaper publishing as a "privileged" business. The public importance of these private aims and objectives can be traced largely to their advocacy by such groups.

Additional examples pile up the evidence. Unemployment relief, social security, and housing are vexing problems, which, if not originally injected into the area of public concern by citizen groups, are nevertheless undergoing constant hammering at their hands. Many questions connected with the railroads are traceable to the Association of American Railroads' desire that all forms of transportation should be treated alike as regards regulation, taxation, and subsidies. In the same way, the conflict between government and the electric and gas utilities has to a considerable extent grown out of the desire of utility operators to maintain the private ownership and control of these utilities, free from effective public regulation. In the controversial issue of public control of short- and long-term credit centers the dispute between government and commercial banking. The Invest. Bankers Association continues to advocate "self regulation," and the American Bankers Association desires "non-political" control of credit.

Other groups besides business and labor accept the policy of active Government intervention in economic and social spheres. Back of the National Education Association's program of specific goals is its fundamental belief that Government should act as the agent of society in providing for its members physical, economic, and mental security, equality of opportunity, and freedom. The National League of Women Voters holds that there is a large area of proper activity for the Federal Government in the field of economic welfare. Equality for agriculture is the long-time objective of the American Farm Bureau Federation and of the National Grange, involving many detailed legislative proposals. Popular respect for the Supreme Court and its interpretation of the Constitution is due in large measure to the American Bar Association.

Prohibition, the World War veterans' bonus, and prohibition repeal are among the best known examples of citizen group aims which became public problems. The first was the objective of the Anti-Saloon League, the Women's Christian Temperance Union, and allied groups;

the second, one of the main objectives of the American Legion and other veterans' groups; while the third was the object of the Association Against the Prohibition Amendment.

*Problems of Foreign Affairs.*

In the fields of foreign policy and of national defense, interest groups of various kinds help sharpen the issues before the country. Their importance in this connection is not constant. It fluctuates. In time of peace, patriotic groups are relatively more important than economic interest groups, although the latter are by no means negligible. In the merchant marine and air transport industries, business groups are important shapers of policy even in peacetime, because of the potential value of ships and aircraft in war.

In time of war or threat of war, patriotic groups become relatively less important, and are supplanted by business and industry, upon which the Nation depends for its means of defense. The Nation's experience in the spring and summer of 1940 illustrates the point. The Nazi conquest of a large part of Europe confronted the Nation with an emergency. In meeting it the National Association of Manufacturers was more influential than the Women's International League for Peace and Freedom, although the latter was by no means a passive onlooker.

However, the overpowering influence of Nazi military successes in 1940 on our defense and foreign policies should not be allowed to obscure the role played by interest groups in these fields in the past decade. Then, as now, the outstanding public problems concerned neutrality, joint action with other nations against treaty-breaking aggressors, the size of the Army and Navy, and the possible uses to which they might be put. These problems were obviously public in nature, but what factors, singly and in combination, thrust them into the area of immediate public concern?

Washington's alleged admonition against entangling alliances, the Monroe Doctrine, Wilson's dream of a League of Nations, trade and investments in Europe and in Asia, overseas possessions, all come to mind, but in themselves they are probably not sufficient to explain the form in which the issues were debated. Many Americans recall Wilson's fight for the League, but even for them such historic events are not of primary importance. Nor do trade and financial statistics fix the attitude of the farmer, the garage mechanic, or the shipping clerk on the puzzling problems of foreign policy. Similarly, the objective geographic facts of Alaska, of Hawaii, and the Panama Canal do not bulk very large in the average citizen's mind in connection with foreign affairs. Factors other than these operated to raise these facts of history, of economics, of strategy and diplomacy to the level of public discussion, and thus to confront the voters and their elected representatives in Congress with questions of policy requiring at least tentative answers.

Among these factors are the ideas, the methods, and the membership of such organized citizen groups as the D. A. R., the American Legion, the Veterans of Foreign Wars, and the Navy League. Also important are those of the Nation's Council for the Prevention of War, the American Peace Society, and the National League of Women Voters. There are many others, of course. All of them interpret facts and events in the light of the principles and assumptions em-

braced by their respective philosophies. Thus, they are actively engaged in shaping opinion, hence policy, in contrast to the inertia of the public as a whole. To the members of these groups historical facts, economic data, the elements of geography and of strategy are vital matters, stimulating them to write American foreign policy in their own terms.

Inspired by its goal of fostering the love of American institutions and of developing an American consciousness among our people, the D. A. R. founds its idea of foreign and defense policy on neutrality and preparedness. One hundred percent Americanism impels the American Legion to take a similar stand. A policy of aloofness from world affairs and of strong defense forces is chosen by the Veterans of Foreign Wars as the one best calculated to protect and nourish the institutions of American freedom. To the Navy League, insular America depends on a strong Navy for national security and national prosperity. The "peace through justice" principle of the American Peace Society does not keep it from supporting strong national defense forces. Although the National Council for the Prevention of War at one time advocated American participation in a program of international organization, more recently a strict neutrality policy has been adopted. Of these representative citizen groups interested in defense and foreign policy, only the National League of Women Voters still advocated in 1938 complete cooperation with other nations in solving mutual problems.

With these groups, as with others, shifts in attitude occur from time to time within the broad confines of their general position. Sometimes the general position itself changes, as in the case of the National Council for the Prevention of War just noted. But rarely do such shifts lessen the significance of such groups as active forces in the determination of specific aims of foreign policy and national defense. Nor do they decrease the frequency with which these groups ask the public at large to endorse their respective policies. This constant formulation and revision of alternative programs for national security compels attention from the public and from Congress. The legislature notes and acts upon those questions of policy, both foreign and domestic, which are injected into the area of public concern and kept there by interested pressure groups.<sup>3</sup>

#### PUBLIC OPINION

Just as many public questions are merely enlargements of group aims, painted in colors of the national welfare, so public opinion itself is shaped perceptibly by citizen groups.

It is hardly correct, of course, to speak of public opinion as meaning a general opinion or a general will. There is no such thing. Theoretically, it would be possible to get a national cross section of opinion on a specific public question at a given moment. If this were done, we might then have an expression of general will on that par-

<sup>3</sup>"The task of Government \* \* \* is not to express an imaginary public will, but to effect adjustments among the various special wills and purposes which at any given time are pressing for realization." J. Dickinson, "Democratic Realities and Democratic Dogma," *American Political Science Review*, vol. 24, May 1930, p. 291. Dickinson's concept of the various special wills and purposes is broad, and includes such pressures as that for Federal aid to the unemployed, social security, etc.



ticular subject at that particular time.<sup>4</sup> The Federal Constitution, however, makes no provision for the holding of such national referenda.<sup>5</sup> Presidential elections are the closest approximation in our contemporary political life to such polls.

Moreover, the assumptions underlying the theoretical possibility are so many and so broad that its practicability is questionable. It assumes that everyone is informed on the matter in question, that he has an opinion on it, and that he is willing and able to express that opinion. It assumes also that the question is so phrased as to be unambiguous to every one of the millions to whom it is put, and that a yes or no answer to every public question would be of value in arriving at solutions thereof. Even with the present degree of literacy, even considering the potentialities of press, radio, newsreel, and moving picture, and even with the growing popular interest in public affairs, everyday observation indicates that the first assumption is false; and there is a great doubt as to the validity of the others.<sup>6</sup>

Only if it is used to refer to a variety of opinions of numerous self-conscious and articulate citizen groups does the concept of public opinion as a positive force accord with the facts of the contemporary scene.<sup>7</sup>

No matter how clearcut and positive the opinion of an individual is on current problems, it is only as a member of a homogeneous group that that opinion figures importantly in the formation of new policies. An individual opinion may be conveyed to Congress, to an executive department, to the newspaper press, to the broadcasting chains, and expressed from forum or pulpit. But as the opinion of one person the chances are pretty small that it will gain much attention.

There are individuals, of course, who are listened to with respect, because they speak or claim to speak for many citizens. They obtain a hearing because of the weight of the composite opinion of those whom they represent. This does not mean that individual views, considered apart from the collective opinion of the interest groups of which they are a part, do not vary in weight and importance. There are many examples in public life of men and women who stand head and shoulders above their fellow citizens and whose views carry greater weight than those of their compatriots.

<sup>4</sup> The Gallup Poll, begun in 1935, which is sold to newspapers by the American Institute of Public Opinion, is probably the most scientific attempt yet made to tap the opinion of the country periodically on current issues. Although of extreme interest and accuracy, it is, of course, entirely a private venture and is in no way a part of the country's formal governmental machinery.

<sup>5</sup> The Ludlow resolution, H. J. Res. 199, 75th Cong., 1st sess., would have amended the Constitution so as to give to the electorate the power to declare war now held by Congress. Although the Committee on the Judiciary was discharged from further consideration of the resolution, the House by a vote of 188-209 on January 10, 1938, refused to consider it.

<sup>6</sup> " \* \* \* what we mean by a common will is no more than that there shall be an available peaceful means by which law may be changed when it becomes irksome to enough powerful people who can make their will effective. We may say, if we like, that meanwhile everybody has consented to what exists, but this is a fiction. They have not; they are merely too inert or too weak to do anything about it." L. Hand, "Is There a Common Will?" 23 Michigan Law Review, p. 50.

<sup>7</sup> "To students of real politik, the fact that there is no 'general will' or general public opinion over and above the many diverse and particular opinions of interest groups which formulate it, has long been recognized." S. McK. Rosen, Political Process, Harpers, New York, 1935, p. 48. There is a tendency, both among casual observers and serious students, to ignore the effect of the inertia of the general public and the part which it plays in the shaping of public policy. Because it is generally negative, it is easily overlooked, but its power is by no means small. Any politician knows, or will learn to his cost, that he must neither move too far ahead of the electorate nor drop behind; nor can he venture too far into by-paths. If he does, even his connection with a determined special-interest group will not save him.



But this admission does not invalidate the theory of public opinion presented here. The views of outstanding unofficial citizens can become known by means of any one of a variety of ways, yet have little or no effect on the direction of governmental policy. Our interest is in the kind of public opinion which does fix or affect that direction. Unless the opinions of outstanding individuals are directed to a particular matter back of which active citizen groups are already ranged, such opinions are likely to be of little net importance. And even if so directed, their importance is likely to be secondary.

#### POLITICAL PRESSURE GROUPS

The constituent groups into which politically active Americans are divided have as their practical objective the favorable consideration of their respective aims by the legislative, executive, and judicial branches of the Government. We have seen how pressure groups, by soliciting general approval for their aims, raise them to the status of public problems. Also, we have considered the role of these groups in the manufacture of public opinion. It is now appropriate to scrutinize more closely the place of pressure groups in American political life.

Their goal is Government sanction of their continually emerging demands. Those demands are insistent no matter what the form of organization of the group. Trade associations and organizations of professional people press their demands unhindered on the formal agencies of the Government. Similarly, groupings of industrialists and federations of labor and veterans' units insist on consideration of their desires. Peace and patriotic-minded societies likewise impress their programs on the formally-selected officials of the Government. Added together, these citizen groups of varied shape constitute a sizable portion of the American people. And, what is more important, they include practically all the people who recognize the value of official consideration of private interests and are so situated as to command that consideration.

Of the variety of citizen groups which have emerged in recent decades as active unofficial agencies in the governmental field, the trade association is perhaps the most typical. According to Herring, trade associations—

have become an integral part of representative government. In shaping policies of government, in bringing to legislative councils the weight of their expert knowledge in their special fields, in synthesizing and directing the opinion of their membership, in arousing public support through skillful publicity, they constitute an element which the formally selected officers of government must reckon with in matters relating to legislation and administration.<sup>8</sup>

To the casual observer, such an appraisal may seem exaggerated. But this is hardly the case. In general, trade association activity corresponds to that of most of the groups whose legislative agents are active in Washington. The range of their interests is very wide. A statement illustrating the movements of typical lobbyists indicates the extent to which the formally selected governmental officers must "reckon with" citizen groups.

During the second week of May 1932, for example, numerous legislative agents were active in Congress. The "dapper, aggressive" agent

<sup>8</sup> E. P. Herring, *Group Representation Before Congress*, Brookings Institution, Washington, 1929, p. 109.

of the American Legion and the "dark, stocky" representative of the Veterans of Foreign Wars "pushed the war widows' pension bill through the House." The latter however, "failed to get the bonus out of committee." The lobbyists for the National Federation of Federal Employees "managed to beat a real pay cut in the House omnibus economy bill." The "special pleader" of the American Automobile Association "failed to block a Senate increase in the automobile tax." The lobbyist of the Independent Petroleum Association "got his tariff in the tax bill," while a lawyer (who normally lobbied for the brewers) "as a side-line \* \* \* fought off a tax on cosmetics."<sup>9</sup>

These are a few of the movements of the "active and successful lobbies which pay their legislative agents \$10,000 or so per year to secure congressional favors." Among others are those of the farmers, the railroads, individual corporations, and business generally, peace organizations, and women's and labor groups. In fact, so numerous and so ubiquitous were the representatives of these and other citizen groups at that time that President Hoover referred to them as a "locust swarm." In speaking of "balancing the Budget" as the problem then before the country, he called it "an issue between the people and the locust swarm of lobbyists who haunt the Halls of Congress seeking selfish privileges \* \* \* misleading Members [of Congress] as to the real views of the people by showers of propaganda."<sup>10</sup>

While the distinction between the people, on the one hand, and the aggregate of the groups whose agents seek congressional favors, on the other, is understandable when drawn by a harassed President, it is difficult to say, nevertheless, how far it should be pushed. Another President who has been pressed by powerful and aggressive minorities<sup>11</sup> has referred to the sum of all interest groups as "what we mean by American democracy."

In a letter to the director of the Institute of Human Relations dated August 20, 1937, President Roosevelt said that "we are ruled by public opinion," and, referring to the press, motion pictures, and radio as "three powerful agencies in the creation of public opinion," laid it down as our "duty to see that these agencies \* \* \* are maintained as public agencies for the creation of wholesome relationships among the various cultural, religious, racial, and economic interest groups which make up the American people. The sum of these complex and composite interests constitutes what we mean by American democracy."<sup>12</sup>

#### THE LOBBY AND ITS TECHNIQUE

From this broad statement on pressure groups, let us proceed to a closer examination of lobby technique in general.<sup>13</sup>

<sup>9</sup> Time, May 16, 1932, pp. 15-16.

<sup>10</sup> Ibid.

<sup>11</sup> In vetoing the World War veterans' bonus bill, May 22, 1935, President Roosevelt asserted that the credit of the United States "cannot ultimately be safe if we engage in a policy of yielding to each and all of the groups that are able to enforce upon the Congress claims for special consideration. To do so is to abandon the principle of government by and for the American people and to put in its place government by and for political coercion by minorities \* \* \*."

<sup>12</sup> New York Times, August 29, 1937.

<sup>13</sup> Writers on congressional lobbies are accustomed to distinguish between the "old" and the "new" lobby. The former used corrupt methods, e. g., bribery, giving of free passes, or payment of election expenses. While the possibility that similar methods may be adopted by the "new" lobby is never absent, still it normally uses propaganda and publicity among the public generally and among constituent members and aims to focus this pressure on Congress. Among the reasons which have been advanced for the change from the "old" to the "new" lobby are: (1) Reform of the House Rules (1911); (2) adop-

In their search for governmental favors, national associations of citizens all conform to a pattern which is more or less standardized. They maintain lobbies at Washington, of varying size and resources. The lobby of the United States Chamber of Commerce, for example, is a department of the national headquarters and is maintained on an impressive scale. In contrast is the single lobbyist of the Women's International League for Peace and Freedom.

Some lobbies are permanent, others intermittent or temporary. Important citizen groups organized nationally maintain permanent lobbies. Others maintain intermittent lobbies which have been effective in legislative matters, such as the Fair Trade League, with its objective of retail price fixing. The American Bar Association's special representative in Washington during the fight on President Roosevelt's Supreme Court reorganization proposal is an example of a temporary lobby.<sup>14</sup> At a minimum, each lobby usually includes a legislative agent and a staff of research workers.

It is the lobbyist's job to put on the statute books the bills which embody the aims of his association, or of which it approves, and to keep off the statute books those bills of which it disapproves. Consequently, it is the desire of the typical national association to build a bloc of votes in Congress and then to back it at the right junctures with pressure from the country. The pressure is exerted on neutral or unsympathetic Congressmen by the association's Nation-wide membership, as an adjunct of a favorable, or at least not hostile, public mood built up by the association's active propaganda.<sup>15</sup>

The services which a bloc of votes in Congress can render a national association are numerous and valuable. Obviously the most valuable is frankly to represent the citizen group in Congress. Possibly the best known example of such occupational representation by geographically-elected representatives is the farm bloc, which was founded by the Farm Bureau Federation in 1921 and held the balance of power in the Sixty-sixth and Sixty-seventh Congresses. For a group to be able thus to rely on some definite support is always worth a great deal.

In addition to being ready to vote for the group's bills, there are many ways in which a bloc may render service to the group. Sympathetic legislators can watch and influence committee appointments, and can urge committee members to report out bills. Members of the bloc can speak for the group on the floor of the House or Senate. They can introduce bills. Moreover, any member of the bloc can use his franking privilege to send association propaganda through the mails free of postal charge. This propaganda takes the form either of a Member's speech on the piece of legislation in question, or of a prepared statement inserted in the Record through "leave to print." These are all normal and time-honored methods by which sympathetic blocs in Congress can advance the aims of citizen groups.

With several hundred nationally organized citizen groups with agents in Washington, it is obvious that only a relatively small number

tion of the practice of open committee hearings; (3) adoption of the seventeenth amendment (direct election of Senators), 1913; (4) a keener and more intelligent scrutiny of public affairs; and (5) Senate and House investigations of the lobby in 1913 to defeat the Underwood tariff bill. Herring, Group Representation before Congress, op. cit., pp. 41-46.

<sup>14</sup> New York Times, July 1, 1937.

<sup>15</sup> "It is thus that the present-day lobby gets results in legislation; a skillful staff of alert watchers and experts at Washington; a disciplined, organized membership all over the country ready to give specific statements of opinion and back up these declarations by pressure on their Congressmen." Herring, op. cit., p. 93.



can gain control of congressional blocs. For representation before Congress, most of the groups must rely primarily on their legislative agents. Even those supported by congressional blocs lean heavily on their lobbyists. In fact, the lobbyist is the key factor in pressure politics. On him rests the responsibility not only of translating his association's legislative program into law as fast as possible, but also of thwarting legislation running counter to that program.

This means that the alert lobbyist must interest himself in a wide variety of subjects on which Congress acts. The objectives of some groups are few and specific, and their lobbyists accordingly need pay but little attention to other legislative proposals. Other groups, however, aim at general objectives, which, to be reached and held, require legislative action in a dozen fields. Outstanding among such groups are those including the Nation's laborers, businessmen, manufacturers; its transport and public utility systems; its bankers, farmers, and professional people. The lobbyists who guard the interests of these groups in Washington must scrutinize carefully a bewildering array of bills. Tax measures and appropriations need close examination. Bills providing for Government reorganization must also be studied.

For almost all these groups the prospects of reaching their objectives are dimmed or brightened by existing and proposed laws dealing with natural resources, transportation facilities, manufacturing, processing, grades and standards, and distribution; with marketing and trading, foreign commerce, banking and credit, and postal operations, quarantine and sanitary measures, and trade practices; with Government purchasing, roads, local tax systems, and education. Almost every one of these subjects, therefore, falls within the scope of the lobbyist's concern. Both his own personal success and that of his association's program depend on his ability to win battles on this many-sided legislative front.

For example, congressional activities in all these fields engaged the attention in 1935 of the Washington representative of the American Farm Bureau Federation. In contrast to the secrecy maintained by lobbyists of an earlier day, Farm Bureau officials, like those of other contemporary pressure groups, print and make them available to the public, stories of some of their lobbying activities.

A most illuminating feature of such reports is the large number of items in connection with which the lobbyist employed pressure in his efforts to carry out his instructions.<sup>10</sup> Among the legislative projects mentioned in the Farm Bureau report are all which were supported by the Bureau and which were enacted into law. Among them were amendments to the 1933 Agricultural Adjustment Act, regular appropriations for the Department of Agriculture, separate appropriations for resident teaching, research, and extension work at land grant colleges, amendments to basic farm credit laws, investigation of food handlers by the Federal Trade Commission, of pulpwood imports by the Tariff Commission, of wool marketing by a Senate committee, an irrigation payment moratorium act, and a tobacco grading act.

<sup>10</sup> "The extent of the present-day operations at the Capital and the systematic methods employed, however, would distinguish the national associations from the petitioners and lobbyists of a former day even if the power they wield and the respect they command did not." Herring, *op. cit.*, p. 241. It is not intended to maintain here, of course, that all present-day lobbying is done in the open, even of the Farm Bureau Federation, nor that the published reports tell the whole story of pressure activities. The report of the administrative officers of the seventeenth year of the American Farm Bureau Federation (Chicago, 1935) is the source of the material in this paragraph.



The Banking and Revenue Acts of 1935 were supported in part by the Farm Bureau and were enacted into law. On four other projects supported by the Bureau—a commodity exchange bill, a lobby registration bill, a filled-milk bill, and a standard containers bill—progress was made.

Ten projects opposed by the Farm Bureau were not enacted, among them bills both to expand and to prohibit the imports of cordage and twine from the Philippine Islands during the transition period leading up to complete independence, to revise the Federal Food and Drug Acts, to rename the Department of the Interior the Department of Conservation and Works, and to place water carriers under the Interstate Commerce Commission. The Motor Carrier Act of 1935 placing motor carriers under I. C. C. regulation was opposed by the Farm Bureau but was, nevertheless, enacted. It is the only bill thus listed.

On 13 projects supported by the Farm Bureau no progress was made. Among them were a bill levying excise taxes on eggs and egg products, blackstrap molasses, tropical starches, and chemical and wood pulp, and repealing the excise tax on furs; a bill to provide more funds for vocational education activities in agriculture and the trades; one amending the Packers and Stockyards Act to redefine the term stockyard, and to give the Secretary of Agriculture certain powers in regard to registration and operation of stockyards and methods of purchase by packers; and a truth-in-fabric bill.

Among the nonlegislative, i. e., administrative projects, on which the Farm Bureau Washington representative worked during 1935 were reciprocal trade agreements, a livestock sanitary convention with Argentina, rural electrification, ocean freight rates, farm-to-market roads, voluntary trade practice agreements under the supervision of the Federal Trade Commission, funds for payment for services of farm debt adjustment committees, and government purchase of domestically produced in preference to foreign-made products. Attention was also directed to rumors that several bureaus which were performing their "proper functions" in the Department of Agriculture were to be transferred out of that Department.

This is a long list, but it could probably be duplicated in both length and variety by nearly every national association represented in Washington. Each association's goal is defined in general terms, which must be implemented by many laws and administrative rulings. The Farm Bureau Federation's slogan of "equality for American agriculture" is appealing and very useful in bargaining with a party convention's resolutions committee, educating the non-farm population to agriculture's problems, inspiring Farm Bureau members to action, and sustaining their morale. But it means little to congressional committees unless it is embodied in specific legislative proposals.

The slogan is broken down into its constituent elements by the Federation in its annual meetings, usually with the assistance of the lobbyist. Then, working with the board of directors and Federation officers, he attempts to enact those elements into law. In this way group aims are changed into national policy.

So it is with every citizen group which is organized and operated for purposes of pressure politics. Labor's objective of the American standard of living, the "American system" of the Association of Manufacturers, the "individual initiative" and "free enterprise" of the chamber of commerce, the "free press" of the newspaper publishers,

and the "America of the future" of the educators are all examples of general aims with great propaganda value which reach Congress in the form of specific bills and amendments intended to accomplish the purposes of these organizations. The lobbyist or his witnesses explains to Members of Congress why the attainment of the aim depends upon the enactment of many specific bills and why the general welfare will be promoted by the bills in which he is interested. Part of the lobbyist's job is to make Congress feel that the "public" is back of the bills which his association wants passed. "The men who seek special favors of Congress \* \* \* do not bribe, or give free passes, or pay election expenses; they attempt to make the legislators think that the thing they want is the thing that the public wants."<sup>17</sup> In this process of identifying group interest with public interest the lobbyist occupies the key position.

Congress is importuned for special favors not only by lobbyists who work openly in Washington, but also by pressure exerted from behind the scenes. The pressure reaches a Congressman through telegrams, resolutions, letters, and delegations of constituents, all urging him to vote thus-and-so on a particular bill. The constituents who exert this sort of pressure are not limited to members of the association whose lobbyist directs the campaign. They include also those of many other groups—political clubs, chambers of commerce, young voters' leagues, independent citizens' alliances, etc. Thus a lobbyist mobilizes behind a measure support from a dozen or more different quarters in a congressional district.

Once the decision is made by the officials of the association interested in the bill to "turn the heat on Congress," a number of district organizers tour the country, contacting local organization secretaries, ambitious young lawyers, and professional men, and local celebrities for the purpose of starting the avalanche of letters and telegrams speeding toward the Capitol. Meanwhile, in Washington, the lobbyist is acting as coordinator of the field armies.

As he conceives his job, he is not a personal contact man at all except with an inner group of statesmen who were on his side from the beginning and have been picked to act as his congressional strategists. With these he is constantly in touch. But most of the time he sits in his office rolling up prodigious telephone bills as he keeps in touch [through the district organizers] with "progress" in two-thirds of the States and scores of congressional districts.<sup>18</sup>

During a campaign of this kind he is hardly visible in Washington, indeed, he may be absent from the Capital City, if his presence is needed with the armies to keep them striking simultaneously. The whole strategy of his movements is to stay out of the limelight and to let the voters speak to their Congressmen for him.<sup>19</sup>

On occasion Congressmen are appealed to through this method to vote against a bill because it is "communistic" or "socialistic." In such cases the lobbyist's aim is to have the pressure come to Members.

<sup>17</sup> C. S. Thomas, "My Adventures With the Sugar Lobby," *World's Work*, January 1916, pp. 244-245, quoted in Herring, op. cit., p. 60.

<sup>18</sup> Aikman, D., "Lobbyist—1936 Model," *The New York Times Magazine*, March 15, 1936.

<sup>19</sup> Note the words of another Washington newspaperman: "In a general way, pressures are applied by (1) leading Congressmen to believe that they can be reelected only if they support or oppose a given bill or, (2) convincing their constituents that the Congressmen should or should not be reelected. The first is the older, more simpler method.

The second is the newer, now more favored, technique. \* \* \* Often the lobbyist employs a combination of the two methods. \* \* \* Crawford, *The Pressure Boys*, Messner, New York, 1939, p. x.

of Congress from one or more patriotic organizations. The following description is revealing:

One of the wealthiest and most powerful organizations in the country has a very clever high class representative here [in Washington] who is never seen at the Capitol, who never lobbies. He knows full well that Representatives listen to the people back home with much more attention than they would to the known representative of any organization. Therefore, no matter how powerful the propaganda for or against any measure in which his organization as a whole or any part thereof is interested, it sometimes reaches the voter in such changed form that the tracks could never be traced to his door. Some of this, after it has passed through several hands, has been known to go out through patriotic organizations whose heads have called upon their members to wire their legislators to oppose or support [sic] certain bills, because they are communistic or socialistic.<sup>20</sup>

Devious as well as direct methods are thus employed by lobbyists to influence Congress. To oppose legislation because it is communistic or socialistic and, therefore, un-American, is to take a stand on generalities which is, nevertheless, unassailable, when love of America stands highest in the scale of popular loyalties.

#### THE LOBBY AND THE POLITICAL PARTIES

The system of representation worked out by pressure groups in this country to supplement the system of geographical representation is co-ordinate with the party system. The presence of groups in Washington—

means that the geographic representation as outlined in the fundamental law of the land has been supplemented by a new and spontaneous and at the same time systematic form of representation based upon various interests of various groups of like-minded people. It means that there has developed in this Government an extra-legal machinery of as integral and of as influential a nature as the system of party government that has long been an essential part of government, though not originally incorporated in the Constitution.<sup>21</sup>

The party system developed in response to two definite needs: First, of a method whereby candidates for manning and operating the governmental machinery might be selected and presented to the electorate; and, second, of a method for choosing between candidates thus selected. Both custom and the Constitution have operated to fix the single-member constituency as the basic unit of representation. This was the system in operation in England in the eighteenth century with which the colonists were familiar.

Moreover, the Constitution designated population as the basis of apportioning the seats in Congress among the several States. Tradition and law were reinforced by the difficulty of communication. Occupational and professional interests were not lacking even during the drafting of the Constitution, yet as a foundation on which to erect the structure of political representation geography seemed the more reasonable.<sup>22</sup> In any event, as the Nation expanded both in area and

<sup>20</sup> Proceedings of the Forty-third Continental Congress of the Society of the Daughters of the American Revolution (1934).

<sup>21</sup> Herring, *Group Representation Before Congress*, op. cit., p. 18.

<sup>22</sup> "A survey of the economic interests of the members of the Philadelphia convention (1787) shows that a majority of the members were lawyers by profession; most of them came from towns on or near the coast, i. e., from the regions in which personality was largely concentrated; not one member represented in his immediate personal economic interests the small farming or mechanic classes; and the overwhelming majority of members, at least five-sixths, were immediately, directly, and personally interested in the outcome of their labors at Philadelphia, and were to a greater or less extent economic beneficiaries from the adoption of the Constitution." C. A. Beard, *An Economic Interpretation of the Constitution of the United States*, New York, 1913, pp. 149-151.



in population, surveyor's lines were unquestioningly accepted as the method of allocating among the population representation in the legislature.

As long as travel and communication were difficult, representation in Congress on the basis of geography was on the whole fairly satisfactory. Unquestionably, even today, men living side by side in the same vicinity have many common interests. Up to a certain point, the needs growing out of these interests can be met by a legislature elected on the basis of geographical representation. Beyond that point such representation is inadequate.

The machine age has sharpened those interests which are independent of territorial association and has created many new interests. Easy and rapid communication has made men more aware of these new interests and has thus facilitated the formation of groups of like-minded individuals. Today, residence in a particular locality is but one of many grounds on which Americans feel a community of interest with others of their fellow citizens. One's vocation, his calling, profession, or occupation, is possibly the most important of these grounds. It can be seen at work in the organization of citizens into trade associations, labor unions, industrial leagues, professional associations. Another important basis is service in defense of the Nation. Patriotism, reform, national defense, and peace are others.

These special-interest groups are not limited by the boundaries of congressional districts. Puzzled by problems beyond their abilities to solve and, turning to the Government for help, they have discovered that the system of representation in Congress makes no provision for them.<sup>23</sup> Two-party government discourages their entrance into politics, thus forcing them into extra-legal channels to achieve their aims in the sphere of legislative activity. The means which they have evolved to do this is the lobby,<sup>24</sup> which thus becomes an instrument not only of opinion forming, but of providing functional, nongeographic interests with representation at Washington.

The decline of the political party as a leader in opinion has been accompanied by the rise of these organized groups of voters.<sup>25</sup> Obviously, the effect of this shift in the relative importance of the party in the political process is important. It has resulted in the virtual domination of politics by the citizen group movement. Both during and after elections the groups hold the key to the explanation of much party behavior. As leaders in the formation of opinion, the parties at election time seek their support more assiduously than that of aggregates of individuals. In election campaigns this means that the

<sup>23</sup> "The Government has set up certain administrative and judicial tribunals to deal with these new interrelations of men that have resulted from easier communication, but the fact that men have interests in common other than those bred by living in the same vicinity has been ignored in the structure of the representative branch of the Government. In the formal system of representation, we are still using the mode of the eighteenth century. With the decline of the political party as the leader in policy and opinion, it was not only compulsory but inevitable that some other medium of expression for the many diverse points of view and commercial and ideational interests should evolve. The national associations are the result." Herring, *op. cit.*, p. 268.

<sup>24</sup> "The groups in this country are reasonably successful in accomplishing their ends through the lobby. They all fear launching into partisan politics as a minority party. Since the Government of this country is based upon the two-party form and leaves no official way for blocs or multiple parties to participate directly in government, the national associations are forced to resort to extra-legal means in order to make their influence felt. The parties have practically no distinctive principles; the groups are founded on principle. The former administer the Government, the latter formulate opinion and urge the parties to put it into effect. The organized groups, to do this, must largely depend upon their lobby." *Ibid.*, pp. 252-253.

<sup>25</sup> *Ibid.*, p. 46.



real significance of the platform on which party nominees run for election can be found only in the stated or implied desires of the groups supporting the candidates. "The voice which political parties hear now is the voice of groups rather than that of political leaders who profess to speak for the people."<sup>26</sup>

The range of that voice extends to Washington as well. Partisans in Congress and administration also listen to group opinion. Members of Congress are elected by parties but in their votes they tend to respond as a rule more to the voice of groups than to that of the party.

Laws are enacted in \* \* \* Congress by members of political parties, and are enforced mainly by members of parties; but partisans are influenced not so much in their votes by the party organization as by \* \* \* innumerable quasi-public organizations \* \* \* it is not the voice of the party as such but the voice of public opinion as expressed by some active agency to which they listen most of the time.<sup>27</sup>

Control of legislation and offices has thus shifted in large measure from the parties to the lobbies and allied organizations.<sup>28</sup>

The real danger of this situation lies not in functional or group representation before Congress, but in the possibility that Congress will be swayed by a pressure out of proportion to the actual number of people in the group, or without regard to the effect of the legislation on the general public.<sup>29</sup> To a certain extent the parties themselves are a check on this dangerous tendency.

At the very point where it might militate against the public interest, the national association is checked by another force, the political party, which theoretically and often in practice works for the national good rather than the welfare of a small special minority.<sup>30</sup>

While this may be too optimistic an appraisal of the situation, it is still true that, without the support of the leaders of the majority party in Congress, citizen groups usually are not able to enforce their demands.

Both parties and groups are active in the shaping of policy. Through nominations of personable candidates, bargains with citizen groups and political factions, and success in elections, the parties play the dominant role in the determination of broad policy. At the same time, the substance of policy both in the beginning and as revised through the years is due more to pressure groups. After all—most issues are not decided by the parties, but by public opinion. \* \* \* Here the activity of the nonparty groups is of prime significance.<sup>31</sup>

The competition among groups for official approval of their aims is perhaps the outstanding characteristic of the governmental process

<sup>26</sup> E. B. Logan, "Lobbying," Supplement to *Annals of the American Academy of Political and Social Science*, July 1929, p. 80.

<sup>27</sup> C. E. Merriam and H. F. Gosnell, *The American Party System*, Macmillan, New York, 1929, pp. 220-221.

<sup>28</sup> Logan, *loc. cit.*, p. 82.

<sup>29</sup> "Apparently the tendency of associations and leagues of citizens formed for the accomplishment of their own particular purposes ignores the theory that the general good should be the consideration of the citizen before that of any one group." Herring, *op. cit.*, p. 4.

<sup>30</sup> Herring, *op. cit.*, p. 252.

<sup>31</sup> Merriam and Gosnell, *op. cit.*, p. 239. "Most legislation \* \* \* represents the insistence of a compact and formidable minority." Learned Hand, 28 *Michigan Law Review*, 50.

in America of the twentieth century.<sup>32</sup> To decide who shall win in this competition and what form the victory shall take is the government's continuing assignment.

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<sup>32</sup> "Government, whatever its form, is bound to be in the long run far more a reflection of the balance of interests in the community than an agency capable of making the community reflect the independent will and purposes of the governors." Dickinson, *loc. cit.*, p. 304.

## CHAPTER V

### CONTACTS WITH GOVERNMENT

#### CONGRESS AND THE EXECUTIVE

In preceding chapters we have seen how pressure groups are composed, what are their aims, and how they proceed to achieve them. But in order to uncover fully the process of control we must examine the various points of contact between citizen groups and government. "The raw material [of government] can be found only in the actually-performed legislating-administering-adjudicating activities of the Nation and in the streams and currents of activity that gather among the people and rush into those spheres."<sup>1</sup>

#### CONGRESS: THE FOCUS OF GROUP ATTENTION

In seeking governmental sanction for their aims citizen groups focus their attention principally upon Congress. The reason for this is obvious. Congress is the law-making, money-raising, and money-appropriating body. In performing these functions it can transform group aims into public policy. With the aid of Congress groups can effect this change through any of four different kinds of action: legislation, Senate action on treaties and Presidential nominations, and formal proposals to amend the Constitution.

##### *General Legislation.*

Much of the general legislation on our statute books is the result, wholly or in part, of group pressures.

The laws passed by Congress are never admitted to be legislation in the interest of special groups. In fact, such bills are taboo as "class legislation." Even the private bills passed for the relief of individuals are introduced on the theory that the individual has suffered an injustice which the ordinary law makes no provision for remedying.

Bills to prohibit the entry of foreign livestock or meats, while they obviously benefit domestic meat packers, are defended as an attempt to prevent the spread of hoof and mouth disease. Farm legislation, which is admittedly for the immediate benefit to farmers, is argued in terms of the general welfare. Even the soldiers' bonus, which Presidents Coolidge, Hoover, and Roosevelt vetoed as special interest legislation, was finally passed over the veto as a debt which was due the World War veterans. While it was a result of increasing pressure upon Congress, the increased pressure probably resulted

<sup>1</sup> Bentley, A. F., *The Process of Government*, Chicago, 1908, p. 180. The raw material of government, Prof. Bentley claims, cannot be found in lawbooks, nor in the "law" behind the lawbooks, nor in the proceedings of constitutional conventions, nor in the arguments and discussions surrounding them, nor in essays, addresses, appeals, and diatribes on tyranny and democracy, nor in "the character of the people," in their specific "feelings" or "thoughts," in their "hearts" or "minds." *Ibid.*, pp. 179-180.

from the stringencies of the depression, and many Congressmen undoubtedly defended it in their own minds as an attempt to cope with the Nation's problems of unemployment and destitution.

### *Tax and Appropriation Bills.*

The revenue and appropriation measures passed by Congress afford a particularly good opportunity to fix or change Government policy. Every year Congress passes at least two revenue bills, one for the country as a whole, and one for the District of Columbia; also, it passes a series of appropriations for carrying on Government functions. Finally, at intervals of a number of years, the tariff comes up for consideration.

Like other congressional legislation, such bills may reflect the general welfare (or the aggregate pressure of a large number of groups) or they may result from the pressures of a compact, formidable minority. In any case, they are defended as being in the interest of the general welfare.

The graduated scale of the income-tax law is still being opposed as unjust. The income tax publicity clause, the excess-profits tax, and the undistributed-surplus tax all were finally repealed as a result of business pressure which convinced the public that these measures were inimical to business. Tax matters are technical, the statistics are complicated and easily juggled; hence the electorate is easily confused and pressure groups are particularly successful. The large increase in consumers' taxes during the depression, in spite of the administration's avowed wish to expand consumer purchasing power, is in large part due to this fact.<sup>3</sup>

But these are not the only ways in which tax bills may be used for group purposes. In 1934, for instance, the Farm Bureau Federation, having been unsuccessful in inserting duties on certain imported fats and oils in the previous tariff act, succeeded in securing their inclusion as excise levies in the revenue act of that year.<sup>4</sup>

Taxation is also used openly for policy purposes. The processing tax of the A. A. A. declared unconstitutional in 1936 was levied as part of an effort to raise farm prices.

The tax levied under the Guffey Coal Act is levied to secure cooperation with the purposes of the act. The pay roll taxes of the Social Security Act implement the provisions for the payment of old age pensions and unemployment compensation.

An indirect method of using tax statutes for group purposes is to attach a rider to an urgent revenue bill. The Miller-Tydings Fair Trade Act was attached to a District of Columbia revenue bill, and, simply because the tax measure was vitally needed, the Fair Trade Act passed without the opposition which it would probably have aroused otherwise.

An instance of counter-attack by pressure groups which goes back a number of years, but is curiously contemporary in its approach, is the reaction of the Institute of American Meat Packers which was under fire in 1916. A House resolution calling for investigation of the meat packing industry in that year was sidetracked by the Institute's efforts. Three years later, by having a resolution introduced in the Senate to

<sup>3</sup> See Dewey Anderson, *Taxation, Recovery, and Defense*, Temporary National Economic Committee Monograph 20.

<sup>4</sup> See ch. VII.



investigate the so-called Socialist members of the Federal Trade Commission, the Institute diverted attention from a Commission report showing monopolistic practices among the big meat packers.<sup>5</sup>

Appropriation bills are likewise subjects of prime interest to organized groups. They provide a constantly recurring battleground for the forces opposing and favoring the various departments and agencies. One way of emasculating an agency whose operations are distasteful or inimical to certain groups is to cut its appropriation to a point where it cannot carry on its program. Certain departments or divisions of an agency may be cut out, or a whole agency may be starved out by drastic slashes. The repeated attempts to cut the appropriations for work relief, as well as for the National Youth Administration, the Securities and Exchange Commission, the National Labor Relations Board, the Justice Department's Antitrust Division, and so forth, are examples of this policy-making approach in appropriations.

Conversely, of course, certain groups fight for continued or larger appropriations for the agencies they favor. For example, in 1925 the Land Grant College Association got through Congress a law authorizing increased Federal grants to States for agricultural research, especially economic and social. Quite naturally it watches closely to see that Congress appropriates each year the funds authorized by this act. The Departments of Labor and Agriculture, the Veterans' Administration, the Office of Education, the N. Y. A., W. P. A., C. C. C., and so forth, all provide examples of this kind of pressure.

The tariff provides an excellent and frequently recurring opportunity for pressure on Congress in the interest of minority groups. This problem is taken up in detail in chapter VII, and will not be discussed here except to point out that it provides an outstanding opportunity for fiscal legislation in behalf of group interests.

#### *Policy-Making Through Blocking Treaty Ratification.*

From time to time the Senate is under pressure to withhold its assent to the ratification of a treaty running contrary to the desires of certain groups. Obviously, such opportunities for compact citizen minorities to put their imprint on policy are few in comparison with those in the field of domestic legislation; nevertheless, they do arise from time to time, and provide another method for group determination of policy.

For example, in 1925 the United States signed at Geneva a treaty outlawing the use of poison gas as a weapon of warfare. Twenty-eight other countries took similar steps, in accordance with the movement sponsored by the League of Nations to limit and reduce armaments. In due course the President forwarded the treaty to the Senate asking for advice and consent to its ratification.

In a speech opposing ratification, Senator Ransdell, of Louisiana, introduced into the Record a letter from the American Chemical Society to Secretary of State Kellogg, asking him to oppose ratification. Mr. Parsons, secretary of the society, also asked Mr. Kellogg to request individual Senators to oppose ratification of the protocol, arguing that ratification would perpetuate the blunder made in Wash-

<sup>5</sup> "The summary volume of the report is a scathing indictment of the 'big packers' as a combination in restraint of trade." T. C. Blaisdell, the Federal Trade Commission, Columbia University Press, New York, 1932, pp. 186-187.

ington in 1922,<sup>6</sup> would lead to unnecessary suffering in future wars, would discourage preparedness against an enemy which might unexpectedly use gas, and would leave the country defenseless. Furthermore, his argument ran, adherence to the treaty would force us to use destructive methods instead of harmless gases in case of war against an unprepared nation, would not be made effective, and would put the chemical industry in each country under the control and supervision of a national board.<sup>7</sup>

This position of the American Chemical Society, first made known in August 1926, was fortified by a statement issued on October 10 by John Thomas Taylor, legislative representative of the American Legion, saying that the Legion, too, was against ratification of the Geneva Protocol. The same stand was taken by the Association of Military Surgeons on October 24 and by the National Association for Chemical Defense on November 14.

In the face of this opposition not even the support of President Coolidge, Secretary Kellogg, and General Pershing, to say nothing of the National Women's Conference on the Cause and Cure of War, was sufficient to gain Senate approval. The Senate voted on December 13 to recommit the treaty to the Foreign Relations Committee.<sup>8</sup>

Even more illuminating is the way various farm groups have tied the Argentine Sanitary Convention up in committee. From 1903 to 1930 the Secretary of Agriculture was authorized to prevent the introduction of communicable diseases of livestock through the medium of fresh meats or other animal products. Under this authority, in 1927, he issued an order prohibiting the importation of fresh meats from any region where rinderpest or foot-and-mouth disease existed. Section 306(a) of the Tariff Act of 1930 prohibited the importation of fresh meat, among other livestock products, from any country if or when either of these diseases exists within its border, leaving no discretionary authority in the Department of Agriculture. The purpose of the Argentine Sanitary Convention, signed in 1935, was to modify that prohibition to the extent of permitting the importation of fresh meats from regions in Argentina that may be determined to be free from foot-and-mouth disease.

For years the opposition of farm and ranch interests has been successful in preventing ratification by the Senate. Among the dozens of farm business groups which have urged the Senate to withhold its advice and consent are the American Farm Bureau Federation, the National Grange, the American National Livestock Association, the National Livestock Marketing Association, the United States Livestock Sanitary Association, the National Association of Swine Records, the American Shorthorn Breeders' Association, and the National Wool Growers' Association. Opposition came also from the Texas and Southwestern Cattle Raisers' Association and the Western Slope Stock Growers' Association. Wool, horse, and cattlemen's associations in 13 Western and Southern States forwarded resolutions opposing ratification to Congress. In the 3 years following the signature of the convention the Congressional Record reveals but one national organiza-

<sup>6</sup> Apparently Mr. Parsons refers to the Washington Naval Limitation Treaty of 1922 between the United States, Great Britain, Japan, France, and Italy.

<sup>7</sup> Congressional Record, 69th Cong., 2d sess., December 13, 1926, pp. 363-367.

<sup>8</sup> The New York Times, June 18, 1925, August 5, October 11, 25, November 15, 27, December 8, 10, 11, 14, 1926.

tion, the National Foreign Trade Council, which had asked the Senate to consent to the convention's ratification.<sup>9</sup> Consent is still withheld.

*Blocking Presidential Nominations.*

Just as Senate refusal to consent to ratification of a treaty can sometimes maintain a favorable position already won, so its refusal to confirm Presidential nominations to administrative posts may be used for certain group purposes. During every congressional session the President sends to the Senate for confirmation the nominations of many persons to public office. Such confirmation is usually given without a great deal of debate, but occasionally a person is nominated whose known views appear invidious to some group, and then pressure will be put on the Senate to withhold confirmation.

The success of organized labor in blocking President Hoover's nomination of Judge John H. Parker to the Supreme Court illustrates this procedure. The first indication of a serious protest against the elevation of Judge Parker occurred on March 26, 1930, when A. F. of L. representatives asked members of the Senate Judiciary Committee to investigate his participation in court decisions upholding "yellow dog" contracts. Three days later the A. F. of L. filed a written objection with the committee and asked for the privilege of appearing in opposition to the confirmation of Judge Parker's appointment. Members of the Senate were called upon to refuse confirmation.

On April 5, A. F. of L. President Green appeared before the committee, voicing the protest of organized labor against the appointment. President Green said he was speaking for 5,500,000 organized workers, and supplemented his testimony by a formal letter of protest addressed to Senators Borah, Norris, and Overman. Notices were sent to the 35,000 unions affiliated with the A. F. of L., urging them to request their respective Senators to vote against confirmation.

Under pressure the Judiciary Committee declined to report the nomination favorably and requested Judge Parker to appear and answer the charges of his critics. In the final vote in the Senate, labor's wishes were followed; the vote against confirmation was 41 to 39.<sup>10</sup>

The Parker case is not unique. Twice President Coolidge nominated Charles Warren to the Attorney Generalship, once in January and again in March 1925. On both occasions the Senate refused to confirm him. Among those opposing confirmation was the People's Legislative Service, whose director, Basil Manly, made a formal protest to the Senate Judiciary Committee. The protest was based on the fact that Mr. Warren, as president of the Michigan Sugar Co., had disregarded an injunction of the Federal Trade Commission restraining his company from violation of the Sherman Antitrust Act.<sup>11</sup>

President Roosevelt's second term has been marked by an extraordinary number of fights against confirmation of his nominees. One of the bitterest of these involved the nomination of Senator Black to the Supreme Court. During the debate the Senators' private gallery held numerous lobbyists representing interests on whose toes Senator Black had stepped in his investigations. "It was their fight that a number

<sup>9</sup> Resolutions opposing ratification, adopted by the State legislatures of Colorado, North Dakota, Nebraska, Oregon, Montana, New Mexico, Nevada, and Arizona, were also sent to Congress.

<sup>10</sup> New York Times, March 26, 29, April 1, 6, 12, 14, 1930, and interview on July 21, 1937, with William Roberts, A. F. of L. representative.

<sup>11</sup> New York Times, February 12, 1925.



of Senators in the pit below were making."<sup>12</sup> But they lost their fight when the Senate voted 63 to 16 to confirm.

An even greater storm of protest was aroused by the President's nomination of Thomas R. Amlie to the Interstate Commerce Commission in 1939. Amlie had been a leading member of the liberal bloc in the House for 6 years, and had consistently supported New Deal policies. He had been particularly prominent in the fight for increased appropriations for work relief.

As soon as a date was set for the consideration of his nomination by a subcommittee of the Senate Committee on Interstate Commerce, the committee was showered with requests to be heard, both in opposition and support of the nomination. The first witness, Luther D. Walter, trustee in receivership of the Chicago & North Western Railway, appeared "as his own witness, representing no one but himself." He was armed with a detailed account of Amlie's writings for the past 8 years, some of which the nominee himself confessed his inability to secure. Two leaders of the anti-Roosevelt Democratic faction in Wisconsin testified against Amlie. Efforts were made to prove, first, that he was a Roosevelt supporter, and hence, as a Democrat, not entitled to fill a place on the minority side of the Commission; second, that he was a Socialist; and, third, that he was a Communist.

The evidence was conclusive that Amlie was a leader of the Progressive Party; that he had been a member of the Republican Party until the Progressives split off in 1934; and that some of his bitterest denunciations had come from the Communists. It was established that he had supported several plans intended to increase and redistribute national income, raising the living standards of consumers at the bottom of the scale, and that he had advocated Government ownership of the railroads.

Alfred Bingham, son of the late Senator Bingham of Connecticut, testified in his behalf, as did John Bauer of the Municipal Ownership League, Mayor La Guardia of New York, A. F. Whitney of the Brotherhood of Railway Trainmen, and a number of Amlie's colleagues in the House of Representatives.

The hearings were finally closed, after a sizable volume of testimony was taken, and the committee went into executive session. The press was opposed to the nomination almost 100 percent, and printed innumerable editorials in support of their position. The last 135 pages of the 390-page volume of hearings was filled with statements for and against confirmation, a large number of them elicited by the furore in the press.

The Association of American Railroads was bitterly opposed to the nomination, as were transportation groups generally. Several State public service commissions supported Amlie. The lines were drawn with extraordinary clarity between the business groups interested in the railroads, and the liberal faction which Amlie supported during his years in Congress.

The subcommittee delayed for months in reporting its findings, until finally Amlie, convinced that Senate action would not be forthcoming in that session, asked the President to withdraw his nomination.<sup>13</sup>

<sup>12</sup> Raymond Clapper. Washington Daily News, August 18, 1937.

<sup>13</sup> The Constitution provides a fifth way through which groups may achieve their objectives, namely, formal change in the organic law itself. The Prohibition and Equal Suffrage Amendments are examples. Both were made part of the Constitution through the efforts



## THE PRESIDENT'S ROLE

In the political process the Chief Executive plays a role of synthesis and of application. The President must, as an adjunct to his duties, construct and further as best he can his concept of the general welfare. This is to some extent inherent in his political and social thinking, and to some extent it may be formulated as a result of his daily responsibilities. But he is not free to express this concept unreservedly in his decisions. He must work within a constitutional system of divided powers and of checks and balances which greatly inhibit his freedom of action.

Moreover, the President is subject to continuous pressure from Congress, from minorities of varying weight, and from individuals. Government in a representative political democracy like the United States is government by compromise. Probably only in degree has the Chief Executive's role, at least in recent years, been different from that described by President Roosevelt in 1938. In replying to criticism of certain of his policies, he is reported to have said: "For various reasons of responsibility and compromise in this office, I cannot dictate my own course of action. To move forward I must accommodate myself to more opinions than one."<sup>14</sup>

Consideration of pressure politics as the interaction of numerous group desires and ambitions may lead to over-simplification of the political process, unless it is remembered that one of the strongest factors in politics is the psychological lag of the voting public. A certain number of the people in the Nation are leaders in the struggle to use political power for various ends. They are a minority of the voters, but because they are energetic and vociferous, they play the role of opinion-formers, and are often successful in accomplishing their purposes. They may be the representatives of minority, special-interest groups, or they may be sincerely concerned to promote the greatest good for the greatest number in an immediate, socially conscious sense.

But in their efforts to use political power for any new purpose, they are continually confronted by the barrier of inertia among the voters as a whole. The ordinary man finds it difficult to evaluate the facts of his everyday environment as they affect him at that moment. His reaction to his environment is conditioned largely by past experience, some of which may still be valid, and some of which has been irrelevant for a generation or more. He is reluctant to change old ways of doing things, and even more reluctant to change old habits of thought. Hence, it is often a matter of years between the original inception of an

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of politically powerful groups. Without the pressure and lobbying efforts of the Anti-Saloon League, the eighteenth amendment would never have been adopted by Congress, nor ratified by the States. Almost equally well-known is the success of the National American Women's Suffrage Association (predecessor of the National League of Women Voters) in having universal equal suffrage incorporated into the Constitution. Another group, the Association Against the Prohibition Amendment, played a part in getting the eighteenth amendment repealed. Its lobbying efforts were secondary in importance, however, in comparison with those of the Anti-Saloon League and its associated temperance groups. The Nation's experience with prohibition illustrates two facts of importance to observers of pressure politics, business, and Government. The first is the dependence of pressure group success upon satisfactory enforcement of the law embodying its objective. The temperance aim of the Anti-Saloon League failed of realization because of the impossibility of enforcing the Volstead Act. The second is the importance of stamina in the game of pressure politics. Although the eighteenth amendment was adopted by Congress over the protest of the United States Brewers Association, the brewing industry was able, nevertheless, due to stamina conferred by charters and resources, to outlive the 14-year prohibition era.

<sup>14</sup> Springfield Republican, May 7, 1938.

idea in politics and the date when the electorate is finally induced to accept it.

During that time, politicians must be alert to sense the dangers of proceeding faster than the inertia of the electorate permits, and equally alert to seize the exact moment for successful action. Unfortunately, it is considerably easier to recognize this inertia than it is to seize upon the moment when action is possible; this is one reason why politicians find it more satisfactory to allow themselves to be prodded in one direction or another by pressure groups, than to mark out their own programs to achieve their campaign promises.

Thus whether the President furthers or obstructs the interest of any particular group at any particular time, depends not alone upon his wish, nor the amount of the pressure, but upon the general political situation as well.

The general political situation is a limiting factor on both congressional and Executive action. Governmental action of all kinds occurs on the level of politics, and in the arena of politics. Even the most routine governmental procedures are carried on in the knowledge that they affect and are affected by the political situation.

As Chief Executive of the Nation and leader of his party, the President can further certain group interests and thwart others. By approving or vetoing acts of Congress the President can give expression to the ideas of certain groups. By sponsoring new legislation he can play an even more active part in achieving the aims of such groups.

He can dispatch a Presidential message, as a very formal approach, or he may communicate directly with various Members of the House and Senate. The famous letter written by President Roosevelt to "Dear Alben" Barkley on the occasion of the death of the Democratic floor leader, Senator Robinson, is credited with tipping the scales in favor of Barkley as his successor rather than Pat Harrison. Moreover, when tax and appropriation measures come to the White House other chances are presented to the President to show his agreement or disagreement with minority objectives.

The President can appoint Cabinet members, departmental officers and bureau chiefs, judges and district attorneys who can be expected at the very least to be guided by the broad outlines of a certain political and social philosophy. As Commander-in-Chief of the armed forces he can use them both at home and abroad in situations short of war to further the interests of certain groups as against others. More frequently, he need only drop a sympathetic word at a press conference or public address in order to associate himself with a certain program.

There are many examples of a President's response to group pressure. For instance, Andrew Furuseth, dynamic, able president of the Seamen's Union, was largely influential in drafting and getting through Congress the La Follette Seamen's Act of 1915. Shortly before President Wilson was expected to consider the bill, Furuseth and Samuel Gompers, president of the American Federation of Labor from 1886 until his death in 1924, called on the President. Gompers says that, "As Mr. Furuseth spoke Mr. Wilson was leaning forward, eager to get the story. A few days later Mr. Wilson signed the Seamen's Act."<sup>15</sup>

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<sup>15</sup> Samuel Gompers, *Seventy Years of Life and Labor*, Dutton, New York, vol. 1, p. 546. For other instances of his contacts with Presidents, see also pp. 517-530.

During prohibition the Anti-Saloon League was strong enough to cause President Coolidge to nominate its candidate for prohibition enforcement officer rather than the candidate backed by Treasury Secretary Mellon, and also to appoint a Federal district judge in New Jersey over the protest of the United States Senator from that State.<sup>18</sup>

In 1934 the President revoked that part of his 1933 economy Executive order reducing appropriations for agricultural extension, experiment stations, land grant colleges, and vocational education in agriculture, industry, and home economics. This action was in line with the desires of the Farm Bureau Federation. Also, for a time at least, the advocates of collective security felt that Roosevelt's "quarantine the aggressors" speech in 1937 indicated the adoption of their program.

#### *The President as Administrator.*

In discussing the influence of groups on the President's role, a distinction is made between that part relating to continuous policy revision and that which deals with routine administration. To divide the President's part in this way is, to some extent, artificial and arbitrary, but it serves to emphasize the dual role he plays, as policy-maker and administrator. It is often hard to discover, of course, where revision of policy ends and where routine administration begins, since administration is the application of innumerable revisions of policy.

In routine administration, contact between President and groups grows out of his position as Chief Executive, rather than as party leader. The President functions as party leader in the formation of policies, measuring group aims against the political situation before deciding to further or obstruct them. Where policy revision is not directly involved, however—that is, in the execution of laws already on the books—the President comes into contact with the groups in his capacity of head of the state and of the executive branch of the Government.

No duty as Chief Executive affords the President such opportunity of reviewing administration as the preparation of the annual Budget. Consequently, no duty exposes him so completely to the pressure of interested groups. Groups who have gained their ends in the establishment of a Government agency recognize the Budget as the first line of battle to keep that agency functioning. Similarly, organizations anxious to throttle a certain Government activity see a chance to gain their ends in the Budget recommendations. The agency itself is usually desirous of increases in its funds, and brings any pressure it can to bear upon the President to secure his sanction. He, in turn, must decide, as to each agency, whether it is necessary, whether it is over or under staffed, and whether it is politically feasible to recommend a decrease or increase. The Budget, as it is finally submitted to Congress, indicates the tacit approval or acceptance by the President of the thousands of individual items representing decades of achievement by successful pressure groups, along with the inevitable accumulation of public services made necessary by the growth of the Nation.

In Federal budgetary procedure group actions are noteworthy as a phase of a routine matter rather than as separate and isolated acts in themselves. Important though it is, the preparation of the Budget is

<sup>18</sup> A. S. Henning, Chicago Tribune, July 12, 1927.



merely the first in a series of steps taken annually to provide funds for carrying on the Government. After receiving the Budget from the President, Congress examines carefully the estimates of both receipts and expenditures for the forthcoming fiscal year, and on the basis of this examination prepares, debates, and passes the necessary tax and appropriation bills. Here, then, are additional stages in the process at which specific objectives of the several citizen groups may be advanced. They are the final phases of the supply process. Hardly are Congress and the President finished with the process for one fiscal year than the spending agencies, under the direction of the President and the supervision of the Budget Bureau, set the process in motion for a new fiscal year.

In all phases the influence of citizen groups may be seen. In the executive phase, when bureau chiefs, business managers, and departmental budget officers carry forward the work of preparing the estimates, groups may be either active or passive. If active, it is through their Washington representatives. If they are passive, it may be because the officials responsible for the performance of the services in question are sympathetic to the group's point of view. In greater or less degree every executive agency lobbies for expanded functions and increased funds. When the departmental estimates are assembled by the Budget Bureau and are presented to the President for his examination and analysis, the influence of the citizen groups may again be actively exerted. At this stage, access to the President is of great value, and his appointment calendar carries names of citizen association officials anxious to point out the need or the desirability of providing better services. Such presentations, of course, can be made at any time of year. After the estimates are submitted to Congress the groups continue to exert influence both actively and, for the most part, openly.

#### *The President as Party Chief.*

But access to the White House is of major importance in policy making only when the President's party has a simultaneous majority in both Houses of Congress. Both for party and for groups supporting the party politically, the capture of Presidency and congressional majorities opens the widest opportunity for revising policy without hindrance.<sup>17</sup>

Groups which claim consideration on account of their support of the party may have offered their aid in a number of ways. Such groups as the Workers' Alliance and the American Youth Congress are unable to make large financial contributions, hence they spend a great deal of time in contacting voters personally, donate their services in campaign headquarters, etc. Theirs is the contribution frequently called "door-bell ringing." Labor unions often make both personal and financial contributions. The C. I. O. is said to have contributed more than \$300,000 to the Democratic Party in 1936, and in addition the union members were personally active in local campaigns. Business groups, on the other hand, usually confine their assistance to financial aid and propaganda through their organizations and publications. All these groups, on the basis of their share in electing the Executive, feel free to approach him in furtherance of their desires, and they are usually received cordially, even when the President is unsympathetic

<sup>17</sup> A. N. Holcombe, *The Political Parties of Today*, Harpers', New York, 1924, p. 87.



to their present demands. But these vote-getting (or even vote-deflecting) activities are hardly typical of the grounds on which pressure groups appeal to the White House for support.

The truth is that continuous grubbing in the Nation's political garden is not the type of activity for which the great majority of citizen associations are established. The political parties were instituted and are maintained for that purpose. Nomination of candidates and the maintenance of an organization for mobilizing voters to support these nominees at the polls are not the functions of citizen groups such as the American Iron and Steel Institute, the American Bankers Association, the National Grange, or the Newspaper Publishers' Association. Among such organizations are some which unquestionably prefer Republican to Democratic Presidents and vice versa, as well as some which have no preference. Undoubtedly the American Tariff League would like to see the White House continuously occupied by a Republican. On the basis of its choice in the past decade, the American Farm Bureau Federation, on the other hand, seems to prefer Democratic occupants of the Executive Mansion. The National League of Women Voters, however, expresses no preference, just so long as the Chief Executive believes in the merit system and supports it in practice. The United States Conference of Mayors is another organization which does not look at political labels. So long as unemployment persists on a wide scale, its interest is in seeing in the White House a President, no matter what his party, who will support its plea for ample Federal appropriations for unemployment relief. But whatever their leanings, partisan or non-partisan, these organizations come to the White House with their requests for Presidential support, basing those requests not so much on the number of votes which they swung to the President in the last election as on other grounds. Among these factors are, first, congeniality of views between the groups and the President, and second, common notions of the general welfare.

Since the turn of the century the Nation has had eight Presidents.<sup>18</sup> Six of them have been Republicans; two, Democrats. Although the country's citizen groups cannot be sharply divided into Republican and Democratic, still the views of certain groups are undoubtedly more acceptable to Republican occupants of the White House than are the views of others. The reverse also is true. During the Republican regime from 1920 to 1932 the views entertained by the Chamber of Commerce of the United States, the National Association of Manufacturers, and the American Bankers Association were received more hospitably at the White House than were those of the American Farm Bureau Federation. Since 1932 the views of the former groups have been less in harmony with those of President Roosevelt than those of the Farm Bureau Federation. Although the views of A. F. of L. leaders during the 1920's were not rebuffed by Presidents Harding, Coolidge, and Hoover, the reception accorded them by the New Deal has been far more sympathetic. The concept of government-business relations held by the National Electric Light Association accorded with that of President Roosevelt's predecessors

<sup>18</sup> William McKinley, Theodore Roosevelt, William H. Taft, Woodrow Wilson, Warren G. Harding, Calvin Coolidge, Herbert Hoover, Franklin D. Roosevelt. During these 40 years the Republicans had been in power 24 years, the Democrats 16.

while the Edison Electric Institute, the association's successor, is in notorious disagreement with Roosevelt. Other examples show still more plainly how congenial views smooth the path to revision of national policy. Since 1932 the opinions of the American Tariff League have not been as welcome at the White House as they were during the preceding Republican regime. The position of the Association Against the Prohibition Amendment coincided with that of President Roosevelt in the days immediately before repeal in 1934, while that of the Anti-Saloon League did not. During President Hoover's term the situation was reversed. In these examples there are undoubtedly particular phases of policy on which group and Chief Executive were not in as close agreement as on broad policy itself. In general, however, they show that certain groups have less difficulty than others in obtaining at the Executive Mansion a sympathetic audience for their views, while at other times the roles are reversed.

Sometimes groups appear, play an important role for a time, then disappear. But always there are groups appealing for the President's support on the ground that the fulfillment of their aims is necessary to the general welfare. Indeed, these grounds are broad enough to accommodate all groups, and it is not surprising, therefore, to find them all striving to play through the President an active part in the process of policy revision.

#### *The President as Chief Executive.*

The number of groups which can seek Presidential aid in their objectives on account of their support of him on election day is limited, as is the number of groups which can expect an open ear on account of possessing similar views. No such limitation exists, however, when the appeal for support comes in the name of the general welfare. Any organization, local or national, partisan or non-partisan, may in the name of the general welfare ask the President's assistance in legislating its objectives.

Organized labor found Hoover willing to listen to its program when it was couched in terms of the general welfare. Farm groups and the Engineer President found that their ideas of the general welfare met in the matter of tariff revision. Even though he has disagreed with them, President Roosevelt has invited businessmen, industrialists, publishers, and utility magnates to the White House to hear their views as to how best to promote the general welfare.

Thus it is possible for groups holding widely differing concepts of the general welfare each to seek the blessing of the Chief Executive for its program, and it may be sought and given without hypocrisy. It is likewise possible for a President to join with Congress in sanctioning, in the name of the general welfare, aims and objectives of groups which on logical grounds are difficult to reconcile. No single group has a monopoly of wisdom, or even of knowledge. Hence, in the highly complex fields in which Congress and President make and continually revise policy there is no yardstick with which to measure the various concepts of the general welfare.

In choosing between the numerous specific proposals brought forward for approval, Congress does not apply a nationally-accepted, rationally-constructed standard. Instead, the process of re-making policy is a process of yielding to the pressure generated by the strong-

est groups. Some of the ideas back of these pressures originate in Congress; others originate in pressure groups and are introduced by friendly Congressmen; while still others arrive in Congress by way of the White House.

However, all the ideas which get through Congress are presented to the President for his approval. Nor is his approval or disapproval based on an absolute standard free from clashing opinions and cross currents of desires and hopes. Whether or not such acts of Congress contribute to a balanced concept of the general welfare, or harmonize with the President's own concept, he cannot wait for legislative perfection to reach him before giving it his approval. The Government must go on, and the future of the state and of the people must be looked to constantly. Thus, every congressional act carrying the President's approval signifies his agreement that the general aims embodied therein contribute to the general welfare. Only by use of the veto power can he signify otherwise.

In the complex of interests, institutions, and personalities which we call government there is a habit of thinking of the President as continually representing the views of a particular part of the population. Despite the popular tendency so to interpret Presidential conduct, it is hardly so simply explained as that.

President Roosevelt has frequently been described as the ally of organized agriculture and labor to the exclusion of other minority sections. But it hardly accords with the facts. Without doubt Mr. Roosevelt has adopted the legislative proposals of certain farm and of certain labor groups. Also he has rejected the legislative proposals of certain business and industrial groups. At the same time, he has not uniformly rejected the ideas of organized business. In some cases they have been adopted by him as the basis of legislation. An example is the 1933 Industrial Recovery Act, the code feature of which was first conceived by the Chamber of Commerce of the United States.

Presidents Harding, Coolidge, and Hoover are often accused of having acted for "Wall Street," and for "those in control of the Nation's productive wealth." But "Wall Street" and "industrial management" are not precise phrases describing definite groups of American citizens, closely organized, unanimous in their basic philosophy, and hewing to their programs regardless of time and circumstance. Although they correspond to an extent to the membership and philosophy of the Investment Bankers' Association and of the National Association of Manufacturers, not even these citizen groups embody everything implied therein. Like so many phrases employed in contemporary political discussion, "Wall Street" and "management of capital," "organized labor" and "organized agriculture" are symbols used to explain events, events oftentimes unpleasant to those using the symbols. Thus, when it is said that the President recommended this piece of legislation, signed that bill, made a particular speech, or performed some other definite act, under pressure from a particular group readily identifiable among those active in public affairs, it betrays a combination of rationalization and over-simplification which often ignores significant elements in the case. What is usually meant is that at a particular time and in a particular set of circumstances, of which the desire of an identifiable set of citizens was one, the Chief Executive took a certain step.



Nevertheless, it would be unrealistic to deny that a major factor in much Presidential behavior is to be found in the existence and public activity of organized groups of citizens. In yielding from time to time to their demands Chief Executives are behaving as might be expected. Somehow to incorporate these group demands into their own ideas of the general welfare is essential. It may be taken for granted that Presidents are all concerned with furthering the general welfare regardless of variations in their political philosophies. Just what this concept means to each occupant of the Executive Mansion depends, of course, upon his personal genius. But in no case is there doubt that the expressed desires of the people, or better, perhaps, of some of the people, are factors giving substance to the concept. In theory and in practice, a democratic republic is responsive to the needs and desires of its citizens, and in the very nature of things an elected Executive must adapt his notion of the general welfare to those conceived and battled for by the groups into which the people organize themselves. To this general rule the Chief Executive of the United States is no exception. The difficult role of the American President is to apply in the interests of all the people a concept of the general welfare compounded from the specific desires of some of the people.

#### ADMINISTRATION

The influence of organized groups on the Federal Government is not aimed entirely at Congress and the President. It is felt throughout the administrative structure as well. While Congress, as the starting point for new policies, is inevitably the primary focus of group attention, at the same time policies already decided upon are being executed in innumerable Government offices throughout the country. The interest which secured enactment of a law must not flag once Presidential approval is given, if the gains won in legislation are not to be lost in administration. Conversely, laws passed over group opposition may encounter continued opposition during enforcement.

Three aspects of Federal administration are important in connection with pressure politics: (1) The large number of activities performed; (2) the great variety of these activities; and (3) the net advantage accruing to business from the daily pushing and hauling of administrative officials.

A mere listing of the executive departments—State, Treasury, War, Justice, Post Office, Navy, Interior, Agriculture, Commerce, Labor—indicates many of the main areas of administrative activity. The number of activities of the departments performing traditional functions—State, Treasury, War, Justice, Navy, and Post Office—is impressive, and in the other departments is even more so. Sample functions selected at random include, for example, the Interior Department's construction and operation of irrigation projects and promotion of commerce in mineral products. The Department of Agriculture aims to enhance the farmer's economic and social condition through many kinds of research, education, and financial subsidy. Through meat inspection and other consumer aids it benefits the public as a whole. Among the Commerce Department's functions are the development of standards used in science, engineering, industry, and trade; investigation of foreign trade restrictions; and maintenance of navigation aids for both ocean and air commerce. Among



other things, the Department of Labor mediates labor disputes, and collects and disseminates labor statistics.

The area of Federal administrative activity extends its boundaries even further in the case of the independent agencies. Ten agencies regulate private enterprise in the fields of railway labor, rates, and services, electric power, interstate communications, and of trading in securities, besides administering the anti-monopoly laws and those governing labor relations.<sup>19</sup> Six more are active in extending credit to individuals and organizations ranging from home owners, farmers, and steamship operators to cities, towns, and other public bodies.<sup>20</sup> War veterans, the unemployed, bank depositors, the aged, the blind, and dependent and crippled children are other groups which come into direct or indirect contact with Federal agencies. Also, the protective tariff system affects thousands of domestic producers.

This enumeration merely hints at the extent of Federal administrative activity, yet it indicates scores of points where administrators and citizens come into contact with each other. The nature of the contact varies, from the mere dissemination of undisputed data to such complex functions as the development of legally enforceable administrative orders involving differing opinions of law. In between, there is a gradation running from informal personal meetings between official and citizen, through semiformal conferences with few restrictions on the kinds of facts and opinions which are acceptable, to highly formalized hearings suggestive of the courtroom, in which the rules of evidence govern the admissibility of material.

#### *Complexity of Administrative Approach.*

In general, the simpler contacts can be made by anyone, regardless of education and experience, by mail or in person. The more complex forms, on the other hand, can be exploited successfully only by those trained in the law and familiar with government procedure. This fact is known to every alert observer of government, and has even been recognized by the Supreme Court. "In dealing with the Government and its departments" the Court has stated, "there is frequently and necessarily required a degree of knowledge and skill, and an acquaintance with forms and principles, not possessed by the unlettered citizen."<sup>21</sup> The conclusion is inescapable that talent of this kind will be far more readily available to those citizens and groups with sizable financial resources at their disposal than to those without such resources. Furthermore, of all active interest groups, business controls the largest and most liquid resources, and hence may be expected to enjoy a considerable advantage even over other citizen groups, in utilizing administrative contacts and procedures. It is well known that men of substance find it easier to resort to the courts for protection of their rights and advancement of their interests than do men of small property. This is also true when it is a question of contacting the administrative arm of Government. And if the regu-

<sup>19</sup> Interstate Commerce Commission, Railroad Retirement Board, National Mediation Board, Federal Power Commission, Federal Communications Commission, Securities and Exchange Commission, Federal Trade Commission, National Labor Relations Board, Social Security Board, Maritime Labor Board.

<sup>20</sup> Reconstruction Finance Corporation, Electric Home and Farm Authority, Disaster Loan Corporation, Federal Housing Administration, Home Owners' Loan Corporation, U. S. Maritime Commission.

<sup>21</sup> Quoted in E. E. Schattschneider, *Politics, Pressures, and the Tariff*, Prentice-Hall, Inc., New York, 1935, p. 213.

lation of interests growing out of the unequal distribution of property formed the principal task of legislation in Madison's time, his observation applies with even more force today.<sup>22</sup>

The multitude of Federal services makes it difficult for the average citizen to comprehend the total administrative process. He is only vaguely aware, if at all, of the number and variety of the points of contact between groups and government. He tends to think of group-government contacts in terms of his own experience. If he is a member of a pressure group, he may become aware of a certain conflict in the pressures applied to an executive department. But at best his view of the Federal administration is narrow.

The owning and controlling groups, such as bankers, industrial managers, and the professional classes, on the other hand, are considerably more sophisticated in governmental techniques and are more aware of the many potentially useful points at which contact may be made. They may, and frequently do, exert their influence at a large number of points in the administrative process.

#### *Motivation of Administrative Pressure.*

The pressure exerted at the numerous contact points takes various forms and is put forth for different purposes. Some groups are drawn into the sphere of administrative activity as a result of a normal interest in the incidence of such activity. In revenue collection, for example, this interest has enabled revenue officials to get technical data needed in administering the income and profits tax laws, and has also resulted in the expression of opinion by various groups on questions of tax administration. The Lumber Manufacturers Association, for instance, has been interested in the determination of the basis of taxable gain in the natural resource industries. Officers of the National Retail Dry Goods Association have assisted in working out the basis for determining the valuation of inventories for income tax purposes. Application of excise taxes to games and parts of games necessitated consultations with the Toy Manufacturer's Association. The tax on bank checks has brought the American Bankers Association into the tax administration picture. The avowed regulatory purpose of the margarine tax has naturally resulted in contacts between the Commissioner of Internal Revenue and the margarine manufacturers.<sup>23</sup>

A second type of pressure grows out of a group's natural desire for adequate financing of an agency whose functioning it finds helpful. The Women's and Children's Bureaus in the Department of Labor are outstanding examples of this type of interest.<sup>24</sup>

<sup>22</sup> In the *Federalist* (No. 10), Madison said:

"The regulation of these various and interfering interests (arising out of the unequal distribution of property) forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the Government."

<sup>23</sup> E. P. Herring, *Public Administration and the Public Interest*, McGraw-Hill, New York, 1936, pp. 48, 50, 52.

<sup>24</sup> The bureau was established largely through the urgings of representatives of the National Women's Trade Union League, the League of Women Voters, the Y. W. C. A., and the National Consumers' League, working in cooperation with the A. F. of L. and the National Federation of Federal Employees. Its effectiveness depends, to a considerable extent at least, upon these same groups. The bureau is primarily a fact-finding agency, working in the fields of labor standards in industrial practice and labor legislation and administration as they affect women. For bringing about reforms the bureau relies on private organizations like the League of Women Voters. The bureau has likened itself to "a powerful dynamo sending currents of facts made available by the Women's Bureau over a national network of wires, and starting activities necessary to effect the desired improvements." *Ibid.*, p. 285. With the Children's Bureau a similar

Equally determined, and equally effective, is group activity aimed at obstructing administration. In varying degrees, Federal administration of the laws governing the generation and transmission of electric power, the labeling of foods, and marine inspection, among others, has been obstructed by groups in these industries.<sup>25</sup>

In certain areas of administration, a considerable degree of cooperation has been effected between regulators and regulated. The relations of the Interstate Commerce Commission with the Association of American Railroads provide an outstanding example. "The most significant thing about the special interests surrounding the Interstate Commerce Commission is the support they give this regulatory body."<sup>26</sup> In the codes under the National Recovery Administration (1933-35) this idea of cooperation formed the basis of a partnership between Government and business in which industry, in effect, made and carried out its own regulatory laws under Government supervision.<sup>27</sup>

Citizen groups often act as a check upon the executive branch of the Government,<sup>28</sup> and may provide an incentive to better administrative methods.<sup>29</sup> From the group point of view these are byproducts of pressure, yet to the public at large they are of major value, and probably tend to offset some of the more questionable effects of this pressure.

#### THE COURTS

For the American people, and especially for its constituent groups, the courts are the keystone of our governmental system. Such groups may appear to be less active in the judicial than in the legislative and administrative fields. The appearance, however, belies the fact. In the courts they are but little less active and their actions are no less significant than toward Congress and the administration. In the judicial field these activities go under the more dignified title of litigation, of seeking an interpretation of the Constitution, or of defending individual rights. But they amount to pressure, just the same. By law and by custom the courts can uphold or invalidate results reached through lobbying in Congress and through pressure on administrative officials.

Litigation in the courts is encouraged by the fact that our Federal Government is one of limited powers. Congress does not have unlimited authority to provide legislative remedies for current eco-

situation prevails. The New York settlement worker, Lillian D. Wald, originated the idea for the setting up of such a Government agency. But it was the National Child Labor Committee, acting at the suggestion of the National Consumers' League, which led the fight for its establishment. Although the bureau administers certain parts of the Social Security Act, its main function is the gathering and organizing of factual material bearing on child life and welfare among all classes. For pushing reforms it relies on the private associations whose activities brought it into being.

<sup>25</sup> See below, pp. 152-160, 165-170, 183-185.

<sup>26</sup> Herring, *Public Administration and the Public Interest*, op. cit., p. 201. Also see below, pp. 148 ff.

<sup>27</sup> See below, p. 181.

<sup>28</sup> "Pressure groups \* \* \* must be looked upon as furnishing a political check upon a powerful Executive with discretion to put into effect or to suspend laws in particular cases, to turn the purpose of Congress in directions not contemplated by that body, or to create privileges and rights as well as to take them away. It is the larger aspect of the question of Executive checks that is to be emphasized, i. e., the compelling force of organized opinion to make a care-less or arbitrary officer respond to, and to bring a sympathetic officer into harmony with, the groups affected." J. P. Comer, *Legislative Functions of National Administrative Authorities*, Columbia University Press, New York, 1927, 199-200.

<sup>29</sup> "The insistence of powerful social groups upon the practical realization of their legislative program is a constant spur to better administrative methods." L. D. White, *Public Administration*, McGraw-Hill, New York, 1926, p. 45.



conomic and social problems. In performing its functions it must stay within the boundaries of its powers as enumerated in the Constitution and as interpreted by the Courts. In a Nation-wide industrial economy, this situation creates an uncertainty over the validity of acts of Congress which inevitably invites litigation.

*Constitutionality and Judicial Review.*

This characteristic of our constitutional system emphasizes the importance of the judiciary in determining finally what public policy does and does not consist of. For example, Congress has the power to regulate "commerce among the several States." What does this mean as a matter of policy? The answer does not lie in the total of the laws passed by Congress in connection with what it regards as interstate commerce. It rests in the court opinions on the validity of certain of these laws. Nor has the answer always been clear and unambiguous. At times the Court "has recognized an intimate—even an indivisible—relationship between the production of certain commodities and their sale in a national market."<sup>30</sup> On other occasions, however, it has insisted that "the production and manufacture of a commodity, and its sale and transportation, are 'two distinct and separate activities.'"<sup>31</sup> The point to be emphasized is not the inconsistency, important though it is. What is especially noteworthy is the primacy of the Supreme Court in defining commerce and fixing the boundaries beyond which the commerce power may not be exercised. The power of the Court to give substance to policy extends, in varying degrees, to the other fields in which Congress is authorized to legislate.

But the really vital factor in judicial review is the readiness of citizens to employ the procedure. Suits do not file themselves, any more than laws are self-enforcing. Congress legislates and the executive administers. But unless someone is willing to challenge the authority of the administrative officer to do what he is doing, judicial review never gets under way. The initiative of citizens in appealing to the courts controls, no matter whether the citizen brings suit against a Federal officer, or whether he has a suit filed against him, as defendant, by the Government.

In the former case, if a citizen will not act, the law is presumed to be a valid exercise of congressional power. No court will on its own motion pass upon the law's constitutionality. Even when the citizen is defendant, his attitude is likely to be controlling. Of course, he may not contest the suit, or, if he loses it, he may not appeal to a higher court. In such a case the Government's judgment as to the legality of the citizen's actions controls. But in the far more likely case of a defense or an appeal from the judgment of the lower court it is the defendant's readiness to dispute the law's validity which sets in motion the machinery of judicial review. The Supreme Court is able to wield its veto power only to the degree that cases are brought to it for decision.

*Increasing use of review power.*—The importance of the courts in reviewing public policy has never been greater than it is today, partly because of the promptness with which groups of private citizens resort to the courts for decisions as to the validity of acts of Congress.

<sup>30</sup> W. H. Hamilton and D. Adair, *The Power to Govern*, New York, 1937, p. 15 and cases there cited.

<sup>31</sup> *Ibid.*, p. 17, quoting Mr. Justice Sutherland in *Carter v. Carter Coal Co.* (298 U. S. 238 (1936), at p. 303).



This is not to criticize a situation. It is merely to state a fact. There have always been citizens willing and ready to seek judicial review of acts of Congress; nor has the success attending these efforts been without deep significance in our national development. But in recent years the challenges to the authority of Congress have become more frequent and more far reaching in their effects. McBain, among others, has pointed out this fact. He states that in the 150 years up to 1933 but 10 laws of prime importance had been struck down by the Supreme Court, while between 1934 and 1936 5 such laws were invalidated. This is his trenchant statement:

Perhaps the only acts in our entire history antedating the New Deal that marked high spots of judicial annihilation were the Missouri Compromise over slavery, the Legal Tender Act (promptly overruled), the Civil Rights Act of the reconstruction era, the Income Tax Act of 1894, the act of 1898 prohibiting interstate carriers from discriminating against labor unions, the first and second child labor acts, the Minimum Wage Act for the District of Columbia, the Federal Corrupt Practices Act as applied to senatorial primaries, and an act requiring senatorial confirmation of Presidential removals from office. In all, only 10 laws of first rate significance:

But in 2 short years the court has already struck down eight acts of the New Deal Congress, five of which (the hot-oil provision, the Railway Retirement Act, the N. R. A., the Farm Mortgage Act, and the A. A. A.) were of very great importance. Even the gold-clause resolution was only partly salvaged from destruction. And the end is by no means yet. Other important acts are awaiting almost certain slaughter at the hands of the court.<sup>32</sup>

Subsequent events proved the correctness of Professor McBain's prophecy. Four months later the Court had invalidated other acts of primary significance, including the Bituminous Coal Conservation Act of 1935.

The decision of the Court is more than a judgment in an important case. It involves more than the power of Congress to prescribe a way or order for bituminous coal; the plight of textiles, of boots and shoes, and of lumber is equally notorious; and the factors which bring disorder into the affairs of many another industry are Nation-wide in their scope. A growing opinion has it that competition is inadequate to its economic task; that the matter lies beyond the competence of the several States; and that the real choice is between Federal regulation and industrial disorder \* \* \* The formal bother is over the frontiers of commerce; the real issue is the power of the government to govern.<sup>33</sup>

After the President's proposal to reorganize the Supreme Court in 1937, the Court's intransigent attitude toward New Deal legislation relaxed somewhat, and the Social Security and Labor Relations Acts were upheld.

*"Duty of the citizen"*.—Obviously, if Congress had not adopted new national policies in these hitherto unexplored fields the Court would have had no opportunity to review them. But it is equally obvious that such opportunity would not have been presented to the Court if groups of citizens had not taken the initiative in challenging the power of Congress to frame such policies. This is the point deserving emphasis. In the operation of the courts, as in the operation of Congress and the executive branch, the really significant and perhaps determining role is played by citizen groups. They may act through trade groups, such as the Edison Electric Institute, the National Coal Association, the Association of American Railroads, through manufac-

<sup>32</sup> H. L. McBain, "The Issue: Court or Congress," *The New York Times Magazine*, January 19, 1936, p. 22.

<sup>33</sup> Hamilton and Adair, *op. cit.*, p. 17.

turers and processors associations, or through farm organizations.<sup>34</sup> Or, again, citizens organized as a corporation may be the form in which a group is active at the bar. These are, in general, the same forms in which American citizens formally group themselves for actively pressing their interests before Congress and the executive branch. Just as political pressure against Congress is generated in corporation board rooms, trade association headquarters, and other citizen group executive committee rooms, so these are the places where the fateful decisions about litigation are reached. Upon these decisions hangs the fate of public policies. "A fate of a public policy hangs on the validity of an act; an act awaits the judgment in a case; a case turns upon the boundaries of a word. This is the way of the law."<sup>35</sup>

*Pressure groups and judicial review.*—Most legislation, it will be recalled, is the result of the insistence of organized minorities. And most important legislation is adopted over strong minority opposition. The full significance attaching to these facts can be grasped only by appraising the actions of these opposing minorities after the legislation is enacted.

It is difficult, almost impossible, to offer satisfactory documentation for the statement that pressure groups do not stop with Congress, the President, or the administrative agencies in the achievement of their aims. It is even more difficult to find the real rather than the nominal initiators of litigation in the Supreme Court record than to find and identify the original impulses behind statutes. Even if we agree that they who pose the questions to the Supreme Court are the real molders of national policy, we will find it difficult to identify them. There is not the same amount of data available from which to draw conclusions in this field as in the fields of legislation and administration. Even there the data are not complete, but they do justify the conclusion that pressure groups are the most important single factor in the legislative process, and are becoming of increasing importance in the administrative process. It is not possible to reach such a conclusion from the data as to the importance of citizen groups in the judicial process.

Yet pertinent material is available, meager though it is. Over half a century ago, a group of farmers, organized into the National Grange, initiated the movement to regulate those forms of private corporate enterprise affected with a public interest. The movement has not yet subsided. On the contrary, it has grown stronger. Before its initial impulse was spent, the courts had answered the question which the Grange played such a part in framing, as to whether the rates and services of public utilities were subject to Government regulation, and Congress had passed the Interstate Commerce Act of 1887.<sup>36</sup> This answer, although it established the principle of public regulation, has been undergoing revision down to the present day.

<sup>34</sup> "Confidence cannot be restored or maintained when Government officials and legislators, in spite of their oaths of office, endeavor to avoid by technicalities the true intent of constitutional guaranties or deliberately legislate with respect to matters not delegated to them. This places on the individual citizen the heavy burden of asserting his rights through judicial procedure, not as to the relation of his acts to such legislation, but as to the right of government to deal at all with such matters." National Association of Manufacturers, *The Platform of American Industry*, p. 4.

<sup>35</sup> Hamilton and Adair, *op cit.*, p. 9.

<sup>36</sup> The *Granger cases* are discussed below, pp. 142-143.

The railroads still endeavor to keep public regulation to a minimum, and are frequently successful, as in their suits in 1934 and 1935 against Federal retirement and pension legislation.<sup>37</sup>

Today the principle of public regulation is being applied to the electric and gas utilities, as well as other industries, but only over their bitter and relentless opposition. Their business association, the Edison Electric Institute, has resorted to the courts to obstruct and defeat Federal regulation. The Institute inspired the suits against the Tennessee Valley Authority Act, the Public Works Title of the National Industrial Recovery Act, and the Public Utility Holding Company Act, although in none of the suits did it appear as a party.<sup>38</sup>

In other fields of private enterprise, not yet so clearly recognized as being affected with a public interest, the conduct of groups in initiating action or compelling the government to take action is often determining. Most actions of this sort grow out of alleged violations of the Federal antitrust laws. In the *Appalachian Coals case*, for example, in which the Government in 1933 tried to put a stop to a cooperative marketing scheme, the group responsible for setting up the scheme was the National Coal Association, although it was not a party to the suit.<sup>39</sup> In many other industries, competitive on the one hand, and monopolistic and semi-monopolistic on the other, trade associations have been active and have frequently figured in suits under the antitrust laws. This is the case with the American Hardwood Manufacturers Association in 1921,<sup>40</sup> with a group of companies headed by the American Linseed Oil Co. in 1923,<sup>41</sup> with the Maple Flooring Manufacturers and Cement Manufacturers Protective Association in 1925, with the Sugar Institute in 1936.<sup>42</sup>

The argument that groups are the really significant factors in the judicial process is supported further by their appearance in cases as friends of the court. In the *Appalachian Coals case*, two of the three individuals filing briefs as amici curiae were Washington representatives of the Cotton Textile Institute and of the National Lumber Manufacturers Association. In the *Sugar Institute case* not only these two trade groups but, also, the Window Glass Manufacturers Association and the Consumers Goods Industries Committee were represented as friends of the court.

Vincent P. Whitsitt, manager and general counsel of the Association of Life Insurance Presidents, said that the association had paid \$60,000 to W. M. Bullitt and John W. Davis to act as "special counsel" in the test case over the Frazier-Lemke Act.<sup>43</sup> The act was held unconstitutional. Also, the same organization paid amounts totaling \$17,500 in 1934 to Clarence J. Shearn, Bruce S. Bullitt, and Root, Clark, Buckner & Ballantine, to act in a "proposed suit" to test the constitutionality of a proposed New York City law to tax insurance companies "when, as, and if the act became effective."<sup>44</sup>

<sup>37</sup> *Railroad Retirement Board v. Alton* (295 U. S. 240 (1935)), and Supreme Court of the District of Columbia, June 26, 1936.

<sup>38</sup> These cases are discussed below, in ch. IX.

<sup>39</sup> *Appalachian Coals, Inc., et al. v. U. S.* (288 U. S. 344 (1933)).

<sup>40</sup> *American Column and Lumber Co. et al. v. U. S.* (257 U. S. 377 (1921)).

<sup>41</sup> *U. S. v. American Linseed Oil Co. et al.* (262 U. S. 371 (1923)).

<sup>42</sup> *Maple Flooring Manufacturers Association v. U. S.* (268 U. S. 563 (1925)); *Cement Manufacturers Protective Association v. U. S.* (268 U. S. 538 (1925)); *Sugar Institute, Inc., et al. v. U. S.* (297 U. S. 553 (1936)).

<sup>43</sup> Hearings Before the Temporary National Economic Committee, Part 10, p. 4352 ff.

<sup>44</sup> *Ibid.*, p. 4354.



When the Supreme Court decided in 1936 that Congress did not have the power to deal with economic problems as it had attempted to do in the 1933 A. A. A., it ruled on a matter in which many citizen groups had filed briefs as friends of the court.<sup>45</sup> Briefs supporting the validity of the act were filed by representatives of the League for Economic Equality, American Farm Bureau Federation, National Beet Growers' Association, the Mountain States Beet Growers' Marketing Association, Farmers' National Grain Corporation, and the Texas Agricultural Association. Briefs challenging the validity of the act were filed by Hygrade Food Products Corporation, American Nut Co., Berks Packing Co., et al., General Mills et al., the National Association of Cotton Manufacturers, and the Farmers' Independence Council of America. The latter organization was set up and financed by the American Liberty League, an anti-New Deal propaganda agency established in 1934.

In 1938 the National Association of Wool Manufacturers threatened to contest the constitutionality of the Reciprocal Trade Agreements Act, passed in 1934 and twice extended, in 1937 and 1940.<sup>46</sup> The threat was issued while negotiations were in progress with the United Kingdom and may have been intended as an attempt to maintain the import duties on British wools. Cuts were made in many items in the wool manufacturers' schedule, however, and the threatened attack on the act's constitutionality did not materialize, probably because the association found it impossible, in the light of Supreme Court decisions, to prove injury as the result of the lowered duties.<sup>47</sup>

Some legislation adopted by Congress as a result of group pressure is immune from judicial review. War pension legislation is an example.

All of the veterans' bonus legislation arising out of the World War was passed over strenuous opposition. President Harding vetoed the original adjusted compensation bill. The bill providing for the 20-year endowment insurance policy plan was adopted in 1924 over President Coolidge's veto. Hoover vetoed an amendment providing for Treasury loans against the face value of insurance certificates. The 1935 act providing for immediate payment of the face value of the certificates became law over the veto of President Roosevelt. These measures were also strenuously opposed by the Chamber of Commerce of the United States, the National Association of Manufacturers, the American Bankers Association, and the National Economy League, along with many other citizen associations, great and small, which in these matters have sided with the post-war presidents.

With apparently but one exception all this opposition stopped short of seeking judicial review of the legislation. The exception was a group of New York lawyers and veterans who tried to get the Supreme Court of the District of Columbia to rule upon the 1924 act. The court refused on the ground that an individual or a small group of citizens could not call into question or impede the spending of public funds. The group then tried to have the United States Su-

<sup>45</sup> *U. S. v. Butler et al., Receivers of Hoosac Mills Corp.* (297 U. S. 1 (1936)).

<sup>46</sup> See the letter dated May 3, 1938, to members of the association and others interested in the proposed reciprocal trade agreement with the United Kingdom, Congressional Record, 75th Cong., 3d sess., p. 1886.

<sup>47</sup> The National Association of Wool Manufacturers is one of the oldest trade associations in the country and one of the most continuously active in governmental affairs. For decades it has lobbied in Congress, particularly on tariff matters, and for an equal period it has looked after wool manufacturers' problems which have come up with Federal administrative agencies.



preme Court compel the lower court to pass upon the constitutionality of the legislation. The petition was refused without written opinion.<sup>45</sup>

In the light of post-Civil War cases, in which the Court had held that the whole question of giving or withholding war pensions was within congressional power, these post-World War cases appear to define "a clear line of judicial policy permitting Congress to do whatsoever it pleases concerning veterans legislation without fear of judicial restraint."<sup>46</sup> In such a situation it is perhaps not surprising that there are not more cases in which the pension power of Congress has been questioned. The fact, however, is not without interest, in view of the constant readiness of trade associations and other citizen groups to challenge the powers of Congress.

As a factor in litigation, citizen groups are of significance more because of the importance of the cases they are connected with than of their number. During our entire history the Supreme Court has invalidated less than a hundred laws. Yet it would hardly be argued that the number was an accurate measure of their significance in the Nation's development. As already mentioned, McBain found that only 10 laws of first-rate importance had been overturned by the Court in all the years prior to the New Deal. Five of the eight laws which the Court struck down in the next 2 years were "of very great importance." The Association of American Railroads instigated the Court action in the railroad retirement legislation of 1934, and in the *A. A. A. case* the National Association of Cotton Manufacturers lent support to the plaintiff, if it did not actually initiate the action. Thus, there is solid ground for believing that in the framing of many of the first-rate questions which ultimately come to the Supreme Court for decision, citizen groups play an important, if not a vital, part.

<sup>45</sup> 270 U. S. 631.

<sup>46</sup> N. J. Padelford, "The Veterans' Bonus and the Constitution," *American Political Science Review*, vol. XXVII, No. 6 (December 1933), p. 927.



## CHAPTER VI

### INDUSTRIAL RELATIONS

Public policy in the field of industrial relations has been formulated by Congress over the bitter opposition of organized industry, an opposition which is still continuing in a determined effort to change that policy. The economic power of business and the "educational" persuasiveness of its newspaper, advertising, and legal allies enabled it between 1933 and 1937 to frustrate the initial efforts of the Federal Government to regulate labor relations. The Supreme Court validation of the Labor Relations Act in 1937 marked a set-back to industry, but its forces are by no means discouraged. On the contrary, they show signs of increasing confidence in their ability sooner or later to outmaneuver labor and government, and again bring public policy more closely into line with business desires.

#### CHANNELS OF BUSINESS PRESSURE

Business exerts its influence on industrial relations policy through the National Association of Manufacturers, its members and affiliates, and other sympathetic organizations. That influence is exercised on behalf of the "open shop" and in opposition to the "closed shop." A necessary corollary is opposition to organized labor and particularly to its political activity.

Through Nation-wide organizations, such as the National Metal Trades Association, and local employers' federations, such as the Associated Industries of Cleveland, the National Association of Manufacturers applies its policy on the industrial front.<sup>1</sup> Through the National Industrial Council, instituted and dominated by the National Association of Manufacturers, employer activity is mobilized and directed on the political front. The Special Conference Committee of New York, composed of representatives of 12 of the country's largest manufacturing and utility corporations, works behind the scenes to exchange information and to coordinate, so far as possible, their respective labor policies, and to join forces with the N. A. M. and the Chamber of Commerce of the United States in their lobbying at Washington.<sup>2</sup>

Although not always in complete accord, the N. A. M. and the Chamber of Commerce are as one in their opposition to the National Labor Relations Act and in their support of proposed legislation to limit the law enforcement powers of administrative agencies, and to increase correspondingly the power of the courts.<sup>3</sup> The American Bar Association has, by framing and pushing legislative proposals designed to achieve this purpose, indicated its fundamental community of interest with business.<sup>4</sup> The American Newspaper Publishers'

<sup>1</sup> S. Rept. No. 6, pts. 4 and 5, 76th Cong., 1st sess.

<sup>2</sup> *Ibid.*, pt. 6, pp. 57-74.

<sup>3</sup> See above, pp. 25-36.

<sup>4</sup> For a statement of the Chamber of Commerce support of this legislation and a discussion of the legislation itself, see above, pp. 37-40, and below, pp. 191-194.

Association shares a similar community of interest. This community of interest is reflected in the opinions which these and other professional and business organizations publish, and which are essentially projections of the philosophy of industrial management as conceived by business and industry.<sup>5</sup> The origin and development of the National Association of Manufacturers, the substance of its philosophy and the methods used in applying it, are, therefore, of central importance in a discussion of the forces shaping the Nation's industrial relations policy.<sup>6</sup>

#### ORGANIZATION OF THE N. A. M.

The National Association of Manufacturers is an organization of over 3,000 corporations engaged in manufacturing and utility services. Its members are located in every section of the United States, and are reputed to employ some 2,100,000 workers. This would be more than 25 percent of the total employees in manufacturing industry. Many of the country's 200 largest manufacturing enterprises belong to the N. A. M.<sup>7</sup>

In addition to being an association of manufacturers and utilities, the N. A. M. is a coordinating agency for some 250 national, State, and local employers' associations in every part of the country. This coordination is achieved through the National Industrial Council, a federation of these various employers' associations organized under the aegis of the N. A. M. Through the National Industrial Council the N. A. M. is reputed to influence from 30,000 to 35,000 manufacturers, employing between 4,500,000 and 5,000,000 persons. This is a substantial proportion of all persons employed in manufacturing. It is with some plausibility, therefore, that the association assumes the status of "the voice of American industry."<sup>8</sup>

The N. A. M. was organized in 1895 at the instigation of some manufacturers in Ohio. Its original statement of objectives dealt principally with the promotion of trade, particularly international commerce and the merchant marine. Not until 1903 did the N. A. M. take a definite stand on labor relations and labor legislation. In the

<sup>5</sup> See the statement regarding the American Bankers' Association and the Investment Bankers' Association of America below, pp. 125-139.

<sup>6</sup> Note the following significant statements by the Industrial Committee of the National Resources Committee in *The Structure of the American Economy* (Washington, 1939):

"\* \* \* there are certain economic-interest groupings operating through formal organizations which have a significant impact on the policies adopted by specific producing units. The most important of the economic interests formally organized are those of business, labor, farmer, and consumer" (p. 163). "Probably the 5 most important business associations are the national associations in the fields of finance, railroads, utilities, manufacturing, and all business." (p. 164). These are the American Bankers' Association, the Association of American Railroads, the Edison Electric Institute, the National Association of Manufacturers, and the Chamber of Commerce of the United States. "With the possible exception of the United States Chamber of Commerce, these national associations appear to be more or less closely tied into the corporate community. Six of the 31 officers and directors of the American Bankers' Association are officers or directors of 6 of the country's 30 largest banks. The railroad and utility associations are almost entirely composed of the corporations listed among the 200 largest, and their directorates are for the most part made up of representatives of these large enterprises. The chairman of the board and 6 others of the 18 officers of the National Association of Manufacturers are responsible executives of the 106 largest industrial corporations, \* \* \* and others of the largest corporations are represented on the association's important policy committees. Even in the case of the United States Chamber of Commerce, there is an important interlocking with the large corporations, 16 directors and officers out of 57 being associated with the management of 28 of the 250 larger corporations" (p. 164).

<sup>7</sup> There is no complete list of National Association of Manufacturers members available in public print. A list of large contributors is available in S. Rept. No. 6, pt. 6, 76th Cong., 1st sess., pp. 247-255.

<sup>8</sup> See National Association of Manufacturers, *Platform of American Industry*, 1935, p. 13.



intervening years, labor unions had developed great strength in membership and organization. The total membership of trade unions is said to have increased from 447,000 in 1897 to 2,072,700 in 1904.<sup>9</sup> This was considered a great threat to what was then termed "industrial freedom." At the New Orleans convention of the N. A. M. in April 1903, a labor platform was adopted, essentially a declaration for the open shop. According to the N. A. M. itself, this convention "marked the first declaration by a representative body for the open shop as a cardinal policy of American manufacturing."<sup>10</sup>

Although a clause added in 1904 considered the right of employees to contract for their services in a collective capacity, in practice the association's officers were hostile toward labor unions, on the theory that the ultimate objective of any labor union was the imposition of the closed shop, to which the association was irrevocably opposed.

### *Policies of the N. A. M.*

In 1903, under the leadership of its president, David M. Parry, the N. A. M. took the initiative in a national coordination of employers' labor policies and founded the Citizens' Industrial Association of America, which during the next few years became a powerful agency of propaganda against labor unions and labor legislation. The Citizens' Industrial Association was strong in its own right and was further strengthened by the affiliation of strong anti-labor and open shop employers' associations in particular fields, such as the National Metal Trades Association. In 1907, however, the N. A. M. undertook to expand its membership and multiply its influence still further. As a result of this campaign, a permanent organization was formed in January 1908 which came to be known as the National Council of Industrial Defense.

<sup>9</sup> Leo Wolman, *The Growth of American Trade Unions, 1880-1923*, National Bureau of Economic Research, 1924, pp. 33-34.

<sup>10</sup> S. Rept. No. 6, pt. 6, 76th Cong., 1st sess., p. 6. The association's labor principles then adopted were as follows:

"The National Association of Manufacturers of the United States of America does hereby declare that the following principles shall govern the association in its work in connection with the problems of labor:

1. Fair dealing is the fundamental and basic principle on which relations between employees and employers should rest.

2. The National Association of Manufacturers is not opposed to organizations of labor as such, but it is unalterably opposed to boycotts, blacklists, and other illegal acts of interference with the personal liberty of employer or employee.

3. No person should be refused employment or in any way discriminated against on account of membership or non-membership in any labor organization, and there should be no discriminating against or interference with any employee who is not a member of a labor organization by members of such organizations.

4. With due regard to contracts, it is the right of the employee to leave his employment whenever he sees fit, and it is the right of the employer to discharge any employee when he sees fit.

5. Employers must be free to employ their work people at wages mutually satisfactory, without interference or dictation on the part of individuals or organizations not directly parties to such contracts.

6. Employers must be unmolested and unhampered in the management of their business, in determining the amount and quality of their product, and in the use of any methods or systems of pay which are just and equitable.

7. In the interest of employees and employers of the country, no limitation should be placed upon the opportunities of any person to learn any trade to which he or she may be adapted.

8. The National Association of Manufacturers disapproves absolutely of strikes and lock-outs, and favors an equitable adjustment of all differences between employees and employers by any amicable method that will preserve the rights of both parties.

9. The National Association of Manufacturers pledges itself to oppose any and all legislation not in accord with the foregoing declaration."

In 1904 the following provision was added to the labor principles:

"Employees have the right to contract for their services in a collective capacity; but any contract that contains a stipulation that employment should be denied to men not parties to the contract is an invasion of the constitutional rights of the American workman, is against public policy, and is in violation of the conspiracy laws. This association declares its unalterable antagonism to the closed shop and insists that the doors of no industry be closed against American workmen because of their membership or non-membership in any labor organization" (*Ibid.*, p. 7).

The council was considered the right arm of the National Association of Manufacturers. Its primary purpose was political, to serve as the legislative pressure group for the National Association of Manufacturers. The president of the association, speaking before the 1909 convention, said: "We have an organization within this organization for the purpose of looking after what I will term bad legislation and eventually to promote good legislation."<sup>11</sup>

The council adopted certain resolutions on August 19, 1907, stating that it should have power to establish and maintain (1) a legislative bureau, (2) a legal bureau, and (3) a bureau of publicity and education.<sup>12</sup>

In 1908 Mr. James Emery appeared in opposition to bills exempting labor unions from the operation of the Sherman antitrust law,<sup>13</sup> and in 1912 also opposed bills restricting the issuance of injunctions in labor disputes.<sup>14</sup>

From 1909 to 1913, the N. A. M. and the National Industrial Council pursued a vigorous policy of opposition to unions on four fronts: In the political field, by opposing candidates favored by labor and supporting candidates friendly to the association's point of view; in the legislative field, by opposing legislation sponsored by labor unions; through propaganda, by disseminating printed matter and sponsoring lecture tours throughout the country for the open shop and against unions; and, finally, in the field of labor relations, by advising and aiding employers in their opposition to labor unions. When a scandal over their political activities broke out as a result of newspaper articles written by a former agent of the association, both Houses of Congress passed resolutions to investigate the activities of the association.<sup>15</sup>

The lobbying activities of the N. A. M. were summarized in 1913 by the select committee of the House of Representatives as including opposition to all legislation limiting the right of workmen to contract as to the amount of time they shall labor and limiting the power of courts of equity to issue writs of injunction; and opposing the exclusion of organized labor from the provisions of the Sherman Antitrust Act. While supporting workmen's compensation legislation, industrial and vocational education, merchant marine legislation, and the creation of a Tariff Commission, the N. A. M. opposed legislation permitting unionization of Government employees. It also opposed restriction of transportation in interstate commerce of articles produced by child labor.<sup>16</sup>

In addition to these activities, a page in the House of Representatives was put on the pay roll of the N. A. M. with the knowledge and consent of its counsel, in order to obtain legislative information. The association participated actively in electioneering.<sup>17</sup> It gave active

<sup>11</sup> Proceedings of the National Association of Manufacturers, 1909, p. 231.

<sup>12</sup> H. Rept. No. 113, 63d Cong., 2d sess., 1913, p. 7.

<sup>13</sup> Hearings before the subcommittee of the Senate Committee on the Judiciary on S. 6331 and S. 6440; also hearings on H. R. 19745, 60th Cong., 1st sess.

<sup>14</sup> H. R. 23635, 62d Cong., 2d sess.

<sup>15</sup> Hearings on S. Res. 92, 63d Cong., 1st sess.

<sup>16</sup> S. Rept. No. 6, pt. 6, 76th Cong., 1st sess., p. 18 ff.

<sup>17</sup> President Kirby, of the association, testified:

"We have endeavored both to elect and to defeat candidates for office. We have tried to elect to Congress men whom we have known to possess the courage of their convictions, and to get under the skin of this industrial question, and who fearlessly opposed the legislation that we have been opposing. We have used every endeavor to put them back into Congress, or to elect such men to Congress. We have as openly endeavored to defeat men who have openly done the other thing, and that we proposed to continue to do as citizens, as a duty which we owe to our country. (Hearings on S. Res. 92, 63d Cong., 1st sess., pt. 56, p. 4502.)

support to approved candidates for Congress, attempted to influence the selection of House committees, and carried on an ambitious educational program.<sup>18</sup>

In the course of the Senate and House hearings no indication was given that any of the officers of the association regretted any of these activities. On the contrary, they considered the congressional investigation an opportunity to present the association's point of view to the public.<sup>19</sup> Not only did the association representatives refuse to admit the questionable character of their activities, but, on the contrary, continued their efforts in the same direction during the administration of President Wilson, beginning particularly during his second term.

Wilson's administration brought with it legislation for the control of corporations. Moreover, as a result of the war, demand for American industrial production grew so rapidly as to put labor in a position of controlling importance. As a result, an upsurge of labor organization under the leadership of the American Federation of Labor confronted the N. A. M. with the second challenge in its history. Just as it had done in 1903, the association fortified its organization and started a propaganda program which at this time was called the "Industrial Conservation Movement." In March 1916 President Pope of the association sent out a call to all members "urging them to lend their aid in a campaign to refocus the industrial perspective of the American people and to give all classes of citizens a better understanding of their responsibility to our industries and of the bearing which industrial prosperity has on their own welfare."<sup>20</sup> For this purpose, the N. A. M., in conjunction with 18 other national industrial associations, organized the National Industrial Conference Board.<sup>21</sup> The objects of the board were to ascertain "pertinent economic facts underlying and affecting industrial conditions," to secure "joint deliberation and joint action by the manufacturers of the country through their chosen delegates, for the sound development of American industry," to promote "understanding and satisfactory relations between employers and employees," to give the public "an accurate conception of the character, scope, and importance of industry" and "to command \* \* \* the attention of the Government when formulating industrial legislation and policies."<sup>22</sup> The association also sponsored the formation of the United States Chamber of Commerce, thus completing the organization of business interests.<sup>23</sup> With the National Council of Industrial Defense (after 1919 called the National Industrial Council) embracing the employers' associations, the United States Chamber of Commerce covering the boards of trade and chambers of commerce throughout the country, and the National Industrial Conference Board providing the materials of propaganda, the National Association of Manufacturers set out to "educate" the country by the use of all available channels of communication.

From 1916 to 1920 the N. A. M. pursued a vigorous campaign as an "industrial conservation movement." After 1920 this movement re-

<sup>18</sup> Hearings on S. Res. 92, 63d Cong., 1st sess., pt. 45, pp. 3896, 3935, 4091, 4411; pt. 51, p. 4096; pt. 54, pp. 4349-4350; pt. 56, pp. 4373 and 4407.

<sup>19</sup> *Ibid.*, pt. 56, p. 4502; and hearings before the select committee of the House of Representatives under H. Res. 198, 63d Cong., 1st sess., pt. 24, p. 2129.

<sup>20</sup> Proceedings of the National Association of Manufacturers, 1918, p. 211.

<sup>21</sup> *Ibid.*, p. 106.

<sup>22</sup> Proceedings of the National Association of Manufacturers, 1919, p. 144.

<sup>23</sup> Hearings before a Subcommittee on Education and Labor, 75th Cong., 3d sess., pt. 18, p. 7849.



solved itself into its essential characteristic of open-shop propaganda. The decade of the twenties was characterized, on the one hand, by the "welfare" philosophy in industrial relations, and the open-shop movement in actual practice. The N. A. M. placed its organization and its resources at the service of this movement. After 1926, however, the activities of the association were more circumspect and less belligerent, perhaps because the upsurge of the labor movement in the years preceding Harding's administration had spent itself, and union membership was on the decline. Furthermore, the association felt that there was less danger of undesirable labor legislation under Harding and Coolidge. During those years, the National Association of Manufacturers coasted along less actively than before, although still adhering to its traditional policy of opposition to trade unionism, and its educational efforts.

#### ORGANIZED LABOR

Other things being equal, the lengths to which business has felt itself obliged to go in maintaining the upper hand in industrial relations have varied with the political strength of labor. This, in turn, has varied with the kind of reception accorded organized labor's requests by Government. Until 1933 labor contacts with Government were largely confined to Congress and the Federal courts. In these contacts labor generally fared better with Congress than with the courts.<sup>24</sup>

Since 1933, with the legal recognition of labor's right to organize and bargain collectively, labor has been drawn into closer contact with the Federal administration. This situation has drawn organized business into the area of government with a volume of talent, resources, and energy hitherto unequalled. Business, especially large-scale business, has resolved to maintain intact its control over industrial relations, which was practically undisputed up to 1933.

#### *The American Federation of Labor.*

In the light of the origins and objectives of organized labor, it is not surprising that business has been able to dominate industrial

<sup>24</sup> The American Federation of Labor claims to have influenced the structural work of the Government as well as legislation in many ways. The Department of Labor, established in 1913, was the result of continued pressure from organized labor dating back to 1884. In the Clayton Act of 1913 organized labor was able to persuade Congress to exempt labor unions from prosecution under the antitrust laws. The 1915 Seamen's Act to improve the conditions under which American sailors work and live was pushed through Congress by the American Federation of Labor and the International Seamen's Union. In 1932 Congress adopted, also under pressure from organized labor, the so-called Norris-LaGuardia Anti-injunction Act, recognizing the right of workers to organize and bargain collectively, outlawing the "yellow dog" contract, and rendering legal certain forms of conduct in labor disputes.

The above examples of successful labor political pressure must be considered in conjunction with numerous examples of less successful labor pressure upon the courts. While the legal right of unions to exist and function has been established for many decades, and while the primary boycott, the right to picket, and the right to strike have also been accepted, the courts have set many limitations on labor's freedom of action. For instance, sec. 20 of the Clayton Act forbade the issuance of injunctions "unless necessary to prevent irreparable injury to property or to a property right." The courts ruled that "property right means the right of a man to do business" and that this entitled him to injunctions against strikers and labor organizations. Sec. 20 also removed peaceful assembling "in a lawful manner" from the reach of injunctions, as well as the doing of "any act or thing which might lawfully be done in the absence of such disputes by any party thereto \* \* \*". The phrases "in a lawful manner" and "might lawfully be done," inserted at the instance of employers' attorneys, were so interpreted by the courts as to nullify the limitation. Sec. 6 was intended to end the prosecution of labor under the Sherman Act by stating that labor organizations instituted for mutual help shall not "be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws." This, however, left the door open for the courts to regard them as conspiracies under the common law, which they did. Among the remedies proposed by the federation are (1) direct election of judges; (2) appointment for short terms, accompanied by recall of judges and judicial decisions; and (3) an amendment to the Constitution providing that a two-thirds majority of Congress can override a judicial veto.



relations for the greater part of the modern industrial period. On the basic questions of business development labor has until recently differed but little from business.

When the American Federation of Labor was organized in 1886, it was based on the belief of Samuel Gompers and his associates that they should seek immediate and tangible ends, such as the 8-hour day and ample benefit funds for mutual assistance in strikes, and not try to deal with the larger questions of the concentration of wealth, the growing power of corporations, and the economic status of labor. On such questions, and on the matter of tactics, earlier organizations like the Knights of Labor had foundered. The A. F. of L. decided that working people could best be organized nationally on the basis of a loose federation of craft unions; that specific aims, such as short hours, higher wages, and better working conditions are more effective in sustaining member interest and support than broader and possibly higher-sounding principles; and that direct political nomination and support of labor candidates was of doubtful value in realizing labor's aims.

Thus, organized labor did not question the capitalist order as it was developing. In this attitude it reflected the view of its leader, Gompers.

Practically, he accepted the capitalist order and concentrated his efforts on high wages, short hours, and favorable conditions of labor within its metes and bounds. In short, he sought to make labor a contented and prosperous partner of business in the American system of acquisition and enjoyment.<sup>25</sup>

The preamble to the federation's constitution did not square with this viewpoint. It portrayed the grim features of a class struggle. "A struggle is going on in all the nations of the civilized world between the oppressors and the oppressed of all countries, a struggle between the capitalist and the laborer, which grows in intensity from year to year \* \* \*." Yet in article II, where the objects of the A. F. of L. are stated, we find them more in accord with the partnership idea. No further reference is made to a struggle between labor and capital. Instead the federation aims to encourage and form labor unions in order to "secure legislation in the interest of the working masses"; establishment of national and international trade unions "based upon a strict recognition of the autonomy of each trade"; the establishment of departments composed of unions of the same industry; aid and encouragement of the labor press of America; and an American federation of all trade unions "to aid and assist each other, to aid and

<sup>25</sup> Charles A. and Mary Beard, *The Rise of American Civilization*, New York, 1927, p. 225. In *Recent Social Trends*, McGraw-Hill, New York, 1933, pp. 835-836, the early development, objectives, and tactics of the American labor movement are described as following: " \* \* \* During the period of establishment and early expansion of the contemporary trade union movement, American unions were dedicated to a straightforward labor policy, involving strikes for the recognition of organized labor, collective bargaining over wages, hours, and working conditions, and the spread of trade agreements between unions and employers in an expanding industrial area. Except for extensive lobbying activities, designed in the main to strengthen the legal position of trade unions, and occasional participation in political campaigns to defeat candidates for public office who were regarded as unfair to organized labor, the movement restricted its activities to the promotion of pure and simple trade unionism. Insofar as the constituent unions may be said to have had a unified or common policy, it took the form of opposition to independent political action by labor, to State interference in industry and in industrial relations, and to participation by organized labor in the collateral operations of cooperative enterprise. The majority regarded themselves as independent associations of wage earners, organized to pursue their own interests free from interference by the Government or other associations of the same nature, and more concerned with the achievement of limited particular ends than with the problems of fundamental changes in the organization of our economic and political society."

encourage the sale of union label goods, and to secure legislation in the interest of the working people, and influence public opinion by peaceful and legal methods, in favor of organized labor.”

Association for mutual aid and assistance, securing of legislation beneficial to working people, and the creation of favorable public opinion by peaceful and legal means, including support of a labor press: In these stated aims there is little indication of belief in a struggle between capitalist oppressors and downtrodden laborers. Or, if the belief exists, the struggle is to be resolved peaceably, employing as solvents economic and political pressure, and public opinion.

*Congress of Industrial Organizations.*

For nearly half a century after its founding in 1886 the A. F. of L. dominated the organized labor movement. Since 1935, however, the Federation has had to share its position with the Congress of Industrial Organizations.<sup>26</sup> In that year John L. Lewis, eleventh vice president of the A. F. of L. and president of the United Mine Workers, resigned his federation post, and, with the heads of seven other A. F. of L. unions, set up the Committee for Industrial Organization.

As first officially stated, its purpose was as follows:

It has been formed for the purpose of encouraging and promoting the organization of the unorganized workers in mass production and other industries upon an industrial basis. Its aim is to foster recognition and acceptance of collective bargaining in such basic industries; to counsel and advise unorganized and newly organized groups of workers; to bring them under the banner and in affiliation with the American Federation of Labor as industrial organizations.<sup>27</sup>

Not until 1936 were the unions affiliated with the C. I. O. suspended from the A. F. of L. But the split had been some time in the making. For years it had been plain that craft unionism, as it had been worked out in the majority of the A. F. of L. constituent unions, had allowed little place for unskilled and semi-skilled women workers, Negro laborers, and wage earners in the mass production industries. Both in manufacturing and in the service industries these groups were growing in numbers, and hence were potentially more important to organized labor than ever before. Among the unorganized workers the desire to organize was getting stronger. For the first time in Federal law the N. I. R. A. in 1933 had recognized the right of workers to organize and to bargain collectively. Yet the majority of the A. F. of L. leadership clung to craft unionism as the basis for organizing the non-union working people, a policy of which John L. Lewis became increasingly critical.

The split did not come about, however, until after the federation itself had given partial recognition to the changing face of American industry. In 1934 it had decided to try to organize the workers in the automobile, cement, aluminum, and other mass production industries. Back of this decision was the recognition that new methods in industry had “brought about a change in the nature of the work performed by millions of workers in industries which it has been most difficult or impossible to organize into craft unions.”<sup>28</sup> The relative newness of mass production systems, and their control by corporations and aggregations of capital which have resisted all efforts at organization, as

<sup>26</sup> Until November 1938 the Committee for Industrial Organization.

<sup>27</sup> A. F. of L. Report of Proceedings of Fifty-sixth Convention, 1936, p. 69.

<sup>28</sup> Proceedings of the Fifty-fourth Annual Convention of the American Federation of Labor, 1934, p. 586.

well as the hope inspired in many workers by the labor provisions of the Industrial Recovery Act, made it appear to the convention that "a new condition exists requiring organization upon a different basis [from the craft union] to be effective."<sup>29</sup> Accordingly, the executive council was directed to issue charters for international unions in the automobile, cement, aluminum, and other mass production industries, and to inaugurate and conduct an organization campaign in the iron and steel industry "at the earliest practical date." However, direction of the affairs of these unions was placed in the A. F. of L. "for a provisional period." The duty to "protect the jurisdictional rights of all trade unions organized upon craft lines" was specifically recognized.<sup>30</sup>

"A breach of faith and a travesty upon good conscience" is John L. Lewis' description of the way in which the executive council had interpreted the 1934 resolution on organization policy.<sup>31</sup> In the automobile industry a charter had been issued which, Mr. Lewis said, "practically limited the membership of that organization to the men employed only in the assembling processes of the plant operations."<sup>32</sup> In his opinion similar action was taken by the executive council as regards the rubber industry. These were, to Mr. Lewis, but the most recent examples of a policy which "failed to take into consideration the dreams and requirements of the workers themselves, and failed to take into consideration the recognized power of the adversaries of labor to destroy these feeble organizations in the great modern industries set up in the form of Federal labor unions or craft organizations functioning in a limited sphere."<sup>33</sup> The results of this policy constitute "a record of 25 years of constant, unbroken failure." A membership of approximately 3,500,000 out of an organizable number of approximately 39,000,000 workers was proof to Mr. Lewis of an inadequate organization policy.<sup>34</sup>

In holding these views Mr. Lewis was not alone. With five other members of the resolutions committee<sup>35</sup> he introduced for approval by the convention a minority report containing the following declaration of policy: "In those industries where the work performed by a majority of the workers is of such a nature that it might fall within the jurisdictional claim of more than one craft union, or no established craft union, it is declared that industrial organization is the only form that will be acceptable to the workers or adequately meet their needs \* \* \*. The American Federation of Labor must recognize the right of these workers to organize into industrial unions and be granted un-

<sup>29</sup> *Ibid.*, p. 587.

<sup>30</sup> *Ibid.*, p. 586. In carrying out convention instructions the executive council construed this duty in such a way as to evoke bitter criticism from believers in industrial unions. In 1935 the council pointed out that the time had not yet arrived to establish international unions in the aluminum, radio, and gas, coke, and by-products industries. Nor were conditions in the iron and steel industry auspicious for an organization campaign. But under the council's auspices an international union of rubber workers had been set up, as well as the United Automobile Workers of America. Jurisdictional rights of existing trade unions organized on craft lines had been protected in the latter case by embracing within the U. A. W. A. only those "employees directly engaged in the manufacture of parts (not including tools, dies, and machinery) and assembling of those parts into completed automobiles, but not including job or contract shops manufacturing parts, or any other employee engaged in said automobile production plants (*ibid.*, pp. 21, 95). Officers of the U. A. W. A. were appointed by President William Green (*ibid.*, p. 824), and questions of jurisdictional overlapping were referred to the executive council for consideration.

<sup>31</sup> Proceedings of the Fifty-fifth Annual Convention of the American Federation of Labor, 1935, p. 537.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*, p. 534.

<sup>34</sup> *Ibid.*, p. 523.

<sup>35</sup> Charles P. Howard, Typographical Union president; Frank B. Powers, Commercial Telegraphers' Union of North America; A. A. Myrup, Bakers and Confectionery Workers' Union; David Dubinsky, International Ladies Garment Workers' Union; J. C. Lewis, Iowa State Federation of Labor.



restricted charters which guarantee the right to accept into membership all workers employed in the industry or establishment without fear of being compelled to destroy unity of action through recognition of jurisdictional claims made by national or international unions \* \* \*. The executive council \* \* \* is expressly directed and instructed to issue unrestricted charters to organizations formed in accordance with the policy herein enunciated."<sup>36</sup> But the majority of the resolutions committee were opposed to the declaration, and under their guidance the delegates rejected it.<sup>37</sup>

According to Mr. Lewis, the action of the executive council not only hampered the organization of unorganized workers, but also weakened the Federation in dealing with Congress. He felt that the A. F. of L.'s legislative record was not what it might be, because the basis of chartering new unions was too narrow. This meant fewer members, smaller income, less adequate resources with which to maintain a legislative and research staff, and, consequently, an overburdened group of legislative agents and an unsatisfactory record of legislative achievement. Organize the workers upon industrial and plant lines, Mr. Lewis argued, and the Federation would then be in a position to organize the thirty-odd million unorganized American workers, take in more members, and make itself an "efficient instrumentality so that the officers of the Federation may carry out the mandates of the convention in making contributions to union welfare." Mr. Lewis pictured what might be:

President Green goes down to the White House sometimes to call upon the President of this Republic to discuss the affairs of labor, and the interests of labor and the common people of this country. And sometimes he goes over to the congressional halls, and he appears there before great committees of the two Houses to make articulate in a public way the things for which labor stands. Now, when he goes down there he goes as a representative of perhaps three and one-half million American workmen. How much more powerful and influential would be the silver-tongued President Green if he were able to appear before the Congress of the United States or the President of this Republic speaking, not for three and one-half million specialized craftsmen organized in the American Federation of Labor, but speaking for 5,000,000, or 10,000,000, or 20,000,000 of workers in American industry who have joined the American Federation of Labor when you have given them a chance and made them welcome.<sup>38</sup>

Here, in the C. I. O. leader's own words, is his conception of labor's strength, if and when it obtains an adequate basis of organization.

The cracks which appeared in the A. F. of L. ranks in 1934 widened into a split with the setting up of the C. I. O. in November 1935, and broke the organized labor movement in two with the suspension of the 10 "rebellious" unions by the A. F. of L. executive in September 1936.<sup>39</sup> With their suspension, leaders of the C. I. O. widened their program. Wherever they found workers willing to join, they enrolled them. They set up craft as well as industrial unions. Open warfare between the two movements resulted. Each invaded the other's territory in

<sup>36</sup> *Ibid.*, pp. 524-525.

<sup>37</sup> *Ibid.*, p. 575.

<sup>38</sup> *Ibid.*, p. 540.

<sup>39</sup> United Mine Workers; Amalgamated Clothing Workers; International Ladies Garment Workers' Union; United Textile Workers (now the Textile Workers Union of America); Oil Field, Gas Well, and Refining Workers; International Union of Mine, Mill, and Smelter Workers (now the Petroleum Workers' International Union); Federation of Flat Glass Workers (now the Federation of Glass, Ceramic, and Silicon Sand Workers of America); Amalgamated Association of Iron, Steel, and Tin Workers; United Automobile Workers; United Rubber Workers; International Typographical Union; United Hat, Cap, and Millinery Workers. For the last two a special finding was handed down.



strenuous efforts to lengthen membership lists. Bitter exchanges between Green, Lewis, and other leaders of the rival organizations have widened and deepened the differences over how best to organize the Nation's workers. The A. F. of L. has resented the popular antagonism to labor unions following upon the C. I. O. use of the "sit-down" strike. Simultaneously, the C. I. O. has charged that the forward march of American labor is being impeded by the selfishness of craft union officials who fear for their positions if the C. I. O. and A. F. of L. should be reunited in a single organization. Several attempts have been made to iron out the differences between the two organizations, but without success. Neither President Roosevelt nor his Secretary of Labor, Frances Perkins, has been able to reconcile them. On the other hand, two of the original unions which broke away from the A. F. of L. in 1935 have returned to it.<sup>40</sup>

#### *Other Labor Organizations.*

In addition to the A. F. of L. and the C. I. O., there are a number of unaffiliated or independent international unions. The largest of these are the railroad brotherhoods. They have never affiliated with the A. F. of L., but have cooperated freely with A. F. of L. unions. Although their problems are, in many respects, not unlike those of unions in private industry, the status of railroads as a public utility brought the Government into the railroad labor picture at an earlier date. One consequence was to create a difference regarding compulsory arbitration of labor disputes, the brotherhoods favoring, the A. F. of L. opposing it. This is a difference of long standing, and, together with the brotherhoods' independent strength, has kept them from formal affiliation with the A. F. of L.<sup>41</sup>

#### *Labor Lobbying.*

In striving to realize its aims and purposes through legislation, labor has followed the pattern of other organized citizen groups. Instead of organizing a political party, the A. F. of L. has exerted pressure on Congress through a lobby. This has been the case, too, with the railroad brotherhoods. The C. I. O. unions have in general employed the same method, although among them the urge for a separate labor party has been strong.<sup>42</sup> The method is non-partisan, involves no commitment to either the Republican or to the Democratic Party, and is essentially one of "rewarding its friends and punishing its enemies." In practice it includes two kinds of activities—political campaigning and legislative lobbying.

Through the activities of the national non-partisan political campaign committee, the A. F. of L. attempts to seat "labor" Congressmen and Senators. On rare occasions it nominates an independent candidate, but generally supports regular party candidates who declare themselves in sympathy with labor's program. The committee questions these candidates for Congress as to their stand on remedial legislation, and, where candidates are standing for re-election, pre-

<sup>40</sup> International Ladies' Garment Workers' Union and United Hat, Cap, and Millinery Workers. The International Typographical Union has assumed a semi-independent status. The United Textile Workers split into the Textile Workers Organizing Committee, which affiliated with the A. F. of L., and the Textile Workers Union, a C. I. O. union.

<sup>42</sup> See ch. X for a further discussion of the railway brotherhoods.  
<sup>42</sup> This urge has found expression in New York in the American Labor Party, which polled nearly half a million votes in the New York City mayoralty election in November 1937. The nucleus of the party was formed from members of the International Ladies Garment Workers' Union and other unions affiliated with the C. I. O., which before their expulsion from the A. F. of L. had favored the formation of a separate labor party.

pare a record of their votes on labor legislation. Moreover, the records of candidates for President and Vice President are printed, as well as those party platform provisions which are favorable or unfavorable to labor. All these records are furnished to the different constituent units, and, indeed, to everyone requesting the information. On the basis of these records the A. F. of L. calls upon "the workers of our common country to stand faithfully by our friends, oppose our enemies and defeat them, whether they be candidates for President, for Congress, or other offices, whether executive, legislative, or judicial."<sup>43</sup> A similar function has been performed for the C. I. O. by Labor's Non-Partisan League, which has on occasion made substantial contributions to the Democratic National Committee. The activities of the railroad brotherhoods in trying to elect sympathetic legislators are not unlike those of the A. F. of L.

All three sectors of organized labor maintain legislative committees in Washington. Their pattern of action may be described briefly by referring to A. F. of L. procedure. At the annual A. F. of L. convention in October the executive committee guides the convention's action on recommendations for the following year's legislative program. The work of the legislative committee is to carry out as far as possible this program. Much of its effectiveness depends in the final analysis on the personalities of the committee membership and of the executive council. Although difficult to measure, of course, the force of personalities must be great, for it is brought to bear on legislators and administrators in many ways. It is exerted through general publicity, encouragement of union members to bring pressure on their Congressmen, conferences with legislators, drafting of bills, supporting candidates for congressional committees, providing Congressmen with speech material, publication of legislative records, co-operation with other groups in the interest of desired legislation, interviews with the President, and contact with various administrative authorities. Thus the A. F. of L. applies pressure to supplement its policy of rewarding its friends and punishing its enemies.

#### LABOR RELATIONS THE AREA OF CONFLICT

For over 50 years organized labor has actively followed a policy of legislative lobbying. Although it has during this period interested itself in many phases of national policy, its primary interest has been the employer-employee relationship. It is here that it has come into conflict with the National Association of Manufacturers and other employer groups.

The conflict arises out of the attempt to apply democratic principles to industrial relations, and, specifically, out of the place of trade unions in the employer-employee relationship. For over 40 years the N. A. M. has opposed the closed shop enforced by trade unions. For an equal period, organized labor has insisted on its right to organize and bargain collectively, regardless of the closed shop. Since 1933 the issue has been sharpened by the Federal guaranty of labor's right to organize and bargain collectively.

In the philosophy of organized labor, union recognition and collective bargaining are essential to the attainment of its objectives. For

<sup>43</sup> Non-Partisan Declarations, Half Century Political Policy, American Federation of Labor, p. 4.

all branches of the movement those objectives can be summed up in the single phrase, attainment of the American standard of living for their members. From time to time attempts have been made to define this term. To the A. F. of L. it means not only the essentials of life for all members of the family, but also a steady income, a secure job, bank savings against emergencies, and the resources to enjoy cultural opportunities. In addition, it means a status of equality and the right of self-direction for the worker in industry. The worker is held to have as much stake in his trade or industry as the manager or stockholder. He is a partner in production, and as such is entitled to an equal voice in shaping industrial policies. If the worker is to exercise this right of partnership, his right to be a free man must be recognized. Individual dignity and self-respect are possible only when the "boss" admits and respects the worker's independent and economic rights.<sup>44</sup> While this is an accurate statement of the purposes of organized labor as a whole, it emphasizes the partnership angle which is becoming an increasingly important part of labor's aims. According to the National Resources Committee, "the establishment [in the collective agreement] of means whereby workers can influence the determination of industrial policies which directly affect them," is of special importance.

The demand for recognition and a voice in industry, clear in all agreements, is a product both of recent trends in Government policy, notably the National Industrial Recovery Act and the National Labor Relations Act, and of the trend, in a country which prizes its political democracy, whereby workers come to demand some measure of democracy in the determination of industrial policies which affect them.<sup>45</sup>

The N. A. M.'s exposition of the "American system" hardly suggests a bitter opposition to the substantive features of labor's standard of living. Even after discounting the N. A. M. allegation that the New Deal has departed from "the principles of social and economic organization upon which American progress, prosperity, and savings have been built," one would hardly be prepared, from reading the exposition, for industry's intransigence to labor's aims. It is only when the general protestations in favor of "inalienable rights," "sovereignty of the people," "individual initiative and effort,"<sup>46</sup> etc., are read in conjunction with the explanations that one begins to sense the realities of N. A. M. philosophy.

According to the N. A. M. there is no place in the American system for control, or even regulation, of industrial relations by the Federal Government. That right belongs to individuals, and the preservation of individual liberty depends upon its protection against alienation by government. Attempts to regulate employment relations, production, hours, wages, and working conditions hamper and destroy the freedom of individual enterprise which the N. A. M. regards as synonymous with individual freedom. The N. A. M. feels that the Constitution does not authorize the Federal Government to legislate in this field. Under the American system the powers delegated to Congress are clearly defined, it is held, and control or regulation of employer-employee relations are not among them. The States and the people

<sup>44</sup> American Federation of Labor, Report of Proceedings of Fifty-fifth Annual Convention, 1935, pp. 4-9.

<sup>45</sup> National Resources Committee, Structure of the American Economy, Washington, 1939, p. 325.

<sup>46</sup> See the Declaration of Principles Relating to the Conduct of American Industry, adopted by the N. A. M., Congress of American Industry, December 1939, pp. 1-2.



possess the powers not delegated to Congress. Only by strict adherence to the principle of a separation of powers of the Federal and local governments and the division of Federal powers into executive, legislative, and judicial does the N. A. M. believe it possible to preserve the "sovereignty of the people and their own local self-governments." Certain rights of the people are held to be inalienable and are protected by constitutions against government encroachment, "even at the dictates of majorities." These rights are in the form of constitutional guaranties which "assure for all citizens freedom of individual contract, freedom of speech, freedom of the press, inviolability of obligations, protection of property, and immunity from Government confiscation." According to the N. A. M. labor legislation and the exercise of unauthorized administrative discretion are attempts to disregard these guaranties, and compel the individual whose rights are alienated to resort to the courts for redress. When Government officials and lawmakers try to evade "the true intent of constitutional guaranties" and make laws "with respect to matters not delegated to them" there is placed on the citizen "the heavy burden of asserting his rights through judicial procedure, not as to the relation of his acts to such legislation, but as to the right of Government to deal at all with such matters." Hence, "the preservation of our American institutions and form of Government depends upon unqualified recognition that the power of the Supreme Court of the United States to pass on the constitutionality of acts of the legislative and administrative bodies of our Government shall be preserved inviolate and unhampered." "The Constitution," in the words of the N. A. M., "is a protection of human rights." Since the right of each individual to ownership and use of property, "encourages the maximum of achievement by all individuals," "the preservation of individual liberty depends upon the maintenance of private ownership and control of the facilities of production, distribution, and living."<sup>47</sup>

#### LABOR AND INDUSTRIAL MANAGEMENT COME TO GRIPS

Read in conjunction with the 1903 declaration of labor principles,<sup>48</sup> which, as recently as 1936, was declared by the president of the N. A. M. to be "still officially our Bible in this field,"<sup>49</sup> the N. A. M.'s conception of the rights which inhere in the "American system" are patently in conflict with those demanded by organized labor. Not until the advent of the New Deal in 1933 did the 40-year conflict enter its bitterest stage. Since then the extremes to which business has gone, under N. A. M. leadership, in attempting to preserve the status quo in industrial relations, clearly reveal its concept of the "American system." Its tactics and maneuvers are so significant as to warrant consideration in some detail.

The New Deal approach to labor relations put long-cherished principles of the association to a test which the N. A. M. was not in 1933

<sup>47</sup> Besides these points, the N. A. M. voices sharp criticism of "undue regulation of the financing of business, viewing it as a distinct threat of a permanent Government invasion into the field of finance and credit in competition with private institutions." It is also opposed to economic planning by government: "active and unfair competition by the Government" in some 28 lines of business; the attempt to gain security for all "by legislative decree"; and the use of the Federal tax power for otherwise unattainable ends. *Ibid.*, *passim*.

<sup>48</sup> Above, note, pp. 82-83.

<sup>49</sup> Hearings before a subcommittee of the Senate Committee on Education and Labor, 75th Cong., 3d sess., pt. 17, exhibit 3802, p. 7546.



quite ready to meet. It was, therefore, necessary to revitalize the whole organization. New literature, greater financial resources, more highly integrated organization of employer groups, greater coordination and unification of employer attitudes, and a broader educational campaign than had ever before been attempted, were necessary. The years 1933, 1934, and 1935 were devoted to reorganization and replenishing the association's resources.

The details of this reorganization, summarized here, are given in the report of the Senate Civil Liberties Committee on the N. A. M.<sup>50</sup>

First, a group of business leaders, representing certain large corporations in the steel, chemical, shipbuilding, and other large-scale industries, decided to underwrite an expanded program of activities. As a condition of the financial aid so promised, they stipulated a change in the management of the association to bring in a large number of industrialists and more active leadership. At the same time, a vigorous campaign for new members was initiated, and a new educational campaign instituted, with appropriate committees and separate financial provision. Finally, the National Industrial Council was put upon a more formal basis, and its cooperative relations with the N. A. M. were systematized and highly coordinated.

These changes brought quick results. Membership increased from 1,469 in 1933 to over 3,000 in 1937.<sup>51</sup> During the same period the association's total annual income expanded from \$240,900 to \$1,439,548.<sup>52</sup> The amount of this income derived from subscription for the public information program grew from nothing in 1933 to \$793,043 in 1937.<sup>53</sup> The association's enlarged program was being financed increasingly by large contributors whose interest was aroused by what they considered the danger confronting industry by the legislative program of the Government. Between 1933 and 1937 the 15 largest contributors increased their contributions from \$13,712 to \$219,460, and half of the income of the N. A. M. during this period was supplied by some 265 large contributors out of a membership ranging between 1,469 to 3,008.<sup>54</sup>

The board of directors of the N. A. M. was enlarged, and the large contributors gained a majority.<sup>55</sup> Under the leadership of William Frew Long, general manager of the Associated Industries of Cleveland, and Homer D. Sayre, commissioner of the National Metal Trades Association, the National Industrial Council was reorganized on a membership basis, thereby making affiliation with this more closely knit organization a necessary step before N. A. M. advice, counsel, and propaganda material could be obtained. During this process, it was able to eliminate a competing organization, the American Plan Open Shop Conference (which in 1933 changed its name to the Council of American Industry). Thus, the National Industrial Council became the only federation of employers' associations active in coor-

<sup>50</sup> S. Rept. No. 6, 76th Cong., 1st sess., pt. 6, pp. 44-69.

<sup>51</sup> *Ibid.*, p. 48.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*, p. 51. E. I. du Pont de Nemours Co. was the biggest contributor. It increased its contribution from \$725 in 1933 to \$55,000 in 1937, General Motors Corporation from \$1,950 to \$13,310, National Steel Corporation from \$1,050 to \$15,000, Chrysler Corporation from \$500 to \$15,000, Texas Corporation from \$750 to \$15,000, Republic Steel Co. from \$237,50 to \$12,750, Standard Oil Co. of New Jersey from \$100 to \$11,000. The other 8 largest contributors were U. S. Steel Corporation, Monsanto Chemical Co., Westinghouse Electric & Manufacturing Co., Bethlehem Steel Corporation, Borg-Warner Corporation, Socony-Vacuum Oil Co., Swift & Co., and Eastman Kodak Co.

<sup>55</sup> *Ibid.*, table 4 pp. 54-56.

dination of business attitude toward labor.<sup>56</sup> Industrialists well known for their leadership in certain open shop employers' associations represented the employment relations group of the National Industrial Council in meeting with the staff of the N. A. M. to discuss pending legislation and to reach conclusions on unified policy.<sup>57</sup>

The results of these conferences were conveyed to all council affiliates. This group also acted in the capacity of a general staff whose viewpoint was forcefully represented in Washington to bring pressure upon Congress.

For 30 years the association had fought wage-hour legislation and had opposed restrictions on injunctions and the application of anti-trust laws against labor. It had fought against regulation of hours and wages of women and children in industry. It had opposed protection of the workers' right to organize and bargain collectively. The only factor that differentiated the activities of the association from 1933 onward was the intensity with which it carried on its obstructive tactics.

#### *National Industrial Recovery Act.*

From the day of its introduction in Congress, the N. A. M. opposed the labor provisions of the National Industrial Recovery Act.<sup>58</sup> A special manufacturers' committee appointed at an emergency conference on April 28 stated that the bill as introduced was unworkable. One of the five amendments which the committee insisted "must be adopted before the legislation can receive the support of industry" recommended the "elimination or revision of the labor provision" so as to "operate equally upon both employers and employees."<sup>59</sup>

Robert L. Lund, N. A. M. president, issued a public statement on May 26, in which he held that the labor provisions might "promote industrial conflicts \* \* \* and force employers to deal with racketeering organizations." "Management in industry has no wish," he said, "to use this legislation to change existing satisfactory labor conditions and believes that their employees, in the vast majority, are of the same mind."<sup>60</sup> In a general meeting of industry held in Washington on June 3, a resolution was adopted, urging modification of the labor provisions to make it clear that there is neither the intention nor the power to reorganize present mutually satisfactory employment relations, nor to establish any rule which will deny the right of employers and employees to bargain, either individually or collectively, in such form as is mutually agreeable to them.<sup>61</sup> This was a typical argument in favor of individual bargaining, which had been the rule in industry and which the N. A. M. had found satisfactory. The N. A. M. did not want these relations disturbed.

<sup>56</sup> *Ibid.*, pp. 57-62.

<sup>57</sup> *Ibid.*, pp. 65-66.

<sup>58</sup> Several outstanding pressure groups were active in the drafting of this legislation. The A. F. of L. wrote sec. 7 (a), which the N. A. M. opposed so forcefully; and the code sec. 3 was largely the work of the Chamber of Commerce of the United States and the American Bar Association. On May 1, 1933, the N. A. M. itself put out a model code which it had prepared in collaboration with the National Association of Furniture Manufacturers and the trade association section of the Commerce Department's Bureau of Foreign and Domestic Commerce.

<sup>59</sup> Hearings before a subcommittee of the Senate Committee on Education and Labor, op. cit., pt. 17, Exhibit 3813, p. 7562.

<sup>60</sup> *Ibid.*, p. 7563.

<sup>61</sup> *Ibid.*, pt. 35, Exhibit 5316, p. 14149.

Representatives of the association appeared before the Senate Finance Committee to express their apprehension of the encouragement that section 7 (a) would give to the organization of labor unions. James A. Emery attacked this provision on the grounds that it tended to identify collective bargaining with trade unionism, interfered with the employee's liberty to choose the form of organization and relationship best suited to his interests, and did not provide sufficient protection for employers. Charles R. Hook criticized section 7 (a) on the basis that it did not prohibit non-employees from interfering with the employees of a corporation—a direct attack on union organizers. The American Iron & Steel Institute, represented by Robert P. Lamont, formerly Secretary of Commerce, also opposed section 7 (a) because the institute stood for the open-shop, and refused to deal with anyone except its own employees. Each of these men proposed amendments which would in effect nullify the basic objectives of the section.<sup>62</sup>

After the act was passed and approved by President Roosevelt on June 16, 1933, the National Association of Manufacturers began a campaign of nullification. On June 20, it sponsored a national industrial conference in Chicago. Resolutions were adopted urging trade groups to include in codes of fair competition clauses upholding constitutional rights to bargain individually and operate an open-shop, and making individual merit the basis of selection, retention, and advancement; also, urging employers to inform employees that open shop conditions would be maintained.<sup>63</sup> By a circular letter from its secretary, the N. A. M. brought these resolutions to the attention of its members and circularized bulletin board posters for employee education to the effect that "there is nothing in the bill that compels, or even encourages, employees to join any organization."<sup>64</sup> N. A. M. President Lund, in a press release on September 7, 1933, urged "the strongest possible employer opposition to union organization," hinting at an employer campaign to set up company unions, and stating that the N. A. M. legislative program envisaged, among other things, the repeal of section 7 (a), or, if that appeared impracticable, repeal of the Norris-LaGuardia Anti-Injunction Act (1932), and enactment of legislation imposing responsibility upon labor unions for the acts of its officers and agents.<sup>65</sup>

This organized opposition naturally hampered the operation of the National Labor Board, which was established by the President in August 1933, with Senator Robert F. Wagner of New York as chairman. The coup de grace was dealt to the power of this Board by E. T. Weir, president of Weirton Steel Co., and at that time an active member of the American Iron & Steel Institute and a very energetic supporter of the National Association of Manufacturers. His refusal to recognize the jurisdiction of the Board in a case involving election of employee representatives in December 1933, finally resulted in a sweeping decision by Judge Niels of the United States District Court of Delaware on May 29, 1934, questioning the statutory power of the Board in this case. The N. A. M. publicly supported Mr. Weir against the National Labor Board.<sup>66</sup>

<sup>62</sup> S. Rept. No. 6, pt. 6, 76th Cong., 1st sess., pp. 77-78.

<sup>63</sup> Hearings before a subcommittee of the Senate Committee on Education and Labor, op. cit., pt. 17, exhibit 3815, pp. 7571-7572.

<sup>64</sup> *Ibid.*, pt. 17, exhibits 3814, 3815, and 3816, pp. 7570-7572.

<sup>65</sup> *Ibid.*, pt. 17, exhibit 3807, p. 7549.

<sup>66</sup> S. Rept. No. 6, 76th Cong., 1st sess., pt. 6, pp. 82-83.



*Labor Disputes Bill.*

It was clear early in 1934 that section 7 (a) of N. I. R. A. would have to be strengthened in order to accomplish the purposes of the act. On March 1 Senator Wagner (New York) and Representative Connery (Massachusetts) introduced similar labor disputes bills in the Senate and House.<sup>67</sup>

During the hearings held in the Senate, James A. Emery testified in opposition to the measure. A committee of the N. A. M. was also appointed to see Hugh S. Johnson and President Roosevelt. A radio program was started, and the executive committee was authorized to arrange for a meeting of manufacturers in Washington to oppose the bill.<sup>68</sup>

The newspapers, too, were flooded with propaganda about the bill, charging that it disregarded "every fundamental concept of legal right and remedies." The association also urged a public inquiry, for the purpose of discovering "the amount of money union organizers take from the wages of working men."<sup>69</sup>

Urgent appeals from the association were sent to other employers' organizations.<sup>70</sup> The National Metal Trades Association, in particular, became active, and telegraphed its members, suggesting that they send the "strongest possible industrial group" to appear at the hearing, but warned that request for appearance be made "in the name of individuals or local groups and not in the name of the association."<sup>71</sup> It pointed out that the bill, if enacted, would "completely unionize American industry; assure domination of Labor Boards by American Federation of Labor, abolish all employee representation plans, discourage employer-employee cooperation, encourage strikes."<sup>72</sup> Commissioner Sayre of the association wrote:

If this measure should become a law, it would simply act as a wedge between employers and employees, and instead of promoting cooperation in the interests of national recovery, it would establish a permanent caste system in the United States which would have a most lasting detrimental effect upon the economic and social welfare of our citizens.<sup>73</sup>

He advised employers to meet in Chicago to appoint a spokesman in Washington,<sup>74</sup> and suggested that delegations to Washington should communicate with him at "either the Mayflower Hotel or at the office of the National Association of Manufacturers in the Investment Building."<sup>75</sup>

Sayre also suggested to members of his association that they try to have their employees appear in opposition to the bill, or, if this was not possible, to have "as many employees as possible write their Congressmen and the committee chairman in opposition to it."<sup>76</sup> Sayre

<sup>67</sup> The labor disputes bill made it an unfair labor practice for employers to interfere with organizations of employees; to refuse to recognize or to deal with representatives of employees for purposes of collective bargaining; or to maintain and support a labor organization. A board of seven members—two representing employers—could hold elections to determine collective bargaining representatives and designate the proper unit of bargaining. It could also act as an arbitrator in labor disputes.

<sup>68</sup> Hearings before a subcommittee of the Senate Committee on Education and Labor, op. cit., pt. 35, exhibit 5258, p. 14056.

<sup>69</sup> National Association of Manufacturers, news release, March 13, 1934.

<sup>70</sup> Hearings before a subcommittee of the Senate Committee on Education and Labor, pt. 35, exhibit 5258, pp. 14055-14056; exhibit 5335, pp. 14153-14154; news release, March 13, 1934.

<sup>71</sup> National Metal Trades Association, mimeographed letter to members, March 12, 1934.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> National Metal Trades Association, mimeographed letter, March 22, 1934.

<sup>75</sup> Mimeographed letter to members, March 14, 1934.

<sup>76</sup> *Ibid.*



also organized group action on the part of employers' associations located in the Chicago district: The Illinois Manufacturers' Association, Chicago Association of Commerce, National Founders' Association, Chicago Employers' Association, and the Chicago branch of the National Metal Trades Association.<sup>77</sup> On May 1, Sayre wrote to members of his association in Pennsylvania, suggesting that they write to their Congressmen and Senators. "As we have previously pointed out," he warned, "the results would be disastrous if any bill of this nature were passed as an employee cannot be forced to work against his will, but the employer would be forced to live up to the Board's mandates."<sup>78</sup> On June 6, Sayre passed on to the membership of his association a wire received from the N. A. M., which said:

Do not be misled by newspaper reports into thinking Wagner bill situation is hopeless. It is not. If expressions are especially heavy to Congress and President next 2 or 3 days it will be most effective.<sup>79</sup>

The Wagner bill did not reach the floor of the Senate. The N. A. M. itself claimed credit for this in a bulletin issued in January 1935, summarizing the association's work in the 73d Congress:

Wagner labor disputes bill to create permanent National Labor Board: Secured three important concessions from Wagner, which made bill less acceptable to labor. Mustered witnesses against bill, conducted Nation-wide educational campaign against it. Obtained compromise resolution.<sup>80</sup>

On August 20, 1934, Walter B. Weisenburger, executive vice president of the N. A. M., wrote to Charles R. Hook, saying, in part:

Much of our attention was devoted last winter to the Wagner labor disputes bill. There are those kind enough to say that but for the National Association of Manufacturers being the spearhead of this attack it would have gone over. Now when it comes to firms and manufacturers who have benefited by the failure of this act to pass, it cannot be said that the interest north of the Mason and Dixon line is greater than that south. \* \* \*

When the National Association of Manufacturers almost lonehanded went down the line against the provisions of 7A, and told the industrial world what it pretended, we took what was for the nonce considered a rather unpopular position. But the basis of our position and the soundness of our arguments are being brought home more clearly every day, as the working out of this particular section continues to harass progress and recovery.<sup>81</sup>

#### *National Labor Relations Act.*

The compromise resolution mentioned above was passed by the Congress on June 16, 1934. This resolution empowered the President to appoint a board or boards to investigate violations of section 7 (a), and also to hold elections to determine representatives for collective bargaining. Under this act, the National Labor Board was replaced by the National Labor Relations Board, with three members: Lloyd K. Garrison, chairman, and dean of Wisconsin Law School (resigned in December 1934, and replaced by Francis Biddle); Harry A. Millis, professor of economics at the University of Chicago; and Edwin A. Smith, former Commissioner of Labor in Massachusetts. This Board served from June 29, 1934, until August 1935, when it was replaced by a new board under the National Labor Relations Act of 1935.

<sup>77</sup> National Metal Trades Association, mimeographed letter to branch secretaries, March 22, 1934.

<sup>78</sup> National Metal Trades Association, mimeographed letter, May 1, 1934.

<sup>79</sup> Mimeographed letter, June 6, 1934.

<sup>80</sup> Hearings before a subcommittee of the Senate Committee on Education and Labor, op. cit., pt. 17, exhibit 3793, p. 7534.

<sup>81</sup> *Ibid.*, pt. 35, exhibit 5401, p. 14264.

The N. A. M. put impediments in the way of every major decision of the N. L. R. B. It contested the majority rule principle established by the Board, on the premise that it would "deprive the minority which did not desire to deal through the union, of the right of collective bargaining assured them by section 7 (a) of the National Industrial Recovery Act."<sup>82</sup> Essentially, the position of the association was one of complete opposition to any Federal legislation protecting the rights of workers to organize. This was explicitly stated when the Congress of American Industry, at its annual convention in December 1934, resolved that "the Federal Government should not assume or attempt to control local relationships between employees and employers."<sup>83</sup>

Thus, a national association of America's largest corporations, each operating plants in many communities throughout the United States regardless of State lines, and each with uniform labor policies controlled and directed from a few industrial and financial centers, vociferously argued that employment relations are not the concern of the Federal Government but should be settled locally.

Government efforts to protect labor's right to organize during 1933 and 1934 were effectively nullified by the obstructive tactics of individual employers, aided by the N. A. M. and its affiliated organizations. The Labor Board had proved powerless to enforce section 7 (a) of N. I. R. A., because of the ambiguity of terms, diffusion of administrative responsibility, and lack of power of enforcement—defects of which employers and employers' associations took full advantage. Employers refused to appear before the N. L. R. B. because it had no power to subpoena witnesses. The Board had difficulty in establishing the interstate character of the company against which charges had been instituted, and could not make adequate records which the Department of Justice could use for prosecution.<sup>84</sup> Refusal to abide by the Board's decisions in election cases stopped it in the initial stages of its effort to settle industrial disputes amicably. Garrison, the first chairman of the N. L. R. B., told the Senate Committee on Education and Labor in 1935 that the majority rule was opposed "because collective bargaining is opposed."<sup>85</sup>

Senator Wagner introduced a bill to broaden the powers of the N. L. R. B. on February 15, and the Committee on Education and Labor held hearings on the bill from March 11 to April 2.

Immediately the N. A. M. galvanized into action. James A. Emery, addressing the National Metal Trades Association, called Senator Wagner's bill "lynch law," and Ernest T. Weir asked members of the Union League Club of Chicago to "urge your employees and your fellow-citizens to register their will down in Washington" and "to be vigilant in the fight, carry it to your people, make them see the fallacy of the radicalism, and the folly of the demands for over-night change emanating from Washington."<sup>86</sup> Upon announcement of public hearings, to commence on March 11, the N. A. M. sent a call, through its news letter of March 4, to all industrialists who would like to appear in opposition to this bill, to communicate immediately with its

<sup>82</sup> Law Department Bulletin, August 24, 1934.

<sup>83</sup> Hearings, pt. 17, exhibit 3793, p. 7530.

<sup>84</sup> Hearings before Senate Committee on Education and Labor on S. 1958, 74th Cong., 1st sess., vol. 1, p. 94.

<sup>85</sup> *Ibid.*, vol. 2, p. 127.

<sup>86</sup> National Association of Manufacturers News Release, April 3, 1935.

New York office. On March 29, C. L. Bardo, president of the association, suggested that members advise their suppliers and dealers of the importance of this bill to the company, register their opposition with their Senators and Representatives, and request groups with which they were affiliated to take similar action.<sup>87</sup> On the following day he again urged manufacturers to write to their Senators and to "bring the bill to the attention of your local board of trade, other business groups, and individual employers, urging them to take similar action."<sup>88</sup>

On the same day Walter B. Weisenburger wrote executives of the employers' associations affiliated with the National Industrial Council, suggesting "Washington pilgrimages" by industrialists. "Of course, one of the most effective means of combating this legislation is the 'come to Washington' idea," he wrote. He offered to meet with local delegations in Washington before their calls and "check over the presentation of material."<sup>89</sup> He also urged distribution of pamphlets prepared by the National Industrial Council in collaboration with the N. A. M. to stir up local campaigns against legislation pending in Congress. In submitting the pamphlet entitled "The Industrial Truth," for this purpose, the legislative advisory committee of the National Industrial Council suggested methods of disseminating the material therein. It was said, for instance, that "two large firms pledged to put loudspeakers in their plants, and for 5 minutes each day—on company time—to give some portion of the messages in this manual." The letter summarized "specific activities which might be undertaken and should be undertaken in every community." "Action must be the by-word of industrialists, action of a positive type."<sup>90</sup>

<sup>87</sup> Hearings before a subcommittee of the Senate Committee on Education and Labor, op. cit., pt. 35, exhibit 5352, pp. 14187-14188.

<sup>88</sup> *Ibid.*, exhibit 5352, p. 14188.

<sup>89</sup> *Ibid.*, exhibit 5355, pp. 14194-14195.

<sup>90</sup> "The following methods were suggested: Every industrialist has contacts with civic clubs, social and business groups. Many wives of manufacturers belong to the League of Women Voters and to various other women's clubs. They certainly would welcome both sides of the story. In most cases he would be able either to get an invitation himself to speak before these various groups in support of the industrial viewpoint or to get one for someone else who is, perhaps, more articulate on these subjects. The possibilities of molding public opinion through thousands of speeches over the country during the next few months are virtually unlimited. The Industrial Truth and the N. A. M. Platform of American Industry \* \* \* offer a wealth of material for this purpose. Your committee will gladly furnish additional speech material or fully prepared speeches upon request.

"2. A small committee might be organized in every community to arrange for these speeches and to contact persons who are speaking quite often and supply them with material.

"3. The same committee probably would find it practical to encourage industrialists to issue statements to the local press dealing with the vital problems presented here. Additional material upon request.

"4. Newspaper editors, while most often fair toward the industrial viewpoint, often lack the necessary material to editorialize upon these problems. This committee might well undertake to keep the local press supplied regularly with informational material, such as that included in this manual, and with other information which comes from the National Industrial Council and the N. A. M. In addition, this committee might well consider the possibility of occasionally inviting the publishers, editors, and managing editors of their newspapers to informal dinners and luncheons to discuss mutual problems.

"5. Local businessmen support their local radio stations, and in most cases it will be found possible to arrange for a series of broadcasts by local people discussing the current national problems. A series of five to ten 15-minute broadcasts might be arranged presenting a local editor, attorney, industrialist, or some other clever speaker each night.

"One manufacturer has done a very logical thing. Few manufacturers or employees know who their Senators and Representatives are—that is, by name, initial, and address—so we have posted, without any other message, a list of the two Senators and the Representatives from our district. All we say is, "when you have legislation of interest to you and wish to write your Congressman, here they are." This is an important suggestion.

"It should be borne in mind that whether in public speaking, newspaper releases, or radio speeches the thought should be directed upon the effect the proposed legislation would



The collaboration of the N. A. M. and the National Metal Trades Association in presenting witnesses in opposition to S. 1958, the Wagner Labor Relations bill, was effective, for the committee was besieged from all quarters by requests to appear in opposition to the bill.<sup>91</sup> The witnesses who appeared against the bill represented, principally, the N. A. M. and the National Industrial Council. More specifically, the National Metal Trades Association and the American Iron & Steel Institute, both affiliates of the National Industrial Council, were most prolific in supplying witnesses against the measure. Inasmuch as secretaries of local branches of the National Metal Trades Association appeared as representatives of local employers' associations, of which they were, in fact, also staff members, there was considerable duplication of adverse witnesses.<sup>92</sup> Apparently some members of the press penetrated through this political camouflage, for the Washington correspondent of the Kansas City Star wrote:

The National Association of Manufacturers and the Metal Trades Association have been largely responsible for the demoralization of the Wagner labor disputes bill, the pet measure [sic] of the American Federation of Labor.<sup>93</sup>

The association continued, unabated, its opposition to the measure after the hearings closed. Weisenburger urged industrialists to converge upon Washington for personal conclaves with Congressmen. Executives of the association bombarded the public over the radio about the dangers of the Wagner bill. The favorable report on the bill on May 1 intensified this campaign. James P. Selvage wrote: "One, two, or three speeches from every radio station in the country during this crucial period when Congress is formulating its final program explaining important issues to the people, urging them to express their views to Congress, would be tremendously effective. \* \* \* Our experience indicates that virtually every radio station will give time to a prominent citizen to discuss vital national issues." He held himself in readiness to "rush you additional material upon any one of these subjects upon telegraphic request."<sup>94</sup>

The N. A. M., as well as the National Industrial Council, began to issue "action letters."<sup>95</sup> More and more of them were issued, and

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have upon the people. The average person is interested primarily in his own welfare, his own job, and his own pay envelope.

"Fundamental is the need that employers should undertake to speak to their employees, explain to them in understandable language what the legislative proposals mean, and stimulate them to write to their legislators.

"In this crisis in the industrial field your committee will stay in constant contact with the situation, and invites your correspondence.

"Our purpose as a liaison committee working in your behalf will be of little productive value to you and your membership unless all industrial associations respond quickly and whole-heartedly to a course of supporting action" (ibid., exhibit 5354, pp. 14190-14191).

<sup>91</sup> S. Rept. No. 6, pt. 6, 76th Cong., 1st sess., pp. 106-107.

<sup>92</sup> Ibid., pp. 108-115.

<sup>93</sup> This quotation was sent by James P. Selvage, director of public relations of the N. A. M., to Homer D. Sayre, of the National Metal Trades Association, with the suggestion that he disseminate it among his membership. Hearings before a subcommittee of the Senate Committee on Education and Labor, op. cit., pt. 35, exhibit 5356, p. 14196.

<sup>94</sup> Ibid., exhibit 5358, p. 14198.

<sup>95</sup> One of these stated: "Although the Nation's employers, under the encouragement of N. A. M. leadership and that of other national organizations, have waged against the Wagner bill a campaign which the 'United States News' has quoted as 'the greatest ever conducted by industry regarding any congressional measure,' that campaign has not been sufficient. \* \* \*

"No matter how many times you may have done it before, wire or write your Representative and Senators again today. Express your opposition to this bill. Recruit your stockholders, the firms with which you do business, your own executives, and department heads. Have them do the same thing."

"And do not forget that the 90 percent of American employees who heretofore have declined to pay dues to American Federation of Labor unions also will be opposed to this measure, which will in effect tax their pay rolls by forcing many of them into A. F. of L. membership. They will want to express their opposition. Many petitions against this bill, signed by hundreds of employees, are being sent to Washington" (Ibid., exhibit 5359, p. 14199).



more pilgrimages "on a concerted basis" were undertaken. A legislative action conference was called by the National Industrial Council at the Mayflower Hotel in Washington on May 22. Association executives were advised to bring with them "at least one business leader from each congressional district," who was "best acquainted with the legislative situation—and with the Congressmen."<sup>96</sup>

In spite of all these efforts, the Wagner labor relations bill passed both Houses on June 28, and was signed by the President on July 5.

*N. A. M. activity subsequent to passage of act.*—Undaunted, the leaders of the N. A. M. and National Industrial Council immediately met to decide upon their next step. Even before the President had signed the bill, officers of the council wrote their respective membership, setting a secret meeting in New York City at the Hotel Roosevelt on Tuesday, July 9. Sidney Cornelius, chairman of the employment relations group of the council, suggested to his membership that "no publicity on this meeting is necessary, so do not mention it in your bulletins."<sup>97</sup>

George F. Kull, chairman of the State association group of the council, asked his membership to avoid giving any public announcements of this meeting.<sup>98</sup>

Robert L. Lund, chairman of the board of the association, and C. L. Bardo, president, invited the board of directors and members of the executive committee to attend special all-day conferences on July 10 and 11 at the Waldorf Astoria Hotel in New York City, following the council meeting of July 9. First on the agenda mentioned by Mr. Lund in his letter was "consideration of Wagner labor disputes bill as passed; validity; future policy, etc."<sup>99</sup> Both Lund and Bardo emphasized "future organized effort necessary to protect American industrial system." Referring to this future effort, Mr. Bardo hinted that "there have been various suggestions for additional organization of shareholders and the teaming together of manufacturers to study the effects of politics on their businesses." This was to be covered in detail at the executive committee meeting. "This industry attitude on the Wagner Act," he continued, "and other items on the program I am sure warrant your participation in this all day session."<sup>1</sup>

According to the report of William Frew Long to the Associated Industries of Cleveland:

It was unanimously agreed at the above conference that industry's attitude toward the new act would be predicated wholly on a determination to preserve the constitutional rights of employers and those employees who prefer to deal with their employers individually or through various plans of employee representation.<sup>2</sup>

In a booklet dated July 23 the legal department advised manufacturers that the Federal Government was not warranted, under the interstate commerce clause of the Constitution, in assuming jurisdiction over labor disputes in ordinary manufacturing; that the act did not apply to employment relations between a manufacturer and his employees engaged in ordinary manufacturing; and that the majority

<sup>96</sup> *Ibid.*, exhibit 5360, p. 14201.

<sup>97</sup> *Ibid.*, exhibit 5421, p. 14297.

<sup>98</sup> *Ibid.*, exhibit 5420, p. 14297.

<sup>99</sup> *Ibid.*, exhibit 5422, p. 14298.

<sup>1</sup> *Ibid.*, exhibit 5423, p. 14299.

<sup>2</sup> S. Rept. No. 6, 76th Cong., 1st sess., p. 123.

rule is invalid by virtue of the fifth amendment to the Constitution.<sup>3</sup>

Thus, while the N. A. M. had argued, prior to the passage of the Wagner Act, that it would subject the most intimate relations between employer and employee to Federal control and regulation,<sup>4</sup> it now argued that the act was unconstitutional, and that these same employer-employee relationships were beyond the reach of congressional power. When the attack shifted from the political arena to the courts, the strategy shifted too. The effect of this attitude on the operations of the N. A. M. is described by the Senate Civil Liberties Committee as follows:

This attitude expressed itself, of course, in the experience of the National Labor Relations Board. The members of the Board were appointed by the President on August 23, and the Board was organized and began functioning August 27, 1935. From that time until March 1, 1937, 83 injunction suits were brought against the Board in the district courts of the United States. Among the companies which took advantage of injunction proceedings in order to retard the application of the National Labor Relations Act, there were such well-known companies and large contributors and supporters of the National Association of Manufacturers program as E. I. du Pont de Nemours & Co., General Motors Corporation, Bethlehem Shipbuilding Corporation, Chrysler Corporation, Goodyear Tire & Rubber Co., Remington Rand, Inc., and many other members of the National Association of Manufacturers and the National Metal Trades Association.<sup>5</sup>

As in the preceding years under the N. I. R. A., the association continued to supply its members with material for use in educating employees as to the limitations of the Wagner Act. Posters were supplied, as before, in question and answer form, which in effect informed employees that they need not join and pay dues to a labor organization; that the employer is not forced to agree to the demands of a labor union; that they would not be discriminated against if they did not belong to the union; that the act did not advocate a closed-shop agreement; and that it did not restrict the company's authority to deal with its employees on the basis of individual merit. Unwilling to accept the principle of collective bargaining, the association encouraged its membership to adopt an attitude of non-compliance with the act on the basis of its unconstitutionality, and one of hostility against the N. L. R. B. Both the act and the Board were subjected to a continued barrage of criticism and ridicule in letters, bulletins, radio addresses, posters, and cartoons. Then, having done everything within its powers to obstruct the Board, the association began to ridicule it as an abject failure.<sup>6</sup>

On April 12, 1937, the Supreme Court of the United States upheld the constitutionality of the National Labor Relations Act. The association continued, however, to advise industrialists regarding methods of reforming company unions into so-called independent unions; it supplied them with materials for posters, again informing employees of the limitations of the act; and it advised corporation officials on the methods of opposing organization of employees by either the A. F. of L. or the C. I. O.<sup>7</sup>

The association chose not to comply with the act, but rather to campaign for its repeal or amendment. Arguing in a press release of

<sup>3</sup> Hearings before a subcommittee of the Senate Committee on Education and Labor. *op. cit.*, pt. 17, Exhibit 3825, pp. 7589, 7593, 7594, 7596.

<sup>4</sup> *Ibid.*, pt. 35, Exhibit 5342, p. 14175.

<sup>5</sup> S. Rept. No. 6, 76th Cong., 1st sess., pt. 6, p. 127.

<sup>6</sup> S. Rept. No. 6, 76th Cong., 1st sess., pt. 6, pp. 132-133.

<sup>7</sup> *Ibid.*, pp. 134-139.

April 22, 1937, that the "Supreme Court decisions on the labor act have left many problems of interpretation and policy for the future," it canvassed its National Industrial Council's member list for proposals to amend the Wagner Act, framed a series of amendments, and stepped up its propaganda efforts in order to create and mobilize favorable public sentiment.<sup>8</sup> Having failed to prevent passage of the Wagner Act, and having seen it declared constitutional by the Supreme Court, the N. A. M. sought to return a Congress favoring amendment of the act in accordance with industry's views. N. A. M. President Lund expounded the propaganda program in partisan political terms in a speech before the Annual Congress of American Industry December 7, 1938, and in the same speech asserted that it was a major factor between 1933 and 1938 in causing public opinion to shift to the right.<sup>9</sup>

*N. A. M. support of limiting amendments.*—The story of the N. A. M.'s fight on the Labor Relations Act is not yet complete. However, it shows signs of achieving some success. The most recent evidence of this success is the adoption by the House of Representatives of amendments proposed by the Smith investigating committee in June 1940.

During the 5 years of the act many changes have been proposed. In 1938 Senator Burke, of Nebraska, suggested changes in the act. In January 1939 Senator Walsh, of Massachusetts, introduced amendments which embodied A. F. of L. proposals for revision. These proposals were attacked by the C. I. O. The following month the executive council of the A. F. of L. decided to press the fight for their adoption. In April the Chamber of Commerce of the United States proposed amendments. In May John L. Lewis of the C. I. O. charged that the A. F. of L. cooperated with the N. A. M. in pressing for amendments to the act. This was denied by A. F. of L. President Green. In June the American Iron and Steel Institute advanced further amendment proposals designed to safeguard employers' right of free speech, and court appeal for both sides. On June 20 the N. A. M. suggested further modifications regarding amendments to define the intent of the act and reduce the discretion of the Board. A few days later the Railroad Labor Executives' Association charged that the Association of American Railroads was endeavoring to alter the statutory basis of settling railway labor disputes as part of an ambitious employer program to change the Labor Relations Act.

Finally, on July 20, the House of Representatives appointed a five-man committee to investigate the Labor Relations Board and make suggestions for its amendment. After lengthy hearings at which Board officials and representatives of industry and labor testified the committee reported its findings and recommendations on March 20, 1940.<sup>10</sup> In June the House adopted the amendments recommended by the Smith committee. They were then forwarded to the Senate, where hearings before the Senate Committee on Education and Labor were still in progress in November 1940.<sup>11</sup>

<sup>8</sup> These proposed amendments included provisions restricting the right of representation of any labor organization which did not submit audited reports, which made political contributions, which required the check-off, which sanctioned general strikes, and which permitted aliens to hold office or be employed in any capacity. An amendment prohibiting coercion from any source was also approved.

<sup>9</sup> S. Rept. No. 6, 76th Cong., 1st sess., pt. 6, pp. 176-177.

<sup>10</sup> H. Rept. No. 1902, 76th Cong., 3d sess. pt. I (majority) and pt. II (minority).

<sup>11</sup> The majority of the House investigating committee recommended that the act be amended so that collective bargaining be defined as not including any duty on the part of the employer to make counter proposals over labor proposals, nor to reach an agreement;



Civil liberties of agricultural as well as of industrial workers have been denied by employers, acting both individually and collectively. The Senate Civil Liberties Committee held hearings in California on this subject, and took extensive testimony. While the committee report is not yet available, the testimony shows clearly that employer associations in San Francisco and Los Angeles conducted anti-union activity and engaged in operations opposed to the closed-shop. As farm mechanization and industrialization proceed, the importance of the right of agricultural workers to organize and bargain collectively becomes greater. Agricultural labor is excluded from the scope of the National Labor Relations Act, but the interpretation of the term has been within the authority of the Board. The Smith amendments would deprive the Board of this authority, and, by incorporating into the Act the definition of agricultural labor written into the Social Security Act in 1939 would exempt certain categories which the Board found were non-agricultural.

*Allies of the N. A. M.*—In its fight for amendment of the National Labor Relations Act, the N. A. M. has had formidable assistance. The division in the ranks of organized labor has been capitalized, of course, but in addition the Chamber of Commerce has worked persistently for amendment.<sup>12</sup> The American Iron & Steel Institute has lent direct support in stimulating employee representation plans. The American Bar Association, through its sponsorship of its administrative law bill (for further discussion of the Walter-Logan bill, see ch. XII, *infra*) has also been of great help. The Special Conference Committee of New York has worked behind the scenes in a very effective way.

This Special Conference Committee is an organization of high executives of 12 of the country's largest corporations.<sup>13</sup> Organized in 1919, it has been active in an unobtrusive way in developing its philosophy of cooperation between employers and employees and in using its influence to keep Congress from adopting "objectionable" labor legislation. Since 1933 it has maintained close relations with the chamber of commerce and with the N. A. M. working through these organizations rather than lobbying directly. Possibly the most significant contribution of the Special Conference Committee was the support it lent the N. A. M. and the National Industrial Council in the coordination of efforts to stimulate employees' representation plans and

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separate the administrative functions of the Board from its judicial functions, vesting the former in a new administrator to be nominated by the President for a period without term, subject to Senate confirmation, and leaving the discharge of the judicial functions and the conduct of elections for the choice of representatives for collective bargaining to a new three-man Board. The Board would be directed to hold an election on petition by an employer and to certify the appropriate bargaining unit; to withhold certification of a collective bargaining unit, where two or more petitions are filed by rival units, until a single unit shall have been agreed upon by all the rivals. Amendments would also require the Board to adhere, as far as practicable, to the rules of evidence and the common law rule regarding preponderance of evidence, and would make the Board's evidence in certification proceedings final and reviewable by the courts. Other amendments would leave the Board less discretion in issuing subpoenas for production of witnesses; would narrow the scope of the act's applicability by writing into it the Social Security Act definition of agricultural labor; would limit the Board's right to order reinstatement of employees to those not guilty of willful violence; and would re-define the policy of Congress as stated in the act's preamble to read that "failure to bargain collectively" and not "denial by employers of the right of employees to organize, and the refusal by employers to accept the procedure of collective bargaining," leads to strikes; and would delete the reference in the preamble which has been interpreted as encouraging collective bargaining. (*Ibid.*, pt. I, pp. 85-95.)

<sup>12</sup> See above, ch. IV, "Business Outposts in Washington."

<sup>13</sup> The American Telephone & Telegraph Co., Bethlehem Steel Co., E. I. du Pont de Nemours & Co., General Electric Co., General Motors Corporation, Goodyear Tire & Rubber Co., International Harvester Co., Irving Trust Co., Standard Oil Co. (New Jersey), United States Rubber Co., United States Steel Corporation, Westinghouse Electric & Manufacturing Co.



work councils (in reality company unions<sup>14</sup>) prior to the Supreme Court validation of the act, and the intensification of those efforts afterward.

The committee had very active and efficient sources of information on the status of legislation. Gerard Swope, of General Electric, was chairman of the Business Advisory and Planning Council in the United States Department of Commerce. He appointed Walter Teagle, of Standard Oil of New Jersey, chairman of the council's industrial relations committee, and the secretaryship was given to E. S. Cowdrick, who was secretary of the Special Conference Committee. Teagle then proceeded to appoint all the members of the Special Conference Committee to the council's industrial relations committee.<sup>15</sup>

In addition to promoting employer-employee cooperation through company unions, the Special Conference Committee also attempted to control the opinion of the workers through foremen and advisers. Such companies as the Goodyear Tire & Rubber Co., and the International Harvester Co. instituted training programs. Company policies were made clear to those in supervisory positions, and it was expected that such information would be passed on to the employees.

The committee sought, furthermore, to influence public opinion through the press, and through cooperation with local civic groups such as women's clubs and businessmen's clubs.

The experience of the Federal Government since 1933 in the field of labor relations shows clearly that employers of labor, particularly large employers, when organized and under unified leadership, hamper, if they do not entirely bar, the establishment and administration of any public policy not in accord with business views. The gains made since 1933 indicate that business has managed to maintain most of its control of industrial relations despite the efforts of labor and Government to loosen it. It is too early to say that business will have its way, yet there is evidence to show that public policy is veering more in the direction of management's views. The staying power of corporate business, its resources, and ability to give aid and assistance in the fields of law, of the newspaper press, and of advertising have proved powerful weapons in this struggle, and the intensity of the battle on the labor relations field since 1933 has indicated their effectiveness.

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<sup>14</sup> A statistical study conducted by the Bureau of Labor Statistics on 592 establishments having employee representation plans indicated that in 41.6 percent of the establishments the plan was introduced because trade unions were making headway in the particular plant or locality (Department of Labor, Bureau of Labor Statistics, Bulletin No. 634, Characteristics of Company Unions, 1935, p. 81). Furthermore, in 22.4 percent of the cases the plan was instituted because strikes were in progress or had recently ended. As strikes are usually called by outside trade unions, it would be a fair inference that these plans, too, were introduced as substitutes for such unions. According to this study, therefore, 64 percent of the 592 establishments studied had acquired representation plans because the managements were motivated by a desire to supplant trade unions. Finally, an additional 24.8 percent of the cases were established as a result of the influence of the National Industrial Recovery Act. The Special Conference Committee attempted to get the Bureau of Labor Statistics to modify this report prior to its publication. Some members, such as the Goodyear Tire & Rubber Co. and the International Harvester Co., threatened to withhold employment and other statistics from the Bureau of Labor Statistics.

<sup>15</sup> Mr. Cowdrick explained the organization of this committee to one of the members, Mr. W. A. Griffin, vice president of the A. T. & T. Co.: "Each member is invited as an individual, not as a representative of his company, and the name of the Special Conference Committee will not be used \* \* \*. The work of the new committee will supplement and broaden—not supplant—that of the Special Conference Committee. Probably special meetings will not be needed since the necessary guidance for the industrial relations committee's work can be given at our regular sessions." (Hearings before a Subcommittee of the Senate Committee on Education and Labor, op. cit., pt. 45, exhibit 7680, p. 16980.)



## CHAPTER VII

### TARIFFS AND TAXES

The three fields of tariffs, taxes, and public expenditures are particularly subject to control by the business community. Their structure is complex, yet the immediate interest of business is easily discernible in any such legislation passed. The complexity and detail involved in all three make it easy for business to divide the strength of the opposition and defeat its aims. This is particularly true when the opposition is divided within itself on the various considerations of fiscal policy. A single fiscal policy may affect even a single individual in various ways, so that in order to determine his own attitude he must weigh the effect on himself as producer and consumer, and as a member of any one of a number of social and economic groups. This confusion is multiplied enormously when individuals attempt to act in groups for pressure purposes, and business has a very real advantage because it is legitimately concerned primarily with its interest as a producer.

Even business, however, does not always act intelligently in its own interest, as the tax structure is a powerful mechanism, capable of effecting fundamental changes in the economic system. Business has always favored taxes on consumers rather than on either individual or corporate incomes, apparently preferring to tax the consumer expenditures out of which future profits must come than to tax the profits themselves.

The protective tariff also tends to cut consumer expenditures, and thus dry up a source of future profits, as does a curtailment of Government expenditures. Business, however, has generally considered all three policies solely in the light of their immediate effect on its pocketbook.

#### EARLY FISCAL POLICY

The dominance of business in Federal fiscal policy goes back to the earliest days of the Republic, when the business community gained most of its objectives in the struggle over the drafting of the Constitution. Since that time the dominant concepts in fiscal matters have been fixed by business, and as a general rule the country has proceeded on the assumptions that a protective tariff is beneficent, that taxes hurt business, and that the Federal Budget should be balanced. There have been strong counter-currents, but they have prevailed for only relatively short periods of time, if at all.

As in other fields of political pressure, the chief spokesmen for business have been the National Association of Manufacturers, the United States Chamber of Commerce, the American Bankers' Association, the Investment Bankers' Association, the American Tariff League, the National Economy League, and other smaller organizations. On occasion, and with some success, they have enlisted the aid of farm and

unemployed groups, municipalities, labor, veterans' organizations, etc., although these groups are primarily interested in other causes, and have affiliated with business only temporarily, for particular ends.

These latter groups are rather loosely organized, and on occasion business has been able to use them for its own purposes without reciprocation. An outstanding example is the farmer's acceptance of protectionist propaganda, although he has been little aided by the tariff on farm products, and as a consumer has been injured by the industrial tariff. Most of the large crops the farmer grows are on an export basis, and their prices have been fixed in world markets, without reference to tariff walls against incoming farm products. Yet on the products the farmer must buy, the prices are set in the domestic market, and tend to be raised by the tariff wall which keeps out foreign goods. In spite of this situation, business has for decades been able to win farm support for industrial tariffs, merely by promising to support agricultural duties which are largely meaningless.<sup>1</sup>

#### THE NATION COMMITTED TO TARIFF PROTECTION

No occasion offers such a wide-open opportunity for individuals and groups to translate private aims into public law as does a revision of the tariff. Its very theory is an invitation to domestic producers to present their claims for protection to Congress for sympathetic examination and approval. They want protection against foreign competition, and have come to have a vested interest in the continuance of such protection. They advance a number of reasons—the general welfare, national defense, the American standard of living, upbuilding of infant industries, high domestic labor and material costs, among others. On the assumption that tariff benefits granted to a few also work for the welfare of the population as a whole, Congress has irrevocably committed the Nation to the protective system. This commitment in turn has created a political environment in which immediate beneficiaries of the system hold a favored position. In reality, Congress makes a tariff under pressure from these insiders.

The first tariffs in the United States were levied for revenue only, and were largely on commodities not locally produced, such as tea, coffee, sugar, and other items which might be regarded as luxuries, and could not be grown or manufactured in the United States. This was the case up to 1808, when the embargoes imposed by Great Britain virtually stopped American importation of foreign goods. The resultant drop in revenues was negligible compared to the equivalent of complete protection which the embargo forced on American industry. Dozens of factories started up, manufacturing the iron, textiles, and other items that had formerly been imported from England. Their costs were naturally high, at the beginning, and their techniques inefficient. Since foreign competition was effectually throttled, however, they could remain in business.

At the close of the War of 1812, foreign commerce returned to its former status, and the American industries feared a complete loss of their markets to cheaper foreign goods. They immediately went before Congress with demands for a protective tariff, basing their

<sup>1</sup> Lippert S. Ellis, *The Tariff on Sugar, 1933*; C. K. Alexander, *Tariffs on Pork and Mutton, 1934*; R. R. Renne, *The Tariff on Dairy Products, 1933*; and T. W. Schultz, *Tariffs on Barley, Oats, and Corn, 1933*; all published by the Rawleigh Tariff Foundation, Freeport, Illinois.



arguments in large part on Hamilton's famous report on manufactures, published in 1790, with its arguments for protection of infant industries.

Since that time, the United States has always had a protective tariff. The levies increased so steadily from 1816 to 1828 as to earn the Act of 1828 the nickname "Tariff of Abominations." From 1832 to 1846, the duties were lowered considerably, and the period from 1846 to 1857 is sometimes referred to as an era of free trade. This is erroneous, as protective duties were in force all that time, although they were lower than they had been in many years.

The drastic necessity for raising money during the Civil War led to abrupt increases in 1861 and 1864, which put the duties far above what the country would have permitted in the absence of a national cataclysm. Some efforts were made to reduce the rates in 1872, but they were unseccessful, and by 1883, the time of the next attempt, the public had grown accustomed to the extraordinary war rates, and many of them were actually revised upward. The McKinley tariff of 1890 raised the rates again, as did the acts of 1911 and 1922.<sup>2</sup>

Throughout these changes, the business approach has been to secure from Congress a tax on articles of foreign manufacture high enough to put their price above that of the domestic goods. The wool manufacturers of the Nation were among the first to be interested, as a group, in tariff legislation, and their interest has continued unabated down to the present. The National Association of Wool Manufacturers, founded in 1864, has had a continuity of management and financial interest which has been able to impose its desires upon a Congress which was both less permanent and less singleminded on tariff policy.

As a natural result of its long contact with the problem, the National Association of Wool Manufacturers developed techniques of securing what it wanted by the use of technicalities in tariff legislation, which it understood better than many of the members of Congress. The institution of compensating duties, established in 1867, is a case in point. The first such tax was simple, merely setting up a tax on imported woolen cloth to equalize the duty on raw wool. That is, it was assumed that if the wool duty was 3 cents a pound, and it took 4 pounds of wool to make a pound of cloth, the cloth duty should be 12 cents. As time went on, however, the duty on finished goods began to include provisions for dyestuffs used, and other fibers mixed with wool, which became so complicated that a detailed knowledge of manufacturing was necessary to fix the compensating duty. As a result, this "compensating" duty was frequently considerably higher than the tax on raw wool.

Up to 1870 the chief arguments for the tariff had been protection for infant industries, and equalization for the farmer. At about that time, the agitation among farmers for lower industrial tariffs began to make itself felt, and in 1872 the argument was laid before Congress that a "scientific" tariff was needed—one which would equalize the duties on raw materials and manufactured goods, as well as give the farmer parity with industry.

This concept of a "scientific" tariff has stuck, even when the tariff provision obviously reflected the desires of interested parties. In

<sup>2</sup> F. W. Taussig, *Tariff History of the United States*, Putnam's, New York, 1923.

1883 the Senate passed a rate of \$20.16 a ton on bar iron, while the House fixed a rate of \$20. The conference committee composed the difference by setting a rate of \$22.40.<sup>3</sup> It is perhaps merely coincidence that the House was the largest of the three bodies, and the conference committee the smallest.

In the fight for a "scientific" tariff, the Tariff Commission was set up in 1916, largely at the insistence of the protectionists. It was charged with the duty of making recommendations to the President and to Congress, on the basis of information which it was to collect on the effect of existing tariff laws. This meant, among other things, that business now had another instrumentality to use in tariff revision. In addition to working with Congress and the Executive, it now could transmit its views and apply its pressure through the Tariff Commission as well.

The Fordney-McCumber tariff of 1922 set up the principle of a flexible tariff, under which the President could revise the rates upward or downward, within a range of 50 percent, according to changes in the tariff situation. This, again, increased the scope of lobbying from the former sporadic moves at the time when tariff changes were in prospect to a regular, day-to-day pressure for revision through the Executive.<sup>4</sup>

The changes of this kind, however, were limited to revisions in existing rates. As the decade of the 1920's progressed, pressure grew for general revision of the tariff laws, and was given extraordinary impetus by the difficulties which confronted the farmers, particularly after 1926. Agitation for parity with industrial prices became stronger and stronger, as farm prices and farm values declined. The McNary-Haugen bill, establishing an export equalization price on exported products, was also the result of this pressure from the farming areas.

#### *Hawley-Smoot Tariff Act.*

Finally, in 1929, Hoover called a special session of Congress to help agriculture by means of tariff legislation. This was the signal for extraordinary pressure from the high tariff advocates among the manufacturers. Of the many interests likely to be affected by the legislation, they were by far the most effective. Farmers, laborers, veterans, patriotic groups, bankers, and lawyers all would be as much affected as business. Yet their organizations were, on the whole, singularly ineffective, not because they were not concerned, nor even because they were undisciplined, but only because they did not clearly recognize their interest as consumers.

<sup>3</sup> Taussig, op. cit., p. 233.

<sup>4</sup> The philosophy on which tariff lobbyists proceed was expressed by Mr. Joseph Grundy, president of the Pennsylvania Manufacturers' Association, when, during the lobby investigation of 1929-30, he was questioned in regard to the \$750,000 which Pennsylvania manufacturers contributed to the Coolidge campaign fund in 1924. Senator Caraway, chairman of the committee, asked, "They put up the campaign expenses, and they ought to get results for their money. Is that the obligation that rested on you—to see that they got their money's worth?"

Mr. GRUNDY. I think they have a right to see that the Republican platform adopted at Kansas City is put into law. \* \* \*

Senator CARAWAY. They put up the money to take care of the election, and you feel they ought to get it back in legislation?

Mr. GRUNDY. If that platform was put into law they would get their money back.

Senator CARAWAY. And you were down here to see that they got their money back?

Mr. GRUNDY. Yes, sir; I was helping every way I could.

(This colloquy is reported in S. McKee Rosen, *Political Process*, Harpers, New York, 1935, p. 28.)

On the other hand, a few pressure groups were active, and effective. What is more, the members of certain "single purpose" groups were not only active, but also practically dominated the proceedings. Where opinions differed on the question of changing existing duties, "the struggle in the actual event in nearly all cases was confined narrowly to the manufacturers and importers of the commodity levied upon, with the latter able, sometimes, to count upon the support of their manufacturing customers."<sup>5</sup> Businessmen thus held the center of the political stage. "The politics of the tariff consists largely of a maneuver executed by a minority of the interests affected by the legislation in the presence of hosts of inert groups who derive benefits from the policy that are often obscure and dubious."<sup>6</sup>

It was not the citizen groups with general interests but those with narrowly defined interests which were active. The League of Women Voters was conspicuous by its absence, as was the American Federation of Labor. The farm groups, however, were active. The Farm Bureau Federation and the Grange testified before the congressional committees, not in opposition to the industrial schedules, but for higher agricultural schedules. "The great farm organizations \* \* \* subscribed strongly to the strategy of reciprocal non-interference in their drive to establish a parity of agriculture and industry."<sup>7</sup>

In conducting this drive the Farm Bureau and the Grange joined hands with farm commodity organizations and affiliated groups in an attempt to secure a new competitive position for fats and oils. In so doing they encountered stout opposition from groups of processors using imported fats and oils. The petition for protection was initiated by the National Cooperative Milk Producers Federation.<sup>8</sup> In addition to the Farm Bureau and the Grange, it was signed by the Farmers' Union, the National Livestock Producers' Association, and the American Cotton Growers' Exchange as well as by numerous secondary groups.<sup>9</sup> Arrayed in opposition were various groups of makers and users of soap and oil products.<sup>10</sup>

Although the drive was generally unsuccessful, it illustrates how specific producer groups rather than general interest consumer groups moved to get what they wanted. Through their national association, wool manufacturers were active, just as their predecessors had been in every tariff contest since 1816.

In the ability of its members to take a unified stand in favor of protection, however, the wool manufacturers were fortunate. Other national producers' groups found themselves divided. The Silk Association, for example, wanted increased duties, while the Silk Defense Committee, a temporary organization, wanted existing rates maintained. Proposed duties on oil, lumber, and logs provoked such a conflict between "all-American" producers and larger producers who were exploiting foreign sources of raw materials that neither the

<sup>5</sup> E. E. Schattschneider, *Politics, Pressures, and the Tariff*, New York, 1935, p. 122.

<sup>6</sup> *Ibid.*, p. 136.

<sup>7</sup> *Ibid.*, p. 137.

<sup>8</sup> *Ibid.*, p. 149 ff.

<sup>9</sup> Five national cattle breeders' associations, an association of manufacturers of dairy and ice cream machinery and supplies, the International Association of Dairy Supply Houses, the National Association of Ice Cream Manufacturers, the National Cheese Institute, and the "Dairy Farm and Trade Press."

<sup>10</sup> The American Laundry Soap Manufacturers' Association, the Soap Institute of America, the Textile Soap and Oil Manufacturers Association, the Institute of Margarine Manufacturers, the Laundry Owners' National Association, the National Association of Cleaners and Dyers, and the American Hospital Association.



American Petroleum Institute nor the National Lumber Manufacturers Association was active in the revision. Rival interests had to act through temporary organizations.

The American Tariff League and the National Council of American Importers and Traders were the most active and the most important of the citizen groups which took part in the tariff revision of 1929. Much of the really significant pressure for and against increased duties came from their members. The former is "without question \* \* \* the greatest repository of skill and experience in the pressure politics of the tariff."<sup>11</sup> It has been described as "fiercely Republican," and as "the spearhead of the (1929) drive of the most experienced and most strategically placed industrialists for higher tariffs."<sup>12</sup>

The National Council of American Importers and Traders, on the other hand, was "by all odds the most active opponent of a long series of increases sought by domestic manufacturers."<sup>13</sup> In the main, the membership of the American Tariff League is the group whose objectives are advanced further by tariff legislation than those of any other. According to the record, the only group which stands in the way of a more complete realization of the league's objectives is the Council of Importers and Traders.

As the Hawley-Smoot Tariff was finally passed in 1929, its rates were even higher than those of 1922, and the discretionary power of the President to raise or lower them within a 50 percent range was retained. The farmers got out of the bill higher rates on their export crops, which affected their prices not at all, and the Federal Farm Board.

The number of farmers interested was far greater than the number of industrialists; the farmers wanted low industrial rates as well as high farm rates, and yet were able to secure nothing more than meaningless increases in rates on exported crops. The history of tariff legislation seems to make it clear that farmers and consumers have found it easier to get increased duties through Congress, even where they are ineffective, as the farm duties have been, than to obtain rate reductions which would mean money in the pockets of consumers.

Business has been very successful in convincing the ordinary citizen that his interest is identical with that of business—that is, that his interest as a producer overshadows his problems as a consumer. Almost invariably, business has been able to whip up public sentiment against imports of manufactured articles, on the basis of alleged protection of wage scales, ignoring the higher prices which consumers consequently pay for the whole range of protected articles.

#### *Use of Import Excises to Strengthen Tariff.*

In the few cases in the Hawley-Smoot Tariff where business could not secure tariff increases, the next maneuver was to persuade Congress to levy import excises. The movement was started by Franklin Wirt, of the Independent Petroleum Producers Association, and he was almost immediately joined by Battle and Madera of the National Coal Association.<sup>14</sup>

<sup>11</sup> *Ibid.*, p. 9.

<sup>12</sup> *Ibid.*, p. 138.

<sup>13</sup> *Ibid.*, p. 141.

<sup>14</sup> See *Time*, May 16, 1932, pp. 15-16.



Wirt was interested because the dissension among the oil producers in 1929 had resulted in the elimination of the oil duties from consideration. The independents are largely confined to domestic wells, whereas the larger producers secure a large part of their oil from foreign sources. Hence, when the independents failed to secure the oil duty they wanted in the Hawley-Smoot Tariff, the import excise tax suggested itself to Wirt. The Coal Association was interested because of the imports of Russian coal at that time. They managed to enlist the aid of Senator Huey Long, as well as the National Association of Lumber Manufacturers, since there were charges of lumber dumping by foreign nations at that time. The rich copper mines in the Belgian Congo were going into production, landing copper on our shores at prices sharply competitive with domestic production. This situation resulted in the interest of Senator Ashurst, and this small group became the nucleus of what Senator Harrison has called the "unholy alliance" of 28 Senators from coal, oil, copper, and lumber States.

Efforts were made at the same time to enact such import excises on vegetable oils and fats, and tropical starches, but they were unsuccessful.

The effect of such excises is exactly the same as that of a tariff, and they were resorted to after being defeated in the tariff bill because they provided a way of getting around the omissions of that bill without reopening the whole tariff schedule to new negotiations and log-rolling.

#### *Reciprocal Trade Agreements.*

One of the first acts of the New Deal was to institute a general policy of reciprocal tariff reductions by agreements with foreign countries. The Hawley-Smoot Tariff had brought retaliation from numerous foreign governments, and it soon became apparent that mere reductions on our part would not secure reciprocal action from these foreign nations. Therefore, trade agreements were negotiated between the United States and numerous other countries, reducing our tariffs on given items produced in those countries, in return for their reductions on our exports to them.

Business was hostile to these agreements from the start, and fought their extension bitterly both in 1937 and 1940. The National Association of Manufacturers was heard at length on the subject of extension, as were numerous other representatives of business, as well as many farmer, labor, and consumer representatives. These latter three groups were seriously divided in their opinions. The Farm Bureau has at times favored, while the Grange opposed, extension. Matthew Woll testified for the Wage Earners Protective Conference in opposition to the proposal, while the Brotherhood of Railroad Trainmen supported it. Consumer organizations generally supported it. Business, however, was very generally in opposition, with only minor exceptions. When the agreement power was extended, in 1937 and 1940, there were suggestions of testing it in the courts; but this has never been done.<sup>15</sup>

The New Deal farm program is generally agreed to have been of less aid to the dairy sections of the country than to the producers of

<sup>15</sup> Hearings before the House Committee on Ways and Means, 76th Cong., 3d sess., on H. J. Res. 407, vols. II and III.

corn, cotton, tobacco, and wheat.<sup>16</sup> This is probably due to a number of causes, but one of them is the luxury status of dairy products for a large proportion of the population. When times are hard, these people shift to corn and pork products and wheat, and they will not return to the consumption of dairy products until their incomes increase. Their incomes have not increased sufficiently to raise dairy prices as the A. A. A. program has raised corn, hog, and wheat prices. The dairy farmers' discontent with New Deal policies has been capitalized by the foes of the trade agreement program, with considerable success. In the 1938 election in Wisconsin and Minnesota, for instance, a strong campaign was made by the Republican Party against the trade agreement with Canada in particular, and Republicans displaced all but one Minnesota Farmer-Laborite, and two Wisconsin Progressives. There were other factors in this sweeping defeat, of course, but a large part of the apparent reaction in these States may be traced to the dissatisfaction of the dairy sections with the trade agreements, and the use of this dissatisfaction by Republican leaders for their own ends.

One of the chief reasons for the objections of business to the trade agreements program has been that tariff legislation has for decades been a matter of log-rolling in Congress. It is notoriously easy to gain support in Congress for a concession, providing the support of another group for another concession can be offered in return. Log-rolling with the executive branch is not so easy. Different pressures can be applied, but it is impossible to swap votes for different provisions in a single tariff bill. Any politician knows, or will learn to his cost, that a promise of future support is worth little in comparison with present aid. Successful log-rolling is a process of swapping a vote on one measure up at the moment for a vote on another measure up at the moment. Under the reciprocal trade agreements program, business can tell the Executive that they will support other measures in return for concessions granted in a particular agreement, but the force of the argument is lost, since the support of other measures is in the future, and may never materialize.

Another reason for the fight against the trade agreements has been that in some cases they have permitted foreign competition to reduce prices. Business spokesmen have naturally tried to avoid stating this directly, so as not to provide an argument for consumers' groups. Mr. Arthur Besse, president of the National Association of Wool Manufacturers, was very insistent that although the domestic manufacturer supplied 96 percent of the domestic market, the 4 percent imported was not an adequate measure of the damage to American producers, but merely indicated the extent to which American producers had been unable to make enough concessions to keep the markets. Specifically, he said, "One of the depressing factors on the price situation was the press of competition from England, \* \* \* it made it very difficult to get an adequate price for our goods."<sup>17</sup> Later he added a specific illustration. "A maker who, perhaps, is the highest grade manufacturer of men's wear fabrics in this country had to reduce his top line 35 cents a yard in January (from his December

<sup>16</sup> See F. F. Lininger, *Dairy Products Under the Agricultural Adjustment Act*, Brookings Institution, Washington, 1934.

<sup>17</sup> Hearings before the House Ways and Means Committee, 76th Cong., 3d sess., on H. J. Res. 407, p. 2391.

prices) after the treaty went into effect in order to meet the competition offered by English mills."<sup>18</sup> These lowered prices may mean lower profits, and as a result of this potentiality they incur the bitter antagonism of producers.

#### TAXES

The present tax structure is a combination of direct and indirect levies, progressive and regressive taxes, based either on ability to pay, or ease of collection. It results from 150 years of constant pressure for tax reduction on the one hand, and for increased Government services on the other.

It is impossible to divide the country into two definite camps on the issue of taxation. Such a characterization as "the haves against the have-nots" is in some ways true, but in others inadequate. Generally speaking, however, the great mass of citizens has struggled for increased Government responsibility, with its greater costs borne in large part by those with large incomes. The possessors of such large incomes have sought to circumscribe Government activities, at least in certain fields, and have wished to pay for the indispensable services by sales taxes and other indirect levies, most of which finally come to rest on the individual consumer.

In our early history, the Federal revenue was almost entirely confined to customs duties, with excises on some items internally produced, such as tobacco and liquor. This state of affairs continued until the Civil War, when the sudden demand for increased revenue led to the imposition of a wide variety of internal revenue taxes (including an income tax). Most of these were removed, and in the next 10 years the Government had again come to depend largely upon whisky and tobacco levies in addition to customs duties.

However, a new income tax was adopted in 1894, when a violent recession and an attempt by the Democrats to carry out their promises of lower tariffs brought a sharp reduction in government revenues. This tax was declared unconstitutional by the Supreme Court.

There followed a period of popular agitation for the income tax which finally led to the adoption of the sixteenth amendment in 1916, permitting the Government to levy taxes on incomes. The N. A. M. has repeatedly shown hostility to the sixteenth amendment, attacking with especial bitterness the proposal for a graduated corporation income tax.<sup>19</sup> Convinced at last, however, that the income tax has become an integral part of our fiscal structure, the N. A. M. has turned its efforts to keeping the graduation from becoming too steep, and raising as much of the money as possible from the lower brackets.

Pressure on taxation measures did not begin with the income tax, however. Earlier taxes were in large part locally raised, generally on property. Here pressure has taken the form of attacks on both the rate of taxation, and the valuation on which the tax is levied. In many localities the real estate tax is still assessed on a fraction of the actual value of the property, while in others the effort to keep the rate down has been successful.

<sup>18</sup> *Ibid.*, p. 2415.

<sup>19</sup> A flat corporation income tax rate is also advocated by the United States Chamber of Commerce in its 1940 statement of policy.



As a matter of fact, the general property tax has not been an adequate means of raising revenue, from the viewpoint either of the Government or the taxpayer. It is an unsteady source of revenue, sometimes resulting in foreclosures and tax sales at the precise time when revenue is most needed, and when tax sales further damage an already demoralized market. Mere ownership of property is no indication of the owner's ability to pay taxes, as was all too clearly shown by the experience among farmers in 1930-33, when foreclosures were rife, and there was no money available with which to redeem the tax liens.

Partly because of this failure of the general property tax, and partly because of the increased need for revenue, many States have enacted State income taxes. These have been fought as bitterly as the Federal tax, though frequently with more success, since business has been able to argue that if income taxes are raised too high, they will move out of the State. Usually other factors weigh more heavily in the location of their plants than taxation, but it is undoubtedly true that there is a point beyond which State income taxation cannot go for fear of the consequences of such a threat.

The course of State tax legislation is too complex and too diverse to permit full discussion here, except to point out that in essence the same procedure is used as in Federal legislation, with greater or less success, depending on local factors.

The emergency of wartime is usually the excuse for drastic revisions in the tax structure. As has been pointed out, the Civil War involved a great deal of commodity taxation, which was generally paid by the ultimate consumer.

#### *Taxation in the 1920's.*

The strain of the World War, however, was too great to permit resort only to such measures. Borrowing was resorted to on a greatly increased scale, and the income tax was made to yield large sums. It was over the bitter opposition of business, however, that the income tax was passed, and the tax on excess profits was even more bitterly opposed. Both yielded enough revenue to make it vital that they should be continued until the end of the war. In 1920, one of the strong, if ungrammatical, talking points of Harding's campaign was "back to normalcy," and his support from business was open-handed and enthusiastic.

Immediately after his election he appointed Andrew Mellon as Secretary of the Treasury, where he was responsible for extraordinary tax reductions. A special session of Congress was called in December 1926. For many months prior to this session, the N. A. M. had been active in a movement to obtain a reduction of the income tax rates. On April 7 it issued a call for the appointment of a committee to consider the simplification and clarification of existing tax laws, and the possibility of reducing the rates. This call, which was sent to 15 outstanding producers' organizations in the country, resulted in a meeting at Washington on April 27, presided over by James A. Emery, general counsel for the National Association of Manufacturers.

At that meeting a committee of seven was appointed, representing the manufacturing, mining, lumber, oil, cotton, boot and shoe, and automobile industries of the country, as a working group on tax co-



operation. "While the Committee was primarily to assist the newly created Joint Congressional Committee on Internal Revenue Taxation in obtaining the industries' views as to simplifying and clarifying the \* \* \* tax law, the whole question of another tax reduction was not overlooked."<sup>20</sup> The Revenue Act of 1928 reduced the tax rate on corporation incomes from 13 to 12½ percent.

There was little general complaint at this tax reduction policy, although here and there murmurings were heard that the debt should be retired, and that taxes should be collected in amounts sufficient to provide for such retirement. With the collapse of 1929, however, income dropped off precipitously, and the revenues from income taxes likewise declined. The revenues from such excises as were in force fell along with other revenues, and at the same time the Government was being frantically urged to use its resources to care for the unemployed.

### *New Deal Tax Policies.*

Tax rates were raised slightly before 1933, but the inauguration of the New Deal marks an extraordinary increase in both tax rates and tax collections. The income tax has been far more steeply graduated than before, and the exemption has twice been lowered. At the same time, a long series of excise taxes has been included in the revenue program, in the beginning largely on consumers' luxuries, but more and more shifting to taxes on consumers' necessities.<sup>21</sup>

At the same time, in an effort to force distribution of earnings, and to stop tax avoidance by stockholders who wished to leave their dividends in the company, the administration established a tax on the undistributed profits of corporations.

Up to 1936, the tax structure affecting corporation earnings had included only a straight corporation income tax.<sup>22</sup> Also, stockholders receiving cash dividends on corporation stock were taxed under the personal income tax laws. This personal income tax was avoided if the corporation retained its profits instead of distributing them, or if it issued stock dividends. Many people of wealth in control of corporations found it advantageous to leave their dividends in the corporation, rather than pay the personal income tax on them.

During the 1920's about 40 percent of all corporate earnings were so reinvested.<sup>23</sup>

Supporters of the 1936 act hoped that the tax would discourage over-investment and force this money into the hands of stockholders.

Business vigorously opposed the act and immediately started a campaign for its repeal. It took advantage of the recession in 1937 to urge that the undistributed profits tax hindered the flow of investment funds into new production and enterprise.

The National Association of Manufacturers, the United States Chamber of Commerce, the Investment Bankers Association, the American Bankers Association, the Association of American Railroads, the New York Board of Trade, the Guaranty Trust Co., and various

<sup>20</sup> Congressional Record, 67th Cong., 1st sess., June 23, 1926, p. 11831. Article by William P. Helm, Jr., in *the Brooklyn Daily Eagle* introduced into the Record by Mr. Jacobstein.

<sup>21</sup> See H. Dewey Anderson, *Taxation, Recovery, and Defense*, Temporary National Economic Committee Monograph No. 20, Washington, 1940, pp. 77-161.

<sup>22</sup> *Ibid.*, p. 127.

<sup>23</sup> Hearings before the Senate Finance Committee on revenue revision, 74th Cong., 2d sess., 1936, p. 18.

other organizations carried on a continuous campaign by means of their various publications, meetings, and the speeches by their members.

Representatives of these various organizations appeared before House and Senate committees considering tax bills. They argued that corporations were being penalized for conducting their affairs in a businesslike way, that corporations, like individuals, should be encouraged to save for a "rainy day." Mr. G. H. Houston, president of the Baldwin Locomotive Works, attacked the levy, saying that the system of private enterprise would be destroyed.<sup>24</sup> Winthrop W. Aldrich, chairman of the board of directors of the Chase National Bank, appearing before the Senate Committee on Relief and Unemployment, said that the tax affected the capital market.<sup>25</sup>

Owen D. Young, of General Electric, and many other industrialists have testified that the tax might be expected to hinder the flow of investment capital.<sup>26</sup>

In 1938 the undistributed-profits tax was retained in principle, but the rates were greatly reduced. In 1939 it was repealed, and a flat levy of 18 percent was placed on all corporation incomes over \$25,000. This rate has since been lifted to 24 percent by the Revenue Acts of 1940.

The business community, however, has not ceased to fear that the undistributed-profits tax may at some time be reestablished. The same is true of the publicity provision for incomes over \$20,000 a year. The law providing that incomes of this size should be made public was passed in 1934, and aroused a storm of protest from businessmen. Immediately it began to be nibbled away. First the "pink slip" on which income was reported for publication was eliminated, and finally the law itself was repealed, in 1937. But agitation against such publicity has by no means ceased. A moving picture released in 1940 devotes a scene to two crooks going over the list of published salaries, commenting with surprised approval that the Government is kind enough to furnish them a "sucker list."

The pressure of business for a sales tax instead of an income tax has at times been so strong as to deceive even sincere representatives of the man in the street. In the "lame-duck" session of 1933 the sales tax was sponsored in the House of Representatives, and for a short time, until the general public became aroused, had secured the support of a number of the outstanding liberals in the House. It was later defeated, but only after a hard fight.

#### *Taxation for Defense.*

The problem of defense and armament in 1940 has again brought up the question of taxes. There is a widespread opposition to meeting the increased expenditure by borrowing, and yet both business and other groups fight increased tax burdens for themselves.

The conscription of wealth ("universal service") has for many years been a battle cry of the American Legion, along with other pressure groups, and efforts were immediately made to pass an excess profits tax which would deal with the problem of war profiteering, and at the same time provide needed Federal revenues. The net result of

<sup>24</sup> New York Times, Jan. 9, 1939.

<sup>25</sup> *Ibid.*, Jan. 15, 1939.

<sup>26</sup> See hearings before the Temporary National Economic Committee, Part 9, p. 3615-3619.

the effort so far has been the passage of the Revenue Acts of 1940, which raised the corporate income tax rate to 24 percent, as stated, lowered the personal income tax exemption, and put on each bracket a flat increase of 10 percent, rather than the graduated increase which the liberals espoused. The excess profits measure was laid aside, promised in January 1941, revived, and laid aside again, but finally a hybrid measure was passed in September 1940.

The study, *Taxation, Recovery, and Defense*, by Dr. Dewey Anderson, of the Temporary National Economic Committee, shows clearly the change in the composition of our tax structure since 1915. The revenues from all sources dropped off somewhat in the 1920's, and increased with extraordinary rapidity from 1932 onward. The proportion of the revenue made up by consumers' taxes has also increased, indicating that the relative pressure brought by consuming groups is considerably less than that exerted by business. Some of this pressure took the usual form of direct approaches to Congress, in hearing rooms, and in lobbies, but an ever greater amount of it has been in the form of propaganda directed at the ordinary citizen to convince him that direct taxation of business, such as the corporate income tax or taxes on undistributed earnings, hampers business and keeps it from going ahead in its "normal" fashion.

Business has led the attack on these taxes, but has managed by means of skillful propaganda to convince a large part of the population that the Government was strangling business, and persuade those people to communicate their disapproval of the bill to Congress.

This, in its broad outlines, is a picture of the tax struggle in this country. There have been many minor struggles, however, between various interests. An outstanding example is the fight on the oleomargarine tax.

The dairy producers have always been plagued by the luxury status of butter, milk, and cheese in the ordinary diet, and at precisely those depression periods when other deflationary factors work against them, they find that their market dwindles. Small income families are much inclined to shift to oleomargarine, for instance, when the price spread between butter and oleomargarine is wide, and they merely forego the consumption of fresh milk.

One of the chief aims of the dairy lobby, therefore, has been to increase the price of oleomargarine to a point which will make the shift of little financial value to the consumer. This approach has proved only partly successful, and further efforts have been made, both nationally and in some State legislatures, to put a prohibitive tax on the sale of oleomargarine.

Here is an extraordinary example of a real division of immediate interest between farmers and urban workers. In the absence of an adequate solution, which would permit dairy farmers to supply wanted dairy products to city dwellers at a fair price, any compromise drives a wedge between the two groups.

#### GOVERNMENT EXPENDITURES

Just as vigorously, if not as successfully, as it has argued tax and tariff matters, business has espoused a balanced budget. It has argued that Government should so arrange its budget that current income equal current outgo, "as business does." Obviously, business



does nothing of the kind, hence the argument is illustrated by pointing out that the individual would soon come to grief if his outgo continued for a long time to exceed his income. "A man whose expenses exceed his salary," the argument runs, "has two alternatives. He can get a higher salary, or he can cut his expenses to a point where his salary will cover them." Since this example has a familiar ring to the ordinary citizen, and since particularly in hard times he finds it difficult to increase his salary, he may be convinced that both business and Government should do as he would be forced to, and cut expenses.

In this case, however, the alternative has been clear, and the general public recognizes the result of curtailment of spending. Economies were installed in 1932, and the downward spiral gathered speed. They were instituted again in 1937, and the recovery suddenly collapsed into a depression. People generally would rather spend the money than take a chance on another recession.

The theory of "compensatory spending" which has been advocated by the administration, has gained many adherents in the country, not so much as a theory of which they wholeheartedly approve as it is a method of handling a problem which they see no other means of meeting. The efforts of businessmen to break down the acceptance of the theory have been largely based on their insistence that if the Government stopped spending, business could take over, and they have been generally unsuccessful. Apparently, a large segment of the people adheres to the view that Government was not spending in 1930, 1931, and 1932, and business did not take up the slack. They seem to prefer to see some diminution in the number of unemployed before they begin to trust business to hire them in private industry.

The advocates of the "compensatory spending" program, as distinguished from those who merely vote for its continuance as a practical necessity, argue that its function is to compensate for the noninvestment of funds by business; that when business investment declines, government must take up the slack. When business finds it profitable to invest, it will do so, but until that time Government must assume the responsibility.

The general public has grown to accept the idea that the Government must apply correctives to "redress the unbalance that exists between business and the rest of the country." They seem convinced that the economic system does not operate adequately without Government intervention of some kind, but feel that Government intervention should be confined to an effort to correct minor maladjustments in the system, rather than to reorganize the system.

In the beginning business was bitterly opposed to the establishment of the Securities and Exchange Commission, the Wages and Hours Administration, the National Labor Relations Board, the Social Security Board, and many others, as it had been to the Federal Trade Commission earlier. Later it tried to amend the acts setting up these agencies, or, failing that, emasculate them by cutting their appropriations. In the election campaign of 1940, the spokesmen of business upheld regulation of the securities and commodities markets, collective bargaining by an agency of the workers' choice, social security, and other New Deal objectives. They refrained, however, from advocating the specific agencies which are charged with these functions, as



well as from saying how they would deal with the problems if they were in power.

*Defense expenditures.*

The attitude of the business community to Government expenditures has changed considerably since the shift of emphasis to national defense. Where industrialists and manufacturers formerly opposed Federal expenditures, they now regard them as of immediate importance, and feel that they should be expanded even more rapidly.

It seems unlikely that this change is entirely due to the need of national defense. The earlier New Deal expenditures were also defended on the basis of their emergency character and the welfare of the country as a whole. But these earlier expenditures, while they poured billions of dollars into the business channels of the country, were not directed from the Treasury immediately into the hands of business. Defense expenditures are paid to business, and are distributed thence according to the will of business. The conflict between the New Deal and business as regards Federal expenditures, therefore, springs not so much from the amount of funds spent, as from the situs of the power produced by the expenditures. In the earlier welfare expenditures, the power was lodged in the Government; under the defense program it is to a much greater extent lodged in business.

FISCAL POLICY DOMINATED BY BUSINESS

Learning from business groups, and observing their success in the manipulation of financial policy, other economic groups, such as agriculture, labor, the unemployed, municipalities, etc., now seek legislation in their own behalf. The formation of these pressure groups has to some extent weakened the control of business over such policies, although the business community has still the greatest resources and the widest experience in dealing with legislation and administration of laws affecting it.

The uniting of agriculture in the National Grange and the Farm Bureau Federation has enormously increased the pressure potentialities of the farm States. They have put their strength behind numerous objectives, some of them regulatory, like the Interstate Commerce Commission, some of them, like the tariff, more closely connected with farm policy. Many of the victories of organized farmers have proved unsatisfactory, again like the tariff, but they do indicate a tremendous potential strength if it is effectively awakened to its own real interest.

The unemployed banded together, briefly, at the bottom of the depression, and secured, first, Federal assumption of the relief problem, then the Civil Works Administration, the Federal Emergency Relief Administration, the Works Progress Administration, the Public Works Administration, and the Civilian Conservation Corps. As the country began to come out of the funk which overwhelmed it during the worst years of depression, however, the business community found it easier and easier to split the supporters of unemployment relief and public works. They pointed out that the unemployed would be better off in private industry doing "honest work," and that if business were freed from the shackles of Government interference it could reemploy most of the unemployed. They objected both to the cost and the up-

keep of the public works program, and were in many cases successful in convincing the public of their viewpoint.

The pressures that have been exerted upon the legislative branch since the founding of the Republic have been diverse in both their source and effect. The laws enacted, however, particularly those dealing directly with the Nation's pocketbook, have generally tended to follow the viewpoint expressed by business, rather than that of less powerful groups. This is the natural result of the long experience which business has acquired with the subject, the tremendous resources of publicity at its command, and the relatively small size and compactness of its organizations.

The tariff laws have provided high protection for the benefit of comparatively few businessmen and industrialists, at the same time damaging the interests of the far greater number of farmers and urban consumers. The tax laws, a compromise between opposing groups, have been subject to tremendous pressure from the large masses of citizens, but are less steeply graduated and based less on ability to pay than would have been the case if this pressure had not been offset by the power of business. Government expenditures likewise have been greatly increased as a result of mass pressure, but that pressure has been nullified to a considerable degree by the desires of the much smaller business group.

## CHAPTER VIII

### BANKING AND INSURANCE

In the fields of banking and insurance, business pressure on government is exerted through individual corporations and important interest groups. The larger banks and insurance companies are an integral part of the business community and are dominated by much the same group of individuals which dominates the business community generally.<sup>1</sup> The two large bankers' organizations, the American Bankers Association and Investment Bankers Association of America, are "extensions" of the corporate community.<sup>2</sup> In speaking of banking and insurance, one speaks not of professions separate from business and industry, but of citizens closely, even organically, related, in philosophy and general attitude, to business and industrial groups.

#### COMMERCIAL BANKING

Of the 15,000 commercial banks in the United States, more than four-fifths are members of the American Bankers Association. They are widely and evenly scattered over the entire country, more than 60 percent being located west of the Appalachian Mountains. The association is highly organized and draws forth and mobilizes the views of country and metropolitan banker alike. Through a skillfully led set of promotional departments, continuous efforts are made to impress these views on the American people as being "best for the Nation," hence, best for banking.<sup>3</sup>

Since its founding in 1875, the history of the association has been one of development and growth to conform with the changing and expanding conditions of banking and the country. In recent years, however, the rate of change has not been fast enough to forestall widespread criticism and questioning of the banking structure. The Banking Act of 1935 departed so widely from what the association regarded as basic principles of banking in the United States that the association drew up a statement of its views. They are worth examination.

#### *Banking and the Government.*

The first of these principles is that the Nation's financial requirements are unrelated to political changes.

"The real conditions that create the necessity for the expansion or contraction of credit arise from the needs of agriculture, industry, and

<sup>1</sup> National Resources Committee, *The Structure of the American Economy*, Washington, 1939, pp. 160-163.

<sup>2</sup> *Ibid.*, p. 163.

<sup>3</sup> For the most part, the publications of the American Bankers Association itself have been used in preparing this section. The principal ones are: *Official Lists, Constitution and By-Laws*; the *A. B. A., Its Purposes and Activities as an Organization of Service to the Banks and to the Nation*; *Recommendations of the Special Committee of the A. B. A. on the Proposed Banking Act of 1935*; and statement of R. S. Hecht, president, A. B. A., on the same before the Senate Subcommittee on Banking and Currency.



trade themselves, wholly independent of the administrative policies of the party which happens to be in power. We [the association] feel that the financial requirements of the Nation's business constitute a continuing economic process that is not related to political changes. The fundamental principles of sound credit do not vary with variations in public thought."<sup>4</sup>

This statement does not mean that banking, according to the view of A. B. A. membership, should be completely free of governmental contact. The Government may properly exert—

"a certain amount of control over banking operations so far as they affect the Nation's currency and general monetary policy. Nor do we [the association] object to broad powers of supervision over the operation of our banking institutions because of the semi-public responsibilities they carry."<sup>5</sup>

Beyond these limits, however, the Government should not go. The granting of credit and the making of investments are questions of business policy that should remain in the control of the bankers.

It seems clear that the bankers in the A. B. A. want control over the money supply of the country. They protest vehemently against vesting this function in the hands of the Government. Today, the money supply of the American people takes two forms: (1) Currency, and (2), more important, "check book money," that is, demand deposits in the banks which become current through checks. It is the power to influence the quantity of this deposit money which the bankers feel should be beyond the reach of the Government.<sup>6</sup>

This power should, in their opinion, lie in the hands of the bankers themselves, or at the most in the hands of a nonpolitical, though governmentally-appointed, board. Such a board would consist of five persons appointed by the President with the consent of the Senate, holding office for a long term of years, and removable from office only for cause.<sup>7</sup> Together with four additional persons selected by bankers, the board would constitute the "open market committee" in whose hands would rest the actual authority to influence the quantity of deposit money. A credit system so controlled would realize the A. B. A. ideal of a "supreme court of finance."<sup>8</sup>

Such a banking mechanism would, according to the bankers, divorce credit control from "politics." "Special care should be taken to keep our credit control and banking mechanism free from any sort of political considerations."<sup>9</sup> "The policies of the [Federal Reserve] Board should have no reference to the politics or the changes in politics of the National administration."<sup>10</sup> The bankers fear that Government will, by the means indicated, add to its multiplying functions the control of the credit system of the Nation.<sup>11</sup>

<sup>4</sup> Hearings before a subcommittee of the Senate Banking and Currency Committee, 74th Cong., 1st sess., on S. 1617 and H. R. 7617, Washington, 1935, p. 518.

<sup>5</sup> *Ibid.*, p. 517.

<sup>6</sup> *Ibid.* The power is exercised through open market operations (buying and selling of Government bonds by a central board); fixing the discount rate (the price at which "bankers' banks" (Federal Reserve banks) extend credit to their members); and fixing reserve requirements (the backing required for demand deposits).

<sup>7</sup> *Ibid.*, pp. 519, 520.

<sup>8</sup> *Ibid.*, p. 520.

<sup>9</sup> *Ibid.*, p. 518.

<sup>10</sup> *Ibid.*, p. 519.

<sup>11</sup> Although the American Bankers Association suggestions as to the make-up and powers of the Federal Reserve Board were not adopted in the Banking Act of 1935, the act was thought "on the whole" to be "an acceptable piece of legislation." (Letter of transmittal from the Special Committee on the Banking Act of 1935, to the American Bankers Association, accompanying text of Banking Act of 1935, dated August 23, 1935.)

During the discussion on the 1935 Banking Act the view was expressed that political control was possible without political domination. Between the extremes of political control of credit by Government, on the one hand, and nonpolitical control by private bankers, on the other, is a third possibility—political control of credit by persons not in public office. Mr. Winthrop W. Aldrich, chairman of the Chase National Bank, and a member of the A. B. A. special committee, told a Senate subcommittee that the proposed legislation permitted political control of credit by Government, in the sense that—

to place the control of the currency and the credit of the country in the hands of individuals who are subject to removal by an administration [as he contended was the case in the pending legislation], is to place the power in an administration to utilize the system for the purpose of creating a boom at the time when an election approaches.<sup>12</sup>

Under questioning by Senator Couzens, Mr. Aldrich agreed that—in the boom of 1929, when these Reserve banks were advocating a rise in discount rates, the mere contact of any administration here with the Federal Reserve Board would have been an influence against any act which would help to boost the boom.<sup>13</sup>

So, I do not get so stirred up about this mere technical assertion of political control—

Senator Couzens commented.

You can have political control whether you have political domination or not. \* \* \* When you talk about political control of the Federal Reserve Board or political control of anything else, as a matter of fact it does not have to be on the statute books in order to give political control. You can have political control of all kinds without a word on the statute books.<sup>14</sup>

If I understand the meaning of "polities"—  
he continued—

it does not just apply, or at least it has not in the past just applied to public officials. \* \* \* Does not politics apply, in part at least, to other activities of life, I mean other than to holding public offices?

Mr. Aldrich replied, "I suppose it does."<sup>15</sup>

In other words, it is not necessary to occupy political office in order to take action having political results. A "nonpolitical" board can control bank credit to achieve political results. So can a "political" board. Adoption of the A. B. A. proposals regarding the composition and powers of the board<sup>16</sup> would not have guaranteed nonpolitical credit control.

Between 1922 and 1932 the relationship between the State Department and private bankers appears to have coincided with these views of the American Bankers Association.

American bankers intending to float foreign issues or to grant credits to foreign governments consulted the State Department before they took final action. After deliberation, the Department notified the bankers of its attitude whether or not objection to the financing was interposed. The conference of Cabinet members and bankers at which this policy was formulated was called at President Harding's request.<sup>17</sup>

<sup>12</sup> Hearings before a subcommittee of the Senate Committee on Banking and Currency, op. cit., p. 393.

<sup>13</sup> *Ibid.*, pp. 407-408.

<sup>14</sup> *Ibid.*, p. 458.

<sup>15</sup> *Ibid.*, p. 393.

<sup>16</sup> See Recommendations of special committee of the American Bankers Association on the proposed Banking Act of 1935.

<sup>17</sup> E. P. Herring, *Public Administration and the Public Interest*, McGraw Hill, New York, 1936, pp. 80-81, 84.

Of the results of its operation there is little question: "There is no doubt that the foreign loan policy of the Federal Government (from 1922 to 1932), as it worked out in practice, aided the bankers and ignored the investors."<sup>18</sup> No simple statement of fact is possible as to whether the pressure for the formulation of this policy came from the President, from his Secretary of State, from a private citizen, or from officials of a bankers' association. Yet this is not necessary in order to grasp the significance of this informal manner of translating group aims into public policy. This informal policy-making was possible because the granting of credit and the making of investments were not under effective Federal supervision.<sup>19</sup>

*Business and the Government.*

In addition to its conviction that politics and banking are and should continue to be divorced, the A. B. A. makes plain its position on other public questions. Even after several years of the gold sterilization policy of the Federal Government, the A. B. A. continues its historic stand for "sound money." Also, the association believes in private enterprise and individual initiative. "It is our conviction that preponderant public opinion in this Nation is against any form of socialization of our national industry, commerce, or finance." The Federal Government should neither control nor should it operate the Nation's economic and financial machinery. During times of economic depression such governmental intervention may be justified; but "with the passing of emergency conditions, the need for the retirement of the Federal Government from the field" should be recognized "as a matter of national policy." Also, widespread social benefits to the Nation would result from such recognition. "We believe," say the bankers, "that the only fundamental cure of unemployment is through the stimulation of reemployment by the removal of unjustified barriers to the free play of private enterprise and individual initiative." Government credit operations, although necessary in depression, should be discontinued. "It is our duty as bankers," they claim, "to facilitate in every effective way the retirement of Government agencies from credit activities by promoting public understanding of the proper function of privately owned banking." Terming the competition of the Postal Savings System "inequitable," the A. B. A. advocates its modification, if not its total abolition.

Equally plain are the association's views on taxation and Government expenditures. Government costs too much, the bankers feel. The public demands more of the Government, hence, functions have increased. When undertaken by Government, the cost of such activities is "relatively high." Also, there is "the inevitable wastefulness of bureaucratic organizations." The result is an increase in taxes constituting "an outstanding public problem from which no class of our people ultimately can remain exempt." The tax burden is not the concern of any one class of the people; it is "a problem and a menace

<sup>18</sup> *Ibid.*, p. 84.

<sup>19</sup> The difficulty in ascertaining the facts about the administration of foreign policy makes confident generalization hazardous. Professor Herring says: "The position of the State Department renders it immune to the influence of such pressure groups [those with a direct economic interest in foreign policy], and its contacts with these associations are of little significance in the administration of the Department's work" (*Ibid.*, p. 77). However, "no one seems to have made a systematic study of the identity and the activities of private pressure groups seeking political intervention to promote and protect American interests in foreign countries." H. H. Sprout, "Pressure Groups and Foreign Policies," *Annals of the American Academy of Political and Social Science*, May 1935, p. 121, note.



for all our people." Unless the upward trend of taxes is curbed, individual initiative and enterprise will be repressed. In that case, the increased taxes will "increase the very types of human misfortune which they in so large part are aimed to relieve."

Solution of the unemployment problem hinges not only on the restoration of free enterprise and initiative and on curbing taxation, but also on a balanced National Budget, hence on decreased Government expenditures. The "illusion" that "Government expenditure is of itself a cure for economic ills" is, according to the belief of the bankers, "one of the most serious dangers confronting the Nation." Continued deficits are partially justified by efforts to relieve human suffering and deprivation in depression times. Nevertheless, "there are well defined, though limited, fields within which Government expenditures are justified." "The prime consideration of sound national fiscal policy" should be "definite efforts to return to a balanced National Budget," presumably through limiting Government expenditures to the fields referred to. Whatever these fields may be, spending for unemployment relief purposes is not one of them. A balanced budget "is the surest way of relieving human suffering and deprivation, chiefly because, of the stimulus and confidence it would give to private industry and trade whose normal activities should be the fundamental source of employment and security."

Although in general it condemns Government control of business and finance, the association welcomes such control in the issuance of bank charters. Issuance of new charters in those localities too small to support a bank or which are adequately supplied with banking facilities should be prevented. Governmental power to inquire into such matters as a condition precedent to admitting a new bank to the benefits of Government deposit insurance is looked on with favor by the bankers. The pattern of most pressure groups is to seek the assistance of Government for certain ends, at the same time remaining free from its control in other ways.

#### *Propaganda Methods.*<sup>20</sup>

The American Bankers Association is conducted on the broad principle that "what is best for the Nation is best for banking. The welfare of the two is indivisible." The task of the A. B. A. public education commission is to publicize the bankers' thoughts on "what is best for the Nation."

The organized bankers aim to sell themselves and their ideas to the American public. In its completeness, their public relations program goes far beyond the mere use of the newspaper press. In its deliberateness it surpasses the calculated activities of many other citizen groups. It is a frank and open effort to gain more extensive public approval of bankers and of bankers' methods, in order to secure public acceptance of the ideas which the bankers think are "the best for the Nation." The primary objective of the A. B. A. public relations program is "to focus attention on, and give impetus to, those ideas which it believes are beneficial in promoting understanding and solidarity among banking, business, and the public." The program "is calculated to produce a continuous and cumulative effect by varied

<sup>20</sup> The material from p. 129 to p. 131 is derived from the pamphlet, "The Public Relations Program of the American Bankers Association," August 1935.



efforts which are aimed to work day in and day out in the desired direction."

Among these varied efforts are the preparation and distribution to the newspaper press of "canned" articles; advertising in the newspapers; publication of books and pamphlets for distribution in agricultural areas; and the association's official monthly magazine, *Banking*.

The publicity department writes and distributes the "canned" articles. They deal particularly with the activities of the A. B. A. "in improving banking and business conditions." Over 6,000 city and country daily and weekly newspapers receive the matter at frequent intervals in the form either of matrices or plates of type. "The subject matter always deals with principles and never deals with personalities or individualized controversies." It is estimated that more than 25,000,000 people read the papers in which the articles are published.

The newspaper advertising is dispensed by an advertising department, and is available at a moderate price for all members who care to use it "in bringing about better public understanding in their own communities regarding banking and its services."

For aid to farmers in setting up better financial, accounting, and operating methods on their farms, the agricultural commission has published two books, *Making Farm Investments Safe*<sup>21</sup> and *Factors Affecting Farm Credit*.<sup>21</sup> The commission also publishes a regular bulletin which circulates to about 10,000 persons, among them the county agricultural agents throughout the United States.

Some 20,000 people subscribe to *Banking*, about two-thirds of whom are bankers, while the remainder are bank directors, business executives, economists, law firms, Government departments, libraries, colleges, public schools, and publications. "To these groups it brings each month articles regarding banking and banking viewpoints." Little attempt is made to pitch the subject matter on a popular level. Instead, it is aimed to reach the leaders in industry, commerce, transportation, and finance. "Among thoughtful and influential business leaders, it serves as a continual liaison in respect to the aims and activities of organized banking and banking thought."

Another, and most subtle method of propaganda is the preparation of "plain language" talks about banking by the public education commission. These are for use by bankers when speaking before grammar and high school classes, before civic clubs and over the radio. The same material is also supplied to lay speakers, and is disseminated widely through State bankers' associations. Thus, "although the forces thus set in motion by the American Bankers Association are having far reaching effects, the part played by this association, itself, is not obvious in them when their effects reach the public."

Another scheme for improving public relations in which the association stays in the background, is the instruction of banking employees in methods of making banking customers better satisfied. This activity is based "on the proposition that, if the attitude of the many millions of persons who come into the banks as customers were made better informed [sic] and more sympathetic, this would act as a leaven

<sup>21</sup> Agricultural commission, American Bankers' Association, *Making Farm Investments Safe*, Madison, 1933; and *Factors Affecting Farm Credit*, Madison, 1934.

and an improved state of public mind toward the banks in general would necessarily result." About a thousand members have organized employee conferences, using as the basis of instruction the materials prepared for this purpose by the public education commission.

Besides organizing special material for use of farmers, the agricultural commission has designated 2,300 key bankers covering every county in the United States "to act as focal points in their districts in fostering better understanding between bankers and farmers."

In addition to these informal propaganda methods, the association, through the American Institute of Banking, maintains an institution for the technical education of the younger banker. But it is also an institution which has in recent years "been consciously directed more clearly toward playing a part in improving public relations for banking as a whole." The textbooks and courses emphasize the public responsibilities and ethical aspects of practical banking. The various institute chapters are also active in the presentation of addresses before schools and civic bodies and over local radios. These talks are "aimed to improve the attitude of the public toward banking." Thus, the American Institute of Banking becomes a clear channel for presenting its students and the public with organized banking's best ideas for the Nation.

#### *Representation at Washington.*

Special pains have been taken by the executive officers of the association, working with the committee on banking studies, to improve the standing of organized banking at Washington. These efforts toward better public relations stand in a class by themselves. There is little doubt that they amount to lobbying, pure and simple, despite the association's claim that it maintains no lobby at the Nation's Capital. The two groups "have been constantly active at Washington in consultation with administration and congressional leaders \* \* \* they have had an opportunity to play a constructive part in shaping banking legislation." Although "these activities have involved a considerable increase in the expenditures of the association," they are clearly regarded as worthwhile. They have brought about "a much more favorable political atmosphere at the National Capital toward bankers and banking." "Bankers," it is maintained, "are no longer looked upon as obstructionists in respect to desirable changes in the banking law." Instead, they are "a very important influence for good on public opinion and on the political attitude of the day regarding banking."

The association's candid description of its own propaganda creates some doubt as to the accuracy of its evaluation of the results obtained, and well known opposition of bankers to banking legislation increases this doubt. There is no doubt, however, that the association has made a Nation-wide effort to bring its views and those of America's millions into close agreement. Perhaps, in the light of the evidence, the bankers' guiding principle, "What is best for the Nation is best for banking," should read, "What is best for banking is best for the Nation."

#### INVESTMENT BANKING

The Investment Bankers Association was established in 1912. Since that time, productive capacity in American industry has advanced tremendously, and the automobile, oil, rubber, chemical, and electrical

equipment industries have advanced to the front rank of large-scale enterprise. A total of \$125,000,000,000 of nongovernmental securities was offered publicly during this period.<sup>22</sup> The Investment Bankers Association has since its establishment been the recognized spokesman of the distributors of these securities.

By no means all or even a majority of the units in this distributing system belong to the I. B. A. The Securities and Exchange Commission reports nearly 7,000 registered firms dealing in securities,<sup>23</sup> of which only 800 are I. B. A. members. But there is little doubt that this minority speaks for the industry. The association's selected membership is composed of "especially high grade investment bankers." Its sponsorship of the investment banking code under the N. R. A. signifies its position as industry spokesman. Finally, through the Investment Bankers Conference, with which it is closely associated, the association speaks for the entire industry before the Securities and Exchange Commission. Therefore, the views entertained by the association may be accepted as representing those of the industry.

Generally speaking, the attitude of the Investment Bankers Association toward Federal regulation of their business has been one of resignation, mingled with hope. Like most private business, investment banking is willing to cooperate with the Federal Government to eliminate so-called unfair trading practices. But beyond this, investment bankers want to police themselves. In fact, their ultimate aim, even today, is self regulation.

#### *The Role of Investment Banking.*

The investment bankers' belief in the wisdom and desirability of relative freedom from Federal intervention is accompanied by a deep-seated conviction that they perform a vital social and economic function for the country, and that the country's welfare demands the performance of this function with as little interference and dislocation as possible. Through the American Bankers Association, the commercial bankers voice their conviction that "what is best for the Nation is best for banking." No such neat identification of interests sums up the philosophy of the country's investment bankers. In fact, the only reference to general welfare in the I. B. A. constitution is in the phrase "general welfare and influence of dealers in investment securities," which, among other things, the association was founded to promote. Nevertheless, there is no doubt that the Nation's progress is, in the minds of the membership of the I. B. A., closely bound up with their own.

This feeling expresses itself in a number of different ways. One illustration is the association's own high opinion of its part in reopening the capital markets in 1935. Amendments to the Securities Act (1933) advocated by the I. B. A. and later (1934) embodied in the Securities and Exchange Act resulted, in the association's opinion, in the preservation of the capital-raising machinery of the country and constituted a beginning of economic recovery. "\* \* \* the machinery for translating the savings of the public into brick and steel, jobs and products, through the employment of capital in pro-

<sup>22</sup> In the preparation of this section, proceedings of the I. B. A. annual conventions have been used, as well as reports of its various committees and its professional periodical, *Investment Banking*.

<sup>23</sup> Securities and Exchange Commission, *Selected Statistics on Securities and on Exchange Markets*, Washington, 1939, p. 40.



duction was effectively preserved," said Orrin G. Wood, I. B. A. president in 1936, "because of the approach this association gave to this vital question confronting it in 1933." "Furthermore," he said, "when the economic historian studies the depression that followed 1929, I believe that one outstanding signpost of recovery will be the reopening of the capital markets in 1935." Another example is in the association's acceptance of responsibility for helping prevent stock-market crashes. In 1937 it affirmed its recognition of "a definite responsibility to help in every way it can to prevent a recurrence of a major panic such as that from which we have recently emerged." Also in placing investment banking alongside the railways, the telephone and telegraph system, and the news gathering and disseminating systems as agencies responsible for the growth of the Nation and "for making the modern world go around," Edward B. Hall, president in 1937, was viewing progress for the Nation and progress for the investment bankers in similar, if not identical, terms.

#### *Regulation and—Regulation.*

The investment bankers are resigned to Federal regulation at the same time that they hope for self regulation. The Federal Government restrictions under which securities' distributors operate date from 1933. In that year, the first of two major regulatory laws governing the sale of securities was enacted, the second dating from 1934. In a very real sense, these laws constituted the public response to the question posed by the stock market crash of 1929 and by the economic depression which followed. The public wanted to know who was responsible. The answer was that the major blame should fall on the bankers. The obvious remedy was to restrict the operations of commercial and investment bankers alike, and these restrictions are embodied in the Securities Act of 1933 and the Securities and Exchange Act of 1934.<sup>24</sup>

While agreeing that certain minimum standards of conduct are of value both to the public and to the industry, the investment bankers feel that the restrictions in these laws are too severe. They have for many years, they say, been striving to realize the same, or at least "virtually identical," objectives which are the goal of the regulatory laws. In 1936 these were stated by Orrin G. Wood, I. B. A. president, to be (1) full disclosure and proper presentation of facts to investors, (2) honorable practices and fair dealings with all investors, and (3) fair trade practices among dealers. Moreover, Mr. Wood continued, "long before the Exchange Act was passed, we favored full and frequent reports by companies seeking capital from the public." The association does not object to the goals of Federal regulation; it would "welcome" "intelligent" Federal regulation to supplement State regulation, improve business standards, and drive from business those who do not serve the interest of the investor. It is the methods of the regulatory approach which draw the association's criticism. These methods are claimed to be "unnecessarily expensive" to the issuing corporation, impractical, and to expose the securities handlers to unreasonable risks. "\* \* \* the business does not want to be bound by laws, rules, and regulations to such an extent that it is impossible to transact a relatively simple piece of business without inadvertently overstep-

<sup>24</sup> To these two pieces of legislation should be added the Banking Act of 1933, the Banking Act of 1935, and the Public Utility Holding Company Act of 1935.



ping the bounds." In making these criticisms, the association claims to be thinking beyond its own interests. " \* \* \* it is in the interest both of the investment banker and the public to limit so far as possible the field of Government regulation and to leave as large a scope as possible for regulation of our business by the industry itself," said Mr. Wood in 1937. The association apparently feels that self regulation by the industry is synonymous with "intelligent" Federal regulation.

The investment bankers are hopeful of better times. They hope that the public mood expressed by "excessive" regulation will prove transitory. The way would then be open to relax stringent restrictions, retaining those features of Federal regulation which have the industry's support and, at the same time, allowing ample room for self regulation. According to a member of the I. B. A. board of governors, the mood is world-wide, and in the United States, it is one of anger directed toward investment bankers, among others. But it will not continue indefinitely, "because people in the mass never stay mad permanently over one thing." They get bored and tired with their anger. "Therefore," the argument goes, "the mood will change," and in the meantime, it is better not to question the motives of the Federal authorities. The industry will do well to accept them as well-intentioned and to recognize that there is much good in what is being done. But the argument clearly infers that when the popular mood changes, there will be an opportunity to rectify the things which the investment bankers "do not like" and which they regard "as inequitable," not only to themselves but also "to the economic structure of the country." In other words, the advice is to make the best of an admittedly bad situation and hope that with the passage of time the lot of the investment banker will again be a happy one.

The shrewdness of this analysis has been confirmed. Although basic features of Federal regulation show few signs of weakening, in other respects the persistence and long-suffering attitude of the I. B. A. are being rewarded. Among other things, the Investment Bankers Association has objected to what it felt were unnecessarily full and detailed data required in registering a security issue and to the 20-day waiting period between the filing date and the public offering of the issue. Working through the Investment Bankers' Conference, the I. B. A., by August 1940, had come to an agreement with the Securities and Exchange Commission to reduce the waiting period provision, under certain circumstances.<sup>25</sup>

### *Propaganda.*

By formal resolution, the association, both "as an association and through its members," does "whatever is appropriate \* \* \* to assist in carrying out" the sense of its attitude on Federal fiscal policy. This it does "in the spirit of the best American tradition" and while "continuing to maintain its freedom from political affiliations." While referring specifically to fiscal policy, this statement presumably applies equally to other policies directly affecting the business of investment banking. A publicity program in the country at large, in addition to direct representation in Washington, suggests the methods employed.

To gain a relaxation of the more restrictive features of Federal regulation, to bring national tax and fiscal policies more in line with

<sup>25</sup> Securities Act News release.

its own views, and to make known its position on other Government policies, the association is represented in Washington by a tax expert, and, as occasion demands, by its officials and committee chairmen, as well as indirectly through the Investment Bankers' Conference.

The latter organization is separate and distinct from the association, although "practically every member of the conference governing committee is with a firm that is a member of the I. B. A." Apparently, the conference was set up at the direct request of the Securities and Exchange Commission, following the experience with the Investment Banking Code. It has been called "an advisory committee to the S. E. C." The association, however, is a trade organization. "It can and should go to Washington on behalf of the industry and fight any regulation or bill that it desires to," said Sidney J. Weinberg at a meeting of the I. B. A. board of governors in 1937. The conference, on the other hand, "has no power to advocate or oppose anything. It can only determine what is in the best interests of the public, and then present it as a matter of advice." "All the work which the conference is doing it is doing in a spirit which you might compare to the gentle persuasiveness of Paul the Apostle. The work which the I. B. A. inevitably has to do is characterized by what you might call the militant pursuit of an objective by the Crusaders." The tax expert is employed "to officially represent the association before the proper tax bodies or committees in Washington."

To provide public support for its Washington efforts and to spread its views generally, the Investment Bankers' Association has an education committee, employs an educational director, and conducts a program of educational activities. But its propaganda program is by no means as vigorous as that of the American Bankers Association, nor is it as clearly shaped to enlist believers in its cause. It is aimed at benefiting the investor, and seeks the support of the general public to that end. It "is designed principally to give the investing public a better understanding of investment problems and of investment banking. It also undertakes to get the great mass of available information on finance and investments to the public in a manner that will be more beneficial to the investor."

Nevertheless, the association hopes for a wider circulation of its material by furnishing material to writers, authors, and speakers dealing with subjects pertaining to investments. A lecture on finance who appears before women's clubs and similar organizations is supplied material by the educational committee. Furnishing speakers on investment subjects for clubs, service groups, and other similar organizations appears to be "a big but neglected opportunity for educational work" which the educational committee plans to grasp more strongly than heretofore. The committee is also aware of the possibilities of publicity through syndicated newspaper articles in small town and country newspapers as well as in metropolitan dailies. Material supplied by the committee has already been used as features in financial newspapers.

One additional educational feature is worth comment. Bond salesmen are the industry's contact with the public. The possibilities of disseminating through them the point of view of the industry's leadership has not been overlooked. Each salesman is "a center of radiation of opinions." Through him the people of the country are to be im-

pressed "with the fact," to quote one of the association's board of governors, "that, while there are a good many things going on that we do not like or believe in—things which we regard as inequitable not only to ourselves but to the whole economic structure of the country—yet we do recognize that there is much good in what is being done, and, recognizing that, we give due credit for it. Such an attitude will help us to do our part in minimizing the bad." "That is a point of view," it is thought, "which in the long run, if spread by every last member of our organizations, is going to appeal to the people of the country." In other words, investment bankers think they are able to wait for the inevitable turn of the political wheel.

#### THE LIFE INSURANCE LOBBY

The life insurance companies are well organized for the purpose of defeating or influencing State and Federal legislation.<sup>26</sup> The most powerful insurance lobby is an association known as the Association of Life Insurance Presidents. This association, set up in 1906, represents 85 percent of insurance business and is the group which conducts the legislative activities. The New York City staff of 60 assembles statistical information, participates in or supports "test litigation," and engages in lobby activities. This last activity in 1937 absorbed \$181,246 of the total expenses of \$390,380.<sup>27</sup> The staff follows bills bearing on insurance business, which includes a wide variety of legislation, and gives special attention to "objectionable bills." Policy holders are not consulted as to their opinion of "objectionable."

The method of lobbying is to name in every State a "legislative correspondent" who is an insurance company employee and who is known as a "voluntary worker" because he turns in only expense vouchers for his work as a lobbyist.<sup>28</sup> This representative tries first to kill bills before they are initiated. Failing here, he works to secure friends on committees or manipulates the introduction of an opposing bill. If an "objectionable bill" passes one house, he repeats his former tactics in the other house. Testimony before the T. N. E. C. showed that by using these tactics in the 1935 session of the Georgia legislature only one bill opposed by insurance interests got onto the floor of the house.<sup>29</sup>

Methods also used are personal contacts with legislators, distribution of legal patronage, campaign contributions for the candidate favorable to the insurance companies, and coercive methods. In Georgia, for example, a legislator, who was also a physician, was threatened with withdrawal of medical examination fees by the insurance companies.<sup>30</sup> Policyholders are solicited to send wires and letters to legislators, often at the expense of the insurance company.

Although the association stays behind the scenes as a rule, executives are sometimes called on to act directly. In Florida, in 1935, the elaborate and efficient organization of pressure, maps, cards, indexes, with information on legislators (the personal file being always kept

<sup>26</sup> This section has been prepared from testimony presented before the Temporary National Economic Committee, pt. 10, pp. 4345-4447, and from the Report on the Study of Legal Reserve Life Insurance Companies, prepared at the committee's direction by the Securities and Exchange Commission.

<sup>27</sup> Hearings before the Temporary National Economic Committee, pt. 10, p. 4356.

<sup>28</sup> *Ibid.*, p. 4357.

<sup>29</sup> *Ibid.*, pp. 4768-69, 4777.

<sup>30</sup> *Ibid.*, p. 4777.



separate) resulted in the defeat of every bill introduced in that session of the legislature deemed "objectionable" by the association.<sup>31</sup>

State legislation authorizing mutual savings banks to sell life insurance direct to consumers has been fought by the association with particular bitterness and with unusual success. Since the passage of the Massachusetts savings bank life insurance law in 1907, bills to authorize such sales have been introduced in the legislatures of many States, but have all been defeated. The law adopted in 1938 by the New York Legislature was not opposed by the association.<sup>32</sup>

Although the major portion of the association's lobbying is done before State legislatures, it is active on occasion in Washington also. The association in 1935 opposed the Frazier-Lemke Act for refinancing farm mortgages when it was before Congress. When the measure passed, the association continued its opposition by arranging for the act's constitutionality to be tested in the courts. In the case of *Radford v. Joint Stock Land Bank*, the Supreme Court, in an unanimous decision, held the Frazier-Lemke Act unconstitutional. To fight this case, the association retained special counsel costing \$60,000, yet the association's hand was not disclosed until the testimony of its manager was presented to the T. N. E. C. 4 years later. During the period from 1934 to 1938, the association gave financial support to over 30 different actions and paid legal fees of over \$197,000 and expenses of over \$27,000.<sup>33</sup>

The association was founded in 1906 for the purpose, among other things, of providing a means whereby legal reserve life insurance companies could present their views openly to legislative bodies on measures pending before them. The Armstrong report to the New York State Legislature had severely criticized the "clandestine activities" then pursued by lobbyists acting for the insurance companies. Presumably taking this criticism to heart, the association adopted as one of its guiding principles the careful consideration of "measures that may be introduced from time to time in legislative bodies with a view to ascertaining and publicly presenting the grounds which may exist for opposing or advocating the proposed legislation." The testimony before the T. N. E. C. shows that the "clandestine" lobby complained of by the Armstrong report still exists. "While present day practices are not as crude as those scored by the Armstrong committee in 1906, the life insurance lobby has become more polished and its effectiveness has been increased through concentration of funds and initiative in the hands of a single unit. No justification exists for a *sub rosa* lobby carried forward without adequate disclosure and financed with the funds of policy holders whose interests more properly should be guarded by the free judgments of their elected representatives."<sup>34</sup>

#### *Assistance From Other Groups.*

It must not be assumed that political activity concerning banking, finance, and insurance matters is confined to the maneuvers of the American Bankers' Association, the Investment Bankers' Association of America, and the Association of Life Insurance Presidents. While

<sup>31</sup> *Ibid.*, p. 4764.

<sup>32</sup> *Ibid.*, p. 4420.

<sup>33</sup> *Ibid.*, pp. 4352-4354, 4750.

<sup>34</sup> S. E. C. Report on Legal Reserve Life Insurance Companies, op. cit., p. 382.

these groups are perhaps more directly concerned over Government policy in this field than any others, the interests of associated business groups are also concerned. This means that other associations from time to time render aid and assistance to the major groups concerned.

One such group is the Edison Electric Institute, which is hardly less concerned with Government policy regarding public utility financing than the banking and insurance companies themselves. Both the institute and the banking associations were extremely active in the Utility Holding Company Act of 1935.<sup>35</sup>

Another group lending aid and assistance to the banking and insurance interests is the American Federation of Investors. This group, purporting to speak "in the interest of millions of thrifty American citizens who have invested in the securities of American industries, in life insurance policies, and in savings bank deposits," appears to have been brought into existence with the approval of the public utilities, if not at their direct suggestion. It became active in 1935 when it began to engage in many of the propaganda and pressure group methods which other better known groups have already made familiar to the public. The American Federation of Investors published a small monthly periodical, *Investor America*, which advocated "a fair deal for the honest investor." In addition, the Federation ascertained the standing of incumbents and candidates for Congress on what it felt were current vital questions, and mailed the resulting information to many voters for their guidance.

The vital questions on which candidates for Congress were quizzed were obviously designed to distinguish between candidates with a "sound" political philosophy and those who were "unsafe." Only a candidate who saw these vital questions in terms of either black or white found it possible to answer the questionnaire fully.<sup>36</sup>

The federation also communicated directly with Senators and Congressmen with respect to pending legislation and other congressional activities. Thus, on October 21, 1935, Dr. Hugh S. Magill, federation president, wrote to Senators and Congressmen, protesting against activities of the congressional committee then investigating lobbying activities.<sup>37</sup>

These activities of the Edison Electric Institute and the American Federation of Investors are, perhaps, typical of nonbanking groups which are sympathetic with the views of banking groups in public affairs. Also, the Association of American Railroads, with the nu-

<sup>35</sup> See ch. IX for a fuller discussion of this activity.

<sup>36</sup> Besides asking candidates whether they favored Government ownership and operation of railroads and other public utilities, whether they favored as a public policy Government competition with private business and industry, and whether they favored the centralization of governmental function and the enlargement of the powers of the Federal Government with respect to business and industry by amendment to the Federal Constitution, the federation also asked for "yes" or "no" answers to such questions as: Will you uphold and protect the right of every American citizen to possess and enjoy property honestly and legally acquired? Do you favor the setting up of committees or commissions of inquisition that harass and intimidate innocent citizens in order to suppress opposition, and do you favor limiting the powers of the Federal judiciary to declare unconstitutional laws enacted by Congress?

<sup>37</sup> It is interesting to note the federation's point of view with respect to the "so-called" lobby bill. In federation opinion, this bill "represented an attempt on the part of Congress, composed of representatives of the people, to prohibit any of the people from effectively promoting measures which they might regard as in the interest of public welfare, and, likewise, from opposing bills which they might regard as hostile to their best interests; \* \* \* it is hard to understand how in a government of the people, by the people, and for the people, such a measure should be promulgated by the representatives of the people."

merous State railroad associations established at its direction, has been active in regard to railroad financing legislation.<sup>38</sup>

Even such organizations as the National Association of Manufacturers from time to time issue statements on banking and investment questions. Thus, on January 13, 1939, the president reported the results of a random poll of 3,000 stockholders, conducted by the National Association of Manufacturers, attributing the stagnation of capital to the New Deal. The results of this survey were referred to committees in both Houses of Congress as an advisory document.<sup>39</sup> The results of the survey were, in general, in line with the ideas of the Investment Bankers Association and other banking and insurance groups.

#### BUSINESS AND GOVERNMENT SHARE THE BANKING FIELD

Current Federal policy in the banking and investment field does not bear the imprint of business or banking philosophy to the extent that it does in the industrial relations field. The 1933 banking crisis was so severe and the revelations of congressional investigating committees so significant that the relative freedom of action enjoyed by bankers prior to 1933 has been severely circumscribed. Legislation governing truth in securities, issuance of securities, stock market practices, and regulatory laws in such fields as public utility and railroad financing leave to investment banking and commercial banking alike a narrower field in which to operate than heretofore.

On the other hand, Government has expanded its functions in the field of credit. In such fields as agricultural credit this expansion dates back many years before 1933. But the absence of credit during the depression, starting in 1929, was so marked that the Government had to go to the aid of numerous sectors of the population. In addition to farmers, Government now extends credit in one form or another to States and municipalities, present and prospective home owners, shipbuilding companies, ship owners and operators, as well as to banks, railroads, insurance companies, etc.

Thus far the insurance companies have managed to escape Federal regulation. In this respect, they enjoy a freedom once enjoyed by commercial and investment banking. The insurance companies, aided by such general business organizations as the chamber of commerce, have long argued that their business should not be regulated by Federal law, but by the States.<sup>40</sup> The evidence is insufficient to indicate that the insurance lobby is responsible for the present lack of Federal regulatory legislation in this field. Yet there is no doubt that Congress has at least tacitly accepted the viewpoint that insurance should be subject not to Federal but to State legislation.

<sup>38</sup> See in this connection information regarding such activities of the Association of American Railroads discussed below, ch. IX, pp. 144-146.

<sup>39</sup> The New York Times, January 14, 1939.

<sup>40</sup> See p. 35.





## CHAPTER IX

### UTILITIES AND RAILROADS

The electric and gas utilities and the railroads have a long history of lobbying both in Washington and at the various State capitols. Although both are publicly regulated private industries, both follow the lobby pattern which has been fixed by unregulated private industry in the matter of striving to shape public policy.

The business community is active in this field just as it is in the fields of industrial relations, banking and insurance, tariffs, and taxes. Naturally the national associations into which the utilities and the railroads are organized are the most active groups. The Edison Electric Institute is the trade association of the electric utility industry and performs many of the functions of a lobbying organization, as well as those of a regular trade association. The railroads are organized nationally into the Association of American Railroads.<sup>1</sup>

The lobbying record of the Association of American Railroads is longer than that of the Edison Electric Institute, but the latter has been very active since the electric utility industry came of age in the early twenties. At that time the utility trade association was known as the National Electric Light Association. Since 1935 the driving force of the utility lobby has been the Committee of Public Utility Executives, a group which has been extremely active not only in the legislative lobbying field but also in the field of public relations and propaganda.

These groups, with an immediate interest in public policy toward utilities and railroads, are aided and supported in greater or lesser degree by others. As indicated above, the Chamber of Commerce of the United States gave considerable attention to the matter of Federal policy toward the railroads in its 1940 declaration of policies.<sup>2</sup> Various nonbusiness groups are active as well, either jointly with business or in opposition to the program of the railroads and utilities. Of necessity the railway labor unions are in more or less continuous contact with the Association of American Railroads. To a greater or lesser degree this is true of other branches of organized labor, as well as groups of farmers and other shippers. Certain Government departments are authorized to make themselves heard in the matter of administration of Federal policy regarding railroads; thus, the Secretary of Agriculture is given authority to intervene in rate cases before the Interstate Commerce Commission.<sup>3</sup> The public interest, as such, is not directly represented by any well organized or well financed group.

<sup>1</sup> The Association of American Railroads was organized on November 1, 1934, as a merger of all of the important railroad associations then existing. When the merger took effect, the following associations passed out of existence: The American Railway Association, the Association of Railway Executives, the Bureau of Railway Economics, and the Railway Accounting Officers Association. The railroads belonging to the first two had an aggregate mileage of 296,869 miles.

<sup>2</sup> See ch. III, pp. 35-36.

<sup>3</sup> This authority is granted in sec. 201 of the 1938 Agricultural Adjustment Act.

It is assumed that authority given such Government regulatory agencies as the Interstate Commerce Commission will be sufficient, if properly used, to protect the public interest.

#### PUBLIC REGULATION

The principle of public regulation of natural monopolies, apparently well established, developed shortly after the post Civil War period, following the hectic period of railroad construction. In fixing the principle, farmers in the Middle West and Northwest took a leading part.

In the 1870's and 1880's the railroads fought vigorously against public regulation of any kind. At that time the now universally accepted right of a State to regulate a public utility was still in the process of being established. The National Grange played the major role in securing the acceptance of this principle by the Supreme Court and the enactment of the Interstate Commerce Act in 1887. This law, as amended, contains the principles under which interstate commerce on railroads, highways, and waterways is regulated by the Federal Government.

#### *The Granger Movement.*

The National Grange was founded in 1867 and almost immediately gained prominence as a force in the enactment of State legislation. Particularly was this the case in the granger States of Illinois, Iowa, Minnesota, and Wisconsin. There, its principal interest in the legislative field was the passage of State laws regulating railroads. "Among the subjects upon which the Patrons of Husbandry attempted to secure legislation, first place was occupied during this period [1870's] by the question of regulating railroad corporations. \* \* \* The different granges were practically unanimous in demanding some measure of regulation of railroads by the State and the enactment of 'antipass' legislation."<sup>4</sup> In varying degree these demands were satisfied by the passage of regulatory laws in Minnesota in 1871, in Illinois in 1873, and in Iowa and Wisconsin in 1874.<sup>5</sup> The form of railroad regulatory legislation adopted by other States in later years was so definitely affected by these laws that "it is not too much to say that the fundamental principles upon which American regulation of railroads by legislation has developed were first worked out in the granger States of the Northwest during the decade of the seventies."<sup>6</sup>

But the battle for State regulation was by no means won with the passage of these various laws. The railroads opposed and obstructed their adoption by the legislatures, continued after their passage to hamper administration, and at last challenged their validity, first in the State courts then in the United States Supreme Court. For the first time there was thus brought before the highest Court of the land the important question of the right of a State government to fix rates for railroad and warehouse services. The Court decided, in a series of cases involving the validity of the Illinois, Iowa,

<sup>4</sup> S. J. Buck, *The Granger Movement*, Harvard University Press, Cambridge, 1913, p. 103.

<sup>5</sup> *Ibid.*, pp. 123-205. "There is no doubt that the influence of the organized farmers was the principal force back of these movements for railway legislation, giving to them many of their distinctive aspects." p. 124

<sup>6</sup> *Ibid.*, p. 205.



Minnesota, and Wisconsin statutes, known as the *Granger cases*, that the State had the right to regulate and fix the rates of a business which is public in its nature. Possibly the best known of these cases is that of *Munn v. Illinois*,<sup>7</sup> upholding the validity of the Illinois law of 1871 fixing maximum rates for the storage of grain in the elevators of Chicago.<sup>8</sup> The principles of constitutional law laid down in them are "perhaps the most important results of the Granger railroad legislation."<sup>9</sup> The claim of the National Grange to have been principally responsible for securing these results is probably not exaggerated: "At a time when the railroads of the country were largely a law unto themselves, and when they were guilty of many excesses, the Grange secured from the courts a decision that the creature can never be greater than its creator."<sup>10</sup>

The force of the movement for effective regulation of the railroads did not spend itself when the right of the States to exercise regulatory powers was upheld in the *Granger cases*. It continued to work until the Federal right and machinery to regulate interstate commerce were also established.

In the case of the Federal Government the question of power apparently was less uncertain than in the States, since article I of the Constitution states specifically that Congress shall have power "to regulate commerce \* \* \* among the several States." The only question was whether commerce should be defined to include the rates and services of railroads across operating State lines. This definition subsequently became of importance with respect to how many things Federal regulation could include, but it gave relatively little concern during the eighties to those interested in obtaining Federal legislation.

The Grange was very active in the agitation which culminated in the passage of the Interstate Commerce Act in 1887, although the drive was relatively less important than the earlier ones for State laws. Merchants and manufacturers seem to have desired the 1887 law as much as farmers;<sup>11</sup> nevertheless, the leadership exercised by the Grange in the agitation for Federal regulation is not questioned and its importance should not be minimized. "The Patrons of Husbandry and other agricultural organizations of the seventies, to whose agitation for railroad regulation, both State and Federal, the general term 'Granger movement' is applied, should be given credit for inaugurating the first important movement for Federal regulation of railroads. This movement, though unsuccessful in itself, was a forerunner of and paved the way for the more extensive agitation which finally produced the Interstate Commerce Act."<sup>12</sup> Therefore, the significance of the Grange role does not appear to be overrated in its official statement: "The Interstate Commerce Commission \* \* \* had its inception in the successful culmination of this great fight in defense of the rights of the people. The right of the Government

<sup>7</sup> 94 U. S. 113.

<sup>8</sup> The other cases are listed in Buck, op. cit., p. 206.

<sup>9</sup> Buck, op. cit., p. 206.

<sup>10</sup> The Grange Blue Book, p. 10.

<sup>11</sup> "The claims of certain Grange enthusiasts that the credit for this [Interstate Commerce] act belongs to the order of Patrons of Husbandry can hardly be substantiated, for an examination of the report of the Cullom [Senate] committee [on railroad legislation] shows that the demand for regulation of railroads was fully as insistent among merchants and manufacturers at this time as among farmers." Buck, op. cit., p. 230.

<sup>12</sup> Buck, op. cit., pp. 230-231.

to control public service corporations is predicated upon the principle which was established in this connection.<sup>13</sup>

This principle (that public transportation agencies are subject to public regulation) has become the basis for more recent regulation in many other fields. It has been extended to electric and gas utilities, pipe lines, communications, and many other activities affected with a public interest, which were once considered private.

*The Association of American Railroads.*

The historical position occupied by the railroads in the field of transportation makes their views regarding public policy of particular interest. In the depression following 1929 the railroads were particularly hard hit. From 1929 to 1933 the \$20,000,000,000 railroad industry witnessed a decline in its operating revenues of more than 50 percent.<sup>14</sup> In order to consolidate their forces, various existing organizations were merged in 1934 in the Association of American Railroads. The principal point in the program which they recommended to Congress and to the public was one which sought "restoration of confidence in railroad securities, equality of opportunity as among all agencies of transportation, and the adoption of methods which will permit efficiency and economy."<sup>15</sup> This program urged that national transportation policy should recognize that the country is committed to private ownership and operation of all forms of transportation under suitable regulation. The statement was apparently published in response to the position taken by the American Federation of Labor and the railway labor unions in 1920 favoring Government ownership and operation of the railroads. In this proposal by organized labor the Association of American Railroads found no "promise of better service, more economical operation, or improved conditions for workers." Sound public policy, in the opinion of the Association of American Railroads, requires that all forms of transportation should be treated alike as respects regulation, taxation, and subsidies. By this declaration the railroads have hoped to bring all competing forms of transportation, including busses, trucks, and water transportation, whether intracoastal, intercoastal on the Great Lakes, or on inland natural and artificial waterways, under the same degree of Federal regulation imposed by law upon the railroads.<sup>16</sup> They urge the removal of the long and short haul clause, and seek permission to consolidate along natural economic lines, and to own other types of common carriers. A final point in their 1934 program was to convey to the public a proper understanding of the railroads' capital structure.<sup>17</sup>

<sup>13</sup> The Grange Blue Book, p. 10.

<sup>14</sup> Association of American Railroads, *Railways of the United States*, Washington, 1940, p. 28.

<sup>15</sup> Association of American Railroads, *The Railroads, a Statement as to Policies*, Washington, 1934, p. 6.

<sup>16</sup> The railroads argue that indirect subsidies to transportation by heavy busses and trucks is the consequence of allowing them the use of publicly constructed and maintained highways. The railroads figure that busses and trucks pay in taxes of all sorts 6 cents out of every dollar received, while the railroads who, it is claimed, must provide their own roads, must pay out for interest, maintenance, and taxes 34½ cents out of every dollar of revenue. *Ibid.*, p. 11.

<sup>17</sup> The Association of American Railroads pointed out in the pamphlet referred to that "hereafter no well-informed person will say that on the whole they (the railroads) are overcapitalized or that there is water in their stocks and bonds. The Federal Coordinator has definitely shown that such a claim is without foundation. He points out that the work of the Interstate Commerce Commission in the field of railroad valuation demonstrates that after making full allowance for depreciation and including nothing for intangibles, the physical value of railroad property exceeds the outstanding capitalization at par, including both stocks and bonds by about one and one-half billion dollars."

## SHAPING PUBLIC POLICY.

While paying lip service to the principle of public regulation, the railways and electric utilities have done everything in their power to avoid it, or at least to control it in their own interest.

After the World War the railroads were transferred from Government to private ownership and operation. This was due, among other things, to the interest which the Chamber of Commerce took in the matter and in the pressure put upon Congress to effect it. The railroads' 1934 statement of policies reiterated their adherence to private ownership and operation. To a considerable extent, the main features of their program have been embodied in the Transportation Acts of 1939 and 1940. These two measures give the Interstate Commerce Commission authority to regulate water-borne and highway transportation, as well as railroads. They also permit voluntary consolidations, under certain conditions, modify the long and short haul clause, and permit railroads to own certain competing forms of transportation. The Interstate Commerce Commission is also directed to study the various forms of transportation, with an eye to determining efficiency, and the extent to which each receives any special benefits, or any type of subsidy. Thus, the legislation goes far toward meeting the railroad demands made in 1934.

Without doubt passage of this legislation represents the successful termination of a long and costly propaganda and lobbying campaign by the railroads. The Association of American Railroads has for many years spent millions of dollars annually in newspaper and magazine advertising, in the publication and distribution of special booklets, and in the establishment of subsidiary propaganda and educational organizations. The Railroad Securities Owners Association, the Fuel Power Educational Foundation, and the Transportation Association, among others, have been organized and financed at least in part by the A. A. R.<sup>18</sup> The latter in turn published various brochures dealing with various phases of the railroad problem, such, for example, as labor (particularly railroad labor), farmers, shippers, and investigators.<sup>19</sup>

So numerous and expensive did these subsidiary organizations become that the president of at least one railroad, F. W. Sargent, of the Chicago & North Western, wrote to the president of the A. A. R. in 1935 protesting against them:

We are getting so many new organizations and the assessments and fees are so numerous that the burden is becoming a material one.<sup>20</sup>

Estimates of the amount of money spent by the A. A. R. and its numerous subsidiaries on propaganda and lobbying activities are so high as to be almost incredible, running to far over \$100,000,000 for the period since 1918.<sup>21</sup>

In Washington the pressure generated by these subsidiary organizations, as well as public opinion generally, is concentrated on Congress and the Government's administrative arm. The association sees that the views of the railroad industry on pending legislation are presented to committees of Congress. The presentation does not stop

<sup>18</sup> Cong. Rec., 75th Cong., 3d sess., pp. 9167-9169.

<sup>19</sup> Labor, official weekly newspaper of the Railroad Brotherhoods, April 12, 1938.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*



at that point. A continuous effort is made to back up the presentation with strong support. Literature is distributed to Members of Congress and to influential citizens throughout the country. State railroad associations are maintained which concern themselves with both State and national legislation. The national association in Washington is in close touch with the State associations, furnishing them with literature and in a way directing their activities, particularly in national matters.<sup>22</sup> The principal objective of this impressive activity is the enactment of legislation regulating the railroads' competitors in the same degree as the railroads, an objective which seems to have been achieved.<sup>23</sup>

#### BANKER CONTROL OF THE RAILROADS

The successful conclusion of the A. A. R.'s campaign for Federal regulation of competitors can be surpassed in many respects by pressure campaigns in the States. Extensive hearings held before the Senate Committee on Interstate Commerce on the subject of railroad reorganization have revealed the various methods utilized by certain industrial and business leaders to gain their objectives. In 1935 Jesse Jones, Chairman of the Reconstruction Finance Corporation, stated: "I have long been of the opinion that the railroads are dominated by the bankers."<sup>24</sup> The findings of this committee with respect to the financing, reorganization, and merger methods and practices of interstate and affiliate railroads substantiated Mr. Jones' opinion.

The suspicion of Senator Burton K. Wheeler, committee chairman, that financial control of railroads by the bankers was the reason for perennial difficulties and that Government loans were bolstering a condition due to flagrant abuses was also substantiated. "One railroad purchased 275,000 shares of stock in another railroad, one-third on their own account. They disposed of this at a substantial profit, while the rest was held by the railroad at a loss."<sup>25</sup>

In another case, Mr. Ball of the Mid-American Co. bought control of the Alleghany Corporation for \$275,000. This holding company controlled six or more railroad systems. The Mid-American Corporation in turn controlled an amazing variety of interests—from peach orchards and trucking to mines, hotels and railroads. One-third of 1 percent of the total property of the Mid-American Corporation gave control over a vast railroad system.<sup>26</sup>

Control of the railroads was gained in many cases not only by outside parties but by the use of unscrupulous methods. The following case is a good example of the pressure on Government officials and agencies, the press, and citizen groups to achieve control.

The Missouri Pacific engaged in a program of expansion between 1923 and 1929. As a holding company, it controlled the Gulf Coast Lines and through them, the International Great Northern, the Texas & Pacific, and, jointly, with the Western Pacific, the Denver & Rio Grande Western. The Van Sweringen interests became interested in

<sup>22</sup> Letter from R. V. Fletcher, vice president and general counsel, Association of American Railroads, December 3, 1935.

<sup>23</sup> At the same time that the Association of American Railroads was engaging in this costly propaganda and lobbying campaign, they petitioned the Interstate Commerce Commission for a flat increase of 15 percent in freight rates and a flat cut of 15 percent in railway labor wages. In addition, Congress was considering legislation authorizing loans to the railroads.

<sup>24</sup> S. Rept. 434, 74th Cong., 1st sess., p. 3.

<sup>25</sup> *Ibid.*, p. 2.

<sup>26</sup> Congressional Record, 75th Cong., 1st sess., p. 699.



the Missouri Pacific holdings in 1928. Following the formation of the Alleghany Corporation, which consolidated their position in the East, they began to buy Missouri Pacific stock. In 3 months \$100,000,000 of Alleghany Corporation funds had gone into Missouri Pacific stocks and convertible bonds. The Van Sweringens now controlled a majority of votes in the Missouri Pacific election, and, since holding companies were not then under the jurisdiction of the Interstate Commerce Commission, they believed this acquisition of control would not have to be submitted to that body for approval.

However, they discovered that a Missouri statute forbade the transfer of more than 10 percent of a Missouri railroad's stock to a holding company without the consent of the Missouri Public Service Commission. At this point, pressure was brought to bear on all sides to permit an eastern company to acquire 12,150 miles of southwestern railroads, without Government supervision and disregarding consolidation plans of the Interstate Commerce Commission.

The management of the Missouri Pacific would not permit the stock transfer without the consent of the State Public Service Commission. Alleghany Corporation officials were pressed for time, since Missouri Pacific elections were imminent. First, they worked on the commissioners, attempting to arrange an *ex parte* hearing.<sup>27</sup>

Alleghany had almost persuaded the Commission to approve its acquisition of a great railroad system after a drumhead hearing, on 24 hours' notice, with no one present but officials whom an Alleghany ally characterized as our friends.<sup>28</sup>

One commissioner, then in Washington, changed his mind due to "the activity of Mr. Eastman or the Couzens resolution." But even so, only a week was allowed for the Federal authorities to prepare the case. Notifications were not sent to the railroads concerned, not even the Missouri Pacific.<sup>29</sup>

After the St. Louis Star had condemned the Alleghany deal in its issue of March 14, 1930, officials began to work on the press with the result that a change in the general attitude was brought about. This change is shown by reference to the following letter from Mr. W. T. Kemper (a Missouri Pacific director who had become a "volunteer" for the Alleghany company) to Mr. E. J. White, vice-president of the Missouri Pacific:

DEAR ED: Here is a clipping from the Kansas City Star of the 17th. Looks like they were with us. Love and good cheer.<sup>30</sup>

The Kansas City Board of Trade changed its mind after a conference with President Baldwin of the Missouri Pacific (who had been assured of running the property under the new owners).<sup>31</sup> A letter from one of the group running the campaign settled the question of the State attorney general. The attorney general did not appear at the hearing.<sup>32</sup> The mayors of St. Louis and of Kansas City and the St. Louis Chamber of Commerce followed the suggestions made by the Van Sweringen group and stated no objections to the proposal.

<sup>27</sup> 76th Cong., 3d sess., Rept. No. 25, Investigation of Railroads, Holding Companies, and Affiliated Companies, Part 8, pp. 1 ff.

<sup>28</sup> *Ibid.*, p. 5.

<sup>29</sup> *Ibid.*, p. 6.

<sup>30</sup> *Ibid.*, p. 9.

<sup>31</sup> *Ibid.*, p. 9.

<sup>32</sup> *Ibid.*, p. 13.

On May 6 the Missouri commission handed down its order granting the Alleghany Corporation the permission it sought to acquire the stock.<sup>33</sup>

It is not surprising that Federal control of railroad reorganization is unwelcome and that in spite of a constant showing in the red and of appeals for Government loans, the railroads still maintain the strongest lobby in Washington. The issue raised by the Alleghany Corporation acquisition of the Missouri Pacific Railroad Co. and by numerous other similar instances uncovered by the Senate Interstate Commerce Committee has been well summarized by Senator Wheeler's statement that the great size and leadership of the corporations and individuals in question presented a contemporary and fundamental problem in the regulation and control of large scale industry and finance. He asked:

Is their attitude toward Government regulation and control so hostile as to justify in their minds such means or any means for defeating laws of Congress and administrative regulation? Is the ingenuity of promoters, financiers, and lawyers sufficiently fertile to provide such hostility with devices enabling them to get around the law and to make themselves to this extent more powerful than government itself?<sup>34</sup>

#### ASSOCIATION OF AMERICAN RAILROADS' COOPERATION WITH THE I. C. C.

Compared with the successful Association of American Railroads' campaign for regulation of competitors and with the preceding instances of business control of Government, the day-to-day contacts with the Interstate Commerce Commission are almost prosaic.

In administering the laws governing rates and services on common carriers, the I. C. C. and the Association of American Railroads maintain close and continuous relations. "Naturally and inevitably," writes the association's general counsel, "we are in daily contact with the Interstate Commerce Commission, with respect to purely administrative matters directly affecting the railroads."<sup>35</sup>

Typical of such matters are car service, safety on the railroads, boiler and locomotive inspection, and transportation of explosives. As regards car service, associations of both carriers and shippers are employed by the I. C. C. Paragraphs 10 and 11 of section I of the Interstate Commerce Act make it incumbent on all carriers to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service. Subject to I. C. C. approval, this function is discharged by the Association of American Railroads, the individual roads following the directions framed and issued by its operations and maintenance department.<sup>36</sup> In enforcing the safety laws, too, the Commission works through the association. Although the railroads vigorously opposed passage of the Safety Appliance Act (1893), their attitude toward it has subsequently changed. For many years its provisions, as well as those relating to automatic train control and signals adopted by Congress in a resolution in 1906 and in the 1920 Transportation Act, have been enforced by the Commission and the association working together. In this they have been joined by the Master Car Builders' Association and the railway brotherhoods.

<sup>33</sup> *Ibid.*, p. 18.

<sup>34</sup> S. Rept. 25, pt. 4, 76th Cong., 1st sess., p. 16.

<sup>35</sup> In a letter to the author, December 3, 1935.

<sup>36</sup> Until 1934 the car service division of the American Railway Association. See note, p. 141.

The laws requiring periodic boiler and locomotive inspection and those dealing with the transportation of explosives are carried out largely according to regulations made by the Association of American Railroads and approved by the Commission.

The area within which the Commission and private interests find it mutually desirable to cooperate includes also the field of rate adjustment. The Commission has the authority to see that just, reasonable, and non-discriminatory rates are maintained, and from time to time exercises this authority in formal hearings and decisions on petitions filed by the railroads or other groups. But this is a costly, cumbersome way of dealing with the many situations arising. Consequently, the Commission attempts to negotiate rates informally through correspondence and conference with carriers and shippers. To reduce the amount of formal rate litigation, it maintains a bureau of informal cases and a bureau of traffic. Through the Association of American Railroads, the carriers in turn maintain standing rates committees. Shippers have the National Industrial Traffic League, national trade associations, and local chambers of commerce. Through the use of this combination of official agencies and citizen associations informal adjustment of rates is facilitated.

#### OTHER PRESSURE ON THE I. C. C.

Pressure on the I. C. C. has come from Congress as well as from the railroad industry, shippers, and labor. Even the congressional pressure, however, originates in occupational and geographic groups outside of Congress, which, because they feel that the Commission's formal and informal procedures are inadequate for their purposes, feel obliged to approach the problem through the legislature. Professional groups spoke through Congress when, at the behest of organizations of commercial travelers, it directed the I. C. C. to issue interchangeable mileage books at just and reasonable rates.<sup>37</sup> Various groups of farmers spoke through Congress when in 1925 it adopted the Hoch-Smith resolution directing the Commission to consider the conditions prevailing in different industries in adjusting freight rates and specifically putting forth the case for agriculture.<sup>38</sup>

Both sectional and economic groups spoke through members of Congress when in 1927 the appointment of a new commissioner and reappointment of a sitting commissioner were before the Senate. The controversy between Pennsylvania and southern coal mine operators over Great Lakes cargo coal rates was pending before the Commission. In the minds of Pennsylvania and Virginia Senators the nominees' fitness for the posts turned in part at least upon their place of residence.

In the decade 1922-32 no less than 37 different proposals were laid before Congress by labor unions, business organizations, and farm and livestock associations asking for legislation regarding the Commission; 10 sought to decrease the Commission's powers, an equal number to investigate its organization and personnel, while 17 attempted to get Congress to direct the Commission's power to certain

<sup>37</sup> Later invalidated by the Supreme Court.

<sup>38</sup> In addition, the American Farm Bureau Federation claims to have secured in 1920 a reduction in railroad valuation for freight rate making purposes, to have defeated a proposal in the same year to raise railroad rates, and to have won from the railroads in 1921 a voluntary reduction in rates on farm products. A. F. B. F. publication, *Back of This Emblem*, pp. 10-11.



ends. Of the 8 resolutions formally introduced calling for investigation, 4 were adopted.<sup>39</sup>

The organized railways and shippers have not regarded such activities with favor. "On the whole, the force of both the organized carriers and the organized shippers has been exerted to counteract legislative interference in rate making and to combat undue influence by sectional interests."<sup>40</sup>

#### RELATIONS WITH LABOR

The right of railway labor to organize and to bargain collectively with management is generally recognized by the Association of American Railroads, subject to the usual proviso of management that this right should not be exercised in such a way as to result in the closed shop.<sup>41</sup>

The success of the railway labor unions in organization and collective bargaining and even in compelling Congress to respond to its demands is well known. Their successful campaign for a Federal law establishing the 8-hour day is an indication of their influence.

For many years prior to 1916 labor had been demanding the passage of a rigid 8-hour day law. In that year the railroad brotherhoods felt that they had an excellent opportunity to force the passage of such legislation, demanded an 8-hour working day agreement. When this was refused the brotherhoods threatened to strike, then made additional demands, but steadfastly refused to submit the 8-hour day principle to arbitration. Efforts of management to subject all of labor's demands to arbitration brought negotiations to an end. President Wilson then intervened, requesting conferences with both sides. As a result he recommended that the 8-hour day be conceded as a right that ought not be arbitrated, but that all the other points in dispute should be submitted to investigation and arbitration. The railroad presidents refused to agree to the President's recommendations, and the brotherhoods issued a strike order. The President then submitted to Congress a program for the enactment of an 8-hour day law for all operatives of trains engaged in interstate commerce.

At a conference in Washington representatives of the A. F. of L. pledged assistance and cooperation with the brotherhoods. The president of the A. F. of L. appeared with brotherhood officials before the Senate committee on August 31 and presented the demands of organized labor in connection with the Adamson bill. President Wilson's recommendations in regard to the brotherhoods' 8-hour day campaign were incorporated into the Adamson bill and it was passed and approved in December 1916.<sup>42</sup>

Another example of the railway brotherhoods' success is the so-called Crosser Act providing for the prompt disposition of disputes between carriers and their employees.

<sup>39</sup> E. P. Herring, "Special Interests and the Interstate Commerce Commission," *American Political Science Review*, December 1933, pp. 903-906.

<sup>40</sup> E. P. Herring, *Public Administration and the Public Interest*, McGraw-Hill, New York, 1936, p. 204.

<sup>41</sup> "The railroads recognize the right of employees to bargain collectively and, to this end, the right of belonging to any organization of their choice. Employees should be free from managerial or any other domination in the matter of negotiating contracts affecting their service. But the right of organization and freedom in bargaining should not be exercised in such a way as to give one type of organization an advantage over another." Association of American Railroads, *The Railroads: A Statement as to Policies*, Washington, 1934, p. 13.

<sup>42</sup> " \* \* \* under President Wilson, the Adamson law, for the sole advantage of railway labor unions, was passed by the House with delegates of the organizations sitting in the gallery and holding stop-watches on Congress." *New York Times*, April 28, 1935.

The bill was drafted by Representative Crosser of Ohio, with the aid of the railway brotherhoods. Upon introduction it was referred to a House Committee where it remained untouched, until the Seventy-third Congress was drawing to a close. Representatives of the brotherhoods called on the President and Members of Congress early in June 1934, requesting passage of the bill before adjournment. This meant delaying adjournment for at least a week. The brotherhoods were successful, adjournment was postponed, and the bill passed the House with little opposition.

In the Senate an effort was made to adjourn before the bill could be passed. But friends were willing to keep the Senate in session. On June 18 Senator Wheeler said: "The question is whether or not we will let the Pennsylvania Railroad—and I shall be able to prove definitely that it is the Pennsylvania Railroad that is opposed to the passage of this bill—in the closing hours of this session to block legislation which is so badly needed. I will block adjournment until the bill is passed."

Labor and its friends won. The bill passed the Senate and was signed by President Roosevelt on June 21, 1934.<sup>43</sup>

In their relations with organized labor and government, the railroads from time to time use the courts to protect or improve their position. Cases in point are the attacks of the Association of American Railroads on Federal retirement and pension legislation for railway employees. Twice within a period of 15 months, in 1934 and 1935, Congress adopted railroad employees' retirement legislation under pressure from the railway labor unions and the A. F. of L. On both occasions the constitutionality of the laws was challenged by the railway managements. In both actions, the instigator, although not the plaintiff, was the Association of American Railroads.

The strategy adopted by the association was to have one of its members file a petition for an injunction in the Supreme Court of the District of Columbia, whence a decision could be appealed direct to the United States Supreme Court. An act of Congress of June 27, 1934, established a compulsory retirement and pension system for all carriers subject to the Interstate Commerce Act. Acting for 134 class I railroads, 2 express companies, and the Pullman Co., the Alton Railroad sued in the District of Columbia Supreme Court, asserting the unconstitutionality of this railroad retirement act, and praying for an injunction against its enforcement. From an injunction an appeal was taken by the Government to the court of appeals. Before the hearing occurred on the appeal the petitioners applied to the United States Supreme Court for a writ of certiorari. The writ was granted, the Court took jurisdiction, and on May 6, 1935, ruled that the act was unconstitutional.<sup>44</sup>

Within 4 months after the Supreme Court's decision Congress had adopted substitute pension and tax measures, as described above. The readiness of Congress to act at the behest of labor was matched by the promptness with which the courts again took jurisdiction of the dispute at the request of management. At a meeting of the associa-

<sup>43</sup> Congressional Record, 73d Cong., 2d sess., vol. 78, pts. 10 and 11; also interview with Edward Keating, editor of Labor, July 24, 1937.

<sup>44</sup> New York Times, July 6, 1934, to May 7, 1935. *Railroad Retirement Board v. Alton*, 295 U. S. 330 (1935).

tion on November 7 "it was decided that the railroads should attack in the courts the two bills enacted by Congress, providing for payment, at the expense of the railroads, of retirement allowance for men who had reached the age of 65,"<sup>45</sup> and an announcement of this action was made on the following day by J. J. Pelley, association president.<sup>46</sup> At this same meeting "the association voted \* \* \* to direct the [law] committee to follow the method used in defeating the railway pension law enacted more than a year ago—filing a petition in the Supreme Court of the District of Columbia, whence a decision may be appealed direct to the United States Supreme Court."<sup>47</sup>

The suit was filed on January 7, 1936, and on June 26 the District of Columbia Supreme Court declared both the 1935 pension law and its companion tax measure unconstitutional. During the hearing on the petition the court overruled a Government motion to dismiss the action; the 135 railroads who brought the suit were joined by other railroads, terminals, and companies engaged in interstate commerce; and, in presenting its case, attorneys for the Government denied that the 1935 acts were subterfuges to avoid inhibitions in the 1935 Supreme Court ruling against the 1934 Pension Act. Although the Railway Labor Executives' Association and officials of the railroad brotherhoods stood ready to support the Government should it appeal the case to the Supreme Court, the controversy was solved through new legislation providing for a voluntary pension plan, worked out by the carriers and their employees at President Roosevelt's suggestion.<sup>48</sup>

#### PUBLIC UTILITIES' ATTEMPT TO SHAPE PUBLIC POLICY<sup>49</sup>

While the electric utilities are newcomers in the field of lobbying as compared with the organized railroads, their activities during the past few years indicate that they have employed all the major devices and tactics employed by the railroads to escape effective public regulation. Either through their trade association, the Edison Electric Institute,<sup>50</sup> or through informal groups such as the Committee of Public Utility Executives, the electric utilities have engaged in extensive legislative lobbying, have resorted to the courts when legislative lobbying failed and, in addition, have made use of wide-spread propaganda for their general economic philosophy.

It is unlikely that any pressure group ever engaged in a more comprehensive propaganda campaign than the National Electric Light Association campaign during the 1920's. This campaign was carried on by a net-work of organizations operating under the Joint Committee of National Utility Associations; represented an annual expenditure of over a million dollars; and was deliberately framed to "sell" utility

<sup>45</sup> Letter from R. V. Fletcher, association vice-president and general counsel, to the author, April 23, 1936.

<sup>46</sup> The New York Times, November 9, 1935, p. 23.

<sup>47</sup> *Ibid.*, November 23, 1935, p. 25.

<sup>48</sup> *Ibid.*, January 8, p. 15; March 6, p. 40; May 16, p. 23; May 21, p. 39; and July 31, 1936, p. 35.

<sup>49</sup> The efforts by associations and agencies of electric and gas utilities to influence public opinion were investigated by the Federal Trade Commission between March 18, 1928, and October 3, 1929, pursuant to S. Res. No. 83, 70th Cong., 1st sess. (approved February 15, 1928). The Commission's Summary Report (Doc. 92, pt. 71A, 70th Cong., 1st sess.) is the source of the information in this section.

<sup>50</sup> The Edison Electric Institute, prior to 1933, operated under the name of the National Electric Light Association (*ibid.*, fn., p. 20).



views to the Nation's population.<sup>51</sup> The scope of the campaign and its thoroughness are well described by the Federal Trade Commission in these words: "To such an extent has the utility program taken into consideration 'every public contact' that no campaign approaching it in magnitude has ever been conducted except possibly by governments in wartime."<sup>52</sup> There is no doubt that the campaign was inspired and carried on by the responsible leaders of the industry. The Federal Trade Commission found that the character and objective of such propaganda activities were fully recognized by the sponsors and plant executives. "In emphasizing that the work was worth while, M. H. Aylesworth, then the director of the National Electric Light Association, advised utility executives not to be afraid of the expense \* \* \* because the 'public pays.'<sup>53</sup>

The deliberate shaping of public opinion in its favor was the avowed objective of the propaganda campaign. Aims of the industry in its propaganda were: to keep the electric and gas utilities privately owned and operated; to gain public approval of their methods and practices; to establish to utilities exclusive right to occupy the field of furnishing electricity and gas; to block real public regulation and to condemn public ownership and operation.<sup>54</sup>

The methods used in placing these views before the public included use of the newspaper press and of the schools. Twenty-four of the 28 State committees on public utility information were directed by widely known and experienced newspaper men. Their efforts were spent in getting newspaper good will.<sup>55</sup> In gaining this valuable asset a variety of methods were used. They aimed to create newspaper good will through advertising; inspired news articles written by the director but bearing the signatures of prominent persons were inserted; personal contacts with editors were made; newspaper men were entertained in various ways; news bulletins and clip sheets were prepared and widely distributed; and many speeches were made, either by members of the utilities industry or someone paid by the utilities to represent their interests.<sup>56</sup>

The success attained through use of these methods is impressive. The total annual expenditure for public utility advertising in 1923 was between twenty-five and thirty million dollars.<sup>57</sup> Utility agreements were linked to prominent names in many newspapers. Personal contacts increased the number of daily papers taking matter prepared by the State information bureaus. The evidence showed

<sup>51</sup> The organization through which the propaganda campaign was carried on included: the National Electric Light Association, The American Gas Association, the Joint Committee of National Utilities Associations, 28 State committees on public utility information or bureaus of public welfare, and the public relations departments of various holding and operating companies. Although they were originally interested, the telephone interests withdrew from the joint committee and the street railway interests took only a minor part. The electric and gas utilities supported the Joint Committee of National Utility Associations when it was revived in 1927 in the proportion of about 75 to 25 percent, respectively. Later the electric industry assumed practically its entire support (*ibid.*, p. 20, 21).

<sup>52</sup> *Ibid.*, p. 18.

<sup>53</sup> *Ibid.*, p. 18.

<sup>54</sup> *Ibid.*, pp. 8-9.

<sup>55</sup> *Ibid.*, p. 9.

<sup>56</sup> The major portion of these speeches reflected the viewpoint of the utilities "so that it might almost be labeled straight-out propaganda on behalf of the utilities industry, but this matter that might be classified as strictly propaganda, and thus barred from the news columns of the big dailies, actually did find its way into those papers because, being delivered by a speaker before a civic organization of standing in the community, it became news and was printed as such."

<sup>57</sup> *Ibid.*, p. 60.

that many of the news bulletins and clip sheets were used as the basis of editorials favorable to the utilities' point of view.

Even more direct means than these were used to obtain newspaper good-will. At one time, in 1928 and 1929, the International Paper Co., a subsidiary of the International Pulp & Paper Co., was financing 10 newspapers, among them the Chicago Daily News, the Albany (N. Y.) Knickerbocker Press, the Boston Herald-Traveler, and the Brooklyn Daily Eagle. Although the president of International Paper, Mr. Archibald Graustein, stated this investment in newspapers was wholly a campaign for newsprint, on the basis of net income the amount realized from utilities was in excess of that realized from paper.<sup>58</sup>

Financial support or subsidy of so-called newspaper news and editorial services also helped to forward a program of publicity in harmony with the utilities' views. Generally there was no disclosure to the public of the financial support and employment of these agencies.<sup>59</sup>

#### *Utility cooperation with the schools.*

The utilities' aim in giving attention to educational institutions, as stated by the Illinois committee on public utility information, "is to fix the truth about the utilities in the young person's mind before incorrect notions become fixed there."<sup>60</sup> The Illinois committee pioneered in this field.<sup>61</sup> By 1922, however, the N. E. L. A. had taken up the plan. Acting apparently on the proposal of Samuel Insull, who earlier had emphasized "the great need of a campaign of education in the colleges and other institutions of learning," the national association in December 1922 appointed a committee on cooperation with educational institutions. In accordance with suggestions from this committee and benefiting from the success of the Illinois plan, work in educational institutions was undertaken by State committees in Indiana, Pennsylvania, Colorado, Wyoming, New Mexico, Wisconsin, Oregon, and other States.<sup>62</sup>

With the schools as with the newspapers, public utility officials realized the necessity of creating goodwill. This was done in a

<sup>58</sup> *Ibid.*, pp. 85-88.

<sup>59</sup> The news and editorial services in this list included: E. Hofer & Sons, Portland, Oreg.; Utilities Publication Co. and Public Service Magazine, Chicago, Ill.; Public Utilities Reports, Annotated, including advance sheets in Public Utilities Fortnightly; Darnall's Newspaper Service, Florence, Ala.; National Industrial Conservation Board, Inc., Chicago, Ill.; Dixie Magazine, Little Rock, Ark. (*ibid.*, p. 92).

<sup>60</sup> *Ibid.*, p. 141.

<sup>61</sup> *Ibid.*, p. 145.

<sup>62</sup> *Ibid.*, p. 145.

Mr. George E. Lewis, director of the Rocky Mountain Committee, describes details and results obtained in the schools of Colorado, New Mexico, and Wyoming:

"As contrasted with a few years ago, before we began to direct our attention to this great job of building up better public relations, students are being given a friendly understanding of the utility industry. Questions relating to the public-utility business which have perplexed them in the past, many of which have been answered solely by those who are hostile to the public utilities and corporations in general, have received answers from the utilities' side. Based upon these answers and upon lectures, these students will be able to form a sound judgment of the utility business, at least a fair and unbiased judgment. Their heads are no longer being crammed with municipal government and State-ownership theories. Where, in some instances, there are professors of socialistic leanings, the teachings are at least leavened by the lectures and other information provided by the utilities.

"In the universities the effect of our work will not be so direct or instantaneous. But the papers and talks that have been provided for the high-school students and the pupils of the upper classes of the grade schools are making their effect immediately apparent. Those informed youngsters are taking the utility messages into their homes. Utility subjects are being made topics for dinner-table discussions among sons and daughters, fathers and mothers. The utilities are finding that they have keen, vigorous, and enthusiastic champions among the high- and grade-school pupils. Unfair, unreasonable, and thoughtless criticism directed at the public-utility business often meets with spirited denials and informed, intelligent debate on the part of students" (*ibid.*, p. 147).

variety of ways. Deliberate cultivation of friendly relations with school and college men often did the trick. In other cases, where caution was necessary, a roundabout approach was used. In Texas in 1923, for example, the utilities were "feeling their way into the schools with the Constitution."<sup>63</sup> Definite pains were taken to obtain the approval of college professors. Referring to teaching as one of the "starveling professions" (the others, the church and the press) Dr. C. A. Eaton, president in 1924 of the American Educational Association and a General Electric Co. industrial relations manager, advised the N. E. L. A. convention "to give a thought to the teachers and when their vacation comes pay them a salary to come into your plants and into your factories and learn the public-utility business at first hand."<sup>64</sup> M. H. Aylesworth, then managing director of the N. E. L. A., put it this way: "\* \* \* Once in a while it will pay you to take such men, getting five or six hundred or a thousand dollars a year, and give him a retainer of one or two hundred dollars per year for the privilege of letting you study and consult with them. For how in heaven's name can we do anything in the schools of this country with the young people growing up, if we have not first sold the idea of education to the college professor?"<sup>65</sup>

This pointed advice was widely accepted. Professors of journalism of well-known universities, directors of cooperative Federal and State extension in agriculture and home economics, faculty members from outstanding private universities and research institutes cooperated in various ways with the State utility information committees. Cooperation was gained in many cases with faculties in institutions of higher learning. In many colleges and universities courses of study were established which appeared to be sponsored by faculty members but which were, in fact, suggested by the utilities. Funds for the support of research scholarships were received by many institutions. Elementary and college text books were surveyed to determine their attitude on the electric and gas utilities. In some instances information given out by the State information committees was utilized in correcting the viewpoints of books considered bad or unfair. In other cases, new or substitute texts were prepared and introduced into the public schools. Educational authorities in certain States were approached directly in order to improve the text-book situation. In numerous cases, thousands of pamphlets presenting the utility point of view were introduced by the State committees into public schools.<sup>66</sup>

These ramified efforts to gain newspaper good-will and capture the schools were supplemented by other activities. One was the customer-ownership campaign. On the theory that customer-ownership constituted public ownership, stock-selling drives were staged to enlist the individual purchaser's support for the system of private utility ownership. Although control rarely accompanied the ownership of utilities stock thus purchased,<sup>67</sup> as a good-will device of political value, this widespread distribution of utilities stock apparently achieved the desired result. For example, rate reductions were widely opposed in Virginia because a certain utility had sold much of its stock to the

<sup>63</sup> *Ibid.*, p. 153.

<sup>64</sup> *Ibid.*, p. 149.

<sup>65</sup> *Ibid.*, p. 149.

<sup>66</sup> *Ibid.*, p. 10.

<sup>67</sup> Less than 2 percent of the total shares sold in 1926 carried voting privilege. *Ibid.*, p. 11.



citizens of that State.<sup>68</sup> Because of their investment in utilities, certain Georgia judges were disqualified from sitting on utility company cases. In Alabama the whole tone of newspaper opinion toward the Alabama Power Co. was changed from opposition to support as a result of stock sales to 10,000 residents. The 150,000 owners of California utilities were the most important factor in twice defeating a State water power program.<sup>69</sup>

The utilities instructed their employees in public speaking, went to great lengths to defend the holding company against attack, and supported State regulation of public utilities in order to offset a program favoring Government ownership. Municipally owned, as well as federally owned, generating plants have been attacked, using among other things, such appellations as "Bolshevist," "Red," and "Sovietized."<sup>70</sup> It is almost impossible to list the various activities undertaken by the electric and gas utilities to impress their views on the people of America. "Sky-writing," to quote Mr. George F. Oxley, director of publicity of the National Electric Light Association, was the only means of publicity that was neglected.<sup>71</sup>

### *The Utility Lobby.*

While the utilities were carrying on propaganda throughout the country, they were simultaneously active in legislative lobbying at Washington—a campaign which reached its climax in the 1935 campaign against passage of the public utility holding company act.

In 1926 Senator Norris (Nebraska) introduced a resolution calling for an investigation by the Federal Trade Commission of public utility practices. The resolution was adopted, and the Federal Trade Commission submitted its report in 1928. The report was found to be inadequate, in that it lacked definiteness and had not probed deeply enough.

Later in that year Senator Walsh (Montana) introduced another resolution, calling for a Senate investigation of public utility financing. This resolution was vigorously opposed by the organized utilities. In discussing the committee hearings on the resolution Senator Walsh said:

The first group appearing in opposition to the inquiry was the National Electric Light Association, composed of 893 electric operating companies, 324 manufacturing companies, 263 associate companies, and 93 foreign companies; the American Electric Railway Association, composed of 337 operating companies, 35 associate companies, 423 manufacturing companies; the American Gas Association, composed of 469 operating companies, 25 holding companies, 350 manufacturing companies, and 17 associate companies.

They were marshaled by Mr. George B. Cortelyou; and it is well known that these great organizations through their representatives assembled here in the city of Washington before Congress convened last December set up spacious and luxurious quarters here and called to their aid experts in various lines, including experts in securing legislation from Congress and in defeating legislation before Congress. \* \* \* There was assembled here the most formidable lobby ever brought together in this city, \* \* \* representing capital to the amount of nearly \$10,000,000,000, and representing \* \* \* the companies to be investigated.

\* \* \* \* \*

Next we had representatives of investment bankers and investment bankers' associations, who told us that they caused investigation into public utility securi-

<sup>68</sup> *Ibid.*, p. 12.

<sup>69</sup> *Ibid.*, p. 302.

<sup>70</sup> *Ibid.*, p. 13.

<sup>71</sup> *Ibid.*, pp. 15-16.

ties to be made and, therefore, there was no necessity for any investigation by the \* \* \* Senate or by any governmental authority at all.

Then we had the American Manufacturers Association appearing by one James A. Emery, the employer and co-worker of the infamous Mulhall, whose villainies were exposed by a committee of the Senate in 1913.<sup>72</sup>

Apparently recognizing that the resolution could not be defeated, the utilities changed their tactics and sought to have this investigation also undertaken by the Federal Trade Commission.

In the debate on the George amendment to this effect, several Senators, especially Senator Glass (Virginia), argued that in view of the inadequacy of the previous F. T. C. investigation, there would be no point in adopting the resolution as amended. Nevertheless, both the resolution and the George amendment were adopted, and the F. T. C. undertook the investigation. The ensuing report, however, regardless of the expectation of the utilities, was not innocuous.<sup>73</sup>

These efforts to sway Congress were paralleled by efforts to sway administrative agencies. The Federal Power Commission's administration of regulatory laws since its establishment in 1920 has been marked by obstructionism by the public utilities.

#### *Utility Pressure on Administrative Agencies.*

The public utility industry came of age in the United States in the period between the setting up of a three-man, part-time commission to carry out the Power Act of 1920, and the amendment of the act calling for a five-man, full-time commission 10 years later. In that decade the Commission in administering the law swung twice between the two extremes of conciliation and strict regulation.

At the outset the Commission adopted a deliberately conciliatory attitude, and the utilities, through the National Electric Light Association, quickly grasped the opportunity to express their views. Regulations governing applications, permits, and licenses were approved and promulgated by the Commission only after the submission of drafts to N. E. L. A. officials and others, and after conferences between the Commission's representatives and N. E. L. A. bankers and engineers. The advent of a new administration on March 4, 1921, offered a unique opportunity to urge the re-opening of the matter. This the N. E. L. A. did, and its request was granted. Again, in November of that year, also at N. E. L. A. urging, the whole question of accounting requirements was opened up for reexamination.

The question thus opened up remained the subject of controversy for many years, and the disagreements growing out of it ultimately caused the revamping of the Commission on a full-time basis. How closely should the Commission scrutinize the power companies' accounts?<sup>74</sup> Prior to 1929 the Commission wished to scrutinize them on the basis of regulations decided upon after consultation with the industry. But, as subsequent disclosures showed, the industry itself was dis-

<sup>72</sup> Congressional Record, 70th Cong., 1st sess., pp. 2893-2894. In the last paragraph in this excerpt Senator Walsh apparently refers to the National Association of Manufacturers which, in the years just preceding 1913, opposed through its lobbyists pending legislation favored by the American Federation of Labor. (See above, ch. VI, pp. 94-106.)

<sup>73</sup> Congressional Record, 70th Cong., 1st sess., pp. 2942 ff. and 3054.

<sup>74</sup> "The Commission had the task of auditing and preserving the records of the original costs of water power projects for two purposes: (1) In order to aid the Commission and State regulatory bodies in passing upon the rates charged by these companies for the electricity generated; (2) in order to fix the 'net investment' 'at the Government would have to pay if it were to take over the property at some future date.'" Herring, *Public Administration and the Public Interest*, op. cit., p. 147.

satisfied with the regulations, and sought to obstruct their enforcement. Not long after the accounting requirements were first settled, both the law and the Commission's policy were attacked in Congress and in the press. The chief counsel of the Commission gave an interpretation of the act showing that the regulations were justified, and the matter was regarded as settled.

But the utilities did not give up the fight. At this time they were engaged in an ambitious and expensive campaign to turn public opinion against effective Federal regulation, which was reflected in the utilities' tactics before the Commission. In the vital matter of the power companies' accounts the Commission was unable to enforce compliance with its regulations. In this matter "great pressure was exerted on the Federal Power Commission" which finally "was forced to give way to this administrative lobbying."<sup>75</sup> The Commission's chief accountant stated at the time that the companies failed to comply with requests for information, to answer correspondence, to file statements, or to produce records; they were lax in keeping their accounts according to the Commission's rules, and some used definitely obstructive tactics.

With the appointment of a new executive secretary in 1929, the policy of the Commission was completely reversed. Between March 4 and the amendment of the act in June 1930, the new secretary proceeded on the basis that utility regulation was largely a State matter, that the Commission had adequate powers under the act to carry out its duties, and that complete data from the companies' accounts were not necessary to the effective discharge of these duties. "The new secretary was entirely complacent in his acceptance of the limitations of the Commission's activities."<sup>76</sup> However, the full-time Commission appointed in 1930 disagreed with the view that regulation was largely a State matter, and discharged the secretary along with other important employees.

While these examples of public utility propaganda and pressure on Congress and the Federal Power Commission illustrate clearly the desire and ability to influence public policy, they have been surpassed by more recent examples.

#### *Utility Holding Company Act.*

It is well known that the public utility industry fought desperately in the summer of 1935 in an unsuccessful effort to defeat the utility holding company bill. It lost in the Senate by one vote. The number and variety of lobbying methods employed by a specially-constituted Committee of Public Utility Executives and by the members of the Institute, as well as by individual companies on their own initiative, were reminiscent of the N. E. L. A. propaganda campaign during the 1920's. A deluge of telegrams sent to Congressmen without the knowledge or consent of the signers, newspaper and radio propaganda, the Washington social lobby, and the employment of "old friends" of legislators to "work" on them, are but a few of the means which a Senate investigating committee found had been resorted to.<sup>77</sup>

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*, p. 148.

<sup>77</sup> Hearings before a special committee to investigate lobbying activities, 74th Cong., 1st sess., pursuant to S. Res. 165 and S. Res. 184, pt. 3, *passim*. This incident is described in some detail in Crawford, *The Pressure Boys*, Messner, New York, 1939.



The closeness of the Senate vote on the utility holding company bill apparently seemed to the industry to justify further opposition in the courts. In any event, the Edison Electric Institute announced in September 1935 its intention to fight the act in the courts and its retention of special counsel for that purpose.

The statement by the Institute's board of trustees showed clearly that the attack on the Holding Company Act was but part of a larger campaign against New Deal legislation. John W. Davis, 1924 Democratic Presidential candidate, was retained to lead the fight "as it relates to the validity and the constitutionality of the Utility Act itself." Newton D. Baker, Secretary of War in Woodrow Wilson's Cabinet, was engaged to "participate in the conduct of the cases to contest the gift and loan of Federal money to induce and enable municipalities to compete with private [utility] companies." James M. Beck, former United States Solicitor General, and Forney Johnston, of Birmingham, Ala., were assigned to argue before the Supreme Court the constitutionality of the acts under which the Tennessee Valley Authority was spending "huge sums of the taxpayer's money in its effort to further the doctrine of the abolition of private business for profit." Of unusual significance to the observer of the judicial phase of the governmental process is the position of the Board as to the way the attack on the Utility Holding Company Act would be launched. At the time of the announcement "utility executives were uncertain \* \* \* how soon the court action would be started or which particular section or sections of the law would be chosen to bear the brunt of the attack. Until the attorneys had an opportunity to decide which company would lend itself most readily as the complainant there would be no decision."<sup>78</sup> As it turned out, however, the attack on the act was not limited to a single suit but was composed of literally dozens of suits filed by as many utility companies. This strategy threatened to swamp the courts and to delay unduly the determination of the act's constitutionality. Moreover, the Government itself brought suit in November against the Electric Bond & Share Co. and 26 affiliated companies to compel them to register with the Securities and Exchange Commission as required by law. By agreement, proceedings were stayed in all except the Bond & Share suit, in which the Supreme Court ultimately passed upon the Holding Company Act.<sup>79</sup>

The Alabama Power Co. and the Duke Power Co. (North Carolina) sued to restrain the Federal Government from making P. W. A. loans and grants to municipalities for the construction of light and power plants,<sup>80</sup> while a group of preferred creditors of the Alabama Power Co. (of whom, incidentally, Mr. Forney Johnston was one) sued the Tennessee Valley Authority and others to set aside a contract that had been entered into by the company and the T. V. A. involving the sale and exchange of electric power generated at Wilson Dam, and the acquisition by the Authority of certain transmission lines from the power company.<sup>81</sup> Support in the prosecution of this suit was given not only by the Edison Electric Institute but also by the National Coal

<sup>78</sup> From the statement and accompanying news items as reported in the *New York Times*, September 13, 1935, p. 8.

<sup>79</sup> *New York Times*, December 8, 1935, p. 27, and December 25, 1935, p. 35. The case of *Electric Bond & Share Co. v. S. E. C.* (303 U. S. 419), was decided March 28, 1938. Mr. Thomas D. Thatcher, former Solicitor General of the United States, was chief counsel for the utilities in this case.

<sup>80</sup> *Alabama Power Co. v. Ickes* (302 U. S. 464), and *Duke Power Co. et al. v. Greencreek County et al.* (302 U. S. 675) (1937).

<sup>81</sup> *Ashwander et al. v. T. V. A. et al.* (297 U. S. 288 (1935)).

Association. All of these suits were decided by the Supreme Court in favor of the Government and against the Edison Electric Institute's members and friends. The suit against the T. V. A. decided only some of the many disputed questions which its program has raised. Among these is the right of the Government to dispose of electric power generated as an incident to the operation of a dam constructed for purposes of flood control, navigation, and national defense. The last attempt of the utility industry to wreck the T. V. A. in the courts was in the so-called *18 Company case*, in which the Supreme Court decided against the utilities, holding that they lacked the right to contest the Federal Government's authority to compete with them.<sup>83</sup>

*Activities of Edison Electric Institute.*

To establish the close connection between the Edison Electric Institute and the persons who challenged the authority of Congress to legislate in the utility field is the main purpose here. But several secondary features of the relationship are worthy of mention. The *Electric Bond & Share case* was not the first in which Mr. Davis acted for the institute in a case attacking the Holding Company Act. Nor was it the first in which the act was brought before the Supreme Court. Rather interesting circumstances surrounded Mr. Davis' association with a litigant in a suit involving the act in the Federal district court in Baltimore in 1935-36.

In corporate reorganization proceedings a minority group of creditors of the American States Public Service Co., acting through Burco, Inc., an investment trust, sought to compel the company to register with the Securities and Exchange Commission as provided by the Holding Company Act. The company, in turn, sought to have the act declared invalid on the ground that it would prevent its reorganization under the National Bankruptcy Act. Mr. Davis was counsel for neither party, but entered the case, apparently, at the suggestion of the company's attorney, Mr. Piper. Mr. Davis said he agreed to take part in the case if Mr. Piper "found him a party in interest to represent." Mr. Piper found such a party in Dr. Ferd Lautenbach, a creditor of the company. But Dr. Lautenbach did not know until the case opened on September 27, 1935, that Mr. Davis was to be his counsel. He learned it only then. Moreover, Mr. Davis' appearance in the case caused Federal attorneys, appearing for the Government as a friend of the court, to charge that the Edison Electric Institute "was behind the litigation." This Mr. Davis denied. He admitted he was counsel for the institute but "denied that the institute itself was active in the proceedings." This exchange took place on September 27 and 28, 1935, hardly 2 weeks after the announcement by the board of the institute that they had retained Mr. Davis to fight the Holding Company Act.<sup>84</sup>

However, the efforts of both parties to the suit, as well as of Mr. Davis, to get the Supreme Court to rule on the Holding Company Act were unsuccessful. The judge of the district court, in a sweeping opinion, declared the act unconstitutional in its entirety.<sup>85</sup> Burco, Inc., appealed to the circuit court, which held that the American States Public Service Co. was intrastate and ruled the act invalid as regards

<sup>83</sup> 306 U. S. 118 (1938).

<sup>84</sup> The New York Times, Sept. 28 and 29, 1935.

<sup>85</sup> *Ibid.*, November 8, p. 1.

the demand for registration. But at the same time the judge reversed the district court's invalidation of the act. Mr. Davis, as counsel for Dr. Lautenbach, then joined Burco and the American States Public Service Co. in a plea to the Supreme Court to review the lower court's decision. The Government opposed a test of the act in the Supreme Court. On March 30, 1936, the Court denied the application for review.<sup>86</sup>

It must not be assumed that the failure of the electric utility industry to persuade the courts to accept its view in these cases signifies its retirement from the lobbying field. On the contrary, like the Investment Bankers' Association of America, it has considerable patience and undoubtedly hopes that the future will relax the present degree of Federal regulation of holding companies and other utility activities. The nomination of a public utility executive by the Republican National Convention in 1940 was undoubtedly received with gratification by the utility industry as a whole. In the meantime the industries' resources and the apparent centralization of public relations policy in the Committee of Public Utility Executives guarantees it the opportunity of maintaining and possibly improving its position in the struggle with government.<sup>87</sup>

#### THE GENERAL WELFARE AND UTILITY LOBBYING

The large sums spent for propaganda by the railroads and utilities under the leadership of their national trade associations and their aggressive lobbying before Congress, the administrative agencies, and the courts raise sharply the issue as to the place of the general welfare in public policy toward utilities.

The conclusion of the Senate Civil Liberties Committee in regard to the National Association of Manufacturers' campaign against the N. L. R. B.,<sup>88</sup> that direct access to corporate treasuries and the expenditure of sums from them jeopardized the integrity of American political institutions, seems to be borne out by the policy of the electric utilities and the railroads in spending corporate funds for which they are, in effect, trustees, for the purpose of influencing public opinion and the selection of political officeholders.

Since 1933 Federal regulation over industrial financing, and particularly over public utility and railroad financing, has widened. There is little doubt that this extension of Federal power resulted in large part from public dissatisfaction with the tactics of the utilities and railroads and from a distrust of the willingness and ability of utility and railroad leaders to manage their business in the public interest. Only after extensive investigation of railroad and utility

<sup>86</sup> *Ibid.*, February 23, p. 1; March 17, p. 8, 18 p. 33, 28, p. 10, and 31, p. 9, 1936.

<sup>87</sup> An indication that individual utilities also engaged lobbyists is contained in the *Chicago Journal of Commerce*, May 18, 1939. According to the report, Fred S. Burroughs, vice president of the Associated Gas & Electric Co., told the Securities and Exchange Commission that his firm retained a man at \$5,000 a month to "mix with the right people" in Washington, and to advise on the attitude of officials. At the time the S. E. C. was investigating the Associated Gas & Electric Co. on charges that it filed a registration statement containing allegedly false and misleading statements, Gray's name entered the case when the company's records disclosed that he had received payments totaling \$55,000. There is poetic justice, in connection with the subsequent receivership of the Associated Gas & Electric Co., in the appointment of ex-Congressman Driscoll as one of the three trustees. Driscoll was the Pennsylvania Congressman who, in the summer of 1935, discovered that the Associated Gas & Electric Co., in cooperation with the Edison Electric Institute, instigated a shower of telegrams which descended upon Congress opposing passage of the Utility Holding Company Act.

<sup>88</sup> See above, ch. VI, pp. 95, 107.



methods by congressional committees did the public, or Congress itself, gain access to the facts. Without these data it would have been impossible to get public support for the extension of Federal regulation as now embodied in law.

This experience, similar to that of industrial relations and in commercial and investment banking, points directly to the need for Federal legislation which will enable the Government to discover and inform the voters of developments in the lobbying field. The failure of the railroads, in the absence of competing forms of transportation, to provide modern and up-to-date service at reasonable rates is well known. Similarly, the failure of the electric utilities to extend their service, particularly into the rural areas, before the advent of the Rural Electrification Administration, is also well known. It would appear that only through a combination of Federal regulation, as now provided by law, and an informed public can the gains achieved in these sectors of public policy be secured and extended.

## CHAPTER X

### SHIPPING AND AIR TRANSPORT

In the formulation of public policy with respect to merchant shipping and commercial air transport, one factor predominates which is not present in connection with other sectors of economic activity. This factor is the wartime value of shipping and of commercial air transport. It is the critical consideration in formulating public policy in these two fields.

Potentially, of course, all business is affected with a public interest when it comes to national defense. The present European war makes it unnecessary to dwell upon this truth. However, except in time of war or crisis, the defense value of business generally figures more importantly in planning than in the administration and execution of policy. This is not true of merchant shipping and commercial air transport. To a very large degree their wartime value determines national peacetime policy towards them. The same thing is true, in only slightly lesser degree, as regards iron and steel, shipbuilding, and the chemical industry. These industries, recognizing their strategic position, have exploited it to the utmost. Congressional committees, particularly the Special Senate Committee to Investigate the Munitions Industry, have shown the various methods by which they have done so. Generally, it appears that the pattern is continuing in the 1940 national defense crisis.

Various business and other groups are active in expounding the doctrine of the defense value of a merchant marine and in attempting to secure a national policy in this field which reflects this philosophy. These groups can be divided into two classifications: Those who merely expound the doctrine, and the second group with a definite economic interest which benefits from the patriotic coloring afforded the philosophy by the former.

The Chamber of Commerce of the United States emphasizes the defense value of a merchant marine, and argues that public subsidy is necessary for the maintenance of such a marine. The Navy League is another group active in expounding the value of merchant shipping to the Nation's defense forces. Patriotic groups, such as the Daughters of the American Revolution, the American Legion, and others, pass resolutions endorsing public support of a merchant marine because of its defense value. These latter groups emphasize the patriotic angle, hence lend valuable public relations aid to the groups which are active because of their economic interest.

#### THE NAVY LEAGUE

In this connection the Navy League is in a category almost by itself and warrants a further word. Its importance with respect to shipping policy grows out of three things: First, the philosophy it holds; second,

its relations with naval shipbuilding and the ship-owning and operating interests; and third, the methods which it employs.

The Navy League of the United States, founded in 1902 and incorporated the following year, subscribes completely to the philosophy of history expounded by Mahan that sea power is the decisive factor in shaping history; hence, since the United States is "insular," an adequate navy is necessary to protect its overseas interests, its lines of communication to strategic supplies, and its merchant shipping. Its formula of defense and of foreign policy is simple and can be clearly stated. According to the Navy League, the United States should possess an adequate navy, by that meaning a navy as strong as the strongest; it should have numerous naval bases, a merchant marine to serve as a naval auxiliary and a naval reserve, a naval militia, and a naval air force. This formula has been stated by the Navy League in the following words:

When the United States has a navy second to none, a merchant fleet carrying all our coastwise trade, and at least half our foreign trade in world competition and an all-American system of world communications free from foreign stock-ownership, management and operators and subject to untrammelled Government control in emergency—then only will America exercise its rightful influence on world opinion, world trade, and world peace.<sup>1</sup>

Because of this value of a merchant fleet to the Navy, public subsidy is justified. The Navy League view is that by itself a fleet is incomplete and must have as a reserve a fully manned merchant marine. In addition, the merchant marine must be government-subsidized, since costs are higher here than abroad.<sup>2</sup>

The cordial relations obtaining between the Navy League and the United States Navy Department, the iron and steel industry, and the shipbuilding, ship-owning, and operating industries are important not so much because of any interlocking directorates, but because all these groups share the same philosophy. The Navy League's officers and directors are civilians. With the exception of two appointed officers, they are elected and serve without pay. Neither active nor retired naval officers (except a few retired officers admitted before revision of the by-laws) are eligible for membership. Shipbuilders and munition-makers and those having an independent financial interest in naval construction or the manufacture of munitions are ineligible as members or contributors. Shipowning and operating companies, however, are not disqualified as contributors. Individuals, even though they are officers of shipbuilding and munitions-manufacturing companies, are eligible for membership. The league has solicited and received contributions from the Standard Shipping Co., the Grace Lines, the Atlantic and Caribbean, and the Chile Steamship Co.<sup>3</sup> Charles M. Schwab and Eugene Grace of Bethlehem Steel are founders as well as life members. The Navy League asserts its freedom from "all outside influence whether political, naval or personal" and maintains that this "is well known to newspaper editors."

The Navy League is a publicity organization. The league's relations with the Navy Department and the Nation's press are cordial,

<sup>1</sup> The quotations and data in this section are taken from Navy League publications.

<sup>2</sup> "No nation, as history shows, has successfully competed in world markets without making that competition a matter of government concern. Lacking Government subsidies to restore the higher cost differential of American shipbuilding and operation, our merchant marine engaged in foreign trade would be swept from the seas by foreign competition." Therefore "our merchant shipping depends upon Government support."

<sup>3</sup> New York Times, February 11, 1936, reporting special testimony before the Special Senate Committee Investigating the Munitions Industry.



enabling it to magnify the force of its voice many times. The league realizes that the Navy and the merchant marine depend upon public opinion for support. While the President's views of the Navy and merchant marine are important, public opinion is necessary whether the President is warm in his support or is neutral.<sup>4</sup> Members of Congress come mostly from interior and inland States. Hence, in the view of the Navy League, they and their constituents need information regarding national defense and shipping policies.<sup>5</sup>

Sound public opinion on naval affairs, in the words of the Navy League, must rest upon Nation-wide information—dependable, adequate, and timely. The Navy Department is not in a position to release and disseminate such information. When disseminated by such an organization as the Navy League, however, it attracts newspapers' attention and receives Nation-wide publicity. This is the role in which the Navy League casts itself.<sup>6</sup>

In order to give "to the American people through the press, in signed statements, accurate and current information and matured comment on naval and maritime affairs," the Navy League uses a variety of publicity methods. It issues its own publication, *Sea Power*, which resumed publication in 1935 after a lapse of 14 years. From time to time it issues tracts and pamphlets. Its officers are active in speech-making and public relations work. Through cooperation with the Navy Department, the league prepares and distributes its press releases and its publications on special projects. Such a project was the Pathé News reel, *Our Navy*, released May 26, 1934, and based on information and graphs supplied by the Navy League. According to the league's executive secretary, the news reel cost it nothing, but the film was seen and heard by some 22 million people in more than 2,500 theaters throughout the country. For publicizing the need for a long-time naval construction program, the film won the thanks of the Secretary of the Navy.

#### BUSINESS INTERESTS AND DEFENSE

In addition to the patriotic groups who expound the doctrine of defense value of merchant shipping and of air transport, there are business groups which capitalize on the value of this alliance of patriotism and economics. Among these groups are the American Merchant Marine Institute (formerly the American Steamship Owners Association), the Air Transportation Association, and various corporations, individually and collectively.

Effective citizen groups organized to counteract business activity in these fields are conspicuous by their absence. The only active groups,

<sup>4</sup> "When the President *does not favor* an adequate navy and merchant marine, Congress usually shows inertia unless influenced by aroused public opinion. When the President *does favor* strong naval and shipping policies, both he and Congress need informed public opinion to assist such policies. Through changing administrations, informed and sound public opinion is *the only available* means under our form of government to secure *continuity* of sound naval and shipping policy." [Italics in the original.]

<sup>5</sup> "Most Members of Congress represent inland States, the majority of whose citizens lack the experience and contact with ocean trade shipping and naval protection essential to a ready appreciation of their values. Therefore the constituents of most Members of Congress, need almost constantly to be informed and educated on naval and shipping matters."

<sup>6</sup> "Dependable, adequate, and timely "information, when issued by the Navy Department, is limited by considerations of policy, both diplomatic and political, and of necessity is largely confined to matters and policies already determined. Such dependable, adequate, and timely information, however, issued freely with frank comment by the Navy League, a disinterested and non-partisan organization of citizens, wins the interest of editors and gets national publicity."

generally speaking, are professional peace groups which concentrate more on matters of broad foreign policy than on the economic factors in national defense. Some of these peace groups are active in lobbying, such as the Women's International League for Peace and Freedom, the National Council for the Prevention of War, and the League of Nations Association. Others confine their activity mostly to educational and research efforts. Among these are the Foreign Policy Association, the American Peace Society, and the Carnegie Endowment for International Peace.

Occasionally one of these professional peace groups exerts appreciable force on policy determination. This was the case with the 1935 Neutrality Act which grew out of the reports and recommendations of the Senate Munitions Investigating Committee. Committee Chairman Nye (North Dakota) was persuaded to initiate this investigation by Miss Dorothy Detzer, lobbyist for the Women's International League for Peace and Freedom.<sup>8</sup> The National Council for the Prevention of War claims to have been responsible for cutting the 1929 naval expansion program to a third of the size originally planned.<sup>9</sup>

The same group took the initiative in 1928 in putting pressure upon Congress to adopt a resolution favoring arbitration of the dispute with Mexico, growing out of the passage there of a statute confiscating all oil lands held by aliens.<sup>10</sup>

While important on occasion, the staying power, resources, and plausibility of program of these peace groups are hardly in the same class as those of the business groups with an economic stake in shipping policy. The peace groups by and large are considered either radical or unrealistic; the business groups, on the other hand, are generally regarded as "sound."

#### PUBLIC SUBSIDIES FOR PRIVATE SHIPPING COMPANIES

For many years shipping policy has been framed and administered in a way highly lucrative for shipping and shipbuilding interests.

<sup>8</sup> Kenneth G. Crawford, *The Pressure Boys*, Messner, 1939, p. 211.

<sup>9</sup> See also p. 44.

<sup>10</sup> In 1926 Mexico passed a statute confiscating all oil lands held by aliens. Since many of these lands were owned by American firms, much indignation was aroused in this country against Mexico. On January 13, 1927, leading New York newspapers warned the American people that if they wanted peace with Mexico they must begin to fight for it. The National Council for the Prevention of War was in a position to act without delay and raised at once a fund of \$12,000. A small committee of well-known men and women was quickly formed, who signed and sent a telegram to 1,000 prominent people throughout the 48 States asking if they favored arbitration of the dispute with Mexico. A proposed statement was included in the telegram.

Of the 1,000 persons, more than 400 replied within 24 hours. The statement with their signatures was printed, and this document, together with the warning editorials from the New York papers, was mailed to every one of the 13,600 newspapers in the United States.

Next was required a technical statement to prove the issue was arbitrable. This was prepared by a professor of international law at Columbia University. Immediately it was sent by special delivery air mail to 240 professors of political science, international law, and history in the leading educational institutions of the country, asking if they approved it. One hundred and one of them assented within 48 hours, and this document, too, with signatures was printed and released to the newspapers.

On 3 days' notice representatives of 30 peace organizations met in Washington and agreed to send as many letters and telegrams as possible to the President and to Members of the Senate, on whom pressure was being exerted by oil interests.

An appeal was mailed by the Federal Council of Churches of Christ for similar action, together with necessary information, to 75,000 ministers. Many thousands of influential people were also reached with copies of conciliatory speeches made by Members of the United States Senate. Letters to local papers were urged.

The effect of this intensive campaign was immediate and decisive. Washington correspondents reported that not in many years in Washington had they seen such an outpouring of public opinion. The Senate voted 79 to 0 in favor of arbitrating the dispute.

The flare-up of the controversy in 1938 resulted again in intensive propaganda efforts by both sides. The newspapers generally took the side of the oil companies, but aroused less public indignation than might have been expected from the vigor of the campaign.

In 1920 Congress directed the Shipping Board to return to private ownership and operation the merchant shipping fleet built up during the World War. The basis of this transfer, as provided by the law, was profitable to the operators. The law provided that such transfer could be negotiated through managing-operating agreements, either on the basis of a lump sum, or of cost of operation plus a percentage of the cost. The Government also was authorized to advance to private owners and operators the funds necessary for purchase. With the passage in 1928 of additional shipping legislation, provision was made for the award of mail contracts. Contracts were to be awarded after competitive bids, and the rates varied according to the speed of the vessel.

A special Senate committee investigating, in 1934 and 1935, the conditions surrounding the award of these ocean mail and air mail contracts, described the results of these policies. It pointed out that the objective of public subsidy was to provide sure and certain transportation for American products to foreign markets, to make available a good fleet of potential naval auxiliaries, and to provide steady enough employment to shipyards and labor to permit rapid expansion in case of emergency; and concluded that the legislation had failed. The fleet actually provided was pitiful, in the committee's opinion, because of the enactment of an ill-advised compromise law, flagrant betrayal of trust by public officers, and the prostitution of the law by private individuals.<sup>11</sup> The merchant fleet created as a result of the legislation was not in reality privately owned, inasmuch as the committee found that the Government had invested, in loans and mortgages to the companies, nearly one and one-half times the stockholders' interest.<sup>12</sup>

From 1920 to 1930 the Government negotiated agreements for private operation pending the disposition of the Government-owned fleet. The Government paid to the operator all voyage expenses and a fixed percentage of the gross voyage revenue. In practice the managing operator made no effort to keep his expenses down, and in fact often deliberately increased them.

In 1930 the cost-plus basis of negotiating operating agreements was abandoned in favor of the lump-sum basis. In order to qualify, an operator had to show sufficient capital investment to indicate financial responsibility, but no investment in fixed assets was necessary; nor was much working capital required. An example is the agreement with the Lykes Bros.-Ripley Steamship Co. The committee found that its profits under this kind of an arrangement were over a million dollars between August 15, 1930, and June 30, 1933. In the company's opinion, profits under the first year of the original agreement were nonexistent. In September 1931 it stated, in its request for an increase in the lump sum payment from \$7,000 to \$14,800: "A thorough analysis of the operations conclusively shows that there will be no profit to the operator and very probably an actual loss." Actually

<sup>11</sup> S. Rept. 898, Investigation of Air Mail and Ocean Mail Contracts, 74th Cong., 1st sess., pp. 2, 3.

<sup>12</sup> The committee found that most of the 2,000 seagoing vessels belonging to the Government in 1920, with an original value of \$3,000,000,000, had been disposed of. Of these, 220 ships, costing originally \$516,174,249 and sold for \$41,411,665, were in the mail contract service. The Shipping Board retained 282 cargo and passenger vessels, of which 45 were in operation under managing-operating agreements, and the remainder were tied up (*ibid.*, p. 4).



the company had made a profit of \$100,000 from August 1930 to September 1931, but the Shipping Board apparently made no effort to verify the facts.<sup>13</sup>

Equally surprising results were obtained under the operation of the 1928 Merchant Marine Act authorizing ocean mail contracts. This law, which was apparently written by the shipping operators and shipbuilders themselves,<sup>14</sup> continued and emphasized the policy of aiding, upbuilding, and maintaining a privately owned and operated American merchant marine. Congress determined that the aid should be distributed under a system of competitive bidding, but this provision was virtually nullified in the administration of the law. Out of 43 contracts only 6 were let at less than the maximum rate allowed by law.<sup>15</sup>

The investigating committee found that of 43 contracts negotiated under the competitive bidding plan, 42 were subject to cancellation because they had been let in open defiance of the legal requirement for competitive bidding.<sup>16</sup> There was only 1 bidder on each of the 43 contracts, and in only 1 case out of 46 lettings did any person but the one planned on in advance succeed in securing the contract.<sup>17</sup> Eighteen of the operators of the 43 mail contract routes had benefited in the past from managing-operating agreements and had purchased ships at less than their appraised value; 11 other operators operated wholly or in part with ships purchased at less than their appraised value; only 7 had neither bought their ships for less than the appraised value nor benefited from managing-operator agreements; 5 of these borrowed from the Government at low rates of interest; and only 2 received no aid from the Government outside of payments under the mail contracts themselves.<sup>18</sup>

The lobbying and propaganda activities of the steamship owners and operators was suggested by the testimony of Mr. R. J. Baker, secretary-treasurer of the American Steamship Owners Association, who said that in his opinion Government aid to shipping was essential, as operating costs were too high to enable American operators to compete with foreign competitors.<sup>19</sup> At the time of the investigation the Steamship Owners Association did not want legislation which would affect the subsidy plan. This is understandable in the light of the active part played by the Steamship Owners Association in the passage of the 1928 Merchant Marine Act and in its subsequent administration. Exhibits before the committee showed that the Steamship Owners Association had hoped that certain Senators would be on the Senate Committee on Interstate and Foreign Commerce or that a certain Senator would be named chairman of the committee. Moreover, evidence was introduced showing that the steamship owners tried to get a couple of members on the Special Committee Investigating the Mail Contracts.<sup>20</sup>

Testimony of Thomas R. Shipp, head of a public relations firm, showed that he had a contract with the American Steamship Owners Association in 1932 to put out propaganda and had also worked for

<sup>13</sup> *Ibid.*, p. 6.

<sup>14</sup> Kenneth G. Crawford, *The Pressure Boys*, op. cit., p. 226.

<sup>15</sup> S. Rept. 898, on cit. p. 7.

<sup>16</sup> *Ibid.*, p. 12.

<sup>17</sup> *Ibid.*, p. 10.

<sup>18</sup> *Ibid.*, p. 5.

<sup>19</sup> *Ibid.*, p. 155.

<sup>20</sup> *Ibid.*, p. 157.

them in 1928. While Mr. Shipp's testimony in response to questioning was not completely unambiguous, there seems to be little doubt that the purpose of this propaganda, both in 1928 and 1932, was to mold congressional and public opinion in favor of legislation authorizing ocean mail contracts to the shipping companies and the continuation of that legislation without change.<sup>21</sup> In 1930 Mr. H. B. Walker, president of the American Steamship Owners Association, proposed to the American Farm Bureau Federation that this general farm group should be the channel through which information and propaganda favorable to the ship-mail subsidy program should be distributed. In reply to the proposal, Mr. M. S. Winder, Farm Bureau Federation secretary, stated that it would cost some \$95,000, at a minimum, to carry out this propaganda campaign.<sup>22</sup>

Although the Merchant Marine Act of 1936, which was passed by Congress following the disclosures of the Black committee, did not contain all of the committee's recommendations, it does in certain respects conform to the committee's conclusions. The committee decided that the 1928 law was incapable of providing an American merchant marine at reasonable cost and ought to be repealed. This was done. In addition, the committee decided that Government subsidies to the merchant marine were necessary, but that they should be direct and not camouflaged as in the ocean mail contract system. Recognizing the difference in construction and operating costs here and abroad, it was recommended that the merchant marine subsidy should be divided into two parts—construction and operating. Congress followed the committee's recommendations as to both the need for public aid and the form it should take. The committee concluded, further, that merchant ships should continue to be built in private yards, but that if suitable terms cannot be secured from private shipyards, it would be advisable for the Government to build its own ships in its own yards. "No necessity," Senator Black said, "excuses the payment of Government tribute to private monopoly."<sup>23</sup> Congress also followed the committee's recommendations that mail contracts under the 1928 act should be terminated and a new agency be set up to administer the program. The 1936 Merchant Marine Act established the United States Maritime Commission, composed of five members appointed by the President.<sup>24</sup>

#### PUBLIC SUBSIDIES FOR COMMERCIAL AIR TRANSPORT

In fixing public policy regarding commercial air transport, the national defense value of the airplane construction and air line operating industries has been the paramount consideration. The legitimacy of public subsidies was recognized in the 1926 Air Commerce Act. As with the merchant marine, the subsidy to the commercial air transport companies took the form of mail contracts. The results in both cases were not dissimilar.

The Black committee investigated both the air and ocean mail contracts. The air mail inquiry, however, was less exhaustive than that

<sup>21</sup> *Ibid.*, pp. 205, 206.

<sup>22</sup> *Ibid.*, p. 459.

<sup>23</sup> *Ibid.*, pp. 38, 39.

<sup>24</sup> Among other things, this act vests in the Maritime Commission the powers of the U. S. Shipping Board under the 1916 act, the 1920 Merchant Marine Act, the 1928 Merchant Marine Act, and the 1933 Intercoastal Shipping Act and amendments thereto. Office of Government Reports, U. S. Government Manual, Washington, 1940, pp. 508-509.

concerning ocean mail, due to the destruction of records subpoenaed by the committee.<sup>25</sup> Nevertheless, sufficient evidence was adduced to show collusion and fraud, with the result that the air mail contracts were canceled by the Government and new contracts entered into. The new contracts were negotiated under authority given the Postmaster General in 1935, according to which competitive bidding was not necessary. Public subsidies continue to be granted to the operators of commercial air transport lines.

#### WHAT PRICE PATRIOTISM

Where business of vital importance to the national defense is concerned, the Government and the public are under a permanent handicap. The experience with public subsidies for the merchant marine and air transport industries shows that the administration of a subsidy system, even in peacetime, is open to grave abuses. In time of war or crisis the opportunity for abuse is even greater. Regardless of the gravity of the crisis, business insists on extracting from the public through the Government what it calls a "living wage." The philosophy of business was summed up in a sentence by Judge Gary, of the U. S. Steel Corporation in 1917. "Manufacturers," he said, "must have reasonable profits in order to do their duty."<sup>26</sup>

The lengths to which business will go in following this principle of extracting a living wage were brought out by the Nye Munitions Investigating Committee reports. During and after the Great War the munitions makers and the shipbuilders insisted on serving their stockholders and the management before serving the Nation. Here again the philosophy of business has been well summed up by one of its leaders. Chiding Congress for not giving the du Ponts all the orders they wanted, an official of his company remarked, "This is our country and not the country of Congress."<sup>27</sup>

In view of the defense program of 1940, it is perhaps not out of place to recall what happened during the Great War, when business was fixing the terms on which it would work for the Government and the people. The Government embargo against foreign loans imposed in the early days of the war was first relaxed sufficiently to permit the granting of commercial credits, then abandoned altogether, largely because of the pressure of J. P. Morgan & Co. The Du Ponts claimed to be in business at the request of the Army and Navy, and therefore were in a position during the war, practically speaking, to write their own ticket. Summarizing the results of its inquiry into the shipbuilding industry during the war, the Senate Munitions Committee stated:

\* \* \* the record of the present shipbuilding companies during the war wherever examined was close to being disgraceful \* \* \*. They made very considerable profits. On Treasury orders they showed up to 90 percent. They

<sup>25</sup> The destruction of these records was carried out by William P. McCracken, Jr., Washington lawyer and lobbyist for air line operators. Mr. McCracken was found guilty of contempt and served a jail sentence. At the time Mr. McCracken was secretary of the American Bar Association. But his standing both with the bar and with the air line operators does not seem to have diminished. He is still lobbying in Washington for the air lines (Crawford, op. cit., pp. 158, 159).

<sup>26</sup> From the testimony before the Special Senate Committee Investigating the Munitions Industry, quoted in Stephen and Joan Raushenbush, *War Madness*, National Home Library Foundation, 1937, p. 125. Mr. Raushenbush was chief investigator for the Senate Munitions Investigating Committee, and *War Madness* is based upon the hearings and the reports of this committee.

<sup>27</sup> *Ibid.*, p. 90.



secured cost-plus contracts and added questionable charges to the costs \* \* \*. The committee finds no assurance in the wartime history of these companies to lead it to believe that they would suddenly change their spots in the case of another war.<sup>28</sup>

Other evidence brought out by the Nye committee showed that leading companies in the steel and copper industries refused to fill Government orders except on what amounted to their own terms.<sup>29</sup> According to the committee: "The Government is more at the mercy of such a strike by capital or management than at the mercy of a strike by labor."<sup>30</sup>

It is well known that the revelations brought out by the special Senate Munitions Investigating Committee resulted in a widespread demand for industrial conscription or its equivalent in wartime. It is interesting, however, that, despite the support of the American Legion and other World War veterans' groups, Congress has adopted no legislation authorizing universal wartime service. A comparison of the effectiveness of the veterans' groups in pushing universal wartime service legislation and their success with bonus legislation is interesting.

For several years the American Legion refused to go along with other veterans' groups in demanding prepayment of the so-called bonuses. In 1932, however, it reversed its previous stand and threw its weight behind the bonus bill. Inside of 4 years the bonus prepayment bill had become law. On the other hand, the Legion adopted the principle of universal service at its Kansas City convention in 1921, yet up to 1940 the Federal statute books still carried no universal service legislation, and even in the present emergency no adequate legislation has been adopted.<sup>31</sup>

#### HISTORY REPEATS ITSELF

In the 1940 national defense crisis, business displayed much the same attitude that it had shown 23 years earlier. Business would help the Government and the people, but the basis of payment therefor would

<sup>28</sup> Quoted in Raushenbush, op. cit., pp. 40-41.

<sup>29</sup> Raushenbush, op. cit., pp. 124-126. "Many of the big war materials companies immediately went on strike for more than their usual income. The Munitions Committee called it the 'strike of capital.'"

<sup>30</sup> Ibid., pp. 124-125.

<sup>31</sup> Prepayment of the bonus and extensive preference for veterans in Government employment are by no means the only evidence of the effectiveness of the veterans' lobby. The Legion claims credit for the legislation enacted in 1921 creating the Veterans' Bureau, as well as for the so-called consolidation bill of 1930, which brought under the Administrator of Veterans' Affairs the Veterans' Bureau, the Pension Bureau, and the soldiers' homes. Credit is also claimed for the passage of the 1929 Cruiser Act and for securing the necessary funds from the Seventy-third Congress "to guarantee a navy for our country which will be second to none." The Legion has been very active in increasing the number of veterans and their dependents who receive financial benefits from the Federal Government (for example, the number increased from 49,450 in 1919 to 435,338 in 1933). Appropriations made by the second session of the Seventy-second Congress for carrying on Government functions were reduced in every department and agency except the Veterans' Administration. Reductions for this agency were averted "only through the tremendous influence exerted by the Legion" (Legionnaire Henry L. Stevens before the September 1932 American Legion convention). Many amendments to the homestead, public land entry, immigration, and naturalization laws in favor of veterans and their dependents have been effected through Legion efforts.

In 1924 the House of Representatives established a standing Committee on World War Veterans' Legislation. By this action the veterans' lobby, it has been said, "marched right into the Capitol," thus displacing the Methodist Episcopal Board of Prohibition, Temperance, and Public Morals (part of the prohibition lobby) as "the most powerful lobby in the history of the country." The veterans have attained this position "chiefly because they have been able to wrap themselves hypocritically in the American flag while raiding the Treasury" (Edward H. Collins, in the New York Herald-Tribune, February 28, 1938). This is an assertion which, while possibly exaggerating the situation, nevertheless must, in the light of the success of the Legion and of the other veterans' organizations in getting congressional sanction for their desires, be regarded as tolerably close to the truth.

have to be fixed before the wheels would begin to turn. Profits, taxes, loans, and so forth, appeared more important to business than getting guns, tanks, and airplane motors into production.

For months the Government's desire to get the program moving was offset by business' desire to get the terms of cooperation settled to their liking. It developed that business did not want to work for the country on the basis of a 7 or 8 percent profit limitation written into the Vinson-Trammell Naval Expansion Act in 1935, so these provisions were repealed. Thus, the whole cost-plus basis of defense contracts, which industry liked so well during the last war when it had practically a free hand in determining costs, went by the board in 1940 when the allowable items of costs were determined by the Treasury Department. Moreover, when the basis of figuring industry's "living wage" was changed from one of limiting profits to one of taxing excess profits, industry again exploited its key position. In figuring the basis for normal profits above which surtax rates would apply, two alternatives were presented. Applying to all business without regard to defense operations, normal profits could be figured either on the basis of average annual profits over the 4-year period 1935-39, or on the basis of a percentage of a corporation's capitalization. The choice itself is a concession; but when the latter alternative is so clearly open to inflation, it is also playing ball the way business wants it played. Tax rates remain important, but applied to excess profits in this way, they become less burdensome. Furthermore, in many cases industries with defense contracts shied away from the capital markets in seeking to finance plant expansion, preferring to secure loans from the Reconstruction Finance Corporation and its subsidiaries, loans which can be amortized over a 5-year period.<sup>32</sup> In these and other ways, steel, aircraft, motor, and chemical companies created the impression in the summer of 1940 that the Nation's rearmament program could wait on the fixing of satisfactory financial terms and that time, far from being of the essence of success, was of secondary importance. In September 1940, Congress was still wrangling with business leaders over these terms.

Farm and labor groups accused business of obstructing the program, but business denied the charge. The American Farm Bureau Federation, largest general farm organization, voiced its concern over industry's stalling in a letter from Edward A. O'Neal, federation president, to the Joint Congressional Committee on Taxation, August 8, 1940. John L. Lewis, president of the Congress of Industrial Organizations, on August 15, expressed similar alarm at the "bold sabotage of national defense by representatives of American corporative industry." Industry took cognizance of these charges. The president of the N. A. M., in a letter of August 18 to congressional leaders, stated that such accusations were "deliberate or unwitting misstatements," and denied the charges.<sup>33</sup> Despite this denial, the impression remained. Business, it appeared, was running true to form.

Speaking bluntly, the Government and the public are "over a barrel" when it comes to dealing with business in time of war or other crisis. Business refuses to work, except on terms which it dictates.

<sup>32</sup> Instances are cited in PM, New York daily newspaper, August 9, 1940.

<sup>33</sup> New York Times, August 19, 1940.

It controls the natural resources, the liquid assets, the strategic position in the country's economic structure, and its technical equipment and knowledge of processes. The experience of the World War, now apparently being repeated, indicates that business will use this control only if it is "paid properly." In effect, this is blackmail, not too fully disguised.

The situation which confronted our Government in 1917 when we entered the World War, and which confronts it now, constitute the dilemma of democratic government. Government depends upon capitalist business for the means of defending its existence. Business apparently is not willing to threaten the very foundations of government in fixing the terms on which it will work. It is in such a situation that the question arises: What price patriotism?





## CHAPTER XI

### AGRICULTURE AND DISTRIBUTION

There are about 7,000,000 individual farm producers<sup>1</sup> in the Nation, and 1,830,717 wholesale and retail distributive outlets.<sup>2</sup> On the other hand, there are 170,000 manufacturing establishments.<sup>3</sup> The concentration of management and control in industry gained by the corporation and the devices associated with it, combined with the economies of large scale production, has meant that a fraction of the industrial producers dominate industry. No comparable degree of concentration exists in agriculture or distribution, hence there is less chance than in business for the development of a consistent unified group philosophy.

As a matter of fact, as a result of their atomistic nature and the consequent lack of a unified philosophy, both agriculture and distribution have in many cases followed the lead of business in internal policies as well as political activity. There are many cases where they did not, of course, among them the Granger movement, the fight for parity of farm income, the distributors' insistence on resale price maintenance laws, etc., but there are also many instances, such as the pressure for a high tariff, the opposition to relief appropriations, and hostility to the reciprocal trade agreements, etc., where the lead of the business community was followed without any clear idea of the contradiction of economic interest involved.

American history, of course, is studded with examples of farm and rural disapproval of policy believed to have been made by and in the interests of urban manufacturing groups. Early instances, such as the revolt of farmers and artisans under Jackson's leadership in the early nineteenth century and of agrarian agitation under Populist leadership some decades later, have been paralleled in recent years by considerable farm resentment against "Wall Street." The attitude is typified in an address by Edward A. O'Neal, president of the American Farm Bureau Federation, in which in 1934 he summarized the effects of economic development and public policy upon business, labor, and agriculture.

Aided by high tariffs, copyright laws, patent laws, and enjoying the privileges and immunities of charters granted by States, corporations abused States' rights and by means of mergers and holding companies they built up giant monopolies in our Nation controlling vast industries and millions of employees; they fixed prices and wielded vast political power. Thus, our so-called sovereign States created a child more powerful than the State itself and frequently threatened our rights under the Constitution. They could boast like Louis XIV who said, "I am the state." They laughed at the Sherman anti-trust law and the Federal Trade Commission.<sup>4</sup>

<sup>1</sup> U. S. Bureau of the Census, Census of Agriculture, 1935.

<sup>2</sup> U. S. Bureau of the Census, Census of Distribution, 1935.

<sup>3</sup> U. S. Bureau of the Census, Census of Manufactures, 1935.

<sup>4</sup> Annual Report of the Officers of the American Farm Bureau Federation for the Sixteenth Year (1934).

## FARM POLITICAL POWER PARTIALLY OFFSETS ECONOMIC HANDICAPS

The economic handicap of farmers has to some extent been offset by their ability to retain representation in Congress out of proportion to their numbers. It is well known, of course, that the political representation of predominantly agricultural States is disproportionate to their population. Nevada and New York provide the classic illustration, as the two are equally represented in the Senate, although Nevada has only 91,058 inhabitants, while New York has 12,588,066.<sup>5</sup> In a less degree this disproportion between representation and population is duplicated in the House of Representatives. The tremendous economic power of one pressure group, business, therefore, while it has not been equaled, has at least to some extent been held in check by the preponderance of farm representatives in Congress. During the Sixty-sixth and Sixty-seventh Congresses in the early 1920's, the so-called "farm bloc," organized under leadership of the newly created American Farm Bureau Federation, held the balance of power. As a result, "More legislation of benefit to agriculture was passed than in all of the sessions of Congress preceding."<sup>6</sup>

President Hoover's signing of the Smoot-Hawley Tariff bill in 1930, while it was in line with farm requests at that time, actually worked against farm interests in many cases, because its industrial levies raised the prices of industrial goods, while its farm duties, although high, were generally ineffective in regard to the prices of farm products.

The efforts of organized farmers have been much more successful since 1933. In the Agricultural Adjustment Act, with its grant of inflationary monetary powers to the President, the Emergency Farm Mortgage Act, and dollar-devaluation legislation, the farm organizations finally reached their goal of writing the Nation's farm policy.

*American Farm Bureau Federation.*

In this success the Farm Bureau Federation played the leading role. Grasping the leadership held in the nineteenth century by the National Grange and later on, in the Northwest, by the Nonpartisan League, the American Farm Bureau Federation in 1921 took the initiative in agitating for farm relief, and has held it ever since.<sup>7</sup>

The foundation stone of its philosophy is the idea that American farmers are entitled to a living standard as high as that enjoyed by other groups. This idea is expressed in the slogan "Equality for Agriculture." According to the Farm Bureau attainment of this goal involves several points. First is a commodity dollar, whose purchasing power would remain constant. The Bureau favored the Goldsborough bill to set up a board to regulate the value of money and stabilize purchasing power.<sup>8</sup> Second, parity must be attained between

<sup>5</sup> U. S. Bureau of the Census, Census of Population, 1930.

<sup>6</sup> American Farm Bureau Federation, Back of This Emblem, p. 13.

<sup>7</sup> The necessity to agriculture of organization in an age of concentrated economic power in industry is well stated in the following extract from an editorial in the Bureau Farmer (now the Nation's Agriculture), official publication of the American Farm Bureau Federation, April 1935.

"The more strongly American agriculture organizes itself in a national way, and along the lines laid down in the platform and policies of the American Farm Bureau Federation, the greater will be the results accruing to American agriculture. In an age such as this, where all ramifications of industry are represented by organization groups, agriculture also must present a unified front, and must focus public attention upon its problems through a representative organization, such as the American Farm Bureau Federation."

<sup>8</sup> The American Farm Bureau Federation in 1934, a statement of Bureau policies and achievements in that year.



farm prices and industrial prices and wages.<sup>9</sup> The cost of distributing farm products must be reduced, and the inequalities in our tariff must be corrected. Moreover, agricultural credit facilities must be strengthened and developed and the tax system revised to remove the burden now borne by agriculture. We need, in addition, a national land policy which will conserve the soil; cultural opportunities as between urban and rural areas must be equalized; and agriculture's voice in the affairs of the Nation strengthened.<sup>10</sup>

In striving for the realization of its program, the Farm Bureau acts as the national organization of local groups, brings pressure to bear on legislators in the determination of Government policy, broadcasts its views on both general and particular issues, and unifies State Farm Bureau activities. In pushing its national program the A. F. B. F. is brought into close contact with Congress, the administrative agencies, and the Federal courts.<sup>11</sup> Also, it publishes a monthly magazine, a bi-weekly news-letter, publicity releases, and special articles for farm journals, produces a monthly radio program, furnishes speech and program material, and performs other services of an informational nature.<sup>12</sup> Its understanding of its usefulness in unifying State Farm Bureau activities is expressed in the following statement:

A Pacific Coast State might need Federal quarantine legislation; a group of Midwest States, Federal appropriations for corn-borer eradication; a few Southern States, flood control assistance; alone, accomplishment in each case impossible; with correlated effort, success on all three.<sup>13</sup>

Only about 5 percent of the Nation's farm population are organized in the Farm Bureau Federation.<sup>14</sup> By themselves, of course, this group is but a small minority of the farm and rural population. It includes, however, many in the most prosperous group of farmers, among them nationally known leaders in commercial agriculture. Large cotton producers, leaders in the Corn Belt, as well as in the commercial production of tobacco and wheat, are numbered among Farm Bureau members and officials.

### *National Grange.*

Organized agriculture includes, besides the Farm Bureau, the 800,000 members of the National Grange and the 92,000 members of the Farmers' Union, plus a number of smaller groups.<sup>15</sup> The Grange is in many respects more conservative in its economic viewpoint than the Farm Bureau, yet it agrees on the fundamental contention that agriculture is at a disadvantage as compared to business and finance.<sup>16</sup>

<sup>9</sup>The A. A. A. held that parity would be reached generally when agricultural prices bore the same ratio as industrial prices to a 1909-14 base.

<sup>10</sup>See resolutions adopted at the 21st A. F. B. F. convention, December 7, 1939, published by the American Farm Bureau Federation.

<sup>11</sup>Back of This Emblem, op. cit., states that, "Formally and informally the Farm Bureau has advised and counseled with the President of the United States, Secretary of Agriculture, the Director of Extension, the agricultural committees of both the Senate and House, and with the various Federal boards and commissions in relation to matters of public policy affecting agriculture" (p. 13).

<sup>12</sup>American Farm Bureau Federation, The Seventeenth Year of the American Farm Bureau Federation, 1935, p. 21.

<sup>13</sup>Back of This Emblem, op. cit., p. 5.

<sup>14</sup>The Farm Bureau office in Washington states that its membership includes 400,000 heads of families. Figuring 3 people to a family, they regard their membership as about 1,500,000.

<sup>15</sup>The Grange and the Farmers' Union also figure membership on a family basis.

<sup>16</sup>"The growth of the corporate structure in business and finance has placed unorganized agriculture at a disadvantage that will increase as time goes on unless corrected by business methods that permit the private ownership of farms and homes, the independence of the tiller of the soil, and at the same time combining the productive and distributing machinery through the agency of better marketing methods." Louis J. Taber, national master, in his address before the 1934 annual meeting.

The Grange also stands for "an honest dollar," meaning thereby "a dollar stable in value and stable in commodity purchasing power." It seeks price parity, as does the Farm Bureau. But it has disapproved of continued Federal intervention in agriculture, holding that such intervention is justified only in times of emergency, and failed to support the Farm Bureau in 1937 and 1938 in its drive for the 1938 A. A. A. Both favor cooperative marketing; a sound land use program; taxation on the basis of ability to pay, and not a general sales tax; commodity storage on the farm effected through Federal crop loans; and improvement of rural educational and cultural opportunities by the use of the tax power. The Grange is more protectionist than the Farm Bureau and has opposed the New Deal's reciprocal trade program, while the Farm Bureau, has at least at times, supported it.<sup>17</sup>

#### *Other Farm Groups.*

The Farmers' Union is generally considered more radical than either the Farm Bureau or the National Grange. Its membership is much smaller, standing at 92,000. It, too, bases its program on the effort to achieve equality for agriculture, and is, if anything, more convinced of the domination of public policy by industrial and financial groups. It generally favors Federal legislation fixing prices and guaranteeing "cost of production" to farmers, although in 1939 it joined with the Farm Bureau and other groups in withholding its support of the legislation then offered.

The Farmers' Union originated in the South a generation ago, and experienced rapid growth there. During the World War it organized vigorously in the Winter and Spring Wheat Belts. It is in these latter regions that it now has its greatest strength. It strongly opposes the dominant corporate form of business organization, holding that only through producers' and consumers' cooperatives can the individual's position be strengthened. Simultaneously, the grip of corporate control over the Nation's mining and manufacturing must be loosened. Because of its strength in the Wheat Belt, and the disproportionate representation of these States in Congress, the Farmers' Union exerts considerable influence in Washington. It engages in legislative lobbying, as do the other two general farm organizations, publishes its own newspaper, the Farmers' Union Herald, and, like the Farm Bureau but with smaller resources, attempts to convince the public of the value of its program.

Besides the Farm Bureau, the Grange, and the Farmers' Union, there are many national, regional, and State groups representing groups of various commodities. Possibly the strongest is the National Cooperative Milk Producers Federation, whose activity in connection with the duty on fats and oils has already been mentioned.<sup>18</sup>

There is no exact counterpart of this dairymen's organization in the livestock field, although the American National Livestock Association represents cattlemen's interests almost as effectively as the Federation

<sup>17</sup> As "spokesmen of rural States," to use the Grange's self-applied title, the National Grange has pushed a "positive legislative program" at Washington since 1900, maintaining a Washington office for many years. Among other things it claims credit for the advancement of the Department of Agriculture to its present status, for rural free delivery, the parcel-post system, and the system of postal-savings banks, for the farm-loan system established in 1916, the Weather Bureau, and the passage of the original pure food and drug law in 1906 (*The Grange Blue Book*). For the National Grange's part in the granger legislation of the 1870's, and the establishment of the Interstate Commerce Commission, see above, ch. IX, pp. 142-144.

<sup>18</sup> See above, ch. VII, p. 115.

does those of dairymen. It has been particularly active in protecting the American livestock industry against importations of fresh and chilled meats from foreign countries.<sup>19</sup> American sheepmen are organized into the National Wool Growers Association, which, together with various regional and State wool growers' groups, has lobbied actively for the wool industry.

*Business Dominance in Shaping Farm Policy.*

Despite the success of organized farmers in writing their aims into New Deal farm policy, national farm policy has for most of the past two decades reflected business rather than farm desires. From 1921 to 1933 all the farmers' efforts for remedial legislation were thwarted. In vetoing the McNary-Haugen bill in 1928, President Coolidge acted according to the philosophy of the business community that a national farm program of the kind provided therein was not in the Nation's interest. Reiterating many of the same objectives voiced in his earlier veto of its predecessor, President Coolidge found in the bill an array of perils for agriculture:

Although it purports to provide farm relief by lessening the cares of our greatest industry, it not only fails to accomplish that purpose but actually heaps even higher its burdens of political control, of distribution costs, and of foreign competition.<sup>20</sup>

He attacked the bill's price-fixing "fallacy"; the tax character of the equalization fee; the widespread bureaucracy it would necessitate; its encouragement to profiteering and wasteful distribution by middlemen; and its stimulation of overproduction.

\* \* \* If the measure is enacted, one would be led to wonder how long it would be before producers in other lines would clamor for similar "equalizing" subsidies. The lobbies of Congress would be filled with emissaries from every momentarily distressed industry demanding similar relief from a burdensome surplus at the expense of the Treasury.<sup>21</sup>

Instead of the program embodied in the McNary-Haugen bill, President Coolidge thought the proper basis for Federal action in behalf of agriculture would be to encourage its adequate organization, to assist in building up marketing agencies and facilities in the control of the farmers themselves.

I want to see them undertake their own management, the marketing of their products under such conditions as will enable them to bring about greater stability in prices and less waste in marketing, but entirely within unalterable economic laws. Such a program supported by a strong protective tariff on farm products is the best method of effecting a permanent cure on existing agricultural ills. Such a program is in accordance with the American tradition and the American ideal of reliance on and maintenance of private initiative and individual responsibility, and the duty of the Government is discharged when it has provided conditions under which the individual can achieve success.<sup>22</sup>

These views prevailed until Hoover was moved to call upon Congress, in 1929 and 1930, to legislate for agriculture. The result was an increase in both farm and industrial tariffs, and the establishment of the Federal Farm Board, none of which particularly benefited the farmers.<sup>23</sup>

<sup>19</sup> See ch. V, pp. 60-61.

<sup>20</sup> Congressional Record, 70th Cong., 1st sess., p. 9524.

<sup>21</sup> *Ibid.*, p. 9527.

<sup>22</sup> *Ibid.* The McNary-Haugen bill was an export dumping measure. Its aim was to secure world price-plus tariff for the portion of each major crop consumed in the United States. Surpluses were to be exported at whatever price could be obtained, loss to be paid from a fund secured by levying an equalization fee on each commodity.

<sup>23</sup> For further discussion see ch. VII.



After struggling unsuccessfully for 12 years, organized agriculture in 1933 had the satisfaction of seeing its views written into the first Agricultural Adjustment Act. The act provided for production control, and authorized the President to inflate the currency. The Emergency Farm Mortgage Act, dollar devaluation, and reduction in the farm mortgage interest rate were also adopted. When the Supreme Court threw out the A. A. A. organized agriculture again under Farm Bureau Federation leadership secured enactment of the 1938 Agricultural Adjustment Act on the basis of Congress' power to regulate interstate commerce. The marketing quota provisions of the Act were validated in 1939.<sup>24</sup>

The matter of the interest rate on Federal farm mortgages is one in which the farm organizations have taken a continuing interest. These rates, usually fixed by administrative decision of the Farm Credit Administration, were set by law in 1933 at 3½ percent for land bank loans and 4 percent for Land Bank Commissioner loans. In 1937, when the law was due to expire, pressure was brought for extension, and both Houses agreed, only to have the bill vetoed by the President. His action was in line with the recommendation of the Governor of the Farm Credit Administration.

Congress was immediately urged to override the veto. To quote from the official Grange publication:

Immediately upon the reading of the President's veto message in the House, the National Grange, through its Washington representative, sent \* \* \* [a] letter to all Members of Congress, suggesting the propriety of overriding the veto.<sup>25</sup>

On July 12 the House voted to override the veto, and the Senate followed suit. In 1940 the low rates were again extended for a 2-year period.

The success of farm and ranch interests in holding up ratification of the Argentine sanitary convention was discussed earlier. (See pp. 60-61.) This convention is favored in connection with the "good neighbor" policy, and also by American meat packers with branches in the Argentine.

Organized farmers have not, however, been uniformly successful in Washington, even since 1933. Manufacturing and processing interests instituted the suit in which the A. A. A. was declared unconstitutional.<sup>26</sup> The continuation of a control program based on a processing tax would have loosened the hold of processors and manufacturers over the farm commodity markets. The business community generally opposed the extension of reciprocal trade agreements both in 1937 and 1939, while the Farm Bureau favored it. Since other farm organizations opposed it, however, the extension cannot be regarded as a victory for organized agriculture.

#### DISTRIBUTION AND LEGISLATION

The field of distribution, like agriculture, consists of a few very large units, two or three large associations, and a large host of small units. The food chains, like A. & P. food stores, the mail order

<sup>24</sup> *Mulford v. Smith* (307 U. S. 38, 1939).

<sup>25</sup> The National Grange Monthly, August 1937, p. 7. Also the American Farm Bureau Federation Official News Letter, July 20, 1937, p. 3.

<sup>26</sup> *U. S. v. Butler* (279 U. S. 1 (1935)).

houses, and trade associations like the National Association of Retail Druggists and the American Retail Federation, are able to wield considerable power.<sup>27</sup>

*Distributors and the Antitrust Laws.*

One of the earliest fights which engaged the attention of distributors centered around the application of the Sherman Act. The intention of Congress in enacting this legislation was to forbid combinations in restraint of trade, but the courts adopted the "rule of reason" in interpreting the statutes, which to a large extent invalidated the law.<sup>28</sup>

To meet this situation, Congress in 1914 adopted the Clayton Act, which included the detailed strictures on unfair competition reflecting the principles of Wilsonian democracy. It is generally agreed, however, that the enforcement of this act has not been successful in restraining monopoly.<sup>29</sup>

Under the National Industrial Recovery Act of 1933, the antitrust laws were suspended, a move which was of benefit to both large and small business, but which gave a real impetus to the organization of distributors. During the N. R. A., organized trade and industrial groups had a greater part in determining and carrying out the laws under which they operated than at any time before or since.<sup>30</sup>

The Schechter decision in 1935, invalidating the code section of the N. R. A., meant a return to the practice of trying to regulate business under the antitrust laws, a policy which has been hampered by the lack of sufficient funds.<sup>31</sup> Invalidation, however, did not wipe out the organizational movement which had gained strength under the N. R. A.

The Miller-Tydings and Robinson-Patman resale price maintenance laws were passed under pressure from distributor groups, who wanted protection from price cutting. The passage of the Miller-Tydings Act as a rider to the District of Columbia appropriation bill has been described in chapter VII.

According to one report,<sup>32</sup> the National Association of Retail Druggists received \$25,000 from the Pepsodent Co. for lobbying services. (The magazine quoted showed a photograph of a check for \$25,000 purported to be made out by the Pepsodent Co. to the N. A. R. D.) The

<sup>27</sup> The term "distribution" in this chapter follows the census definition, hence includes all retailers, all wholesalers, and all other classes of distributing agencies, such as repair and service establishments for automobiles, etc. Bureau of the Census, Census of Distribution, Instructions for Preparing Reports, Washington, 1930, p. 1.

It eliminates from consideration those units who perform a distributive function incidental to their primary functions; i. e., a manufacturer who ships his goods out of his plant performs a distributive function, but is not here classed as a distributor.

<sup>28</sup> "As the judges have read the Sherman Act, its purpose was not to condemn mere size, or even market control. Only power unreasonably acquired or abused was held to be proscribed; and intent to harm competitors or abuse customers and the existence of collusive action became the prominent tests of unreasonableness. It proved difficult under court interpretation of this law to attack practices which tended to lead to monopoly, prior to evidence that substantial market control had actually been acquired." Leverett S. Lyon et al., *Government and Economic Life*, Brookings Institution, Washington, 1940, p. 1267.

<sup>29</sup> T. C. Blaisdell, Jr., *The Federal Trade Commission*, Columbia University Press, New York, 1932, p. 259.

<sup>30</sup> "Under the 'partnership of industry and government' established by the Recovery Act, each industry had the opportunity to formulate its own rules of self government, which, upon approval by the President, were exempt from the provisions of the antitrust laws and were binding upon all members of the industry, and, also, the power to select the members of an administrative agency from its own ranks to administer such rules within the industry." Paul Brissenden and Travis Brown, in *Code Authorities and Their Part in the Administration of the National Industrial Recovery Act* (mimeographed), Washington, 1936, pp. 62-63.

<sup>31</sup> Thurman W. Arnold, *The Bottlenecks of Business*, New York, 1940, pp. 1x, 72, 143, 170-171, 215-216.

<sup>32</sup> Cooperative Builder, December 11, 1937, quoting Consumers' Union.

association, it seems, was trying to force wholesale news dealers to withdraw from circulation certain magazine articles attempting to give the facts about the Miller-Tydings retail price-maintenance amendment which the organized druggists feared to have come to the attention of the consumers.

The American Retail Federation, organized in 1935 almost immediately attracted the attention of Congress. A special committee was appointed to investigate it, and reported that it was a carefully conceived organization intended to look like a federation of small dealers and small independent merchants over the country, whereas it was actually conceived and organized by the chain and department store interests.<sup>33</sup>

Louis Kerstein, president of Edw. Filene's Sons Co. of Boston, told the committee that the federation had two purposes—(1) to gather and disseminate statistics on distribution, and (2) to lobby among Members of Congress. C. O. Sherrill, federation president, refused to admit, however, that lobbying was one of its main objectives. Congressman Cochran snorted, "It is ridiculous to claim that such a salary [Sherrill's salary increased from \$40,000 to \$50,000 in 3 years] would be given a man just to gather statistics."<sup>34</sup>

#### *The Motion Picture Industry.*

The motion picture industry is one in which the producing and distributing functions are to a large extent combined; furthermore, the field is dominated by a few large corporations.<sup>35</sup>

The smaller producing companies are compelled to permit "the Big Eight" to distribute their films in order to have them shown at the larger theaters. In addition to this control, the movie industry exercises other controls in the form of block booking and blind selling. The producers sell their films in blocks to the independent exhibitor. In order to obtain the outstanding films the exhibitor must buy several other films which are often inferior. The independent exhibitors claim that they are often compelled to take the entire year's output of three or four of the "Big Eight" distributors in order to get the pictures they really want.<sup>36</sup> The exhibitor usually has the privilege of rejecting 10 percent, and he is not compelled to show all the films he agrees to buy, although he is required to pay for them. Contracts are made before the films are produced, and the exhibitor frequently signs without seeing a synopsis of the films; hence it is beyond his power to exercise his own choice in the type of films he will show.

Since 1928 independent exhibitors have been seeking congressional aid in solving their problem. The Neely-Pettengill bill introduced in 1936 forbade distributors to lease films in blocks of two or more, provided that synopses of all films were to be furnished, and set a fine of not more than \$5,000 for any deviation from the facts.<sup>37</sup>

<sup>33</sup> Congressional Record, 74th Cong., 1st sess., p. 8104.

<sup>34</sup> *Ibid.*, p. 8106. Mr. Cochran also said: "Evidence adduced during this and other investigations \* \* \* showing it is becoming a practice for certain well-organized and powerful groups representing vast aggregations of capital to use methods of undue influence and propaganda sometimes bordering upon, if not including, deceit to block, oppose, and hinder the consideration of proposals for legislation leads and impels this committee to recommend immediate passage of legislation requiring the registration of all lobbyists for the purpose of protecting the public interest" (p. 8104).

<sup>35</sup> These corporations, generally referred to as "the Big Eight," are Warner Bros., Universal, Columbia, Metro-Goldwyn-Mayer, Twentieth Century Fox, United Artists, and Radio-Keith-Orpheum. These companies are the largest producers in Hollywood; they operate about 2,500 movie theaters in the largest cities in the country; and, by various devices, it is charged, they control the other concerns which produce and distribute films.

<sup>36</sup> New York Times, April 6, 1939.

<sup>37</sup> *Ibid.*, July 24, 1938.



A similar bill easily passed the Senate in 1938, and was referred to the House Interstate Commerce Committee, of which Representative Lea (California) was chairman.<sup>38</sup> Chairman Lea said: "I just don't see how we can do anything about the bill this session. I should not like to report it out without hearing and I cannot see where we can find time to have any at this late date."<sup>39</sup> Thus the bill was not acted upon by the House.

The Hays organization (the Motion Picture Producers and Distributors of America) brought powerful pressure against the bill.<sup>40</sup> It did not reach the floor of the House in 1938, and in July 1939 it again passed the Senate, only to be again held up in the House.<sup>41</sup> Hearings were held in the spring of 1940 by the House Interstate Commerce Committee but no action was taken.

Many organizations, such as the League of Women Voters, parent-teacher organizations, and many religious and civic groups supported the bill, along with the Allied States Association of Motion Picture Exhibitors. Familiar arguments were raised on both sides. It was held that if communities had the right to choose their entertainment, producers would be forced to make better pictures.<sup>42</sup> On the other side, the presidents and sales managers of the various producing companies, along with several movie stars, appeared before the Senate and House Committees and charged that the bill violated the principle of free speech and opinion,<sup>43</sup> and that it would mean raising the price of movies 15 or 20 cents.<sup>44</sup> Representative Brown said he received letters from child stars, such as Shirley Temple and Mickey Rooney, discussing the moral and economic factors involved in the Neely bill.<sup>45</sup>

Monopoly and antitrust laws, however, are only one phase of the activities of distributors. To the extent that the United States Chamber of Commerce is composed of associations of small businessmen, they may be regarded as responsible for the establishment of the Department of Commerce, and its rapid growth in the 1920's.

#### *Food and Drug Legislation.*

Food and drug legislation has also been of continuing interest to distributors. At various times they have found it convenient to combine with other business groups and agriculture in opposition to proposed legislation. The original Food and Drug Act of 1906 was amended several times, but no fundamental revision of it was attempted until the Copeland bill was introduced in 1933. So successful was the opposition that 5 years elapsed before the bill was passed and then it had taken on a highly modified form.

Section 701 of the bill provided for judicial review of administrative regulations, a provision illustrative of the growing trend in Federal legislation to impose strict procedural requirements on regulatory agencies in the exercise of their rule-making powers. In expressing his views on the wisdom of including this authority to review administrative regulations, former Secretary of Agriculture Wallace said that,

<sup>38</sup> *Ibid.*, May 18, 1938.

<sup>39</sup> *Business Week*, June 25, 1938, p. 20.

<sup>40</sup> K. G. Crawford, *The Pressure Boys*, Messner, New York, 1939, pp. 95-98.

<sup>41</sup> *New York Times*, June 12, 1938, p. 26.

<sup>42</sup> *Ibid.*, September 8, 1939, p. 29. *Business Week*, January 22, 1938, pp. 22-23.

<sup>43</sup> *Ibid.*, May 31, 1940.

<sup>44</sup> *New York Times*, May 25, 1940.

<sup>45</sup> *Ibid.*

if the provision "remains in the bill, its effect will be to hamstring its administration so as to amount to a practical nullification of the substantial provisions."<sup>46</sup>

Behind the zeal for judicial review was the controversial matter of spray residue on apples. "The burden of protecting American constitutional liberties from \* \* \* encroachment" was assumed by the International Apple Association.<sup>47</sup> If judicial judgment could be substituted for scientific findings and one adverse decision in any one of the 80 district courts of the United States could prevent the enforcement of a regulation throughout the Nation, the apple growers had little to fear from an administrative ruling limiting spray residue. In the final analysis, "apples outweighed arguments."<sup>48</sup> In this case, the desire of business interests to circumscribe the rule-making authority of the Department of Agriculture was reinforced by the desire of one branch of commercial agriculture to be free from a regulation embodying a scientifically determined limitation.<sup>49</sup>

A statement made by a representative of consumer interests shows the advantages of judicial review to the drug industry.

The business interests, with high-priced lawyers and with their excellent lobbies, are well able to protect themselves. I think in this bill they are putting an added measure of protection not for the consumer but for business. And you are inviting them to go to the courts and seek to restrain the enforcement of this act.<sup>50</sup>

One of the chief factors involved in this legislation was the very general interest of Congress in the effects of the Food, Drug, and Cosmetic Act.<sup>51</sup> Units of the industries affected are spread all over the country rather than being massed in a few large centers. Hence almost every legislator has in his district some interest, aside from consumers, affected by the legislation. The Vick Chemical Co., of North Carolina, and the Lambert Pharmacal Co., of St. Louis, were represented in the crusading zeal of Senators Bailey (North Carolina) and Clark (Missouri) to combat bureaucracy. In the minority report their signatures appear under the statement that the—

Legislation should be directed \* \* \* to preventing adulteration, \* \* \* (etc.) and not to regulatory control of the food, drug, and cosmetic industries. The bill is directed to the latter and, accordingly, authorizes inordinate bureaucratic control.<sup>52</sup>

Another important factor was the little publicity given to the legislation in the press. Newspapers had apparently been led to believe that it was a menace to advertising.<sup>53</sup> However, the pressure brought to bear by consumer organizations, women's associations, etc., did much to retain in the legislation provisions of real benefit to the consumer.<sup>54</sup>

<sup>46</sup> David F. Cavers, "The Food, Drug, and Cosmetic Act of 1938," *Law and Contemporary Problems*, vol. 6, 1939, Duke University Press, Durham, p. 21.

<sup>47</sup> *Ibid.*, p. 15.

<sup>48</sup> *Ibid.*, p. 21.

<sup>49</sup> The hope that legislators would see fit to accede was tersely expressed by *Business Week*, February 22, 1935. In referring to the Senator in charge of the hearings it said, "He is a high-pressure parliamentarian and can rush hearings through in 2 days. Industry representatives believe that he will be able to choke off propaganda of the consumer agitation type which was one thing they feared about the hearings."

<sup>50</sup> Hearings before a subcommittee of the Senate Committee on Interstate Commerce on S. 5, March 2, 1935, p. 343.

<sup>51</sup> Cavers, *op. cit.*, *passim*.

<sup>52</sup> S. Rept. 361, 74th Cong., 1st sess., pt. 2, p. 3.

<sup>53</sup> Cavers, *op. cit.*, p. 3.

<sup>54</sup> The following organizations worked together in support of the bill, joining forces through the Women's Joint Congressional Committee: The American Association of University Women, Women's National Homeopathic Medical Fraternity, National Council of Jewish Women, National Consumers League, National Congress of Parents and Teachers, National Board of the Y. W. C. A., Girls Friendly Society of U. S. A., Council of Women for

Business pressure was brought to bear during consideration of the Food and Drug Act to maintain the value of advertising to business, without regard to the consumer's interest.

At the hearings on the measure it was pointed out that the amendment on the control of advertising would in no way affect various famous advertisements. Referring to two well-known advertisements, it was pointed out that their wording could not be attacked as "representation \* \* \* not sustained by demonstrable, scientific facts \* \* \* but the inference was directly contrary to substantial medical opinion."<sup>55</sup>

"No advertiser would have cause to fear more than an order to stop falsifying unless either his commodity were intrinsically dangerous or the Government could succeed in the difficult task of proving intent to defraud."<sup>56</sup>

The question of control of advertising was further complicated by department rivalries.

Commissioner Ewin L. Davis, of the Federal Trade Commission, submitted amendments which would require false advertising to be brought under the jurisdiction of the Federal Trade Commission. Industry at first favored this suggestion but switched to approval of jurisdiction by the Food and Drug Administration jurisdiction, only to be swung back under leadership of the Proprietary Association.<sup>57</sup>

Thus, despite losses on some fronts, business has been able to influence Government policy markedly. Of a kind are the efforts of the meat packing industry in 1916 and 1919 to sidetrack congressional attention from the Federal Trade Commission's "scathing indictment" of the industry;<sup>58</sup> the success of the processors of corn products in causing the Secretary of Agriculture to revise an F. D. A. ruling requiring that the use of corn instead of beet sugar be so indicated on the label;<sup>59</sup> the success of the agriculture-business lobby in holding up the passage of the Food, Drug, and Cosmetic Act of 1938, because of proposed labeling requirements; the success of the American Newspaper Publishers Association in obtaining wording of the 1938 amend-

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Home Missions, American Nurses Association, American Medical Women's Association, American Home Economics Association, American Dietetic Association, National Women's Trade Union League, National League of Women Voters. L. G. Baldwin and F. Kirlin, "Consumers Appraise the Food, Drug, and Cosmetics Act," *Law and Contemporary Problems*, Duke University Law School, Durham, 1939, vol. 6, p. 144.

<sup>55</sup> Hearings before a subcommittee of the Senate Committee on Interstate Commerce on S. 5, March 2, 1935 (testimony of Arthur Kallett, of Consumers Research), pp. 67-69.

<sup>56</sup> Cavers, *op. cit.*, p. 19.

<sup>57</sup> Cavers, *op. cit.*, p. 12 ff.

<sup>58</sup> T. C. Blaisdell, Jr., *Federal Trade Commission*, Columbia University Press, New York, 1932, pp. 186-187.

<sup>59</sup> Some years ago the rules of the Food and Drug Administration governing the labeling of products in which corn sugar is used as a substitute for beet or cane sugar caused such a storm among the corn products refiners that the pure food officials were compelled by the Secretary of Agriculture to revise the regulations.

The officials had ruled that when corn sugar (dextrose) was used as a substitute for sugar in jams, preserves, and jellies, the manufacturer must state this fact on the label. To this ruling issued under the authority of the Food and Drugs Act, the corn products refiners objected strenuously. They failed in their plea to Congress to enact a law tolerating the use of corn sugar without a declaration on the label. They then sought a reversal by the superior officer of the food and drug officials, the Secretary of Agriculture.

Here they were successful. In December 1930 he decided that the policy of the Food and Drug Administration as expressed in the ruling in dispute had been too strict, and that from that time on dextrose might be substituted for cane sugar without its use being mentioned. "This reversal in policy not only made the consumer unwittingly eat a sugar substitute, but it made the Secretary's subordinates eat their own words" (*Hearing, Public Administration and the Public Interest*, p. 238). In reaching this decision, the Secretary overruled the scientists in the Food and Drug Administration, whose stand had been supported by the canners, the beekeepers, and by spokesmen for consumers. An appeal to President Hoover to set aside the Secretary's decision was to no avail. The desires of the corn products refiners prevailed.



ment to the Federal Trade Commission Act exempting them from any liability in cases of misrepresentation.<sup>60</sup>

#### UNEQUAL BARGAINING POWER OF AGRICULTURE AND DISTRIBUTION

Public policy with respect to agriculture and distribution is important to all classes of the population, and particularly to farmers and consumers. Various factors operating in connection with the ordinary family-sized American farm make it impossible for the individual producer, without government help, to cooperate with other farmers in matters of production control, price adjustment, etc. Similarly, the individual consumer acting by himself is of little consequence in fixing the terms and conditions of his purchases. Farmers have, with the aid of political power, gone some distance in equalizing the pressure brought upon government by business. Thus far consumers as such have made no comparable progress.

In influencing public policy in the fields of agriculture and of distribution, pressure groups utilize the resources and techniques characteristic of their activities in other fields. In these fields, as in others, the superior resources of business place it in a strategic position; and it is difficult for farmers, consumers, and even small distributors to imprint their own desires on public policy.

Here, as in other segments of public policy, the electorate needs the facts, if it is not to be unduly influenced by the superior show of strength from business.

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<sup>60</sup> "Publisher representatives succeeded in bringing about a complete exemption of newspapers and advertising agencies from liability for advertising of the type proscribed by the bill. Not only are they not subject to prosecution, provided they disclose the source of the copy, but also mechanical operations are taken into consideration, and press runs will not be interfered with when serious delay might result." (Editor and Publisher, July 17, 1937, p. 7.)

## CHAPTER XII

### THE NEED—TO RELAX BUSINESS CONTROL

Democracy in America is on the defensive. In the preceding pages, it has been shown that pressure groups as now operating usually fail to promote the general welfare. This is due less to their differing conceptions of the general welfare than to the grafting of pressure groups to a geographical system of representation, in conjunction with business control of resources, including technology, which results in a fatal inequality of bargaining power.

In essence, the New Deal has tried to equalize the bargaining power of business, farmers, and labor vis-à-vis government. Even after 8 years, an adequate method for doing so has not been worked out, although some progress has perhaps been made. Senator O'Mahoney (Wyoming) has clearly stated that "organized business has no right \* \* \* to control the Government."<sup>1</sup> If disposed to reply, business might answer that, either by squatter's right or by right of prescription, it was already controlling the Government. The political and governmental aspect of the problem of concentrated economic power calls for the development of procedures to at least attenuate such preemptive rights. Such a discovery would go far to meet one of our basic needs—to make technology the ally of American democracy and not just the ally of business.

Proposals for the development of such procedures can be divided into two groups. Those in the first group assume that a legislature elected wholly on a territorial basis is no longer adequate to its task, but should be supplemented by an advisory council. Proposals in the second group start from the premise that the problem of representation is subordinate to a number of others. Among them are how to improve Federal administration; how to strengthen planning; how to extend Federal research; and, finally, how to bring into the open the lobbying activities of pressure groups.

#### ADVISORY COUNCILS

Among the earliest proposals for supplementing geographical representation by an occupationally constituted group was that of Senator R. M. La Follette (Wisconsin) for a national economic council. In a bill introduced in 1931,<sup>2</sup> he proposed the establishment of a council of 15 members appointed by the President, with the advice and consent of the Senate, for staggered terms of 4 years. The President's nominations were to be made from lists submitted by groups of associations and organizations representing the industrial, financial, agricultural, transportation, and labor interests of the United States. Not more than 3 persons were to be named from each list. The council was to

<sup>1</sup> Congressional Record, 76th Cong., 3d sess., p. 6398.

<sup>2</sup> S. 6215, 71st Cong., 3d sess., introduced February 21, 1931.

have 4 main duties—to keep itself advised regarding general economic and business conditions; to consider problems affecting the Nation's economic situation; to try to formulate proposals looking to solutions of these problems; and to make an annual report to the President and recommendations to Congress. In carrying out these duties it was to have had the services of a paid secretary and staff and the authority to subpoena witnesses in its search for information.

In 1935 Senator Bulkley (Ohio) took the initiative in a further exploration of the wisdom of establishing a council advisory to Congress on national problems. The general outline of the idea emerged in a statement by Senator Bulkley before a meeting of 65 members of an advisory committee to a sub-committee of the Senate Committee on Manufactures.<sup>3</sup>

The council was tentatively envisaged as having about nine full-time members charged with the consideration of every problem affecting the National Government. It was to be completely advisory, without administrative or executive authority. The council, Senator Bulkley said, must be composed of men having and retaining the highest respect and confidence of the whole country. It would be representative of the country at large, and not of any particular group, section, political party, or religious faith. An independent status was contemplated, to permit the council to select and concentrate its attention on the most important current problem.

Neither the La Follette nor the Bulkley proposal generated much support. The former was never reported out of committee, and a resolution to appropriate additional funds for the latter was overwhelmingly defeated in the House. Both actions evidence the unwillingness of Congress to depart from traditional patterns. The proposals indicate clearly the feeling of the sponsors, at least, that Congress needs the advice of an occupationally constituted group when dealing with national and economic problems, but it is equally clear that Congress as a whole does not share such a feeling. There are many reasons for this, besides the obvious one that in a democracy new suggestions rarely enlist majority support overnight.

In the years that elapsed between the rather summary dismissal of the La Follette proposal and the motion of support given Bulkley's suggestion by the advisory committee of the Senate sub-committee, planning seemed to have come into somewhat better repute, at least among leaders of business, labor, and agriculture. The chaos existing at the bottom of the depression, the banking crisis of 1933, the recovery measures of the New Deal, all were contributing factors. Also, the idea of an official body representing business, labor, and agriculture for joint discussion of national problems and for planning had been advanced by the American Farm Bureau Federation and had received indirect support from industrial and labor groups as well as from Secretary of Agriculture Wallace.<sup>4</sup>

Bulkley's statement of the need for an economic council won the approval of the advisory committee. He pointed out, among other

<sup>3</sup> Pursuant to S. Res. 114, 74th Cong., 1st sess., to investigate the desirability of establishing a National Economic Council. In the sub-committee's consideration of the proposal the adjective "economic" was eliminated from the proposed title "because the economic cannot be separated from other subjects which affect the welfare of the Nation."

<sup>4</sup> This idea has been pushed by the National Farm Institute, an annual forum and discussion meeting sponsored by the agricultural committee of the Des Moines Chamber of Commerce.



things, that the Cabinet was no longer able to advise the President on all subjects, as it used to do; that there was need for a continuous consideration of national problems independent of the welfare of any particular party, and impossible of attainment by a group dependent upon votes for office; that the President was unable to master all the various aspects of the problems confronting him; that Congress was pushed and hauled about by pressure groups; and that a part-time council would inevitably be inadequate.<sup>5</sup>

Among the 47 leaders of business, agriculture, labor, and the professions who listened to Bulkley, Henry C. Taylor, president of the Farm Foundation and former chief of the Federal Bureau of Agricultural Economics, pointed out most clearly the dangers to the general welfare of the present hybrid system of representation. In his opinion, most thinking behind present policies is limited, group thinking. To the extent that the groups are in conflict, and government comes to the aid of each, confusion is the result. "Groupistic thinking and groupistic action cancels \* \* \* the optimum welfare of the country." In the proposed council Dr. Taylor saw a means of developing unified comprehensive thinking, the kind of group thinking that might develop a clear, practical, and realistic national policy.<sup>6</sup>

The approval of the advisory committee apparently carried little weight with Congress, for it refused the request for additional funds to carry on the inquiry initiated by Senator Bulkley.<sup>7</sup> Even though it was a legislative body accustomed to thinking of the national welfare as a composite of the welfares of separate pressure groups, it apparently failed to see in either of the bills a means of reconciling these pressures.

In 1933 President Hoover's Research Committee on Social Trends suggested the possibility of a national advisory council to consider basic social problems of the Nation.<sup>8</sup> Among the indispensable prerequisites to a "closer coordination and more effective integration of the swiftly changing elements in American social life" the committee listed a "willingness and determination to undertake important integral changes in the reorganization of social life, including the economic and the political orders, rather than the pursuance of a policy of drift."<sup>9</sup> The failure of the La Follette and Bulkley proposals in Congress over an 8-year period indicates that such a willingness and determination is still in the future.

<sup>5</sup> On this point Senator Bulkley's observations are of particular interest. "Big executives," he said, "are willing to give their whole time to their own business and realize the seriousness of the effort required. Yet they frequently come to Washington and presume that by spending 2 or 3 days or a week they can master the problems which confront the Government, although these problems are much more complex and difficult than those that confront them in their own business. They think they can give advice on those problems that will be of value to those responsible for carrying on the Federal Government, and if the advice is disregarded they become resentful."

<sup>6</sup> Among other significant observations were those of J. A. Leighton, Ohio State University, who envisaged the council as a possible safeguard against a totalitarian state; Will Durant, who saw in the council the realization of his dream of a corporative council within our democratic framework; Dr. Harold Urey, Columbia chemist and Nobel prize winner, who saw the members of such a council as sort of national occupational representatives-at-large; Professor Westerfield, of Yale, who wanted the council to explore and advise only, not to plan; and J. J. Pelley, president of the Association of American Railroads, who wanted to know how the council would get results.

<sup>7</sup> The Business Planning and Advisory Council, set up in the Department of Commerce in 1935 following the Supreme Court's invalidation of the National Industrial Recovery Act, can hardly be regarded as a substitute or counterpart for a national council as envisaged by either La Follette or Bulkley.

<sup>8</sup> Recent Social Trends in the United States, McGraw-Hill, New York, 1933, p. lxxiii.  
<sup>9</sup> *Ibid.*, p. lxxi. The committee found no assurance that dictatorships could be averted without "a more impressive integration of social skills and fusing of social purposes than is revealed by recent trends." *Ibid.*, p. lxxiv.

## STRENGTHEN PLANNING

Both of these men were working toward a device for government planning. The national economic council contemplated by Senator La Follette would have been an advisory council to Congress, and would undoubtedly have introduced an element of planning into the legislative process. In contrast with this, Senator Bulkley proposed an independent council, with no administrative or executive authority. Some other believers in government planning conceive it as a staff function of the Executive.

The present status of the National Resources Planning Board in the Executive Offices of the President follows the recommendation of the President's Committee on Administrative Management, reporting in 1937.

R. G. Tugwell conceives of a fourth type of planning agency, with an independent status, free from both the executive and legislative branches, having more than a merely advisory power but less than the authority to execute. Both the planning function and direction are inherent in Tugwell's scheme, which he terms the "directive."<sup>10</sup>

According to Tugwell, what is needed in our present difficulty is some governmental agency which can bring about an integration of all forces of society. "The articulation of the whole is the emergent need of society," and the planning arts are "the only available resource in the crisis."

The establishment of such an agency involves an answer to the question, "How can the Federal Government plan?" Tugwell argues that it must provide itself with what he calls the directive. This directive is based on a conjunction of all forces, governmental and nongovernmental, in the carrying out of a long-time program for the benefit of the Nation as a whole.

The function of the directive is a generalizing purpose, the capstone of a "directional system," making "of industrial society a continuum in which causes and effects are clearly related and in which penalties are traced directly to violations." As to the composition of the directive, Tugwell makes no express statement beyond this, that "this new agency would need to be severely hedged about with limitations on qualification, the persons chosen would need to be given longer-term appointments than any other except judicial officials."

The powers of the directive must be inferred from several general statements. It would be "under the discipline of fact," with a capital budget (as distinct from a current expenditure budget) ultimately entrusted to it. It would have the power to find the facts and act on the basis of them, and the scope of such action would include, for instance, the power to suggest the substitution of public for private ownership and operation. The directive's procedure would utilize the expert preparation of factual material, public hearings, agreed findings, careful drafting of legislation, and legislative ratification. Besides being independent of the executive, it would also be independent of the legislative branch. That is, projects referred to the legislative by the directive could be overridden only by a two-thirds, or at least more than a simple majority vote.

<sup>10</sup> See R. G. Tugwell, "The Fourth Power," *Planning and Civic Comment*, April-June, 1939, pt. 2.

The judiciary should have no power of definition or of review of its findings.

While the President's powers, according to Tugwell, should be strengthened, even this would not meet the planning need. Both a strengthened Executive and a directive are essential parts of the Federal mechanism envisaged by Tugwell to meet the present ineffectiveness of public policy when opposed by a concentration of private economic power. "The growth of conflict in those areas which are outside formal government, but which affect government in its most vital relationships, together with that unresolved conflict within government between the President and the Senate, are again emasculating the national administration at a time when technique has made industrial functions irrevocably national; and they threaten, for all our present prestige, to bring us again into disrepute abroad."<sup>11</sup>

This conception of a Federal directive is far broader than any of the preceding proposals. The idea of a directive goes beyond the idea of planning, and would probably, therefore, receive even slighter consideration than the various planning proposals already offered. Its definitive contribution is precisely the idea, however, that at some point in connection with any plan arises the question, "Planning for what?" The incorporation of the directive into the Federal administrative mechanism would not meet other pressing problems of our democracy, but it seems likely that such an agency would be in a better position to give continuous, connected, and serious thought to the problems of government than any agency now existing.

#### IMPROVE GOVERNMENT ADMINISTRATION

Many proposals have been advanced, and quite a number put into effect, for the improvement of government administration. College and university courses have been established; efforts have been made to stimulate public interest in better government; such organizations as the Council of Mayors, the various State leagues of municipalities, and the Council of State Governments have been set up; the Federal Government has undergone extensive reorganization; and a number of steps have been taken to simplify and standardize government procedure. These changes have generally been made in recognition of the need for more adequate methods of dealing with the problems of an increasingly complex society.

The very complexity of the problem, however, makes it vital to examine carefully all such proposals to be sure that they will really facilitate, and not obstruct, the processes of administration.

In this connection the Walter-Logan bill is of interest.<sup>12</sup> Briefly, it provides for judicial review of the findings and regulations of administrative agencies. The bill has the unqualified support of the American Bar Association and the United States Chamber of Commerce, among others. According to the chamber, the Walter-Logan bill is urgently needed to curb the dangerous exercise of legislative power by administrative authority.

As stated in the title, the Walter-Logan bill is a bill to provide for the more expeditious settlement of disputes with the United States,

<sup>11</sup> *Ibid.*, p. 20.

<sup>12</sup> S. 915, H. R. 4236, 76th Cong., 1st sess. This bill is temporarily dead, since the House, in a vote on December 18, 1940, failed to pass it over the President's veto. It will undoubtedly, however, come up again for consideration.



and for other purposes. It provides for publication of administrative rules and regulations of administrative agencies. Within each agency there would be a board to hear grievances in connection with any decision of the agency. The bill provides an opportunity for judicial review of regulations and decisions made thereunder, and the courts would be authorized to set aside the regulation if it is unconstitutional, if it conflicts with the statute, if it is beyond the powers granted by the statute, or for failure to publish. The courts could set aside intra-agency decisions if they are based on erroneous findings of fact, not supported by evidence, if the decision is not supported by the findings, if the petitioner is not treated fairly, if the decision is not within the authority of the agency, and if the decision is unconstitutional or otherwise contrary to law.

Col. O. T. McGuire in hearings before a subcommittee of the House Committee on the Judiciary, said:

Our bill proposes that the individual shall be protected, without hamstringing administration within the law, by requiring public notice, and public hearing if requested, before regulations are issued, by requiring the regulations to be issued, and by authorizing judicial review of regulations to see whether they are within the terms of the Constitution and statutes.<sup>13</sup>

According to the late Senator Logan (Kentucky) co-sponsor of the bill, it is designed to meet a situation which he described as "administrative absolutism." The ideas embodied in the bill, according to Senator Logan, have been before the Senate Judiciary Committee in one form or another for over 10 years. Apparently the development which disturbed Senator Logan is the multiplication within that period of Federal administrative agencies having the power to issue rules and regulations with the force of law. Senator Logan referred particularly to the practices of the National Labor Relations Board, saying:

If a hundred reputable witnesses testify one way and one man, who, perhaps, is not so reputable testifies the other way, and the National Labor Relations Board decides for the 1 against the 100, the courts can grant no relief at all. It is of that condition that I am complaining, not only in the N. L. R. B., but in every other agency of Government. There is being developed, it appears, an idea at least of administrative absolutism.<sup>14</sup>

The special committee on administrative law of the American Bar Association shares Senator Logan's view. In reporting to the 1938 annual meeting of the American Bar Association, this committee complained that Government administrative agencies had a tendency to decide without hearings, on the basis of secret reports or of preformed opinion; to act rather than decide; to disregard jurisdictional limits; to do what will get by, to adopt an arbitrary rule for convenience; to handle routine perfunctorily; to act through deputies; and to mix the judicial and administrative functions. These conclusions are based on illustrations from English, State, and local practice.<sup>15</sup> "The American bar bill," Colonel McGuire says, "presents the eternal conflict between two different theories of government—one,

<sup>13</sup> Hearings before a sub-committee of the House Judiciary Committee on Administrative Law Procedure, H. R. 4236, 6198, 6324, 76th Cong., 1st sess., p. 14.

<sup>14</sup> Congressional Record, 76th Cong., 1st sess., p. 7075. For the finding of the Senate Civil Liberties Committee on the obstruction of the National Association of Manufacturers to the enforcement of the National Labor Relations Act by the National Labor Relations Board, see ch. VI, pp. 94-106.

<sup>15</sup> See also F. F. Blachly and M. E. Oatman, Federal Regulatory Action and Control, Brookings Institution, Washington, 1940, p. 14 ff.

the American theory of a tripartite government, each part a check upon the other two and none overbalancing the others; the other, the parliamentary theory of government, in which the Executive, for the time being, is the dominating force and which could but result in this country in forcing the acceptance of the Roman theory in which the Executive becomes supreme—a reversion to the primitive type of government resulting in the condition obtaining in Germany, Italy, and Russia today.”<sup>16</sup>

The Walter-Logan bill has attracted support from the American Bar Association, naturally, and from many of its affiliated State and local subsidiary associations.<sup>17</sup> Also, it was reported by the Senate Committee on the Judiciary that “a number of business organizations have approved the bill and it is understood to be acceptable to a large labor organization.”<sup>18</sup> On the other hand, the bill has been opposed or at least questioned by most of the Federal administrative agencies, who have urged that the matter is too important for action without a report and recommendations from the Attorney General’s committee on administrative procedure. Assistant General Counsel Bernard, of the Treasury Department, pointed out before the Senate Judiciary Committee that the bill would require a hearing before old rules were amended or repealed; it would require the issuance of rules under statutes whether or not it was necessary; and since the petition of an aggrieved person is enough to cause review of rules, all rules would be open for continuous review. Robert M. Cooper, Special Assistant to the Attorney General, stated: “It is hardly reasonable to assume that a judiciary, completely untrained in the problems of administration, is more capable or more likely to reach proper results than experienced administrators selected primarily for their specialized knowledge, technical competence, and thorough familiarity with the intricacies of modern governmental policies.”<sup>19</sup> All these arguments were advanced in the President’s veto message.

Further doubts as to the wisdom of this approach to the problem have been voiced by competent observers outside the Government. Blachly and Oatman,<sup>20</sup> for instance, find many constitutional and practical difficulties inherent in judicial control and in the intra-agency review boards. They ask, “Is there administrative absolutism as is alleged?” and conclude that the fears of the American Bar Association are largely unjustified. They regard the judicial formula of the Walter-Logan bill as fundamentally wrong because it is based on the moribund idea that law cannot prevail or justice be done except through the courts.<sup>21</sup>

There can be little doubt that Federal administrative procedure stands in need of improvement. This is not surprising in the light of the great multiplication of administrative agencies in recent years, brought about primarily by the expansion of Federal authority into areas of complex economic activities. It is doubtful, however, whether the solution lies along the line of the Walter-Logan bill. Its basic principle of judicial review is likely, if past experience is

<sup>16</sup> Hearings on Administrative Law Procedure, op. cit., p. 33.

<sup>17</sup> For the process by which such decision as to policy are reached, see note on p. 40.

<sup>18</sup> Congressional Record, 76th Cong., 2d sess., p. 9395.

<sup>19</sup> Administrative Justice and the Rules of Discretion, Yale Law Journal, February 1938.

<sup>20</sup> Op. cit.

<sup>21</sup> Ibid., pp. 227-230.

a guide, to play into the hands of powerful pressure groups. By utilizing nothing more than injunction procedure in equity, the National Association of Manufacturers was able for years to obstruct enforcement of the Labor Relations Act. The extent of obstructionism possible in a situation where interminable delays can be secured through questioning the authority of an agency to issue a regulation or the form in which it is issued, as well as by appealing to the courts, is almost impossible to imagine. It would seem that the Walter-Logan bill is far less likely to expedite than to delay the disputes with the United States.<sup>22</sup>

#### BRING LOBBIES INTO THE OPEN

Without doubt there is need to improve Federal administrative procedure, and the strengthening of planning within the Federal Government would aid it in meeting current problems. Yet a democracy cannot operate successfully unless the electorate is informed of the problems at issue, and the interests of the various parties to the debate. Information concerning these interests is the general goal of lobby registration proposals.

Such proposals involve at least two aspects. The first is the securing, and periodic publication, of data on lobbyists—names, sponsors, and principal sources of funds, receipts and disbursements, purposes of expenditures, especially for public relations services, advertising, radio, etc. Secondly, it should be recognized that the Federal Government has a responsibility to see that the electorate is informed on public problems. This can be done either by requiring private radio chains, as a condition of retaining their licenses and as a public service; to publicize the activities of lobbyists in Washington and elsewhere; or, failing this, by establishing a Government-owned and operated radio broadcasting station for the dissemination, among other things, of such information.

The need for registration of lobbyists and adequate machinery for publicity grows out of the obscurity in which lobbies operate to affect public policy, and the extent to which such pressure groups distort the right of petition. Only when Congress exercises its investigating power does the public begin to have access to the facts about legislative lobbying. Newspapers, periodicals, and journals of opinion have from time to time published information about lobbying activities indicating their ubiquity and significance, and these fugitive indications are amplified by scholarly monographs, semipopular diagnoses, and journalistic treatments of the lobbying system. However, it is only when a congressional committee, with its power to subpoena witnesses and take evidence under oath, probes beneath the surface of the governmental process that the public is permitted to view that process in the raw. Such investigations, even though they are made infrequently, are invaluable. They show the extreme lengths to which lobbies will resort in their efforts to shape and control public policy. Between congressional investigations one can only guess at the activities of lobbyists, which, for the most part, are forever undisclosed.

<sup>22</sup> The literature on this controversy of judicial versus administrative supremacy is very large. A considerable part of it is cited in one connection or another in Colonel McGuire's speech before the Ohio Bar Association, reprinted in the House Judiciary Committee Hearing, cited, pp. 14-34. See also Phillips Bradley, "Administration—The Fourth Power in Modern Government," *The Social Studies*, vol. XXVII, No. 5, May 1936, pp. 320-327.



A Federal lobby registration law, setting up a special agency to classify, organize, and disseminate the material filed with registration, having access to either the private radio chains or a publicly owned and operated station, would begin to provide information vital to the operation of the democratic process.

There is now no Federal legislation regulating lobbies. Many such bills have been introduced into Congress, yet only a few have even made substantial headway. The outstanding ones are the House bill introduced as a result of the 1913 Mulhall investigation, Senator Caraway's bill introduced in 1927, and Senator Black's 1936 proposal. Each of these bills followed disclosures by congressional investigating committees of flagrant perversion of the right of petition by one or more lobbying groups. Thus the 1913 bill was proposed as a means of offsetting the lobbying activities of the National Association of Manufacturers, disclosed in investigation of that year.<sup>23</sup> The late Senator Caraway's bill came shortly after the Federal Trade Commission's disclosures of the propaganda and lobbying activities of the National Electric Light Association. Senator Black's bill in 1936 resulted from disclosures made by his committee, of unprecedented pressure efforts resorted to by the electric utilities, under the leadership of the Edison Electric Institute, to defeat the public utilities holding company bill, as well as further disclosures of pressure both on Congress and on the administrative agencies of the Government by air transport operators, shipowners, operators, and others in connection with air and ocean mail contracts. Senator Black's bill passed the Senate but was rejected in the House.<sup>24</sup>

Lobby registration is intended, among other things, to disclose the identity of lobbyists and their employers, to reveal the legislation in which they are interested, prohibit certain people from acting as lobbyists, reveal the money spent by lobbyists, eliminate bribery, forbid the payment of fees contingent upon the passage or defeat of particular bills, and impose penalties for violation.<sup>25</sup>

The Georgia Constitution of 1877 declared lobbying a crime, and Massachusetts and Wisconsin adopted lobby registration laws in 1890 and 1899. Sixteen States have passed laws requiring lobbyists to register and furnish financial statements. Six others require registration but no financial statements, and the rest have no lobby registration laws at all.

Experience under these laws has varied from success to almost complete failure. According to one competent observer, "The Wisconsin statute is reported as satisfactory in securing the publicity intended."<sup>26</sup> In Ohio and New York only a minority of the lobbyists ever actually registered. The New York law charges no specific agency with enforcement, so, although violation is a misdemeanor and penalties are provided, the law is flagrantly violated. From 1908 to 1935 an annual average of only 134 registered.<sup>27</sup> Most lobby laws are unenforced,<sup>28</sup> partly because lobby laws generally contain "no satisfactory definition of what constitutes legitimate lobbying."<sup>29</sup>

<sup>23</sup> A summary statement of these lobbying activities is contained above, in ch. I.

<sup>24</sup> Congressional Record, 74th Cong., 2d sess., pp. 4104-4105, 5551.

<sup>25</sup> Harvey Walker, *Lobby Making in the United States*, Ronald, New York, 1934, pp. 294-295.

<sup>26</sup> *Ibid.*, p. 295.

<sup>27</sup> Belle Zeller, *Pressure Politics in New York*, Prentice-Hall, New York, pp. 253-256.

<sup>28</sup> Walker, *op. cit.*, p. 295.

<sup>29</sup> Zeller, *op. cit.*, p. 257.

While these lobby registration laws are generally ineffective, they are occasionally used as threats to frighten lobbyists, or by persons in strategic positions for retaliation. Thus, an effort was made in 1920 in New York to prosecute the Anti-Saloon League. The attempt was, however, abortive. A legislator may also use the laws to threaten an unregistered lobbyist.

But the laws apply only to paid lobbyists, and legislators are half-hearted in their opposition to lobby practices. Most State legislators receive very low pay for their services, and it would not be surprising if some of them found it difficult to maintain a hostile air to friendly lobbyists.<sup>30</sup>

Experience shows that a lobby registration law is of little value unless a specific agency is charged with the administration of the law. Such an agency must, in addition, have adequate enforcement powers, and be adequately staffed and financed.

It is quite probable that registration and publicizing of lobbyists and their activities will not wholly meet the problem confronting us. However, the adoption of such a law would probably throw more light on the relationship between political activity and the concentration of economic power than any other proposal likely of adoption. The purpose is not to deny citizens their constitutional right of petition, but rather to throw enough light on the governmental process to allow citizens to vote intelligently.

America is trying to adapt an eighteenth century political system to a twentieth century economic system. To undertake this adaptation successfully there is a pressing need, as the President's Committee on Recent Social Trends said in 1933, of a "willingness and determination to undertake the important integral changes \* \* \* in the economic and political order." There is needed in the political and governmental fields an imagination and resourcefulness in carrying out this adaptation comparable to the genius of businessmen in adapting the corporate structure to their needs. Whether American society will repay this kind of social inventiveness and whether it will give to originators in the field of public administration and politics the place of prestige they deserve is a question which only the future can answer. At a time when democracy, both in its philosophical and in its governmental aspects, is under withering, possibly fatal fire, only social and political genius of a high order will be equal to the task. In the Federal Constitution of 1787 the founding fathers broke with tradition and set up a new and untried form of government. Today's crisis, both in its internal and external aspects, demands no less ingenuity and no less fortitude than belonged to the founding fathers.

<sup>30</sup> *Ibid.* See also K. G. Crawford, *The Pressure Boys*, Messner, 1939, ch. II.

## APPENDIX

Following is a list of national organizations with permanent representatives in Washington. The list is based on that compiled by E. P. Herring in 1929,<sup>1</sup> brought down to date by the deletion of organizations no longer existent, or no longer represented in Washington, and the addition of organizations which have appeared since his list was compiled.

It should be remembered, of course, that there are numerous organizations which do not appear in this list, and which nevertheless carry on intensive lobbying campaigns. The Edison Electric Institute, for instance, has no official Washington representative, nor has the American Petroleum Institute. Many labor organizations, likewise, are represented at the capital only by virtue of their affiliation with the American Federation of Labor or the Congress of Industrial Organizations.

- |  |   |
|--|---|
| Air Line Pilots Association.                             | American Chemical Society.  |
| Air Reserve Association of the United States of America. | American Civil Liberties Union.                                   |
| Amalgamated Wage-Hour Bureau.                            | American Coal Distributors Association.                           |
| American Academy of Accountancy.                         | American Coalition of Patriotic Civic and Fraternal Societies.    |
| American Action.   | American Commission for Non-Participation in Japanese Aggression. |
| American Association for the Advancement of Science.     | American Council on Education.                                    |
| American Association for Economic Freedom.               | American Council of Learned Societies.                            |
| American Association of Independent Small Business.      | American Council on Public Affairs.                               |
| American Association of Junior Colleges.                 | American Dental Trade Association.                                |
| American Association of Motor Vehicle Administrators.    | American Drug Manufacturers' Association.                         |
| American Association of Museums.                         | American Engineering Council.                                     |
| American Association of Nurserymen.                      | American Farm Bureau Federation.                                  |
| American Association of Personal Finance Companies.      | American Federation of Arts.                                      |
| American Association of School Administrators.           | American Federation of Government Employees.                      |
| American Association of State Highway Officials.         | American Federation of Housing Authorities.                       |
| American Association for the Tuberculous.                | American Federation of Investors.                                 |
| American Association of University Professors.           | American Federation of Labor.                                     |
| American Association of University Women.                | American Federation of Organizations for the Hard of Hearing.     |
| American Automobile Association.                         | American Forest Products Industries.                              |
| American Bankers Association.                            | American Forestry Association.                                    |
| American Bar Association.                                | American Foundation for Homeopathy.                               |
| American Bottlers of Carbonated Beverages.               | American Friends of Spanish Democracy.                            |
| American Box Shook Export Association.                   | American Gas Association.   |
|  | American Genetic Association.                                     |
|  | American Golf Association.  |
|  | American Good Government Society.                                 |
|  | American Guides Association.                                      |
|  | American Historical Association.                                  |
|  | American Home Economics Association.                              |
|  | American Horticultural Society.                                   |

<sup>1</sup> E. P. Herring, Group Representation in Congress, Brookings Institution, Washington, 1929, pp. 276-283.



- American Hotel Association.  
 American Institute of Architects.  
 American Institute of Cooperation.  
 American Institute of Food Distribution.  
 American Legion.  
 American Manganese Producers Association.  
 American Merchant Marine Institute.  
 American Mining Congress.  
 American Motor Carriers' Tariff Bureau.  
 American Municipal Association.  
 American Nature Association.  
 American Patent Law Association.  
 American Peace Mobilization.  
 American Peace Society.  
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