Anti-Trust Does Not Just Mean Breaking Things Up

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In this talk I want to offer three historical examples during which trade unions or their liberal allies were able to leverage anti-trust law, administration, or political culture in a fashion that advanced a social democratic and pro-union agenda. All were moments when the meaning of anti-trust was up for grabs. The first came during the very early years of the New Deal, the second during the heyday of mass unionism in the late 1930s, and the third during the seemingly more conservative era of the 1950s.

In the 1920s the word "racketeering," was popularized by the Employers Association of Chicago as a way to discredit trade unionism by linking the collective effort to set wages and prices with Al Capone's gangster operation. And in truth there was some similarity because in the hypercompetitive world of building construction, garment manufacture, local cartage, milk delivery, and other similar trades and services, the standardization of wages required the regulation of prices and the demarcation of well-defined local markets. Employers, as well as workers, had to be organized. Given the absence, at either the local or national level, of any legal or administrative framework to this end, the enforcement of such standards was in private hands, thus sometimes entailed physical coercion. Hence the conflation of unionism with racketeering.

This was the situation in 1931 when Benjamin Squires, an arbitrator and University of Chicago economics professor, created a plan to legally stabilize competition in Chicago's dry-cleaning industry. Squires thought laws promoting competition caused tradesmen to ally themselves with gunmen, who used violence to uphold trade rules. Absent that thuggery, "cutthroat competition" drove down wages and prices among Cook County dry-cleaners. Accepting a dual responsibility, Squires arbitrated labor disputes and chaired a new trade association: the Cleaners and Dryers Institute. He signed contracts with every member giving him the power to set their prices.

But the Supreme Court in May 1932 held the Sherman Antitrust Act applicable to drycleaners and shortly thereafter the Illinois State's Attorney indicted Squires and some of his collaborators, unionists and businessmen, of fixing prices and using strikes and boycotts to coerce compliance. The Employers Association of Chicago, which secretly financed much of the prosecution, called the lengthy court proceedings, which took place in the summer of 1933, a "racket trial."

There was enormous irony here because at this very time, passage of the National Industrial Recovery Act, provided for a set of codes of fair competition that precisely mimicked the kind of arrangement Squires sought for Chicago dry-cleaners. Indeed, among the 800 codes negotiated in 1933 and 1934, many ratified private agreements of the sort Squires had sought to develop, setting prices, favoring small firms against the industry chains, and formalizing relations between the master cleaners and the unions. FDR subsequently appointed Squires the code administrator for the Chicago industry, even as he stood trial for price-fixing and racketeering.

After a long and expensive trial, a jury acquitted Squires and the other defendants, an acquittal that played a small but important role in the larger legitimization of New Deal efforts to transform the meaning of the anti-trust law into something that saw maintenance of economic competition among individual business units as far less important than the creation of an orderly market and a humane work regime that raised wages, lowered hours, and encouraged trade unionism.

A somewhat similar, if larger, iteration of this tradeoff came five years later. During the 1920s and 1930s, the rise of multistate chain stores — Woolworth, J.C. Penney's, A&P, Safeway and several others — generated every bit as much alarm as that evoked by Amazon, Walmart, and Facebook today. Much opposition came from the South, where "the chain-store menace" was equated with Yankee imperialism, the destruction of local enterprise and the emasculation of White manhood as a generation of independent proprietors were transformed into an army of salaried clerks beholden to New York capitalists. Huey Long, the governor of Louisiana and later a U.S. senator, told his constituents, "I would rather have thieves and gangsters than chain stores in Louisiana."

Rep. Wright Patman (D-Tex.) championed the anti-chain-store movement. A progressive populist — except on issues of race — Patman had partnered with Sen. Joseph Robinson (D-Ark.) to pass legislation in 1936 that sought to thwart the competitive advantage enjoyed by the chains. These stores used their scale to leverage kickbacks and discounts from suppliers and deployed "loss leaders" — popular items with deeply slashed prices — both to ruin competitors and entice customers into the store. Patman and Robinson wanted to mandate a national standard, "retail price maintenance," to insure that stores both large and small sold toothpaste,

canned soup and 1,000 other items for the same price. Patman saw “the huge chain stores sapping the civic life of local communities with an absentee overlordship … and reducing their independent business men to employees or to idleness.”

The price maintenance law proved largely ineffective, so in 1937 and 1938, Patman stepped up the anti-chain-store pressure with a legislative proposal that would impose a heavy tax on retail corporations with more than 10 outlets in multiple states. Opponents rightly called it a “death sentence” law, because the tax burden rose in near-exponential fashion on the largest and most geographically pervasive chains. Fifteen states had already enacted a somewhat more modest set of escalating taxes, which the Supreme Court — still sharply conservative — had ruled constitutional.

No store was in Patman’s crosshairs more than “The Great A&P,” a grocery behemoth that had 15,000 stores in the early 1930s. It also had a vast array of captive food-processing enterprises that easily enabled the company to undercut its small-town competition and whipsaw grocery wholesalers. Nearly 1 in 7 grocery dollars spent by American consumers flowed across A&P counters. Like Walmart and Amazon today, A&P used its massive purchasing power to squeeze and manipulate the business practices of tens of thousands of farmers, druggists, wholesalers and vendors of every sort.

Urban consumers generally liked A&P’s low prices, but trade unions certainly didn’t like the long hours required of workers and the low wages it paid them. Brothers George and John Hartford, who had founded the company in the 19th century, were paternalists who hated trade unionism. In 1934, when a coalition of unions struck at A&P stores in Cleveland, the Hartfords closed all 293 of their stores in the city and discharged 2,200 workers. White House

intervention got the stores reopened and the workers rehired, but A&P signed no contract with organized labor.

Worried about the consequence of chain-busting regulations like the one proposed by Patman, the Hartfords reluctantly reached out to the labor movement — not the radical Congress of Industrial Organizations, but the more moderate American Federation of Labor. Congress had passed the Wagner Act in 1935, providing a framework for collective bargaining and boosting the power of labor. There were as sit-down strikes among the clerks at several Woolworth stores in Detroit and New York. Therefore, early in 1938, AFL President William Green met with A&P executives, where the makings of a deal became obvious: If A&P would sign contracts with unions representing meat cutters, retail clerks and truck drivers, organized labor would oppose the Patman bill, allowing the chain to survive.

The bargain worked. The AFL declared that it would study “taxes of discriminatory and punitive character,” while state labor federations in Texas and Louisiana came out against the federal chain-store tax. Patrick Gorman of the Amalgamated Meat Cutters declared “mass production methods are here to stay as long as consumers demand them.”

For its part, A&P ceased to oppose labor organization in its stores, leading to rapid organization of grocery workers in the urban North — not only at A&P, but also at rivals Safeway, Kroger and many regionally important chains. With the rise of chain supermarkets in the postwar era, the locally owned independent grocer virtually ceased to exist, but grocery unions flourished. Wages were never particularly high in the sector, but stable employment and seniority guarantees ensured that unionized grocery workers could expect something close to a

career at work, with health insurance, a pension and enough income to buy a house. Today 1.3 million workers are members of the United Food and Commercial Workers.

Could such a deal be made today? Not unless the Walmarts and Amazons of our time are faced with a 21st century movement, not unlike the anti-chain store impulse of the 1930s, powerful enough to threaten their core business model. Then a concordant with the unions might well seem a necessity to avoid such a calamity.

Finally, I want to take a brief look at a 1950s antitrust investigation led by Tennessee Senator Estes Kefauver. He was an old New Dealer suspicious of corporate power in all its manifestations. At this time there was some movement to break up General Motors, a company which then controlled almost 50% of the US car market and which set the de facto price standard for the rest of the industry. The Eisenhower-era Department of Justice actually considered the matter in some detail, alleging that GM's acquisition of suppliers enabled the corporation to control its costs and fatten its profit margins by forcing other automakers to buy its parts. Had such an anti-trust action been successful, Chevrolet would have become a separate car company, thus creating a Big Four set of domestic automakers.

But Kefauver and his staff did not urge the government to bring an anti-trust action against GM. Instead, they wanted to use the anti-trust laws to regulate GM price and production policy, so as to staunch the continual rise in the "administered prices" for which the company was noted. Kefauver and his key staff intellectuals, Gardiner Means and John Blair above all, saw chronic inflation, even in the 1950s, as a product of the institutional market power held by large corporations in oligopolistic industries such as steel, autos, pharmaceuticals, and meatpacking. Blair put forward a proposal for an “Investigation of

Monopolistic Pricing and Production Policies" that would be "directed toward determining the nature and possibly injurious economic effects of pricing and production policies in the so-called 'administered-price' industries." Blair wanted to "focus the attention of those involved in public policy where the real inflationary danger exists." Without wider understanding of this threat, he warned, the Federal Reserve's default response to the new inflation would continue to be a growth-stifling degree of monetary restraint.

In response, executives in these industries blamed union power for creating a wage-price spiral, a view implicitly endorsed by the Federal Reserve which hiked interest rates to suppress demand and thereby weaken labor power. But the progressive institutionalists on the Kefauver Committee sought to use the anti-trust laws as a mechanism, not to break up the big companies, but to limit and regulate their pricing power. In a famous essay of the time, the noted historian Richard Hofstadter asked, "What Happened to the Antitrust Movement?" His answer was that liberals had made their peace with business bigness, and Hofstadter was correct in that limited sense. Walter Reuther and the UAW did not want to divide GM into a set of smaller units: that would just make collective bargaining more complex and possibly open the door to competition on the basis of labor costs. Indeed, GM's defense against any DOJ anti-trust initiative had been to centralize and integrate all aspects of GM's engineering, production, and distribution business, a process that actually facilitated collective bargaining across every GM division and subunit. John Kenneth Galbraith also thought business gigantism virtually inevitable, but that corporate power would be constrained by the "countervailing power" of trade unions, consumers, and government. Thus, if labor-liberals of that era did not seek to fragment big capital, they did seek to redefine anti-trust in a fashion not dissimilar from our

own very recent time: as a warrant for much greater regulation of the corporation and the enhancement of working-class and consumer voice and power. The labor-liberals of the 1950s failed in this quest, but that is not the same thing as saying that they abandoned the project altogether.

So, what do these three historical snapshots have in common. In each instance, laborite progressives recognized that business competition per se did not necessarily advance working-class interests; indeed, such competition might well put wages and working conditions into competitive play. Instead, the American anti-monopoly impulse, a culturally resonant tradition extending back to the Boston tea party at the very least, had to be reconfigured and redeployed as a lever by which a progressive working-class agenda might be advanced. That is our task as well.