

FOR RELEASE UPON DELIVERY

FREE ENTERPRISE AND
THE ANTI-TRUST LAWS

AN ADDRESS

BY

HONORABLE TOM C. CLARK

ATTORNEY GENERAL

OF THE

UNITED STATES

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Free enterprise is the American way.

In Massachusetts, your heritage of freedom stems from the Pilgrims who rebelled at restraint. And in my State of Texas, the plainsmen knew the free life.

Freedom of opportunity is the great American heritage.

In our free enterprise system, every man has the right to start his own business. He has the right to put his ideas and money together, to take a chance on making money or losing it. He is limited only by his imagination, his industry and his daring. But he also has the further right to expect that the market will not be rigged against him and that his competitors will not be permitted to combine to destroy him.

This is deep-rooted American tradition. It is our duty, our privilege, to guard and to defend it.

We Americans believe that the free enterprise system is the best way to encourage and to develop new industries, to advance art and science, to raise the American standard of living, to distribute the most goods to the greatest number of people at the lowest cost, and to assure the preservation of our democratic form of government. We have never wavered in this belief.

The antithesis of free enterprise is state ownership. Progressive abandonment of free and competitive enterprise leads to government domination of business. We have seen tragic examples of this.

Rigid control and sanction of cartelization were the forerunners of Hitler.

Powerful business combinations headed by small groups needed only indoctrination to become the backbone of the Nazi war machine. By reason of their long practice of stifling free enterprise they were ready for and grasped the evil Nazi philosophy.

Mussolini erected his Fascist corporate state upon the foundation of giant industrial combinations.

These alien philosophies are abhorrent to us. Yet they arose in countries which had operated on a competitive system basis.

There are other economic philosophies which differ from ours. But the world is large and we can all live in peace together as United Nations.

Our own path is plain. We must not permit the economic system in which we believe, our system of free enterprise and opportunity with its attendant civil rights, to deteriorate. We must not allow it to be robbed of its vitality and of its blessings. Assaults upon it by the selfish must be withstood.

There are those who would scuttle our way of life. These greedy men clamor loudest for free enterprise and opportunity. Actually, they mean freedom for their own activities - - - freedom to drive competitors from the market place. These men would have freedom for guaranteed profits and safe markets with none of the risks inherent in our capitalistic system. They would have freedom to insulate their business from the uncertainties of competition and freedom to gorge themselves with monopolistic

profits.

These are not the freedoms to foster and protect in America. They are not freedoms at all. They mean only license - - license to carry a business blackjack in a community where other citizens go unarmed.

These men would play the game of restrictive agreements, agreements which fix arbitrary and unreasonable prices for the goods which they sell, agreements which divide markets in which their goods are sold, agreements which divide fields of production and sale, and agreements which suppress technological advance and new products.

Let me tell you just how their system operates.

The story of the monopolist who corners the market is an old one; it is familiar to you all. The Department of Justice has fought the oil trust, the tobacco trust and the railroad trust and has recently won the battle against the aluminum trust. The title "Trust-buster" is well earned.

But the monopolist constantly seeks new methods of tying up markets. Cornering and controlling markets, production, prices and inventions are no longer done openly. Secret agreement is now the device. Telephone conversations and club luncheons have replaced agreements and memoranda of understanding.

Price fixing agreements by which goods are sold at artificial and exorbitant prices are common. Housewives, storekeepers, wholesalers and even manufacturers are forced to pay tribute to producers of goods and hoarders of materials who have conspired in secret to make helpless

buyers pay monopoly prices. These prices include the unseen tax of the monopolist, the extra charge which the monopolist takes unto himself by reason of his preferential position, a preferential position engineered in secret to mulct the public.

The monopoly tax is levied by the private government of the monopolist. It has no legal sanction and the unfortunate taxpayer has no right of appeal.

This monopoly tax has been reliably estimated to reach many billions of dollars annually. It is money which could have bought more radios and clothing, automobiles and housing. Many times, it is money which could have bought food.

The price fixing agreement is sometimes clothed in the garment of illegal patent-license agreement. It may also appear in the guise of trademark agreement. But it must be recognized as the same purse-bleeding agreement of the same price fixers.

The American people demand that these vultures be stamped out of the market place.

The secret agreement has also been employed to parcel out exclusive areas for the production and sale of goods. This agreement is known as the division-of-territory agreement. This is the scheme of two or more conspirators. They see no advantage in fighting for the whole market since such a fight may result in lower prices to the consumer and less profits to them. Accordingly, they cut the pie neatly into portions. Each

conspirator then gets a piece for his very own. In this piece or exclusive area, only he can produce and sell. His conspirators have agreed to stay out of this area and he, of course, has agreed to stay out of their areas. Each trading area is then at the complete mercy of the monopolist who controls it. The consumer finds no competition between producers and is compelled to pay whatever price the monopolist cares to charge. This always includes the monopoly tax.

The evil of division of markets also embraces our foreign trade. Industry after industry is subject to export restraint. Whole continents have been delivered as exclusive marketing areas. These cartelists, and we can so dignify the monopolists when they act in combination and in concert with others, have erected super-governments. They refer to their restrictive agreements as treaties. There is no senate, no representative of the consumers, to approve these treaties. The cartelists are sovereign in themselves and owe allegiance only to their profits. They know only the diplomacy of the dollar.

Their policies are planned to withstand the effects of the rise and fall of nations. This is clearly revealed in cases brought by the Department of Justice against American companies in league with the German dye-trust, I. G. Farbenindustrie. Nations conquer or are vanquished but the monopoly profits of the private economic empires continue.

There are also the secret agreements which divide fields of production and sale. By these devices, the conspirators divide the pie not

geographically but according to product. They may all operate in the same area but restrict themselves to specific operations or products. No one dares enter the field granted to another.

Such was the case in the glassware industry. Here, the conspirators created exclusive fields in which each acquired a monopolistic and non-competitive position in the production and sale of a particular type of glassware. The buyer found a complete absence of competition in each field.

You have also heard stories about the suppression of inventions and the smothering of discoveries.

You know about the match trust and its miracle match which could light one thousand times but which never reached the market. No conventional monopolist would think of allowing such a match to reach the consumer. The consumer might be benefited but match sales would be drastically reduced.

The introduction of fluorescent lighting was retarded. Here, power company revenue was at stake.

Again, so that more electric lamps could be sold, the manufacturers built them with shorter life.

Vitamins have been kept from the poor and the lame. Vitamin D is a boon to children with rickets who suffer from malformation due to defective bone metabolism. Rickets are most prevalent with the poor. The poor are also the largest consumers of oleomargarine.

Some years ago, patents for producing vitamin D by ultra violet ray

came into the hands of a university foundation located in a butter producing area. The sole right to use this artificial method of producing vitamin D in foods belonged to the foundation.

The foundation denied licenses for irradiating oleomargarine with vitamin D to manufacturers of oleomargarine because the patent holder was as the inventor said, unsympathetic to oleomargarine,

Monopolists think of their profits first and of the people last.

These are but a few of the practices engaged in by the monopolists who would tear down our free enterprise system while they declare their love for the American way of life.

Fortunately these men are in the minority.

I wasn't always Attorney General Clark. Once I was just Attorney Clark, one of the lawyers in the Department of Justice.

In later years, it was my privilege to be Assistant Attorney General in charge of the Antitrust Division. I speak, therefore, from first-hand experience in antitrust work when I say that these men are in the minority.

On the whole, the business men of America, of which this association is very representative, play the game squarely. They give the other fellow a chance and are willing to pass on a reasonable portion of their gains to the buying public.

That is the way the fair American shoe manufacturer and the fair American textile machinery manufacturer operate.

It is the way laid down by the founders of this country. It is the way crystallized by the provisions of the Sherman Act.

In giving us the Sherman Act, a Congress more than fifty years ago reaffirmed by statutory enactment the American principle of freedom of opportunity in a competitive system. Since the beginning of the century, the Democratic and Republican party platforms have repeatedly pledged adherence to these principles.

The Sherman Act is rightfully known as the Magna Charta of the free enterprise system and the Bill of Rights of business.

The Sherman Act asserts the principle that in a free market, enterprise and initiative shall have the opportunity to compete without fear of restraint by combination, and without fear of reprisal by monopoly methods.

The Sherman Act asserts the principle that the ultimate interests of the entire economy and of all the people will be best served by freedom of opportunity to introduce new ideas, new goods, and new services, and to enter the market and compete on equal terms.

In the famous Trenton Potteries case, the Court found the Congressional intent in enacting the Sherman Act to be:

" . . . based upon the assumption that the public interest is best protected from the evils of monopoly and price control by the maintenance of competition."

The events of recent years have amply demonstrated the wisdom and foresight of the Congress which wrote this charter of economic freedom.

An astounded world watched our industrial machine pour forth the goods and material which overwhelmed the enemy.

Many nations in a weary world look for succor to our government and our system of free enterprise and free opportunity and would emulate that which has brought to us the greatest standard of living known to any people of the world.

I have just returned from a Europe sick from many ailments. Very apparent is the disease that comes from industrial combination and cartelization.

It is a hateful disease which must not infect us. Our job at the Department of Justice is to protect the American economy from contagion.

The Department of Justice must preserve our economic freedoms and the civil rights which flow from them by enforcement of the Sherman Act.

The Department of Justice is the public protector. It is the law department of the greatest clients in the world- - - the United States of America and its people.

Many antitrust actions start from the people. Complaints are received by the Department of Justice every day.

One may be from the machine tool manufacturer who finds all his suppliers of ball bearings lined up against him offering bearings at

identical prices.

Another may be from the tobacco farmer who finds himself confronted with the same prices and buying conditions from all the big tobacco companies.

Another may be from a municipality which is planning to build a school but finds that all contractors operate through a bid depository and decide among themselves who shall be the successful bidder and at what price the successful bid shall be made.

And still another complainant may bewail the fact that overstocked suppliers have agreed to withhold their goods from the market to create a scarcity with consequent higher prices or to put him out of business.

If, after investigation, it is determined that the complaint is well-founded, the Department of Justice moves swiftly.

Where it is plain that the offender clearly intended to violate the antitrust laws, criminal indictment is immediately sought.

Let me say very clearly that the Department of Justice does not seek to punish for the sake of punishment. It does not carry on a vendetta with the businessman. It seeks only to deter the violation of our basic economic law.

The civil action is used to obtain affirmative relief.

Large fines do not correct the situation which has already become fixed. In such cases, we ask the equity courts to order relief which will remove the wrong complained of and dissipate its effects.

Where an illegal business structure exists, we may ask that it be dissolved if it is indicated that this is the way to remedy the wrong.

Where a corporation uses its subsidiaries, divisions, or plants in violation of the antitrust laws, we may ask for what in legal language is known as divestiture. This means separating the subsidiary, division or plant from its parent towards the end that two competitive units will appear in place of the single structure which acted in violation of the antitrust laws.

We must untrack the trend towards concentration of economic power.

The Smaller War Plants Corporation recently issued a report to the Senate Small Business Committee. The report decries the trend toward mergers and acquisitions which was accelerated during the war and which must be prevented and reduced in stature.

The report concludes that antitrust, small-business and surplus-disposal programs are the remedies indicated.

The Antitrust Division of the Department of Justice has long maintained separate sections dealing with small-business problems and surplus property disposal.

I should like to make another point clear about the Sherman Act and its enforcement.

We know that because of the broad language of the Sherman Act, violation of its terms is sometimes unpredictable although the Supreme Court is making clearer and clearer the bounds of proper activity. Nevertheless,

should a specific program be contemplated and should the planners be fearful that it violates the law, the Department of Justice is prepared to discuss it.

The American business man who wants to play the game according to American rules has nothing to fear.

We are now going back to the old rule book.

For five weary years, business has complained of the OPA and price control.

It has begged for the return to the economies of supply and demand.

Well, it is just about here.

Business will be on its own.

There will be no government to whip and to blame.

It is expected that business will accept the responsibility of the free market.

It is expected that business will not substitute private price control for government regulation.

The average American -- the elevator operator as well as the apartment building owner, the shoe store salesman and the chain store operator -- has been protected from runaway prices under government control.

They are entitled to expect fair and reasonable treatment with the removal of government control.

This is now the obligation of business.

To shirk this obligation is to betray a trust imposed on business by the removal of control.

It is to shirk a responsibility to the public and to the free enterprise system.

The removal of price control places the free enterprise system on trial.

The American business man has a personal and vital interest in the preservation of the American system of free enterprise, free opportunity and free men.

His future as an independent business man depends upon vigorous, night and day enforcement of the antitrust laws.

We call out, then, to business men like you to help us.

For it is with your continued support and assistance in enforcing our basic economic law that the American business scene will remain free from enterprise and open for opportunity.