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THE SIGNIFICANCE OF THE SHERMAN ACT

An Address by

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before the

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at

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## THE SIGNIFICANCE OF THE SHERMAN ACT

At great sacrifice and at unprecedented cost this country has emerged victorious from history's most terrible war. The American people fought to maintain their freedom and to safeguard their national life from the threat of aggressors who sought to eliminate democracy from the world. In the moment of victory this country has affirmed its determination to go forward, to live and to work as a community of free citizens.

The direct and critical dangers of war have been surmounted. The problems of reconversion are now with us in many urgent forms. To uncoil the vast war machine which was built in so short a time is a difficult and intricate process. It will require the same mutual goodwill and unity among industry, labor, government and the general public which characterized the American war effort and confounded those who mistakenly believed that democracy had come to the end of the road. But there is no real question that the same degree of ability and cooperation will enable us to carry out reconversion with efficiency and dispatch.

Beyond these immediate concerns, however, it is essential to keep in view the long range interests of this country. We have a heritage of freedom. It is our responsibility to continue the development of that heritage.

During the war we have come to a new realization of the values and principles upon which American society is based. We have come to recognize that our political freedom under our representative form of government requires the solid foundation of a free economy. We know that in order for democracy to be strong, adaptable and progressive it must be secure in its economic liberty.

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It is the role of the Sherman Act to insure our economic liberty. The Sherman Act is primarily designed to maintain the conditions of free enterprise. It represents the expression of a deeply rooted American tradition against the domination of economic life by monopoly. It sets forth in unmistakable terms the principle that in a free market, enterprise and initiative shall have opportunity to compete without fear of restraint by combination, and without fear of reprisal by monopoly methods. From this standpoint the Sherman Act is both a Magna Charta for business and a guarantee to the public that the competitive system will not be circumvented by the devices of collusion or concentration of control. Neither the power of monopoly nor conspiracy among entrenched groups may be employed to eliminate opportunity or to undermine the free market.

In essence this is the significance of the Sherman Act, but its implications are even more profound. In effect the Sherman Act clearly states the faith of this country in the capacity and desire of private initiative to foster economic advancement. It asserts that if opportunity is present for enterprise to introduce new ideas, new goods and services, or to enter the market and compete on equable terms, the best interests of the entire economy will be promoted. Because restraints of trade, whether they are imposed by monopoly or by the concerted effort of industrial combinations, violate the freedom of opportunity for all, the Sherman Act defines them as illegal.

The Sherman Act was passed in 1890. In this sense it was a product of the times. It expressed the reaction of government and of the general public against the concentrated control of industry by the old trusts. It elevated to the level of national policy the historic rule of common law



against monopolistic behavior. In a more fundamental respect, however, the Sherman Act embodied a principle independent of its particular setting: the understanding that the preservation of a free economy ranks among the foremost obligations of a free people.

Events of recent years have demonstrated both the wisdom and the foresight of the Sherman Act. All of us have become familiar with the monopoly pattern of cartels, and with their effect upon economic activity. At the outset of the war our industrial mobilization was seriously handicapped by malpractices which cartel groups had imposed upon many important industries. We may recall the shortages which were the consequence of restrictions upon output; the division of world markets which frustrated our foreign trade; the lack of capacity to produce strategic materials; the economic warfare which hostile interests conducted through cartels in order to weaken our industrial potential. The whole dangerous array of cartel methods and cartel aims had gained an alarming hold upon the American economy. Only by a renewal of the most vigorous enforcement of the Sherman Act was this country successful in meeting the cartel threat. As a result of antitrust actions numerous cartel agreements were abrogated. Cartel restrictions upon the production of essential materials were lifted. Numerous important branches of technology were freed from cartel domination and made available for the conduct of America's war effort.

We have no intention of permitting cartel practices containing such potential menace to our national security and to our economic development to be resumed. The cartel system is alien to our conception of economic life. In effect it sets up a feudal pyramid of control over industry. It seeks to maintain artificial price levels, to limit output, to divide



world markets among a privileged few and to prevent the appearance of new enterprise. Economically, the cartel system rests upon coercion and the denial of opportunity. Politically, the cartel system is the antithesis of representative government, for where cartels exist they have been able to exert unhealthy influence upon public policy, especially in the fields of foreign relations and foreign trade.

Monopoly in the domestic market produces situations very similar to the effects of cartel control of industry. It may not be generally realized but it is nevertheless true that it is the rise of monopoly in domestic markets which leads to the creation of cartels. It is for this reason that comprehensive enforcement of the Sherman Act seeks to protect small business and to maintain the conditions of competition. A moment's reflection is sufficient to understand that the freedom of small business to enter the market, to have access to raw materials, and to introduce new inventions is an integral part of our economic system. When monopoly interferes or seeks to stifle this incentive, it threatens the operation of the free market at its source.

Properly conceived and construed, the Sherman Act is thus a Bill of Rights for industry. The spirit of the antitrust laws is the spirit of an age of enterprise. As far as this country is concerned the spirit of enterprise is accepted as the principal means of supporting a free and progressive economy.

The antitrust policy of the Department of Justice is the product of its responsibility for enforcing the Sherman Act. It is at this point that there is much unnecessary confusion which I should like, if possible, to dispel. The Department of Justice applies the antitrust laws as a part



of its continuing functions. It does not make the law nor does it interpret it. That is the responsibility of the courts. In a case involving price fixing, for example, there is no choice but to institute criminal proceedings. Where the pattern of business practices constitutes the issue proceedings are initiated to seek injunctive relief.

There is one fundamental misconception which is often encountered. Some business men seem to feel that the antitrust laws are intended to regulate business. Nothing could be further from the facts. The antitrust laws place no restriction upon industry. The antitrust law imposes no regulation upon the business man. On the contrary, the antitrust laws seek to relieve business from arbitrary types of restriction imposed by monopoly and from regimentation by entrenched monopoly groups. All that the anti-trust laws endeavor to do is to uphold freedom to compete, and to remove illegal obstacles to competition.

Business as a whole, regardless of its size, has nothing to fear from the Department of Justice or from the antitrust laws as long as it lives up to the rules of competition. When complaints are received which indicate that competition has been eliminated, whether it is by means of patent pools, trade association practices, price fixing agreements, or any other type of illegal discrimination or restraint, the Department must investigate the grounds for the complaint and where conditions warrant it must institute legal action. Necessarily these are the result of the study of each particular case.

In executing this task, the Department seeks only to protect the public interest. The rights of business, as well as the rights of the consumer, are adversely affected when monopolistic practices prevent the market from

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fulfilling its intended purpose. The support which the Department's anti-trust program receives from all elements of the public and all levels of industry show how alert the country is to the need for enforcement. At the same time, it is encouraging to note that industrial spokesmen and large groups of business associations appreciate the primary responsibility of business itself in removing such restraints on the market. It is the duty of private enterprise as the bulwark of our economic freedom to lend its own efforts to the maintenance of a free and vital competitive economy.

In the period ahead the American economy is confronted by a challenge. It is the challenge of full employment and full production. Because our experience has shown that employment and production suffer when monopoly is able to impose restrictions upon output, the need for proper enforcement of the antitrust laws is increased. By removing illegal restrictions on the market we make it possible for enterprise to operate under the most favorable conditions. Small business will therefore have a chance to enter new fields. Workers will find an increased range of opportunities for employment. Capital will find new outlets for investment. The consumer will benefit through a greater volume of goods and services, and real income will rise because of competitive prices.

It is sometimes said that our economy is mature. A realistic appraisal indicates, however, that we are on the verge of an era of tremendous economic expansion. During the course of the war we have glimpsed a whole new world of technology. This technology, together with business initiative, can create a host of new industries. If these new industries are to have a chance to develop, the competitive conditions necessary for their growth must be maintained.



Vigorous enforcement of the antitrust laws is not simply a concern of the Department of Justice or of business; it is the concern of the whole American people. But it merits emphasis to say that business in general benefits as much, if not more, from antitrust enforcement than any other section of our economy. The market for business is expanded; the possibilities of profit are increased; a premium is placed upon efficiency and imagination. To American industry in general such circumstances are incentives and opportunities. American industry has grown most rapidly where the principles of competition operate effectively. There is no reason to believe that the qualities of initiative and ingenuity which created our economic system have disappeared. It is the purpose of the antitrust laws to preserve the conditions which permit initiative to go ahead.

No one contends that antitrust action alone will solve all of our economic problems, or that all barriers to advancement can be lifted at a stroke or in a day. Antitrust is a part, an important part, of the united effort which must be made in working toward economic solutions. Other policies on the part of government, business, and labor must also contribute to the success of enterprise. Given this team-play, there is every reason for confidence in our economic future and certainty of our progress as a free people in a great industrial nation. This is the promise of our history.