Agriculture and federal antitrust activity: an economic history and analysis

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AGRICULTURE AND FEDERAL ANTITRUST ACTIVITY:
AN ECONOMIC HISTORY AND ANALYSIS

by

Scott D. Walton

A Dissertation Submitted to the
Graduate Faculty in Partial Fulfillment of
The Requirements for the Degree of
DOCTOR OF PHILOSOPHY

Major Subject: Industrial Economics

Approved:

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1953
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INTRODUCTION

The problem which this dissertation seeks to resolve is, "What has been the relationship of agriculture to federal antitrust activity?"

An astute student of governmental process in the United States has said:

Three basic interests—business, labor and agriculture—seek to determine the content of public economic policy in the United States... The pattern of evolving public policy reflects the interplay of these interests, their strength and their weakness, their skill in accommodation, and their ability to capitalize such resources as they have at their disposal. A realistic analysis of the activities of government in the economic system must take these interests into account, must consider their claims and their demands and the intensity of the pressure which they are able to bring to bear on the process of determining public policy. ¹

If this is true—and the validity of the statement is a basic assumption of this investigation—then it follows that to understand the Sherman Antitrust Act of 1890, and changes made in it subsequently, it is necessary to understand the forces which caused the basic law to be enacted and which have operated to bring about changes in that act.

It is the thesis of this dissertation that agrarian influences played a major role in the enactment of the Act of 1890 and have since played a key part in the modifications of that law. The only method of determining the reliability of such a proposition is historical analysis of the economic forces and events leading to the passage of

the Sherman Act, and those economic factors and incidents which compelled modifications of the announced purposes of that statute.

The term "trust" is employed in this discussion in its common meaning of any large combination, whatever its organizational form, which dominates an industry. The capitalized form "Trust" will refer to the "trust proper" except when found in direct quotations.

The phrase "antitrust activity" is used in a fairly broad sense, connoting something more than the passage of the Sherman Antitrust Act, modifications thereof and court action under those laws. There were a number of activities taken up by the federal government in dealing with the problem of combination which were as much a result of "antitrust" sentiments as were the Act of July 2, 1890, and related legislation, executive actions and court decisions.
The period 1850-1890 was one of remarkable change in the American economy. Farming was transformed from an independent and largely self-sufficient way of life into a modern interdependent business; industry definitely underwent a change from hand labor in the home to power machine production in the factory; and local markets were transformed into national and world markets. Reactions to these changes on the part of agrarians were varied, but one result was the rise of organizations calculated to improve the lot of the farmer. A feeling prevalent among farm leaders was put into the following words by N. B. Ashby, Lecturer of the National Farmers' Alliance:

The characteristic of the present epoch is organization and centralization. First came the organization of capital and its centralization. . . . As the organization of capital, with its centralizing influences, continued, the farmer began to feel the pressure, and he has been driven into organization in defense of his capital and labor.¹

The situation confronting the farmer was the result of changes which created a new agriculture in a new industrial age. "Antimonopoly" and "antitrust" activities were a product of the reaction of farmers and other economic groups to these rapid changes. The revolutionary changes in agriculture and industry became significant in the decade of the 1850's and were most directly the result of the transforming

¹N. B. Ashby, The Riddle of the Sphinx (Des Moines, 1890), p. 233.
influence of the railroads. The phenomenal growth of the railways changed the markets of the nation from local to national, thereby making possible the development of mass production in industry and the rise of large-sized business units. Agriculture also was undergoing a process of mechanization and expansion with the emphasis increasingly on the production of cash crops for distant markets. The result was an increased dependence of the farmer on middlemen—who bought his products and sold others to him—on railroads, processors of agricultural products, manufacturers, financiers and world markets.\(^2\)

In the twenty years from 1830 to 1850, 7300 miles of railroad were built; 1860 saw a total mileage of 30,626; 1870, 52,922 miles; 1880, 93,262 miles; and, by 1889, there were 161,276 miles of railroad in operation.\(^3\) This expansion made possible an immense growth in manufacturing and in agriculture. The growth of manufacturing between 1849 and 1889 was astonishing, increasing over 900 per cent in the period. In 1849, the value of manufactured products was 1,019 millions of dollars; in 1859, 1,886 million; in 1869, 3,386 millions; in 1879, 5,370 millions; and in 1889, 9,372 millions of dollars. The increase in heavy industry was particularly remarkable, with the output of pig iron increasing over 16 times in the period 1850-1890. There were only 631,400 net tons produced in 1850, while in 1890 the figure had expanded


to 10,307,000 net tons. 4

Agricultural expansion was tremendous from 1866 to 1889. In 1866 the production of corn was 867,946,295 bushels; by 1889 it was 2,112,892,000 bushels, an increase of about 150 per cent. The production of wheat in 1866 was 151,999,906 bushels, while in 1889 it was 490,560,000 bushels—an increase of over 200 per cent. While some of this increase can be attributed to larger yields, the major part of it was the result of bringing into production the plains of the West. In 1866, total corn acreage was 34,306,538 acres; by 1889 there were 78,319,651 acres devoted to the production of corn in the U. S., an increase of something more than 100 per cent. There were 15,424,496 acres producing wheat in the year 1866, while in 1889 38,123,859 acres were employed in the production of wheat—an increase of about 150 per cent. 5

The period 1850-1890 also saw the corporation rise rapidly to a dominant form of business organization. Before the Civil War, the corporate form of doing business was confined almost entirely to the textile firms in the industrial field and to the railroads. Connecticut had passed in 1837 the first general statute allowing for incorporation for any legitimate purpose. Other states followed and by 1850 a substantial number had general incorporation laws. 6

During the Civil War and in the post-war expansion, the corporate form of doing

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5U. S. Department of Agriculture, Yearbook, 1897 (Washington, 1897), p. 710.

business spread rapidly as the advantages of limited liability and capital concentration became apparent. New Jersey's increasingly liberal incorporation laws encouraged such promotions. Having earlier provided for limited liability in her general incorporation law, New Jersey passed an act at the close of the Civil War permitting companies chartered in that state to carry on business, hold property and have offices outside the state. In 1888, the state further amended its law to provide that corporations chartered in New Jersey might hold and dispose of stocks of other corporations, thereby opening the way for corporate combination through the device of the holding company.7

The forces which made possible the tremendous expansion of manufacturing and the rapid rise of the business corporation also made for a vast increase in the size of business units. With the increased size, however, came an increase in the concentration of control in many industries. A variety of techniques were employed to achieve this control. Competitors merged, or small companies were bought out—or driven out—of competition by large firms. Pools were formed to regulate price and output. After 1880, the Trust method of combination became fashionable, after Standard Oil had established the pattern in 1879.

The Trust was a legal device involving the transfer of a majority of the common stock of each member company to a small board of "trustees" in exchange for trust certificates which entitled the holders to prorata shares in the distributed profits. Control over a large

number of companies was thus centralized in the hands of a small group. These agreements proved vulnerable to legal attack and were usually replaced by holding companies. While the "trust proper" disappeared from the scene, the term "trust" was used to denominate all forms of business combinations.

The extent of combination in manufacturing in the decade of the 1880's is well illustrated by the trends in certain industries. In 1880 there were 1990 woolen mills; in 1890 but 1311. The number of iron and steel mills decreased by a third during this period, but yielded a product nearly one-half greater. The number of establishments engaged in the manufacture of agricultural implements fell from 1943 in 1880 to 910 in 1890, although the capital was more than doubled. In the leather industry, three-fourths of the establishments lost their identity in these ten years, but the volume of production was increased five times.8

Before 1890, many railroads found themselves in distress and were anxious to do away with what they regarded as "cut-throat competition." Fundamentally sound companies felt themselves at the mercy of reckless, and sometimes ruthless, competitors, and wished to arrive at a modus operandi which would permit the payment of dividends. "Pools" were established; personal agreements were made by railroad presidents to insure harmony and uniformity of rates. J. P. Morgan organized an inter-state railway association for the purpose of preventing rate-cutting

on western and southwestern railroads in January of 1889. Most such efforts were futile and "rate wars" prevailed.9

During the period before 1890, the heaviest attack of the Western farmer on "monopoly" fell on the railroads. When the average farmer living west of Chicago talked about monopolies and trusts, he was thinking primarily of the railroads. The railroads were the "big business" of the time—the Standard Oil Trust not being formed until 1879—and the terms corporation, railroad and monopoly were synonymous for a time.

It was not until after the Civil War that the Western farmer took this view, however. Prior to the post-war fall in agricultural prices, he was a most ardent supporter of railroad construction which would open up new lands to cultivation and reduce his transportation costs. The desire for greater transportation facilities led towns, counties, states and the federal government to furnish a large part of the capital, in the form of loans or donations of bonds, purchases of stock and grants of land. Promoters appealed to farmers who would be benefited by the new road and sold a great many shares to them, shares which were frequently paid for by giving mortgages on farms.10

When the Civil War commenced, the "state righters" and strict constructionists were no longer an important force in Congress and it was possible to proceed with the nationalistic policy of chartering the transcontinental railways which were so effective in opening the

9 Ibid., pp. 103-104. Philip D. Locklin, Economics of Transportation (Chicago, 1947), pp. 305-313.

West to cultivation. The Union Pacific received its original charter in 1862 (the effective one was granted in 1864), the Northern Pacific received one in 1864, the Atlantic and Pacific (whose charter rights were later secured by the Santa Fe) in 1866 and the Texas Pacific in 1871.\(^1\)

It was early recognized by the transcontinental railroads that the profitable portion of their business would be local freight, since there were four or five competitors for the through business. These roads established land departments to advertise and settle the frontier in order to secure a local freight business. A number of lesser and more local railroads sprang up, especially in the region just west of the Mississippi and these further facilitated settlement. Within a few years after the joining of the Central Pacific and the Union Pacific in 1869, the completion of the great railway systems—the Northern Pacific, the Southern Pacific, the Kansas Pacific, the Missouri Pacific, the Santa Fe, the Burlington, the Rock Island, and the Great Northern—caused western Iowa, western Minnesota, Kansas, Nebraska and the Dakota Territory to become "habitable and inhabited."\(^2\)

Throughout the decade of the 1880's, the number of miles of railroad increased, but the number of railroad companies decreased. The resultant monopoly positions enabled the railroads to establish rates


without fear of competition. Such positions permitted them to increase
rates by devices such as charging "transit" or through rates on the
commodity to the easternmost terminal of the line, even though the
shipper would prefer to consign his goods to some intermediate point.
This was common practice among some railroads of the Northwest, which
demanded the wheat shippers to pay the full rate to Chicago or Milwaukee
rather than permit them a local rate to Minneapolis or St. Paul where
he might transfer his shipment to some other road. It was rare that a
shipper had a choice of more than one railroad to ship by. When he did,
it didn't mean that there was competition. The railroads reached agree-
ments not to compete and, in many instances, they consolidated.13

The complaints of the abuses of the railroads' monopoly position
were legion, and in many cases justified. It was charged that the
farmer was discriminated against as compared to larger shippers, such
as the bigger elevator companies, which were alleged in some cases
to have received the advantages of lower rates, rebates and preferred
treatment with respect to cars. Furthermore, there were a number of
frauds practiced by the railroads or in connection with them. There
were construction company scandals such as that of the Credit Mobilier.
There were also scandals in connection with railroad security manipu-
lations and reorganization in which, in some cases, the farmer who had
bought stock to encourage the building of a certain road presently
found himself without any equity in that company. Also in many

13 John D. Hicks, The Populist Revolt (Minneapolis, 1931), pp. 60-75.
communities the farmer found himself under the burden of heavy taxes levied to pay for subsidies to railroads which had secured tax exemption for themselves.\textsuperscript{14}

An additional source of aggravation were the political activities of the railroads, which usually controlled legislatures in the states of the Mississippi Valley as well as eastern states such as New York and Pennsylvania. Such domination was brought about by lobbying, bribery and intrigue, with the free railroad pass being a manifestation of the link between the railroads and prominent citizens, both public and private. To further annoy the farmer, the railroads owned much of the choice land open to settlement by the farmer—land which would otherwise have been open to free settlement under the homestead laws.\textsuperscript{15}

The major complaint against the railroads as "monopolies," however, was with respect to rates. It was charged that as the colonizers of the region, as allies or partners of the lumber elevator, milling and packing firms, they were the chief exploiters of the farm population which was obliged to pay them high rates, both coming and going. Other objections were to higher rates on local traffic compared to those at competitive points and to rate discrimination between various shippers.\textsuperscript{16}

\textsuperscript{14}\textit{Ibid.}, pp. 62-69.
While the railroads had made possible the opening up of vast, fertile areas which were to greatly increase production—corn production increased from 867,946,295 bushels in 1866 to 2,112,892,000 bushels in 1889; wheat production increased from 151,999,906 to 490,560,000 bushels in the same period—\(^{17}\) they symbolized the advance in transportation by land and sea which not only established a national market, but which threw the American grain farmer into competition with producers in the Argentine, Canada, Mexico, Algeria, Russia, India and Australia. This ready access to world markets by all grain producing areas made the American farmer dependent on a price set in foreign markets.

The manifestation of this tremendous change which was of the greatest concern to the farmer was low prices. The fifties started off with low prices for agriculture, although the Crimean War brought temporary relief with high prices prevailing for wheat and corn in the middle of the decade. After the Panic of 1857, prices fell drastically again, revived in 1859, but fell off to a very low level in the early sixties until the influence of the war caused them to increase to new highs. 1867 was the last year of war prosperity for the farmer and prices began a lengthy decline—the decline was erratic, but each succeeding low point was usually lower than the preceding one, and farm prices hit a low in 1896 unmatched in the one hundred years from 1850-1950 except by those of 1861 and 1932.\(^{18}\)

\(^{17}\) U. S. Department of Agriculture, Yearbook, 1897, p. 710.

The period from 1870 to 1873 was one of general prosperity for the commercial, manufacturing and speculative interests, but it was one of agricultural depression, with the exception of the wheat farmer. The fall of 1873 brought a great financial panic and a period of financial depression ensued which lasted almost to the end of the decade. Increased foreign demand brought about higher prices for the large crops of 1879 and 1880, resulting in temporary agricultural improvement. A drought in the upper Mississippi Valley reduced the yields of both corn and wheat in 1881, again casting the farmer into depression. For a few years, around 1883, crops were generally good and prices were fair, but the general trend was still downward and by the late eighties the prices of corn and wheat in the state of Iowa were as low as they had been since the Civil War. A drought in the central and western portions of Kansas, Nebraska and the Dakotas lasting for ten years from 1887 further depressed conditions in that part of the nation. Furthermore, the prices actually received by the farmer were somewhat lower than the market price, since in many cases the distance to the market was great. In 1889, corn was sold in Kansas for as little as ten cents a bushel and was often burned for fuel. At times the average price of wheat in the Northwest fell as low as from forty-two to forty-eight cents a bushel.

While general agreement existed as to the basic fact that prices were too low, there was no such agreement among farmers as to the cause. They were not inclined to accept the view that "over-production" was the depressing influence, but rather chose to accuse other economic groups for their condition, not without a certain amount of justification.
Blame fell upon monometallism, deficient circulating medium, protective tariffs, speculation in farm products, greedy middlemen, exorbitant freight rates and trusts.

Objections to high railroad rates on farm products were heard even before the Civil War, under rather peculiar circumstances. Farmers in the Middle Atlantic States had local railroad problems created by the trunk line railroads—the New York Central, Erie, Pennsylvania, and the Baltimore and Ohio—which ran from the Midwest through the Middle Atlantic States to the seaboard. The trunk lines had made their western connections in the early 1850's and their competition had steadily become keener as the decade advanced. They competed by reductions in freight rates and rate wars frequently resulted. During the rate wars, produce was carried from the West to the seaboard at a heavy loss. After the Panic of 1857 the competition was especially keen. The lines were fighting for what part they could get of a declining volume of traffic from West to East. The farmers of the Middle Atlantic States were the chief victims of the competition. They no longer had high transportation costs to protect them from the competition of the Western producer. After the panic, prices had fallen drastically in the eastern markets and they fell still further as a result of the rate wars.\(^\text{19}\)

The distress of the depression led to a full-grown anti-railroad movement, with its center in New York and reaching so far south as

Virginia. This so-called "pro-rata" movement, lasting from 1858 to 1861, was the first sectional protest against the railroads. The goal of the movement was legislation which would prohibit inequalities between local and through transportation charges—specifically, statutes were demanded which would force the railroads to charge the same rate per ton-mile for local as for through traffic. Bills embodying such provisions were presented unsuccessfully to the various state legislatures in the years 1858-1861 and with the coming of the Civil War and the attendant prosperity the movement passed away.

In Centralia, Illinois, a group of farmers held a convention in the fall of the year 1858—the same year that the Eastern pro-rata movement began. Here, however, the complaint was not against the railroads, but a revival of antagonism against the country merchants and other middlemen. There had been, in 1852, a brief protest by Illinois farmers against these "non-producers." With the coming of the railroad, there had been some relief for the agricultural class in the Centralia area, but by 1858, farmers in Illinois felt constrained to convene in order to determine a plan of operation which would relieve them from "oppression." Among the significant points in their platform were the following:

We believe that the producer of a commodity and the purchaser of it should, together, have more voice in fixing its price than he who simply carries it from one to the other. . . . We believe that in union there is strength, and that in union alone can the necessarily isolated condition of farmers be so strengthened as to enable them to cope, on equal terms, with men whose callings are, in their very nature, a permanent and self-created combination of interests.  

20 Jonathan Peris, The Groundswell (St. Louis, 1874), pp. 203-204.
The first measure in the plan of operations which was to put their purposes into effect was the formation of Farmers' Clubs, which clubs were to have the object of producing concerted action on all matters connected with the interest of the farmer.21

These new sectional movements among the farmers were reactions to industrial and agricultural change. The improvement in transportation, which the railroad represented, created new possibilities and greater potential advantages for the farmer, but it also presented him with new problems. The movements blossomed briefly before the Civil War, but wilted under the warm sunshine of war prosperity. Soon after the war, the agitations were renewed and a series of conventions protesting conditions were held in the West and South. Later, the more permanent and national organizations were established. These organizations had a new purpose: the improvement of the economic condition of the farmer through direct, organized action—both political and economic.

Although permanent agricultural societies existed prior to the war, they had somewhat different objectives and adopted different methods. While interested in benefiting the farmer economically, they proposed to do it through the popularizing of technical agricultural education and through the promotion of agriculture by the holding of fairs. They were also concerned with the creation of social groups for the rural people. These societies appeared to lack the programs of the later farmers' organizations which had as a primary goal the promotion of agricultural welfare through cooperation and combination, although

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these later groups also had social and educational purposes. 22

After the close of the war, the notion of national organization took hold among members of the agricultural class and there arose a number of great farmers' organizations. The first great group to be established was the Order of Patrons of Husbandry, or Grange, which was founded in 1867. It was founded by a clerk in the government service in Washington, Oliver H. Kelley, who had concluded that a national secret order of farmers was required for the furthering of the reconstruction of the South and the advancement of agriculture throughout the country. 23 While it was the original intention of the founders of the order that the benefits of organization would be mainly social and intellectual, it turned out that the desire for financial advantage was a far greater incentive to membership. The desire for cheap transportation had resulted in antagonism to railroad corporations, as previously noted, and took the form of agitation for government regulation of freight and passenger rates, and of unfair railroad practices. When the members of the new order took up the agitation, a remarkable expansion took place.

The expansion took place in the years 1872-1874 and was in large part a result of the Panic of 1873. The farmer was hard hit as prices continued to fall and credit became more difficult to secure. Creditors who had previously carried debts from year to year now demanded payment. When mortgages fell due, it was almost impossible to renew them

22 Edward Wiest, Agricultural Organization in the United States (Lexington, Ky., 1923), Chap. 15.

and mortgage foreclosures were commonplace. Even short term loans, from planting time to harvest, were difficult to secure. Under the burden of these many misfortunes, the farmer looked about for a scapegoat and found it in the corporations, especially the railroads, which he chose to call "monopolies."  

A contemporary account of the Granger movement, written by J. D. McCabe under the pseudonym of Edward W. Martin, was entitled History of the Grange Movement; or the Farmer's War Against Monopolies: Being a full and authentic account of the American farmer against the extortions of the railroad companies.

In Illinois, in the year 1873, at the various county Independence Day picnics held by farmers, the meetings were of a much more serious nature than was usual. There was a passionate denunciation of corporations and a reading of a "Farmers' Declaration of Independence" which concluded, "We, therefore, the producers of the state in our several counties assembled . . . do solemnly declare that we will use all lawful and peaceable means to free ourselves from the tyranny of monopoly . . . ."  

In 1874 at the seventh annual session of the National Grange, a document entitled the "Declaration of Purposes of the National Grange" was adopted as the platform of the movement. While it claimed that the Patrons waged "no aggressive warfare against any other interest,"

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24 Buck, op. cit., pp. 52-73.
it did state an intention to dispense with the surplus of middlemen. While asserting that they were not the enemies of capital, it registered their opposition to the "tyranny of monopolies, high rates of interest, and exorbitant per cent profits in trade." With respect to the railroads, the document declared that the order was not inimical to them, but that transportation companies of all kinds were necessary to the farmer—cheap transportation was also advocated.

There was little original in the Grange platform. Its demands were an amalgam of the various complaints against "monopoly" that already existed, including those of local farmers' clubs in Illinois and of the woolgrowers' associations, the cotton planters and the Eastern farmers in the pre-war period. The main goals of the order were: lower and more uniform railroad rates; the reduction of middlemen's profits and malpractices, if necessary by doing away with the middleman; and, the establishment of easy credit, especially for Southern farmers. These goals were not to be reached by direct political activity, indeed, the "Declaration of Purposes" forbade such activity.

In the late seventies, the beginnings of yet other national farmers' groups, the Alliances were made. While the groups were not important nationally until after 1887, there was an attempt to establish them on a national basis at a "Farmers' Transportation Convention" in Chicago during the month of October, 1886. Reflecting the views

28 Hicks, op. cit., p. 97.
29 Ibid., p. 99.
of the attendant delegates from Alliance chapters, farmers' clubs and granges, a resolution was adopted which condemned the railway industry as:

a virtual monopoly . . . defiant of all existing law . . . oppressive alike to producer and consumer, corrupting to our politics, a hindrance to free and impartial legislation, and a menace to the very safety of our republican institutions. 30

At the close of the day's convention, the Alliance delegates met and organized the National Farmers' Alliance. Their constitution declared, in part: "The object of the organization shall be to unite the farmers of the United States for their protection against class legislation, and the encroachments of concentrated capital and the tyranny of monopoly . . . ." 31 The Alliances, however, were later to concentrate their attentions on the problem of money and credit, rather than on opposition to monopoly, in railroad form or otherwise.

While before 1890 the railroad problem was the burning issue, there were other grievances which the farmer charged up to "monopoly." The middleman and the manufacturer were accused of using their monopoly position to force the farmer to sell at a low price and to buy at a high one. 32 In order to do away with these "evils," it was decided to do away with the middleman and to go into certain lines of manufacturing. The Western farmer had just newly become a producer of staple crops for cash markets on a large scale and had, therefore, little conception of the actual services performed by middlemen or of

30 Ibid.

31 Ashby, op. cit., p. 408.

the complexities of distribution. He embarked optimistically on a number of ventures of a cooperative nature which included local, county and state agencies for the purchase of farm implements and supplies. Local grain elevators, cooperative stores, farm machinery factories, and banking and insurance companies were also established.

At first the attack on the middleman took the form of making bargains with a certain dealer who would allow Grangers special rates if they bought for cash and traded only with that dealer. Later, purchasing agencies were established which would forward the orders of the members in a lot to manufacturers and wholesalers and prices were received which were quite a bit lower than retail if cash accompanied the orders. This development led to the establishment of cooperative stores. The earlier stores were usually set up as stock companies, and while savings were realized by Patrons as a result of the low prices charged by these stores, the profits were divided among the stockholders in proportion to the stock they held and not among the purchasers according to the volume purchased. When prices were lowered by competitors, there was no incentive to purchase at the cooperative stores and as a consequence they declined. While the National Grange at a later date attempted to promote cooperative stores organized according to the Rochdale plan, the earlier failures prevented widespread acceptance of the plan in the Middle West, although it was generally adopted in the South and East.

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33 Buck, op. cit., Chap. 7.
The establishment of cooperative marketing agencies was more successful, at least while the order flourished. The farmers were able to increase their returns by entering this branch of the agricultural industry. There were, also, instances of the state Granges choosing certain firms as agents rather than entering the business; in these instances the members of the order were advised to use such outlets, and more savings resulted. With the decline of the order, the state agencies either came to a disastrous ending or lost ground gradually. While in operation, however, they apparently saved the Patrons a considerable amount in commissions on produce.

The most disastrous venture was that of the manufacturing of farm machinery, especially harvesters. Experiencing difficulty in finding a manufacturer to sell harvesters to their agents at reduced prices, and having their treasuries fairly overflowing with money, some state Granges felt that there could be no better use made of these funds than to "smash" the "Harvester Ring," the "Plow Ring" and other combinations. In Nebraska, Iowa and Minnesota, factories were set up in 1874 to manufacture harvesters under contract for the various state Granges. These machines were sold for about half the prevailing price and were generally satisfactory, although some proved defective. Some were shipped too late to be used in the harvest of 1874, and in nearly every case the state Granges involved found that they had lost money in the venture. When, in the summer of 1874, the venture looked like a great success, the members of the executive committee of the National Grange decided to have the Grange sponsor the manufacture of almost all machinery used on the farm. Patents
the executive committee then turned to
order, but when it became impossible to keep these lines secret,
we were unable to do so. We were unable to perform the function of disarming
for cooperation. The executive committee, therefore, made
the national defense dual commits to open.

At the on-arrangement were the by event in the war, in
phases were offered, these elements were discovered in
incomplete, that needs be maintained for the duty, unless certain
some degree later on, and in January, 1948, the entire state change
in the states and other western states. They were to control the
process to be successful. Various companies and support to escape
in such a movement, within an organized manner, a number of
army of the nation, was to take place.

Farmers should hold their farms within the price range. The
northern farmers are organized in Chicago in October of 1947, that the
centralization of resources to resist the number of the
were fixed by farmers and monopoly, the farmers were addressed to form
for the purpose of this cause, given the basis better that exists.

In 1948, there was suggested the establishment of a cooperation.
provided a market for farm products and were somewhat more successful
tempered by Zanis, which processed the new agricultural materials
and equipment of the 1940s. Some other factors were
and the number of the city in the 1940s. However, the fact that
were bought, factors were processed and built. However, the fact that
The return of the members was regrettable, but it was necessary to continue the operation. The members were reluctant to leave, but it was necessary to order them to do so. The members were divided in their opinions and beliefs, and the company was therefore not able to continue the operation. However, some members were convinced that the problem had been solved.

The company had to promote international exchange, and its problem was to define the membership plan and the participation of non-American cooperatives in the national purchasing agency and to extend the cooperation of cooperatives in the United States. A comprehensive devaluation of cooperatives was necessary, and the national currency took up the question of the cooperative scheme of establishing manufacturing enterprises.

As in the year 1875, the national currency took the position of the scheme, which was abandoned in 1875.
stores, elevators and cotton gins were established by local alliances, with some success. Cooperative marketing organizations were frequently established. The Texas State Alliance attempted in 1886 to market cotton directly by gathering their cotton at a central location and inviting buyers to come and bid on it. The effect of the attempt on prices was indiscernible, although it had been hoped that buyers would compete against one another and raise the price. The Farmers' Mutual Benefit Association in Illinois pooled grain for direct shipment to Chicago and other main grain markets and was successful for a time. Also in similarity to the Patrons, the Alliance set up purchasing agencies to eliminate the middleman and these agencies were especially successful in Iowa, Minnesota and Nebraska. 36

A grand scheme to break the power of the "monopolies" was fostered by C. W. Macune, a leader of the Southern Alliance. In line with the goal of organizing the agriculturalist of the cotton belt for business purposes, Macune believed it necessary to weld the cotton growers into a strong, solid, secret, and binding organization for the purpose of breaking the power of monopoly. He apparently believed that a farmers' monopoly should be established, especially a monopoly on the sale of cotton. Such a combination could force purchasers to pay a "fair price" and furthermore would be able to dictate what prices he would pay by refusing to buy, except at a "fair price." 37

36 Hicks, op. cit., pp. 132-138.
37 Ibid., pp. 134-135.
A Farmers' Alliance Exchange was organized in Texas in 1887 to sell farm produce and to buy farm supplies through a headquarters in Dallas. After a life of some twenty months, the Texas Exchange went out of business. A lack of capital, inability to secure credit, too small a profit margin and general mismanagement were the causes of collapse. Similar exchanges were organized throughout the South and while some were temporarily successful, they all eventually disappeared. In addition to the problems of poor management and inability to sell on credit successfully, they met with discrimination on the part of wholesalers, manufacturers and railroads. After a large number of such exchanges had been established in the South, the notion of creating one national agency to head all of the state exchanges arose. At the meeting at Ocala, Florida, in 1890, the secretary of the State Business Agents' Association urged such an organization in saying,

Our enemy can not meet us successfully if we stand united, but if every agent attempts to work out his problem single handed and alone, each will fall an easy prey to the powers of monopoly. I am convinced that we have gone as far as we can as individual agents.39

Macune himself put the quietus on this proposal, undoubtedly sobered by the disastrous experience which befell his Texas Exchange, and nothing further came of the suggestion.

In December, 1888, the National Farmers' Alliance and Cooperative Union consolidated with the National Agricultural Wheel to form the National Farmers' Alliance and Industrial Union (known as the Southern Alliance) and the constitution drawn up at that time declared:

38Ibid., pp. 135-137.
39Quoted in Hicks, op. cit., p. 139.
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38 Ibid., pp. 135-137.
39 Quoted in Hicks, op. cit., p. 139.
obtain higher prices for all that the farmer produces, and cheaper prices for all that he consumes of other's products.43

There were other measures taken before 1890 by the farmers on other than a national level which indicated their unalterable opposition to the "monopolies." Albert Cummins, later a distinguished Governor and United States Senator of the State of Iowa, acted as chief attorney for a farmers' protective association which sought, in 1881, to break up a "barbed-wire combine."44 There was an instance where members of the Southern Alliance took action when the price of jute bagging increased, presumably because of the formation of a "trust." The farmers of the cotton belt, under Alliance leadership, substituted cotton bagging for jute and reportedly brought the "monopolists" to terms.45

The farmer's attack on monopoly took the form of political as well as economic organization. This was due, in part, to the fact that the cooperatives hadn't been successful, and partly due to the fact that some activities of the business combines could not be controlled except by political measures. The activities of agrarians in the field of politics prior to 1890 led to the passage of the Sherman Antitrust Act in that year.

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43 Ashby, op. cit., p. 403.


45 Hicks, op. cit., p. 140. Ashby, op. cit., p. 371.
A phase of the organization of farmers in the new industrial age was the political organization and action of these farmers' groups. While the Republican party's origin can not be ascribed to the reaction of the farmer to industrialism, it did represent a political means for achieving the economic goals of the Western farmer after 1850. Indeed, the combination within the party of two economic groups—the Western farmer and the Eastern businessman—whose objectives were so often seemingly in conflict, set the pattern for party politics in the post-Civil War period.

With the triumph of the Republican party in 1860, public policy reflected the aspirations of the new patterns of leadership. Two major forces were combined in this movement. Western agrarian interests received recognition in the enactment of the Homestead Act of 1862, the Land Grant College Act of the same year, and also in 1862, the establishment of the Department of Agriculture as a service agency for farmers. At the same time, policies of liberal internal improvements and extensive government aid to advance construction in the West were also calculated to appeal to Western agrarian interests. Concern with the promotion of business interests was equally evident. The
steady elevation of the tariff became a powerful weapon in safeguarding many business enterprises against foreign competition. Monetary and banking policies contributed to the strengthening of the position of business and financial groups. Land grants and other public aids fostered the growth of railroad corporations. Business promotionalism bulked large in determining the direction of public policy.

After the war, the Republican party was in control of every state of the Northwest and the Pacific Coast. The Democratic party was still a force in Ohio, Indiana, Missouri, California and Oregon. However, in the rest of the "North"—Illinois, Michigan, Wisconsin, Minnesota, Iowa, Nebraska and Kansas—the term "Democrat" was almost synonymous with "rebel" or "Copperhead." However, as the Republican party changed from one which had risen in the West as a party of revolt to the party of the business interests, considerable opposition was generated in the agricultural states of the West. This opposition taking place in the Northern states to the dominant Republicans took the form of third parties rather than the installment of the Democrats, because of the antipathy towards the "party of rebellion."^2

During the eighteen-seventies signs of a shift in public policy became apparent. Promotionalism began to give way to regulation. Agricultural depression accentuated cleavages of interest between railroads, processors, and other business interests, on the one hand,

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1 Buck, *op. cit.*, pp. 80-81.

2 Fred E. Haynes, *Third Party Movements Since the Civil War* (Iowa City, 1916) contains an account of these parties up to the First World War.
and farmers, on the other. The appearance of pools, combinations, and monopolies in important sectors of the economy drove non-participating small businessmen to turn to government to restore their relative position. The first important manifestation of the growing regulatory movement, the Granger agitation, was primarily agrarian in origin. Its most significant contribution was in the field of state railroad regulation, where it elaborated a pattern of control of rates and practices which was later to be widely applied to other so-called public utilities in more comprehensive and positive terms.

Since it is usual to attempt to solve problems on the local and state level before proceeding to national action, political or otherwise, there were many instances of localized "anti-monopoly" activity undertaken by the farmers which indicated the key role which they would play in attempting to solve the problem of "monopoly" and also the direction which national action would later take. Mention has been made of the "pro-rata movement" of farmers in the Eastern states before the Civil War. After the war, as the problems of farmers increased and agricultural prices fell, similar movements sprang up in the West. The first political manifestation of these new movements was a convention of farmers, meeting at Bloomington, Illinois, in April, 1869, to make an organized protest against high freight rates and to bring its influence to bear upon Congress and the Illinois Constitutional Convention. Movements in other Western states originated shortly thereafter,

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3Periam, op. cit., Chap. 18.
and the results of these separate movements was the Granger legislation of the 1870's and 1880's.4

Before the Granger movement had achieved its goal of legislation curbing the railroads, there were some national political parties which had "anti-monopoly" leanings. The National Labor Reform party, which resulted from a resolution passed at the National Labor Congress held by the National Labor Union in Cincinnati in 1870, was the first national anti-monopoly party.5 A platform was adopted for this party at the Congress held by this union in 1871 which, after enumerating the wrongs suffered by the laboring class, declared the instrumentalities by which these wrongs were inflicted to be the monopolies of banking, railroads, manufacturing, land, commerce and grain.6

The National Labor Reform party, however, did not come out for the abolition of monopoly in its resolutions for the campaign of 1872. It was, more practically, concerned with questions of currency, debt, taxation, public lands, labor legislation, government regulation of railroads and other reform measures.7 Judge David Davis of Illinois, known to be disaffected with the Republicans, was nominated for the Presidency, but he declined.

In 1872, however, there were parties declaring against monopoly.

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4Buck, op. cit., Chaps. 2-5.  
5Haynes, op. cit., pp. 93-94.  
6Ibid., p. 97.  
7Edward Stanwood, A History of the Presidency (Boston, 1898), pp. 336-337.
The Prohibition party, in its first national appearance, declared monopoly to be an evil in its platform. Both the Liberal Republicans and the Republican party in their platforms opposed the further grants of public lands to "corporations and monopolies." The Democrats, except for a small dissident group, accepted both the platform of the Liberal Republicans and their candidate, Horace Greeley.8

The National Labor Reform party, with Charles O'Connor of New York as its candidate, was unsuccessful at the polls, drawing only 29,489 votes. It is perhaps significant, though, that its strength was not in the industrial states of the East, but in the agricultural states of the West and South. The Prohibition party polled even fewer votes than did the Labor Reformers.9

From 1873-1876, a number of third parties were formed in the Western states. The platforms of these state parties, as well as the names of some—they were called, variously, "Independent," "Reform" and "Anti-Monopoly"—indicated their "anti-monopoly" character, although their concern was almost solely with the railroads. These parties, which were the political manifestation of the Granger movement, had as a major goal the establishment of state regulation of railroads and railroad rates. When satisfactory state legislation was achieved in these states—Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Kansas, Nebraska, California and Oregon—and the laws were upheld by the Supreme Court in the "Granger Cases," the parties, the

8Ibid., p. 340, 344, 347, 349.
9Ibid., p. 352.
Grange membership and agitation for regulation declined. This movement did not directly result in a national party or national action, although three states—Illinois, Kansas and California—sent Independents to the United States Senate.

It was soon evident, however, that any effective regulation of traffic between states by state laws was impossible as a practical matter, even though the Court had decided that a state might exercise jurisdiction over any railroad traffic taken up or set down within its borders. The natural result was a demand for supplementary federal legislation for regulation of the railroads.

Serious consideration had been given to regulation of railroad rates by Congress as early as 1868 when the proper committees of the Fortieth Congress were instructed to inquire into the constitutional power and the expediency of regulating and establishing maximum rates on interstate roads. The third session of the Forty-second Congress saw the establishment of a select committee of seven on transportation routes to the seaboard, with Senator Windom of Minnesota as its chairman. The committee was to study the question of securing cheaper transportation to the Atlantic seaboard from the West. While the primary object of study was "cheap transportation," the committee on April 24, 1874, presented to the Senate its report which also contained the first comprehensive plan for regulation of interstate railroad traffic by the federal government. The committee concluded that the

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10 Buck, op. cit., Chaps. 3-6. Haynes, op. cit., Chaps. 6-7.
11 Haynes, op. cit., p. 51.
"problem of cheap transportation is to be solved through competition." The type of competition which was to secure cheap transportation was to be that of various proposed waterways and freight railroads to be owned or controlled by the government.

In the House, more vigorous action was taken under the leadership of Mr. McCrory of Iowa, chairman of the Committee on Railroads and Canals. McCrory had introduced a bill in the Forty-second Congress which was never reported out of committee, but he had greater success with a bill introduced in the House in January, 1874. The measure, in part, provided for a commission of nine to establish schedules of maximum rates, and was passed by the House in the latter part of March, 1874. The measure was referred to the Senate committee, which reported it back later in the session, but no action was taken by the Senate. The failure of the McCrory bill was followed by a lull in agitation for federal regulation for a time, although the movement for such regulation never disappeared.

Mr. Reagan of Texas, chairman of the committee on commerce, introduced a bill in the House during the second session of the Forty-fifth Congress (1877-1878) which was concerned, for the most part, with the prevention of discrimination. Later in the session, he introduced a substitute measure which contained a section prohibiting pooling—the first measure introduced in Congress containing a general prohibition of specific monopoly activities. This bill was passed by the House.

during the third session (1878-1879) but the Senate again took no action. The bill was generally supported by the National Grange, which took a certain amount of exception to it since it mentioned nothing about reducing rates. The failure of the Reagan Bill, in this and succeeding sessions, marked the end of influential "Granger" agitation for federal regulation.

As the farmers' movement for railroad regulation subsided, there came an increased political agitation on the part of the farmer for inflation. While the National and State Granges did not enter politics, and though the "Granger Movement" did not directly result in the formation of a national party, there was a connection between the Grangers and the "Greenback" party which was directed against the "money power." The Independents in Indiana held a convention after the elections of 1874 and recommended that a national convention be held at Cleveland in March of 1875 in order to adopt a national platform and to appoint a time and place for holding a National Independent Convention to nominate candidates for President and Vice-President. The 1874 convention committee on platform recommended the formation of a "new political organization of the people, by the people and for the people, to restrain the aggressions of combined capital upon the rights and interests of the masses . . . ." While such a statement apparently stamped the group as being "antimonopoly," the committee further stated that "the proper solution of the money question more deeply affects the

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16 Haynes, op. cit., p. 106.
material interests of the people than any other one question, and that it directly or indirectly affects all other economic questions in issue before the people.17 There were only two states—Indiana and Illinois—in which there were direct connections between the parties of the Independent movement and the Greenback party.18 But while there were not too many links between these two movements, the Alliance movement was the heir of both.

The Cleveland convention met according to plan and completed the organization of the party. The farmer was not alone in the agitation for "greenbacks." "Greenbackism," as a movement, passed through two stages. It was first, under the promotion of the National Labor Union, a labor movement. After 1874, when the agrarians took up the cry for cheap money, it became a farmer-labor movement working through the Greenback Labor party.19 In March of 1875, at the same time that the National Independent Convention was being held in Cleveland, an Anti-Monopoly convention was held in Philadelphia. It proposed a national conference of "representative workingmen and farmers" be held in Cincinnati in September, 1875. At the fall meeting, the eastern delegates withdrew. Those remaining adopted resolutions similar to those of the new party and finally a committee was appointed "to act with the national executive committee of Independents appointed by the Cleveland convention."20 Another Greenback convention was held

17. Ibid., p. 107.
in Detroit in August, 1875. It was not a success from the standpoint of attendance, but a significant resolution was adopted. It was recommended that there take place "the organization of Greenback clubs in every State of the Union for the purpose of carrying out the principles and measures set forth . . . . in the resolutions." These clubs were the successors of the farmers' clubs of earlier years and the predecessors of the clubs in the Alliances.

The Independent National, or Greenback, party held its first national convention at Indianapolis in May, 1876. In its platform, it said not one word about monopoly. It confined itself solely to the currency question. The temporary chairman was Ignatius Donnelly of Minnesota, and Peter Cooper, of New York, was nominated for President. While the candidate polled only 81,737 votes, the bulk of which came from the Granger states—North Carolina and Pennsylvania being the only other states giving any substantial vote to the new party—this vote had a significance far out of proportion to its number. The election of 1876 was the "disputed election" in which Samuel Tilden, the Democratic nominee, was defeated in the electoral college by a vote of 185 to 184, although he had a majority of the popular vote. In the state of Indiana, Cooper had received 17,233 votes; Tilden 213,526; and Hayes, the Republican candidate, 208,111. Indiana had, in 1872, been in the

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21 Ibid., p. 111.
22 Stanwood, op. cit., p. 367.
23 Ibid., p. 383.
24 Ibid.
Republican column, and if the Greenback candidate had drawn as many as 11,325 of his votes from former Republican voters in the 1876 campaign, this is what had cost the Republicans the electoral vote of Indiana and thrown the election into dispute.

There were some evidences of cooperation between the Greenback and Labor Reform parties before 1878, notably in the East, since separately they were too weak to have much power. Both being protest parties established to deal with problems brought about by economic events after the Civil War, there was an incentive to union. An alliance was formed between these parties at a meeting held at Toledo, Ohio, on February 22, 1878. The preamble to the platform gave the following as the reason for union:

The Independent Greenback and other associations, more or less effective, have been unable hitherto to make a formidable opposition to old party organizations ... assemble in national convention and make a declaration of our principles and invite all patriotic citizens to unite in an effort to secure financial reform and industrial emancipation. The organization shall be known as the "National Party".

In the off year elections of 1878, this party secured 1,060,000 votes and sent fourteen Representatives, including General James B. Weaver of Iowa, to Congress. Three of this group were from Pennsylvania; two each from Iowa, Illinois and Maine; and one each from Indiana, Missouri, Texas, North Carolina and Alabama. This drawing of strength from the Republicans contributed to the Democratic sweep of that year.

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26 Ibid., p. 122.
and the Democrats now controlled Congress. While the Greenbackers declared that they held the balance of power in the House of the Forty-sixth Congress, the election of the Speaker showed this not necessarily true. The Democratic candidate was elected and it was revealed that the strength was as follows: Democrats, 143; Republicans, 124; and Greenbackers, 13. The Democrats did not need the National party's votes and the Republicans could not control the House even with them.

The Greenback party, in its national convention of 1880, did put an antimonopoly plank in its platform:

We denounce, as destructive to prosperity and dangerous to liberty, the action of the old parties in fostering and sustaining gigantic land, railroad, and money corporations, invested with and exercising powers belonging to the government, and yet not responsible to it for the manner of their exercise.

Not to be outmaneuvered, the Republicans reaffirmed their opposition to further grants of the public domain to any "railway or other corporation," while the Democrats resolved against "discrimination in favor of transportation lines, corporations, or monopolies." This was the first mention by the Democrats of opposition to monopoly in a post-Civil War convention.


28 Haynes, op. cit., p. 132.

29 Stanwood, op. cit., p. 410.

30 Ibid., pp. 405, 414.
General Weaver, the Greenback nominee in 1880, linked the banks with monopoly in his letter of acceptance in the following fashion:

It must be apparent to all that the great moneyed institutions, and other corporations, now have control of nearly every department of our Government, and are fast swallowing up the profits of labor and reducing the people to a condition of vassalage and dependence. These monopolies, of whatever class, are interlocked in purpose, and always act in closest sympathy. . . . The great problem of civilization is, how to bring the producer and consumer together. This can only be done by providing an adequate circulating medium, and by rigid regulation of inter-State commerce and transportation. 31

Weaver received only slightly more than 300,000 votes in the canvass of 1880. This was more than the difference between the popular votes for the candidates of the two major parties—Garfield had 4,454,416 and Hancock, 4,444,952. Also, in three states, California, Indiana and New Jersey, the vote for Weaver was greater than the discrepancy between the votes for the Republican and Democratic candidates. However, as compared with the elections of 1876, only California had been lost to the Republicans while Indiana made the reverse switch and New Jersey had remained Democratic. The strength of the Greenback party was in the West, as the following distribution of states casting over 10,000 votes for Weaver, arranged in descending order, shows: Missouri, 35,135; Michigan, 34,895; Iowa, 32,701; Texas, 27,405; Illinois, 26,358; Pennsylvania, 20,668; Kansas, 19,851; Indiana, 12,986; New York, 12,373; and Kentucky, 11,499 votes. 32

While in 1882 some regarded the Greenback party as dead, a group

31 Quoted in Haynes, op. cit., pp. 138-139.
of Greenbackers met early that year to discuss a call for a national
convention. The platform drawn up at this meeting significantly
invited "all members of land leagues, farmers' alliances, trades unions,
anti-monopoly leagues, producers' organizations, Knights of Labor" and others to unite with the Greenbackers. Although union was not con-
summated at this time, these groups were later to comprise the backbone
of the People's party. And though the Greenback party was not a success
in that it replaced one of the older parties or had its programs immedi-
ately adopted by the other parties, its breaking up caused a realignment
of power between the older parties. Many of the independents in the
Greenback movement went into the Democratic party and this was, in part,
a cause of the success enjoyed by the Democrats after 1880. In 1882,
Democratic governors were elected in the normally Republican states of
California, Colorado, Connecticut, Delaware, Kansas, Massachusetts,
Michigan, Nevada, New York, and Pennsylvania. These elections also
resulted in a majority for the Democrats in the House of Representa-
tives in Washington. A Republican paper in Iowa declared these
results, "a landslide, a tidal wave, an earth-slip . . . ."  

In the election of 1884, a new party, the Anti-Monopoly party,
appeared on the scene. It was formed at a conference at Chicago on
July 4, 1883, after a call had been issued to form "a new political
party to espouse the cause of legitimate industry in the irrepressible

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33 Haynes, op. cit., p. 146.
34 Ibid., p. 144.
conflict between the confederated monopolies and the people."\(^{35}\) A national convention was held on May 14, 1884, in the same city to draw up a platform and to nominate candidates. The party was not truly national in scope, there being representatives only from eleven Western and six Eastern states at the 1884 convention.\(^{36}\) The temporary chairman of the convention was Alson J. Streater, the Union Labor candidate of 1888 and one-time president of the Northern Alliance.

The platform adopted by the Anti-Monopolists was one of general reform with particular emphasis on the control of corporations, one plank reading: "That corporations, the creatures of law, should be controlled by law." The transportation, money and telegraph corporations were singled out and Congress was urged to pass "all needful laws for the control and regulation of those great agents of commerce," and the passage of an Interstate Commerce Bill was urged to this end. That the Anti-Monopoly party was essentially a labor party is clear from its platform and the fact that the platform concluded with an appeal "to the American farmer to co-operate with us in our endeavors to advance the National interests of the country, and the overthrow of monopoly in every shape when and wherever found."\(^{37}\)

The National, or Greenback, party adopted a stronger position with respect to monopoly in its 1884 platform than it had previously. Its platform declared:

\(^{35}\)Ibid., p. 148.

\(^{36}\)Ibid.

... never in our history have the banks, land-grant railroads, and other monopolies been more insolent in their demands for further privileges—still more class legislation. In this emergency, the dominant parties are arrayed against the people and are the abject tools of the corporate monopolies.

We denounce as dangerous to our republican institutions, those methods and policies of the Democratic and Republican parties which have sanctioned or permitted the establishment of land, railroad, money and other gigantic corporate monopolies; and we demand such governmental action as may be necessary to take from such monopolies the powers they have so corruptly and unjustly usurped, and restore them to the people, to whom they belong. 38

That the Anti-Monopoly and Greenback parties shared essentially the same views in this campaign is evident from their platforms and from the fact that both nominated General Benjamin F. Butler of Massachusetts for President. On August 12, 1884, Butler published a statement to his constituents in which he accepted the nominations of both of the parties and urged the consolidation of all the discontented elements into a "People's Party." 39 Joseph R. Buchanan, a labor leader, wrote in his autobiography that, "General Butler and his platform appealed especially to wage-workers, but they received very little support from that quarter, the greater part of the People's party (sic) vote coming from the farmers." 40

Both major parties were vague on the subject of monopoly in their platforms. The Republicans recognized the right of Congress to regulate commerce and promised to support such legislation, including an act to regulate railway corporations. The Democrats said that, "While

38 Ibid., pp. 424-425.
39 Haynes, op. cit., p. 150.
40 Quoted in Haynes, op. cit., p. 203.
we favor all legislation which will tend . . . to the prevention of monopoly . . . we hold that the welfare of society depends upon a scrupulous regard for the rights of property as defined by law."

Although the Democratic candidate was victorious in the contest of 1884, there was great significance in the vote cast for the candidate of the Anti-Monopoly and Greenback parties. General Butler secured more popular votes than the difference of the popular vote for the other candidates—Cleveland secured 4,874,986; Blaine, 4,851,981; and Butler, 175,370. In four states—Massachusetts, Indiana, Connecticut and New York—the vote for Butler was greater than the difference for the two major party nominees. Three of these states—New York, Indiana and Connecticut—went Democratic and Massachusetts went Republican. Since Butler was formerly Democratic governor of Massachusetts, it may well have been that Democrats of that state voting for Butler cost Cleveland the state. The state vote was especially significant in New York, where Cleveland received 563,154 votes; Blaine, 562,005; and Butler, 16,994. If anything more than 9,074 of the third party's candidate's votes came from dissident former Republicans (the Republicans had carried the state in 1880), this cost Blaine the election, for New York had 36 electoral votes and Cleveland won by an electoral vote of 219 to 182. While the Greenback party polled less votes than in 1880, it put the Democratic party into

\[41\] Stanwood, op. cit., pp. 430, 437.

\[42\] Ibid., p. 448.
a temporary majority by robbing the Republicans of some key states and also because some of the discontented elements who had voted Greenback in 1880 went into the Democratic camp in 1884.

The first major piece of federal antitrust legislation which resulted from agricultural organization was the Interstate Commerce Act of 1887. The question of regulation had been before Congress constantly since 1874. With the passage of the Reagan bill in 1878 in the House, and the failure of the Senate to act, no other bills were passed until 1884, when the House again passed the Reagan measure. This bill was regarded as being radical, providing for legislative establishment of fixed rules for regulation of rates and for the conduct of common carriers. Reagan was in stern opposition to pooling among the railroads, not so much on any logical ground, but because "the mere fact that railroads wanted pools was sufficient reason for prohibiting them."43 In 1885, the Senate passed the Cullom bill, which was more conservative, with provisions for the establishment of a commission to collect information, hear complaints and exercise a general advisory power. A deadlock ensued, and at this point a special committee was appointed to make a thorough examination of the railroad question. Known as the Cullom committee, this committee made its report in 1886.

The conclusions of the committee were somewhat different from those of the Windom committee twelve years earlier. It emphasized that the "paramount evil" was unjust discrimination between persons,

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places and commodities rather than exorbitant rates.\(^4\) The effect of discrimination, according to the report,

has been to build up the strong at the expense of the weak, to give the larger dealer an advantage over the smaller trader, to make capital count for more than individual credit and enterprise, to concentrate business, at great commercial centers, to necessitate combinations and aggregations of capital, to foster monopoly.\(^5\)

To remedy the situation, the committee recommended a system of mild regulation.

The Act to Regulate Commerce, passed in 1887, was based largely on the Cullom committee report. The act, however, shows the results of compromises between the views of the House and the Senate. The House wanted a prohibition of pooling; the Senate did not. The House desired a rigid long-and-short-haul clause; the Senate desired a flexible one. The Senate wished to create a commission to administer the law; the House wished to leave enforcement to the courts. While the two chambers were attempting to iron out differences in a conference committee between the Reagan bill and the Cullom bill, the Supreme Court handed down its decision in the Wabash case.\(^6\) It was held in this case that a state could not control rates on interstate traffic. Since approximately three-fourths of the rail traffic was interstate in nature, federal action was necessary if regulation were to be achieved. The demands from the agrarian West and South for federal


\(^5\)Ibid., p. 189.

\(^6\)Wabash, St. Louis & Pacific Railway Co. v. Illinois, 118 U. S. 557 (1887).
regulation of the railroads were increased after the Wabash decision rendered much of state railroad legislation ineffective and the act was passed on February, 1887.

While credit for the Act of 1887 can not be given directly to the Grangers, the Grange not being politically influential at the time, the legislation can be regarded as a result of the movement in the 1870's for regulation by the states of the railroads. Farmers' organisations of the time were more concerned with problems of finance, but there was still pressure from the agricultural regions for the passage of such legislation and members of Congress from farm states were leaders in securing such passage.

The more significant provisions of the Interstate Commerce Act from an anti-monopoly viewpoint are Sections 4 and 5. Section 4 is the so-called "long-and-short haul" clause which provides that a higher rate shall not be charged for a shorter haul than for a longer haul for the same class of traffic in the same direction, other things being substantially equal. Section 5 stated:

That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense. 47

Some members of Congress from farm states were well aware of the effects of unrestricted competition on rates and clearly hoped that Section 5 would provide low rates at competing points and that Section 4 would prevent the charging of rates higher than these at non-competing points. Representative Crisp of Georgia indicated the agrarian view in some remarks made on the bill on January 18, 1887:

... Gentlemen who sustain this practice say that if you prohibit pooling, the result will be a railroad war, that the irresponsible bankrupt concern will reduce its rates and undercut, that the other will undercut, and one will go under, and it will be a case of the survival of the fittest. If that lamentable state of affairs should exist, it will be the fault of the railway companies themselves, who will not brook that legitimate competition that every other enterprise has to bear; but even if this dire result should occur; then, Mr. Speaker, we would be in no worse condition than we are today, where the effect of the pool is practically to make one line.48

Furthermore, in the debate on the Sherman Antitrust bill it was brought out that at least certain agricultural representatives weren't concerned as to whether rates were just and reasonable or not, so long as competition brought them down. Representative Bland of Missouri had introduced an amendment to the Sherman bill, which amendment was not incorporated into the Act as passed. The amendment, introduced on May 1, 1890, read:

Every contract or agreement entered into for the purpose of preventing competition in the sale or purchase of any commodity transported from one State or Territory to be sold in another, or so contracted to be sold, or for the transportation of persons or property from one State or Territory into another, shall be deemed unlawful within the meaning of this act: Provided, that the contracts here enumerated shall not be construed

48 Quoted in Railway Age Publishing Co., Light on the Law (Chicago, 1887), p. 11.
to exclude any other contract or agreement declared unlawful in this act.49

The respective chambers could not agree as to such an amendment and eventually both receded from their amendments.

In the debate in which a conference report was rejected by the House, the following statements and exchange on the Bland amendment and a conference committee substitute took place:

Mr. Culberson, of Texas. . . . Now, the House proposition makes every contract and agreement to prevent competition in transportation unlawful. That is the substance of the House proposition. The proposition of the conference committee, on the other hand, provides that every contract or agreement made to prevent competition in the transportation of any product from one State into another whereby the rate of freight is raised above what is deemed reasonable and just is declared to be unlawful. That is to say, if the contract contemplates a rate of freight which is reasonable and just, this report legalizes the contract or agreement; whereas the House proposition is to make all contracts of that character, whether the rates are reasonable or unreasonable, unlawful.

Mr. Stewart, of Vermont. What is the objection, if the rate is just and reasonable?

Mr. Culberson, of Texas. Why, the very reason why we insist, and that is about one of the very best provisions in the interstate-commerce law—the very reason why we insisted that there should be no more pooling between railroads in the United States was to encourage, incite, and, if you please, excite competition among competing lines of railway.50

Both Culberson and Bland showed indifference toward protecting railroads from ruinous competition, being more interested in cheap transportation, even if rate wars were necessary to bring it about.

50 Ibid., p. 5951.
Mr. Culberson, of Texas. Now, I understand, Mr. Speaker, that one of the main objects of this report is to prevent railroad wars on freight rates. That I understand to be the object. Whether it would have that effect or not I do not know, but I suppose it would. Is it important for the people of this country to promote competition among competing lines of railways? I think so; and the only way to encourage competition is to forbid pooling, as Congress has done, and reject all propositions which propose to authorize railroad companies to enter into contracts for the purpose of preventing competition.  

Mr. Bland. . . . We provide that where any transportation companies enter into contracts or agreement to prevent competition such contracts shall be illegal; that they shall be declared illegal and unlawful by law. Why, I had supposed in my simplicity that the idea of building railroads throughout the country was so that we might have competition. The common people of this country have so regarded it. They have regarded every new railroad as a blessing, because it tended to compete with other roads, and thereby to cheapen transportation.

The early results of the Act of 1887 were disappointing, as were the first results of the Granger laws. The old "evils" remained. Rebates and concessions were made in secret, and disguised by irregular methods of accounting. "Gentleman's agreements" and traffic associations took the place of pools. The powers of the commission were in dispute and were often rendered worthless by the decisions of the courts. The railroads would not remain at peace with one another. But, as was the case with the Granger laws, once the statute had been placed on the books, agitation for effective regulation diminished. Between 1884 and 1888, attempts were made to organize the radical elements of the country into labor parties. The Greenback Labor party

51 Ibid., p. 5952.
52 Ibid., p. 5960.
gradually disappeared and was replaced by the Union Labor party, the more important of the labor parties, in the campaign of 1888. This new party was formed at Cincinnati on February 22, 1887, by delegates "from the labor and farmers' organizations, including the Knights of Labor, the Agricultural Wheelers, the Corn-growers, the Homesteaders, Farmers' Alliances, Greenbackers, and Grangers." Before the canvass of 1888, the new party had split into two factions, known respectively as the "Union Labor" and the "United Labor" parties. Of the two, the former was the larger faction and proved to have the greater attraction for voters. Both of the platforms of these parties, adopted at conventions held simultaneously in Cincinnati beginning on the 15th of May, denounced monopoly.

The platform of the Union Laborites gave plenty of evidence that the party was farmer-labor. In opposing monopoly, it stated:

General discontent prevails on the part of the wealth-producers. Farmers are suffering from a poverty which has forced most of them to mortgage their estates, and the prices of products are so low as to offer no relief, except through bankruptcy, and laborers are sinking into greater dependence.

Concerning the problems of the time, the platform further stated that, "The paramount issues to be solved in the interests of humanity are the abolition of usury, monopoly, and trusts and we denounce the Democratic and Republican parties for creating and perpetuating these monstrous evils." The Presidential nominee of the party was Alson J.

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54 Haynes, op. cit., p. 206.
55 Ibid., p. 460.
56 Ibid., p. 461.
57 Ibid., p. 462.
Streeter of Illinois, the temporary chairman of the Anti-Monopoly convention of 1884.

While the United Labor party was in the main a "single-tax" party with its main concern over the monopoly in land, it proposed that there be public ownership of railroad and telegraph systems and denounced the two major parties for their "affiliation with monopolies." As did the Union Laborites, the convention nominated Westerners for President and Vice-President.

The third party which was to receive the most votes cast for parties other than the two major parties was the National Prohibition party. It sponsored a broad general reform platform. Planks were instituted concerning the tariff, taxation, civil service, suffrage, labor immigration, land monopoly, civil rights and one plank declared for "prohibiting all combinations of capital to control and to increase the cost of products for popular consumption."59

The Labor parties and the Prohibition party convened before either of the major parties. The adoption by the minor parties of strong antitrust planks may well have influenced the platforms of the Democrats and the Republicans.

The Democrats met at St. Louis on June 5. As their platforms of prior elections show, the Democrats were never as concerned, officially, about monopoly as were the Republicans and the third parties. Even

58 Ibid., pp. 463-465.
59 Ibid., p. 466.
in the platform of 1888, the subject was tied in with the tariff issue, and the tariff was denominated the "Mother of Trusts." The only direct reference to the monopoly issue in the 1888 platform was:

Judged by Democratic principles, the interests of the people are betrayed when, by unnecessary taxation, trusts and combinations are permitted to exist which, while unduly enriching the few that combine, rob the body of our citizens by depriving them of the benefits of natural competition. 60

With the exception of a small party by the name of American, the Republican convention meeting the 19th of June at Chicago was the last to convene. While the tariff was also the main issue, the platform stated:

We declare our opposition to all combinations of capital, organised in trusts or otherwise, to control arbitrarily the condition of trade among our citizens, and we recommend to Congress and the state legislatures, in their respective jurisdictions, such legislation as will prevent the execution of all schemes to oppress the people by undue charges on their supplies, or by unjust rates for the transportation of their products to market. 61

It might seem paradoxical that the Republican party—the party of the businessman and banker, the party of "sound finance"—came out with a stronger condemnation of "trusts" than did the Democrats and that in its platform it also favored the use of both gold and silver as money with the attendant condemnation of the Democratic efforts to demonetize silver. However, the Republicans had lost the Presidency in 1884 for the first time since 1860 and in their eagerness for victory, promises were made to every wing of the party and section of the country, especially to the Western farmer. The fact that Harrison

60 Ibid., p. 470.
61 Ibid., p. 474.
came from the West was a factor in his choice by convention managers—Harrison had been a member of the party from the time it was a radical uprising in the West. Lastly, the axiom that, "Party platforms are like streetcar platforms; they are to get in on, not to ride on," should also be remembered.

The Republican party was successful in the fall of 1888. It secured a majority of one in the House, the Senate was Republican and Harrison was elected. In a number of states—Connecticut, Indiana, Michigan, New Jersey, New York, Ohio, Virginia and Wisconsin—the third party vote, either single or combined, was more than the difference between the vote for the major party candidates. Since in most of these states, the third party vote must be regarded as defections from the Republican column, the loss of these votes was not great enough to defeat that party. In both the campaigns of 1884 and 1888, the importance of the third party vote was that it indicated on what slender margins the major parties achieved victory.

The Union Labor party received not quite 147,000 votes, the geographical distribution indicating that it was largely supported by the agrarians. The bulk of the vote—117,000 of the 147,000—came from the West and the South, with the following states contributing more than 5,000 votes: Kansas, 37,726; Texas, 29,459; Missouri, 18,632; Arkansas, 10,613; Iowa, 9,105; Wisconsin, 8,552; and Illinois, 7,090. These were the states in which the Populist movement was

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62 Ibid., p. 474.
63 Ibid.
gathering strength. *Appleton's Annual Cyclopaedia, 1888*, stated that, "The Union Labor party drew its support from the Greenbackers, the farmer organizations, and the older labor-reformers." 64

The Prohibition party received almost 250,000 votes, with its strength in the Northern and border states—Massachusetts, New York, New Jersey, Pennsylvania, Ohio, Indiana, Kentucky, Tennessee, Wisconsin, Minnesota, Nebraska, Kansas and California. This party was a confusing factor in the 1888 election campaign. 65 Its platform was broad and apparently appealed to reform groups and discontents who didn't feel too strongly about the prohibition issue—the election of 1896, when the Prohibitionists were split up into "narrow gauge" and "broad gauge" factions, indicated that a substantial proportion of the support for this party came from others than strict prohibitionists. 66

Recognising the slender base of their majority—in fact, Harrison had received a smaller popular vote than had Cleveland—the Republicans continued to woo the Western voter. Senator Windom of Minnesota was given the Treasury Department instead of Tom Platt of New York, indicating the concern over the breach between the Eastern and Western wings of the party and the lengths to which party leaders were willing to go in order to heal the breach. Those in control of the party were well aware that while on the surface the return of the Democrats to power in the decade of 1880's appeared to be the major political

64 Quoted in Haynes, *op. cit.*, p. 208.
66 Ibid., pp. 528-532.
event, the increasing influence of the Western farmer and third parties fostered by him were more significant.

Before 1890, there were indications that the Alliances were coming to be a significant force in politics. 67 Alliance leaders had from the first hoped to secure results through favorable legislation. Alliance political programs varied from state to state, but the following goals were common: railroads should lower rates and abandon "evil" practices; land monopolies should be broken down; "trusts" of every sort and kind should be destroyed; interest rates should be lowered, national banks abolished and more money should be made available. The Alliances were, before 1890, theoretically non-partisan—they did not prefer one party to another and presumably had no intention of becoming a third party.

Railroad regulation was the chief concern of Alliance men in the Northwest—the old Granger territory. There was agreement that the consolidation and combination of railroad capital demanded strong and swift action on part of the "producers" and that it would be better to subordinate other political questions. Early Alliance political action on the state level resulted in the enactment of considerable favorable legislation—especially with respect to railroads. Many railway commissions were established and previously existing ones were given increased authority over rate-making, even to the point of dictating schedules of "reasonable maximum rates." Before 1892, there were thirty railway commissions, other than the Interstate Commerce Commission, with varying degrees of authority in existence in the U. S.

67 Hicks, op. cit., pp. 140-152.
The state railway legislation, as well as other laws passed at the instigation of the various state Alliances, proved ineffective from the point of view of the farmer. The commissions did not bring the desired results of low rates and the farmers felt in other cases that they were being tricked out of legislation promised them by other parties. Under these circumstances and believing that non-partisan political efforts were a failure, it was perhaps inevitable that third party action increased, resulting in the People's party. Hicks summarized the feeling thus:

For most northwestern Alliance men loyalty to the old party—the party that once they had loved, but by which they now had been betrayed—was dead. If through a new party there was hope of reform, then let the new party come.

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69 Hicks, *op. cit.*, p. 152.
The adoption of the Sherman Act is a curious phenomenon of our history. Unlike the Interstate Commerce Act, it was not the fruit of exhaustive investigation and careful debate, a response to overwhelming demand from directly interested groups. While hindsight justly views it as one of the most important measures ever passed by Congress, it is doubtful if any member of the Fifty-first Congress so thought of it.

The dominant Republican party made the unprecedented tariff increases of the McKinley bill the chief business of the session. The paradoxical passage of an antimonopoly statute in the same year, with only one dissenting vote, was chiefly due to Republican fears that the party might lose its Western section, either to the Democrats or to the new third party then taking shape. Even from that viewpoint it was treated by Congress as secondary to the Sherman Silver Purchase Act.

A major contributor to the fears of the Republicans was the rising People's, or Populist, party. The party was one of a chain of independent parties which began to appear in the early seventies. Although the Greenback party was the last to command any sizeable support from the Western farmer, the Anti-Monopoly party and the Union Labor party bridged the
interval between that party and the People's party. The relationship between the Union Labor and Populist parties is indicated by political events in Arkansas. At a convention held by the Union-Laborites in April, 1888, resolutions were adopted favoring the reforms asked for by the Agricultural Wheel, Farmers' Alliance and Knights of Labor—groups which later formed the main support for the People's party. In Arkansas, these nominees received the support of these various organizations, "especially those of the farmers . . . ."\(^1\)

Two contemporary accounts of conditions, one by an Alliance lecturer in Iowa (Ashby's *The Riddle of the Sphinx*) and the other by the editor of an Alliance paper in St. Louis,\(^2\) dwell at great length on the evils of combination, centralization and monopoly. Ashby summarized his views thus, "Centralization and its concomitants—the trust, the pool, the combine, and the trade conspiracy—are the deadly enemies which are crushing the industrial classes with the high cost of interchange."\(^3\)

Even problems of money and debt were laid at the door of combination:

"The demonetization of silver was the result of a carefully laid conspiracy between capitalists of the loaning class against the business and debtor classes."\(^4\) The abolition of the national banks—the basis of the money

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"monopoly"—was urged. Not all authorities agree that monopoly was the chief "evil" the farmer felt faced him. Hicks regards the farmer as ultimately believing that the main grievance was against the system of money and banking, "which now virtually denied him credit, and which in the past had only plunged him deeper and deeper into debt. There must be something more fundamentally wrong than the misdeeds of railroads and trusts..."[5]

There was a fundamental difference between the Southern Alliance and the Northern Alliance on the subject of monopoly. The National Farmers' Alliance put more emphasis on monopoly and supported measures to do away with "trusts" while the National Farmers' Alliance and Industrial Union—with the important exception of the Agricultural Wheel—put more emphasis on the question of money and credit and supported measures to bring some relief in that direction. Ashby quotes the Iowa Homestead as saying in 1890:

It is, however, in the measures now advocated before Congress that the widest difference between the Alliances appears. The Northern Alliance is bringing its influence to bear on several measures, prominent among which are the silver bill, the Butterworth bill for the control of gambling in "options" and "futures," the Conner lard bill for the prevention of the adulteration of lard, and the anti-trust bill. The Southern Alliance is spending its main force on what is known as the sub-treasury bill...[6]

In the Declaration of Purposes of the Constitution of the Southern Alliance, the following appears: "...we hold to the principle that

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all monopolies are dangerous to the best interests of our country, tending to enslave a free people, and subvert and finally overthrow the great principles purchased to the fathers of American liberty." This probably was in deference to the Agricultural Wheelers, since other groups in the Southern organization were not strongly antitrust and proposed that counter-combination was the solution to the ills of the times. The meeting at St. Louis held in December of 1889 by this organization had nothing to say about antitrust legislation.  

Ashby was apparently not representative of the Northern Alliance. He saw "Nationalism" as the only true and effectual cure." For the time, however, he proposed counter-combination on the part of the farmer:

Farmers of the Northwest should not rest until their own cooperative companies transact the whole of their business. This will restore prosperity, hold in equilibrium the centralizing forces now at work, distribute wealth equally among the producers of it, drive non-producers into productive employments, or the poor-house, and will hasten the day of industrial government.  

A more representative view was taken by Henry Wallace, editor of the Iowa Homestead. In an address before the National Farmers' Alliance, he said:

7Quoted in Ashby, op. cit., p. 441.
8Hicks, op. cit., Appendix A, pp. 427-428.
9Ashby, op. cit., p. 255.
10Ibid., p. 385.
It [the Alliance] does not ask that a combination of farmers be legalized to sell wheat or corn at twice the actual value that it would have under free competition, and it will fight to the bitter end any proposition to legalize pooling and combination of railroads and manufacturers to fleece the general public.\(^\text{11}\)

Other organizations of farmers also made their antitrust views known before the Sherman Act was passed. At a meeting held in Montgomery, Alabama, during November, 1889, the National Farmers' Congress of the United States—composed of delegates appointed by the Governor of each state—adopted resolutions declaring opposition:

- to all combinations of capital, in trusts or otherwise, to arbitrarily control the markets of the country to the detriment of our productive industries; and we demand of the Congress of the United States such legislation as will secure to farmers and stock raisers of the country the best possible reward for their labor.\(^\text{12}\)

This meeting was described as the largest gathering of representative agriculturists of the United States ever assembled. The legislative committee of the National Grange also addressed the Congress in 1890 as follows:

- The formation and continuance of "trusts" for the purpose of robbing the unprotected people should be prohibited by stringent legislation, and we heartily indorse the "Sherman bill" as amended and passed by the Senate, and recommend its passage by the House.\(^\text{13}\)

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\(^\text{11}\) Quoted in Ashby, \textit{op. cit.}, p. 397.

\(^\text{12}\) Haynes, \textit{op. cit.}, p. 227.

\(^\text{13}\) Quoted in Ashby, \textit{op. cit.}, p. 436.
Before the passage of the Act of 1890, there had been legislation prohibiting trusts. Shortly after the Congress had passed the Interstate Commerce Act in 1887, states began to place laws on their statute books which prohibited trusts, pools and similar devices designed to restrain competition in the fields of manufacturing and trade. Beginning in the Granger section, a wave of anti-monopoly statutes swept the country. By the middle of 1890, when the Sherman Act was adopted, seventeen states and territories had passed such laws, six of them in the form of constitutional provisions. The marked and significant sectional character of the movement is indicated by the almost solid geographical grouping of the states, beginning with Washington in the Northwest and running through Idaho, Montana, Wyoming, the Dakotas, Nebraska, Kansas, Texas, Iowa, Missouri, Mississippi, Tennessee, North Carolina and Kentucky.14

The importance of the trust issue in the public mind made it too obvious a political asset for wise politicians to ignore. Having lost the Presidency in 1884 for the first time since 1860, Republicans were in no mood to risk the defection of geographical sections essential to the party's continuance in power. Nor could their opponents sensibly refuse an opportunity to pry away the avowedly anti-monopolist agrarian Republicans from the increasingly powerful Eastern industrial section of the party. Thus antagonism to trusts became an ostensibly bipartisan policy, but it was in fact believed in strongly by the leaders of neither party.

Thomas B. Reed, Republican leader in the House, ridiculed those complaining of monopoly. He said, "I have listened to more idiotic raving, more pestiferous rant on that subject than on all the others put together." Outside of those protected by patent, he declared, there were no monopolies in the country and there never could be; "there is no power on earth that can raise the price of any necessity of life above a just price and keep it there." However, the Republican party as a whole could not publicly take as calm a view toward "trusts" as did some of its members. It willingly participated in the passage of Federal and state laws to prevent the execution of all schemes to oppress the people by undue charges on their supplies as promised in the 1888 platform.

Although the Democrats had referred to the problem in their platforms in the campaigns of 1884 and 1888, they had introduced and passed no bill during Cleveland's first administration. Some bills had been introduced during the term of the Fiftieth Congress, but no action was taken on them. Harrison, in his first message to the Fifty-first Congress, referred to the question in this fashion:

> When organized, as they often are, to crush out all healthy competition and to monopolize the production or sale of an article of commerce and general necessity, they are dangerous conspiracies against the public good, and should be made the subject of prohibitory and even penal legislation.16

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16James D. Richardson, Messages and Papers of the Presidents, Vol. XII (New York, 1897), p. 5478.
The Act of 1890 was not the product of lengthy hearings or debate. There had been, previously, an investigation of the Beef Trust by the Senate and in 1888 the House Manufactures Committee made a study of the "trust" problem, but the results were not conducive to clear understanding or effective remedies. No specific recommendations were made by the committee in 1889 because of disagreement among its members. No hearings were held on the Sherman bill in 1890. The debates covered only five and a half days and questions of constitutionality and interparty discussions on the relation between tariff protection and monopoly took up the bulk of the time. With reference to the linkage between trusts and tariffs, it is significant that the Senate defeated an amendment to the Sherman bill to withdraw tariff protection from monopolistic combinations by a vote of 26 to 16.

John Sherman, Senator from Ohio, introduced his bill as Senate Bill No. 1 of the first session of the Fifty-first Congress meeting on December 4, 1889. This bill was never enacted into law. Debate in Congress resulted in several substitute bills and one, presumably drawn up by Senators Hoar of Massachusetts and Edmunds of Vermont, was reported out of the Senate Judiciary Committee and passed without change by both Houses. President Harrison, on July 2, 1890, approved and signed Senate Bill No. 1, namely: "An Act to protect trade and commerce against unlawful restraints and monopolies." This act was referred to as the Sherman Act out of deference to that Senator.

17 Ashby, *op. cit.*, pp. 61-69.
Senator George of Mississippi also introduced a bill on December 4, 1889, in relation to trusts. This bill had the important proviso:

Provided, That this Act shall not be construed to apply to any arrangements, agreements, or combinations between laborers made with the view of lessening the number of hours of labor, or of increasing their wages; nor to any arrangements, agreements, or combinations among persons engaged in horticulture or agriculture made with the view of enhancing the price of agricultural or horticultural products.\(^{20}\)

A number of bills introduced in the House in December of 1889 had the same or similar provisos.

The original bill intended the prohibition of combinations which tended to prevent "full and free" competition in the production or manufacture of articles which competed with any article upon which a duty was levied by the United States. Senator Sherman thought that such wording and scope might be justified as a regulation of commerce with foreign nations. Among others, Senator George felt that the proposal to regulate manufacture or other production within individual states might be the cause of rendering the entire bill unconstitutional.

The Finance Committee, again with the intention of finding some way to regulate production as well as marketing, presented a substitute which prohibited restrictive combinations in the production of any article in any State or Territory which tended to prevent full and free competition with similar articles produced in any other State or Territory.

This phraseology was also objected to as being unconstitutional and the bill as finally passed did not propose to protect production from combinations, but only trade and commerce.

The majority of members of Congress from farm states favored enforced competition as the solution, feeling that the lack of competition raised prices to the farmer and lowered the price he received. Senators George and Vest, and Representative Fithian of Illinois expressed this point of view, with Congressman Fithian expressing it in these words:

Competition when left free, and when combinations are not formed to prevent the operations of natural laws, will regulate the price of every commodity and will bring the price down to the level of an honest profit. . . . Wherever there is free, healthy competition there can be no combination to create fictitious prices of commodities, except where the supply of the article is limited by natural causes.20

While it has been suggested to pay bounties to the growers of wheat and corn and other class legislation has been suggested as a relief or a panacea for the ills of the farmer, no farmer who has studied the pernicious effect of class legislation will favor it. . . . Class legislation can not be justified upon any theory consistent with honest government. Let us go back to first principles and have no privileged classes. Let every person sell the product of his toil in fair and legitimate competition in the market that will afford him the best prices and buy his necessaries in the market where he can buy the cheapest.21

A strong dissent from this point of view was voiced by Senator Stewart of Nevada, who favored counter-combination:

Now, it is the struggle of every community, it is the struggle of all the people who are attempting to better themselves, to get a good price for their commodities. Why might not the citizens


21Ibid., p. 4104.
of Iowa and Kansas unite and say, "We will hold back our corn; we will not sell it at these ruinous prices; we will combine and hold it until prices are better; we will put up the prices; they are robbing us. There is an organization in Chicago that is bearing this article, that is selling it short, that is putting it down; they are robbing us and we will not sell; we will combine." 22

Stewart was also apprehensive that the proposed antitrust law might be turned upon labor and agricultural organizations, prophesying:

"... it is very probable that if this bill were passed the very first prosecution would be against combinations of producers and laborers whose combinations tend to put up the cost of commodities to consumers." 23

Senator Teller of Colorado was also of the opinion that farmers should be permitted to combine in groups for the purpose of increasing the price of farm products, and brought up the question of the legality of farmers' organizations in the following speech:

There are legitimate and proper efforts that can be made for the advancement of prices. This refers to reduction in price as well as to advance in price. If there is a combination to put down the price of an article or to put it up, it is equally punishable under this provision by a criminal prosecution. There may be a condition of things where it would be perfectly proper and legitimate to put up the price of an article.

I know it will be said in answer that these things should be left to the natural course of affairs, of commerce, and trade. But there has been recently organized all over this country what is called the Farmers' Alliance. What is the object and what is the purpose of it? The very purpose is to increase the price of farm products, and that I regard as a thing most desirable to be done, and I regard it as absolutely essential

22 Ibid., p. 2565.
23 Ibid., p. 2566.
to the prosperity of this country. There has been recently organized, in the Northern States more particularly, and I suppose it will spread all over the country, what is called a National League amongst the farmers for the same identical purpose that the Farmers' Alliance has been organized for. Shall it be said that these organizations are forbidden by law? Is it possible that we are putting it in the power of some men to coerce and force the farmers to abandon these organizations? Does anybody believe that these organizations are inimical and hostile to the public welfare? On the contrary, does not everybody know that unless we can by some method increase the price of farm products in this country a great many farmers in the United States will be in bankruptcy and turned out of their homes?24

Senator Sherman did not want to appear to be the cause of harm to the farmer, and hastened to declare that his bill did not intend to outlaw such organizations, stating:

It does not interfere in the slightest degree with voluntary associations made to affect public opinion to advance the interests of a particular trade or occupation. It does not interfere with the Farmers' Alliance at all, because that is an association of farmers to advance their interests and to improve the growth and manner of production of their crops and to secure intelligent growth and to introduce new methods.

No organizations in this country can be more beneficial in their character than farmers' associations and Farmers' Alliances. They are not business combinations. They do not deal with contracts, agreements, etc. They have no connection with them. And so the combinations of workingmen to promote their interests, promote their welfare, and increase their pay if you please, to get their fair share in the division of production, are not affected in the slightest degree, nor can they be included in the words or intent of the bill as now reported.25

To make more explicit the intent, Senator Sherman presented the following amendment to the bill:

24 Ibid., p. 2561.

25 Ibid., p. 2562.
Provided, That this act shall not be construed to apply to any arrangements, agreements, or combinations between laborers made with the view of lessening the number of hours of labor or of increasing their wages; nor to any arrangements, agreements, or combinations among persons engaged in horticulture or agriculture made with the view of enhancing the price of agricultural products.26

This amendment, which was substantially the same as the proviso in Senator George's bill, was passed by the Senate sitting as a Committee of the Whole.

In view of court decisions later which declared certain agricultural association and union activities to be invalid under the Sherman Act, it might be fruitful to attempt to determine the intent of Congress. The amendment which the Senate passed never became law. In point of fact, the bill which actually became law was neither the Sherman bill nor the bill presented by Senator Reagan of Texas. The Act of 1890 was the result of the joint authorship of the Judiciary Committee and was known (or at least referred to by Albert H. Walker, who wrote a history of the act)27 as the Hoar substitute.

This substitute bill did not explicitly nor implicitly exempt any combination from the operation of the law, but a majority of the members of the Judiciary Committee were in favor of such exemption. Senator Hoar had supported the exempting amendment to the earlier bills in these words:

26Ibid., p. 2611.

I hold, therefore, that as legislators we may constitutionally, properly, and wisely allow laborers to make associations, combinations, contracts, agreements for the sake of maintaining and advancing their wages, in regard to which, as a rule, their contracts are to be made with large corporations who are themselves by an association or combination or aggregation of capital on the other side. When we are permitting and even encouraging that, we are permitting and encouraging what is not only lawful, wise, and profitable, but absolutely essential to the existence of the commonwealth itself.28

When the conference committee reported on the Bland amendment to the Hoar substitute, it had this to say about the bill which was later enacted, without change, into law:

A majority of the committee of conference on the part of the House on the disagreeing votes of the two Houses on Senate bill 1 submit the following statement:

Its only object was the control of trusts, so called, so far as such combinations in their relation to interstate trade are within reach of Federal legislation.29

Thus, there is some evidence to support the conclusion that most members of Congress did not intend to bring farmer and labor organizations under the Sherman Act.

In the debate on the Sherman bill, members of Congress from agricultural states set forth their views on the relationship of the tariff to trusts and on the practice of trading in futures. A number of Senators suggested trusts be attacked by removing import duties,30 but Senator Reagan of Texas claimed the mass of the great combinations existed outside the tariff, citing the "Beef Trust" as an example.31

29Ibid., p. 5950.
30Ibid., p. 2728.
31Ibid., pp. 2470-2471.
That agrarian Senators were concerned with something other than a philosophical condemnation of monopoly was made abundantly clear by statements of Senator Ingalls of Kansas. He had drawn up an amendment to the Sherman bill prohibiting trading in futures, which "nefarious operations" were alleged to have caused the existing poor condition of agriculture. His statement concluded in this fashion:

Sir, although the farmers of this country have been sneered at to-day, although we have heard disparaging allusions to the Farmers' Alliances and associations, and suggestions that this legislation was being brought about at their dictation, they are intelligent, they know what the purpose of this amendment is, they know the cause of the evils under which they labor and of which they complain. There is no one thing which they have more imperatively and more unanimously demanded than the enactment of some law which will put a stop to the gambling in the products of their labor.32

The answer to why the Sherman Act was passed is quite clear. It was not passed by firm antimonopolists in Congress in order to break up the "trusts," but was put through Congress at the instigation of conservative Republicans in order to satisfy the demands of the Western wing and bring it back into the party fold. Senator Platt of Connecticut, an arch-conservative, charged that the bill had been carelessly drawn and promoted in haste:

The conduct of the Senate . . . has not been in the line of the honest preparation of a bill to prohibit and punish trusts. It has been in the line of getting some bill with that title that we might go to the country with. The questions of whether the bill would be operative, of how it would operate . . . have been whistled down the wind in this Senate as idle talk, and the whole effort has been to get some bill headed: "A Bill to Punish Trusts" with which to go to the country.33

32Ibid., p. 2656.

33Quoted in Josephson, op. cit., p. 460.
During the debate, Representative Mason of Illinois, a Republican, accused the Democrats of obstructing the passage of an antimonopoly bill in the following terms:

You use the "trust" as a bugaboo to frighten people away from the Republican party into your ranks. That is the reason you do not want the Republican party to strike a blow at trusts today. The moment that we strike down trusts in this country that moment there is taken away one of the principal elements of your political talk in seeking to drive the farmers away from the Republican party into the Democratic party. 34

Another interpretation of the motive behind the passage of the act is that the Republican leadership felt a bill to curb or regulate monopolies should be passed at the same time tariffs were being raised to favor the "trusts." Josephson quotes one unnamed Senator as remarking that such a measure would serve as a "good preface to an argument upon the protective tariff." 35

As to the role of Senator Sherman in getting the bill through Congress, the most reasonable and charitable interpretation of his motives is that he was attempting to secure some legislation which would hold the party together. He was a moderate, neither a Stalwart nor a liberal Republican. Not a representative of the agricultural class in Congress, he had in fact incurred their wrath by his actions on the Senate Finance Committee. In January, 1874, he spoke in the Senate against an increase in paper money. He was also the chairman of a committee in the lame duck session of the 43rd Congress which passed the Resumption Act. Sherman engineered a compromise which

35 Josephson, p. 458.
changed Bland's bill—which resulted in the Bland Silver Act of 1878—from one permitting unlimited coinage of silver to one allowing only a limited amount of coinage. In August of 1879, he was insulted by farmers at Toledo, Ohio, for his role in limiting the amount of currency. 36

A less charitable view of Sherman's purpose in introducing the bill was that he had a desire for personal vengeance against an industrialist who had blocked his nomination for President in 1888. When the bill passed Congress, President Harrison is reported to have said, "John Sherman has fixed General Alger (the Match King)." 37 Senator Hoar, who had totally reconstructed the bill in committee, with the help of Senator Edmunds, said of Sherman, "I do not think he ever understood it (the bill)." 38

Hoar and Edmunds, both Eastern conservatives, had no interest in drawing up an effective antitrust act. It was even said that the provision which defined trusts and combinations, written by these men, furnished "guide-boards for persons desiring to evade the law." 39 Another Republican Senator from Ohio, James B. Foraker, commented that, after the bill became law, both of these authors of the act pursued the lucrative practice of advising combinations exactly when their

36 Ibid., pp. 191, 194, 263, 258.
37 Quoted in Josephson, op. cit., p. 458.
38 Ibid., op. cit., p. 459.
39 Ibid.
contracts were valid and when they contravened the prohibitions of the statute. Senator Cullom of Illinois, a moderate Republican, previously instrumental in passing the Interstate Commerce Act, voted for the bill, although of the belief that "if it were strictly . . . enforced, the business of the country would come to a stand-still."

There were other acts of the 51st Congress in 1890 which featured provisions which were to entice the Western farmer back into the Republican column. The McKinley Tariff Act of 1890, the chief business of the session, contained such provisions. Duties were levied or raised on barley, butter, eggs, ham and bacon, and potatoes as well. Raw sugar was put on the free list, but domestic sugar producers were given a bounty to compensate them for this.

The placing of raw sugar on the free list removed the chance to bargain with the Latin countries for the reciprocal remission of duties. Blaine argued that fostering trade with the tropical countries through bargaining on the sugar duty would increase outlets for the breadstuffs of the American farmer. He prophesied that there were a number of clauses in the bill which would lose markets and, therefore, Western votes. Blaine warned McKinley that the rate on hides was excessive and that the new tariff would:

benefit the farmer by adding 5 to 8 per cent to the price of his children's shoes. It will yield a profit to the butcher (Beef Trust) only—the last man that needs it. The movement is injudicious from beginning to end . . . . Such movements as

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[^40]: Ibid.
[^41]: Ibid.
this for protection will protect the Republican Party only into speedy retirement.\footnote{42}

Another enactment of the Fifty-first Congress in 1890 which the Republicans hoped would quicken the faltering affections of the West was the Sherman Silver Purchase Act. The attractions of that piece of legislation were supposed to be two-fold; inflation for the farmer, who suffered from low prices, and greatly increased income for the Silver States.

There had been, and was to be, considerable agitation on the silver question. The Union Labor party had in 1888 demanded "free coinage," and that principle had been favored by the Grange, Alliances and special "silver conventions" held in the Middle West. In 1888, the Republicans in their platform had claimed to "favor use of both gold and silver as money" and condemned the Democratic administration for its efforts "to demonetize silver."\footnote{43}

Secretary of the Treasury Windom had drawn up a silver-coinage bill in December, 1889, which provided for the issue of silver certificates against a limited monthly purchase of bullion. This bill did not please a number of factions and John Sherman was assigned to reach a compromise.\footnote{44} He eventually drew up a bill which passed Congress and which bears his name, but which he felt enacted "a thoroughly bad principle in order to avoid the enactment of that principle in more vicious form."\footnote{45} Senator Sherman's compromise Silver Purchase Act failed to

\footnote{42}{Quoted in Josephson, op. cit., p. 454.}
\footnote{43}{Stanwood, op. cit., p. 475.}
\footnote{44}{Ibid., p. 456.}
\footnote{45}{Quoted in Josephson, op. cit., p. 456.}
conciliate the agrarian and silver wings of the party. They were, in fact, embittered over the bill which had been sold to them as a silver-coinage act. The agitation for free coinage of the metal increased rather than diminished, drove erstwhile Republicans into the Populist party and became the main issue in the Presidential election of 1896.

The Congressional elections of 1890 and the continued growth of the Populist revolt give ample evidence that the Western farmer's anger was not assuaged by the attempts to soothe him with an antitrust act, a silver coinage act and concessions in the tariff. The Democrats won the congressional elections by an enormous majority, returning to the House 235 members, as compared with 88 Republicans (the smallest contingent since 1860) and 9 Populists were elected to the lower chamber. Nearly 40 of the Democrats were also Farmers' Alliance men, owing their election to the assistance of these farm organizations in the West. In the middle western states the victory amounted to a political revolution: Indiana, Illinois, Iowa, Minnesota, Kansas and Nebraska elected 44 Democrats and Independents, and 15 Republicans in place of 44 Republicans and 15 Democrats in 1888. The Senate was still Republican, although only by a majority of 8. However, a score of the Republican Senators were Free Silver men from frontier and mountain states. Two Populists, one from North Dakota and one from Kansas, also had entered the Senate.46

The history of the period from 1850 to 1890 gives ample illustration of the role which the farmer played in securing federal antitrust legislation. Organization on a large scale for political action went hand in hand with the movement for governmental control of the railroads. Railway discrimination was fought partly because it was supposed to foster industrial monopoly. While chiefly concerned in its early years with regulating the railroads and promoting cooperation among the farmers, the Grange laid the foundations for political organization of the agrarian element. While the Granger movement obtained no legislation against industrial monopolies, it was a direct ancestor of the various Alliances. It was these agrarian organizations, some of them tentatively allied with organized labor, which were responsible for putting the first American antitrust laws on the statute books.
The period 1890-1896 was one of continuing depression and of continually falling prices, with a low being reached in 1896 which has not been equalled since the Civil War. A factor in the situation was the relatively stable amount of money in circulation and loans while production kept increasing. This condition was accentuated by the tremendous decrease in the amount of gold certificates in the period, while from 1894 to 1896 the amount of gold coin also decreased. A large part of the decrease in the supply of gold was due to the export of gold. The years 1891 and 1893 saw greater exports of gold than had been occasioned since the Civil War.\(^1\)

Cleveland was plagued throughout his administration with the problem of gold. The reserve kept sinking below the "magic" figure of $100,000,000. Private and public loans had to be sought in order to enable the Government to maintain its policy of paying out gold rather than silver, although it would have been possible to pay out the latter, since we were at the time on a "limping" bimetallic standard, with silver not being freely coined but nevertheless a basis for our currency.

Financial panic reigned in the spring and summer of 1893. Gold was

\(^1\)U. S. Bureau of the Census, *Historical Statistics*, pp. 275, 244.
drained out of the Treasury and there was some doubt as to whether the U. S. could meet all its obligations in gold before the influx resulting from the sale abroad of American harvests. On October 30, 1893, a few months after the House had voted to repeal the Sherman Silver Purchase Act, the Senate did likewise, although the Silver Senators filibustered. The repeal of silver-purchasing did not bring any upturn in business—deflation continued. Prices received for the harvest of 1893 were extremely low, so low that the hoped for importation of gold did not come about. In January of 1894, the Government approached actual bankruptcy.

Speculation in railroad and industrial concerns, coupled with depression in Europe since 1889, were the principal causes of the panic. The crash was preceded by several years of steadily mounting commercial failures, and the failure of the Philadelphia and Reading Railroad Company in 1893 was followed by a break in the stock market. During the year, 491 banks, including sixty-nine national banks, suspended business. The liabilities of business failures in the year amounted to 346.7 millions of dollars.²

When the rates of railroads could not be maintained by agreement, the fundamental defects of construction and financing were revealed. Great systems reduced their dividends and some went on the non-dividend list. Weak and mismanaged railroads went into bankruptcy in 1893, with the Erie and Northern Pacific roads joining the Reading railroad in defaulting. Five hundred and ninety-three roads with a total mileage

²Ibid., pp. 273, 349.
of 63,000 were sold under foreclosure from 1876 to 1894, and in the year 1893 alone there were 156 of them with 39,000 miles of track in receivership. The roads defaulting in 1893 had a valuation of two and one-half billion dollars, or about a fourth of the total railroad capital in the country.  

With the railroads and other basic industries in distress, widespread unemployment, wage cuts, strikes and lockouts appeared. Farm prices plunged to new lows, and Populism gained new converts. The year 1894 was especially one of industrial and social unrest in the U. S., with the winter of the year being one of unprecedented suffering; 2,000,000 to 3,000,000 men were unemployed. Coxey and his "army" marched. Much more serious were the labor conflicts, culminating in the great railroad strike of July, 1894. Many blamed the Populists for the increase in discontent—indeed, "General" Jacob Coxey had been a Greenbacker and shared Populist views. The farmers, in general, were not great supporters of the "industrial armies" and bitterly opposed the Chicago strike, having suffered losses as the result of it.

While the Sherman Act eventually acted as a spur to combination, since it was safer to combine than to try to control the market by agreements, there was not much combination in the period 1890-1896. Some consolidation did come about in the railroad industry, since with one quarter of the total railway capitalization in receivership the

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4Josephson, op. cit., Chap. 16.
consequent reorganization under banking leadership facilitated such consolidation. The Interstate Commerce Commission had, in fact, at an early date anticipated the possibility of increased consolidation after pooling had been prohibited. In its second annual report, it noted that "with pooling prohibited, the tendency among the railroads seems likely to be in the direction of consolidation as the only means of effectual protection against mutual jealousies and destructive rate wars."5

During the administrations of Presidents Harrison, Cleveland and McKinley, little enthusiasm was shown in the executive branch for the enforcement of the Sherman Act. Only eighteen actions were brought in the entire period from 1890 to 1901. The first "trust" to stand at the bar was the so-called "Whiskey Trust" (the Distilling and Cattle Feeding Co.). Indictments under the Act of 1890 were returned in early 1892 in the District Court of Massachusetts against the officers of the company, charging that they purchased or leased competing distilleries which produced seventy-five per cent of all distilled spirits manufactured and sold in the United States, and sold the products of the distilleries at fixed prices, giving rebates to the distributors who purchased exclusively from it. One indictment was quashed for insufficiency on May 16, 1892, and a nolle prosequi was entered in the other case March 30, 1896.6

The attorney for the Whiskey Trust, Richard Olney, who had successfully defended that organization in 1892, was appointed Attorney-General


by President Cleveland, a position which he held from 1893 to 1895. Olney was positively hostile to the law, and vainly attempted to get the law repealed. In addition to passiveness in the executive branch, there were no special funds set aside for antitrust law enforcement, and the Department of Justice was further hampered by the lack of investigatory facilities, which made it exceedingly difficult to collect evidence against secret violators of the law. There were some cases, though, relative to labor organizations which carried implications for organizations of farmers.

Although a strong case can be made for the position that the Act of 1890 was not intended to apply to organizations of labor or farmers, the courts did not so construe the Act. In 1893, the United States District Attorney for the Eastern District of Louisiana commenced an action against a labor union in a case known as U.S. v. Workingmen's Amalgamated Council of New Orleans. The defendants interposed as defenses, among others, that the Sherman law was not applicable to combinations of laborers and that since the object of the strike had been to compel employers to employ no laborers except those belonging to the Union, the accomplished object would not result in any restraint of commerce.

In overruling the first defense, District Judge Billings said:

I think the Congressional debates show that the statute had its origin in the evils of massed capital; but when the Congress came to formulate the prohibition which is the yardstick for measuring the complainant’s right to the injunction, it expressed it in these words: “Every contract or combination in the form of trust, or otherwise, in

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754 Fed. 994.
restraint of trade or commerce among the several states or
with foreign nations, is hereby declared to be illegal." The
subject had so broadened in the minds of the legislators,
that the source of the evil was not regarded as material, and
the evil in its entirety was dealt with. They made the inter-
diction include combinations of labor as well as of capital;
in fact, all combinations in restraint of commerce, without
reference to the character of the persons who entered into
them. It is true that this statute has not been much expounded
by judges, but as it seems to me, its meaning, as far as
relates to the sort of combinations to which it is to apply, is
manifest, and that it includes combinations which are composed
of laborers acting in the interest of labor.8

The Debs case of 1894 saw another use of the injunction against a
labor union under the antitrust law. The American Railway Union, of which
Eugene V. Debs was president, declared a boycott against the Pullman
Company to force arbitration of a labor dispute which had caused a strike
of Pullman employees. Members of the union refused to operate trains
which included Pullman cars. Resistance on the part of the carriers led
to strikes and violence which interfered seriously with the operations
of railroads entering Chicago. Attorney General Olney urged sweeping
use of the Interstate Commerce and Antitrust Acts against the railway
union and an injunction was issued by the Federal Circuit Court in Chicago
on the grounds that Debs and others were conspiring to obstruct the mails
and restrain commerce. In upholding the injunction in subsequent contempt
proceedings, the Federal Circuit Court construed the Sherman Act to
include not only combinations of capital, but combinations of any charac-
ter restraining trade.9

854 Fed. 996.
The Supreme Court in the Debs case found ample legal grounds for upholding the injunction and the contempt conviction in Federal power over the mails and interstate commerce. It did not, however, reach the decision on the basis of the Sherman Act. Justice Brewer concluded his opinion by saying:

We enter into no examination of the Act of July 2, 1890,

... upon which the Circuit Court relied mainly to sustain its jurisdiction. It must not be understood from this that we dissent from the conclusions of that court in reference to the scope of the act, but simply that we prefer to rest our judgment on the broader ground which has been discussed in this opinion . . . .

The first case attacking a large trust to reach the Supreme Court was the E. C. Knight case, and was a bill in equity against the "Sugar Trust," which had gained control over all but two per cent of the domestic refining industry, asking for dissolution of the combination. Evidence of sales or price control by the company was not presented in the high court by Olney—his charge was not to prove combination or conspiracy in buying or selling, but simply in manufacturing. For making this weakest kind of a case, the former attorney for the "Whiskey Trust" was accused by the New York World of having had "manifestly and even almost avowedly no desire to enforce any law in restraint of trust conspiracies."12

In the case the Court held, with one dissent, that:

10In re Debs, 158 U.S. 564 (1895).
12Quoted in Josephson, p. 608.
Contracts, combinations, or conspiracies to control domestic enterprise in manufacture, agriculture, mining, production in all its forms, or to raise or lower prices and wages, might unquestionably tend to restrain external as well as domestic trade, but the restraint would be an indirect result, however inevitable and whatever its extent, and such result would not necessarily determine the object of the contract, combinations, or conspiracy. 13

Since such restraint affected interstate trade only indirectly, the Court held that it was subject to state control only, and dismissed the bill.

Olney was in good spirits after his apparent defeat in the Knight case and wrote to a friend privately:

You will observe that the Government has been defeated in the Supreme Court on the Trust question. I always supposed it would be, and have taken the responsibility of not prosecuting under a law I believed to be no good—much to the rage of the New York World. 14

The farmer was hit particularly hard by the depression in this period. The price of wheat fell below fifty cents, the price of cotton fell below seven cents a pound, and the price of corn fell to almost twenty cents a bushel. 15 The depression entered its most acute phase in autumn of 1894. The weather was good that year and bumper crops were produced. Wheat fell below fifty cents per bushel, a record low price for the century up to that time. Western corn, suffering from disease and heavily damaged, was an exception, with a small crop and a price increase to about forty-five cents a bushel. However, 1895 saw a bumper crop of corn and the price dropped to just over twenty-five cents a bushel. 16

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13156 U. S. 16.

14Quoted in Josephson, op. cit., p. 609.


16Ibid.
Early efforts to regulate railroad combinations brought little relief to the remoter farm sections. The farmers were also keenly aware of collusion between the railroads and the middlemen who operated grain elevators. Also they were subjected to "sharp" business practices whereby high-grade wheat often received the valuation of lower-grade wheats at such elevators. When money became scarce and credit for crops became practically unobtainable, then "the iron circle of the conspiracy of expropriation" seemed complete to the Western agrarian. These farmers came to believe that the root of their troubles lay in the private control of money and credit; their objective became a "fair price" for the farmer and the means by which this was to be achieved was inflation.

While the Sherman Antitrust Act and the Interstate Commerce Act were in large measure the product of agricultural discontent, the agrarian revolt did not reach its peak until after the two acts had been passed. The uprising reached its zenith in the years 1890-1896, when free land was disappearing, prices were falling and credit was difficult to secure. In both the West and South, farmers fought with increasing vigor against the inequalities which had their manifestation in the disparity between the unchanging level of their debts and fixed costs, and the falling prices of their produce. Their fight was mainly for higher wheat, corn and cotton prices, although they may also have fought for the "cause of humanity," as they declared.

After 1890, the political leaders of both major parties were content to leave well enough alone. At least, their actions and promises did not give satisfaction to the agrarians, who turned to the Populist party. A break came about, in both parties, between the East and the West, with
compromise and party system unable to bridge the gap. The West was a
debtor region, having been built up with capital borrowed from the East,
and the disappointment of the Western farmer with the results of his
enterprise caused a sectional rift, with one observer stating, "Between
1890 and 1896 the American people were as implacably divided by the Mis-
sissippi River as they had been divided in 1860 by Mason and Dixon's
line."

The Republican Fifty-first Congress, in its "lame duck" session of
1891, got out of control. While the sponsor of the Silver Purchase Act
of 1890, Senator Sherman, led a faction of the Senate in an unsuccessful
attempt to repeal that act, the Republicans in the House came close to
passing a free coinage bill.

The Fifty-second Congress, which first met in December, 1891, con-
tained—besides eight Populist Representatives—two Populist Senators,
Paffer of Kansas and Kyle of South Dakota, who held a disproportionate
amount of power, since the balance in the Senate between Republicans and
Democrats was sensitive. Senator Paffer introduced in this session of
Congress a bill:

*To protect interstate commerce; to prevent dealing in "options"
and "futures"; to prohibit the formation of "trusts," "combines,"
"corners" and all other combinations which affect prices; and
to punish conspiracies against freedom of trade among the people
of the several States.*

There were other bills introduced in January and February of 1892 by
Congressmen from agricultural states of an antitrust character. Senator
George, although not a Populist, was a representative of the agricultural

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state of Mississippi, reintroduced a bill identical with the one which he had presented during the 51st Congress, a bill which provided that the law would not be used against agricultural organizations. Bills introduced in the House during the session contained the same or similar provisions.

The first national nominating convention of the People's party met at Omaha on July 2, 1892. Ignatius Donnelly, giving the keynote address at the convention, reaffirmed the concern of the agrarians with the trusts by saying:

They have agreed together to ignore in the campaign every issue but one. They propose to drown the cuteties of a plundered people with the uproar of a sham battle over the tariff, so that capitalists, corporations, national banks, rings, trusts, watered stock, the demonetization of silver ... may all be lost sight of.

In the platform, the Western farmers demanded that the Government use its supreme power to halt the sweep of centralization of control over the economy into the hands of the capitalists. Portions of the preamble are classic:

The conditions which surround us best justify our cooperation: we meet in the midst of a nation brought to the verge of moral, political, and material ruin. . . . The newspapers are largely subsidized or muzzled; public opinion silenced; business prostrated; our homes covered with mortgages; labor impoverished; and the land concentrating in the hands of the capitalists. . . . The fruits of the toil of millions are boldly stolen to build up colossal fortunes for the few, unprecedented in the history of mankind; and the possessors of these, in turn, despise the republic and endanger liberty.

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Upon the relation of agriculture to the trusts, the preamble stated:

Our country finds itself confronted by conditions for which there is no precedent in the history of the world: our annual agricultural productions amount to billions of dollars in value, which must, within a few weeks or months, be exchanged for billions of dollars in commodities consumed in their production; the existing currency supply is wholly inadequate to make this exchange; the results are falling prices, the formation of combines and rings, the impoverishment of the producing class.21

In their 1892 platform, the Populists specifically demanded that there be a free and unlimited coinage of silver and gold at the existing legal ratio of sixteen to one, that a graduated income tax be established, that the railroads and means of communication be owned and operated by the Government and that the "land, including all the natural sources of wealth, is the heritage of the people, and should not be monopolised for speculative purposes."22 There was not, surprisingly perhaps, any demand providing for regulation of the trusts in general and only the currency, transportation and land question received recognition in the demands. James B. Weaver of Iowa, long in the reform movement and having once campaigned on the Greenback ticket, was nominated for President, with only Senator Kyle of South Dakota receiving any considerable support in opposition.23

The Republican party which held its convention in Minneapolis in June, almost a full month before the People's party convention, concerned itself for the most part with the tariff question, proclaiming great

21Ibid., p. 510.
22Ibid., pp. 511-512.
23Ibid., p. 513.
gains as a result of the McKinley Act and denouncing the Democrats for their attempts to destroy those achievements. Bimetallism was favored, but with no set ratio for coinage. Concerning trusts, the platform stated:

We reaffirm our opposition, declared in the Republican platform of 1888, to all combinations of capital, organized in trusts or otherwise, to control arbitrarily the condition of trade among our citizens. We heartily endorse the action already taken upon this subject, and ask for such further legislation as may be required to remedy any defects in existing laws, and to render their enforcement more complete and effective.\(^24\)

Harrison was renominated, and Whitlaw Reid of New York was chosen as his running mate.

The Democrats, who had made strong gains in 1890, further sought the vote of the agrarian in their convention in Chicago, June 21, 1892. The main concern of their platform was the "Force Bill" and the tariff of 1890. In denouncing the tariff, they made a strong appeal to the agricultural classes with the following statement:

We call the attention of thoughtful Americans to the fact that, after thirty years of restrictive taxes against the importation of foreign wealth in exchange for our agricultural surplus, the homes and farms of the country have become burdened with a real estate mortgage debt of over $2,500,000,000, exclusive of all other forms of indebtedness; that in one of the chief agricultural states of the West, there appears a real estate mortgage debt averaging $165 per capita of the total population, and that similar conditions and tendencies are shown to exist in the other agricultural exporting States. We denounce a policy which fosters no industry so much as it does that of the sheriff.\(^25\)

\(^{24}\)Ibid., p. 496.

\(^{25}\)Ibid., p. 500.
The Democratic party also came out against corporate ownership of lands which were formerly in the public domain, pledging themselves to work for the reclamation of such lands. On currency, they also proclaimed for bimetallism, although not at the ratio of sixteen to one. Recognition was also given the trust problem in this statement:

We recognise, in the trusts and combinations which are designed to enable capital to secure more than its just share of the joint product of capital and labor, a natural consequence of the prohibitive taxes which prevent the free competition which is the life of honest trade, but we believe their worst evils can be abated by law; and we demand the rigid enforcement of the laws made to prevent and control them, together with such further legislation in restraint of their abuses as experience may show to be necessary.26

Grover Cleveland was nominated on the first ballot, and Adlai Stevenson was chosen from among a group of Midwesterners to hold the second position on the Democratic ticket.

The results of the election were confusing. In addition to the parties already in the picture, the Prohibition party, which—besides attacking the liquor menace—had currency, tariff, labor, railroad, land monopoly, and trust planks, also was a force to contend with. The popular vote was 5,556,543 for Cleveland, 5,175,582 for Harrison, 1,040,886 for Weaver and 255,841 for John Bidwell of California, the Prohibition candidate. The Democratic candidate had 277 votes in the electoral college, there were 145 for Harrison, and Weaver received 22. However, the growth of the Populist party in the West and in some parts of the South led to coalitions which rendered an exact division of the votes among the several parties impossible. In five states—Colorado, Idaho, Kansas, North

26Ibid.
Dakota, and Wyoming—the Democrats nominated no electors, but voted for the Populist candidates. In the Western silver states, these men were "free-silver" rather than "genuine" Populists, and had been attracted to the party since it was the only one of the parties with a large following that had a "free-silver" plank.27

The fact that Cleveland had only a plurality and not a majority of the popular vote made the outcome of the election something less than a mandate. From Ohio westward, there was not a single state outside of the Solid South—with the lone exception of Nevada—in which all four parties ran candidates that the winner did not have less than a majority of the popular vote. This attested to the inconclusiveness of the balloting and also to the tremendous impact which the third parties had in the campaign.28 The closeness of the vote and the important roles played by the Populist and Prohibition parties were an index of the desire for reform existing at the time.

In 1893, Cleveland called a special session of Congress in order to repeal the Sherman Silver Purchase Act of 1890, a move which was to antagonize Populists whose political activity had, indirectly, reinstated him in the Presidency. The fight against the administration bill was led in the House by William Jennings Bryan and in the Senate by William V. Allen, a Populist.29

The second session of the Fifty-third Congress was to see continued

27Ibid., pp. 515-517.
28Ibid., p. 517.
29Hicks, op. cit., pp. 311-312.
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Senators—which now numbered three with the addition of William V. Allen, of Nebraska—held the balance of power in the upper chamber.

The farmers in 1888 had been promised some silver inflation if they would support a higher tariff. The Silver Purchase Act of 1890 was a small return on their vote. When the Democrats had promised a lower tariff in 1892, along with bimetallism, and the farmer had received repeal of the Silver Purchase Act, entrenchment of the gold standard, a high duty on sugar and wool on the free list, the farmer was more inclined to support a third party, and the People's party grew.

The silver issue was to be a factor in the canvass of 1894. The Populist party was attracted to it since the silver plank in their 1892 platform apparently had the widest appeal of all their planks. The repeal of the act authorizing the purchase of silver, the difficulty of securing currency and credit, and falling prices put the farmer in a mood to grasp at any likely-looking straw. William H. ("Coin") Harvey of Chicago brought out in 1894 a treatise entitled Coin's Financial School which explained prosperity and depression in terms of the quantity of money and made a case for silver which had a tremendous popular appeal. "Silver Congresses" were held and as the popularity of the silver issue increased, it became more and more the chief item in the Populist creed. The elections of 1894 became a test of the strength of its political appeal. 34

In several mountain states where close combinations between the Democrats and Populists had made success possible for the Populists in

34Hicks, op. cit., Chap. 11.
1892, fusion no longer was possible, with neither side being willing to compromise. In Nevada, a Silver party was established, leaving the Populists high and dry. It was also difficult to promote fusion along the Middle Border. Only in the South was the situation with regard to fusion different. Cooperation between Republicans and Populists had begun in 1892 and continued into the campaign of 1894. And in South Carolina, Ben Tillman, a Populist, ran on a Democratic ticket in opposition to the regular Democratic organization.35

The results of the election were pretty much what might have been expected, although by no means what the leaders of the third party had hoped. Most of the Western states that had given majorities to the Populists before now returned to their old parties. Even General Weaver, who was a fusion candidate in Iowa, was defeated. Only in Nebraska and North Carolina was there a semblance of success, with a governorship and seat in Congress being obtained in the former state, and a Senator and three outright Populist Representatives being elected in the latter. Despite the defeat in terms of seats held in governmental office, the Populists professed the belief that the returns indicated an increase in strength. A greater number of votes had been cast for Populist candidates, and this without as much fusion backing. Particularly in the South was the increase heartening, and Ignatius Donnelly was moved to the position that the Democratic party would ultimately go the way the Whig party once went and that only two parties would be left, the Populists, representing the views of the common people, and the Republicans, representing the views of the

The condition of the railroads concerned some members of Congress and in 1895 the House passed a bill to repeal the anti-pooling clause of the Interstate Commerce Act, but the more radical Senate refused to take any such action. Later in the year, in the first session of the Fifty-fourth Congress, Senator Peffer again offered his antitrust bill, this time with a proviso to the effect that the antitrust law should not be used against organizations of farmers. Similar bills were also offered in the House.

The elections of 1894 had indicated to some leaders of the People's party that fusion was a necessary condition to success, which meant that the silver issue be advanced to the foremost position and that other demands be subordinated. Conditions between 1894 and 1896 made this decision an easy one. President Cleveland had gone to J. P. Morgan and other private bankers for loans to raise gold reserves and this established a link between Cleveland and the "Money Trust." The continued spread of "Coin" Harvey's ideas, and the hue and cry over the "Bond Syndicate" caused the silver craze to sweep across the West like a prairie fire.

The campaign of 1896 had a strong antimonopoly flavor. With "free silver" the main issue, the forces in favor of free coinage of silver at the ratio of sixteen to one were lined up against what was called the "money power" or "monopolistic powers gathered around the gold candidate."

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36 Ibid., pp. 333-339.
38 U. S. Congress, Senate, Bills and Debates in Congress Relating to Trusts, p. 541.
The Prohibition party was the first to hold its national convention in 1896, and promptly split on the silver question. In the end the "broad gaugers," who favored the free coinage of silver and other reforms, including antimonopoly legislation, formed another party. The "narrow gaugers," opposing particularly the adoption of a free coinage plank, contended for a platform which would make the prohibition of the manufacture and sale of intoxicating liquors the only issue on which the party should appeal to the people.39

The first major party to meet was the Republican party, which met at St. Louis on June 16. They decided to take the bull by the horns, instead of following a compromise course. They denounced the Democratic administration, charging it with the prolonged depression. The Republicans also renewed their allegiance to the policy of protection and condemned Cleveland's administration for not keeping faith with the sugar-producers and sheep-raisers of the nation. No opposition was made to combination and, most importantly, they declared themselves as unreservedly for sound money and therefore opposed to the free coinage of silver and in favor of the gold standard. In favoring the admission of women to wider spheres of usefulness, they welcomed their cooperation in rescuing the country from Democratic and Populist mismanagement and misrule.40

The bold stand on the part of the majority of the convention brought about the inevitable, and anticipated, departure of the Silver wing.

40Ibid., pp. 532-537.
When the substitute free coinage plank of Senator Henry M. Teller of Colorado was defeated, thirty-four delegates from Montana, Utah, Colorado, Idaho and South Dakota, including four U. S. Senators and two representatives in Congress, with Mr. Teller at their head, solemnly withdrew from the convention.\(^1\)

The Democrats met in Chicago on July 7. Although the control of the national committee was in the hands of the anti-silver wing, the majority of delegates were pro-silver and all attempts to prevent the adoption of a free-coinage resolution were in vain. The platform declared the money question paramount, the opposition of the party to monometallism, denounced the "crime of 1873" and demanded the free and unlimited coinage of both silver and gold at the "present legal ratio of sixteen to one." Some antimonopoly planks were present, linking the tariff to the breeding of trusts, condemning the "trafficking with banking syndicates," and asking for a stricter control by the federal government of "arteries of commerce," principally through the enlargement of the powers of the Interstate Commerce Commission.\(^2\)

A minority of the Committee on Resolutions submitted a dissenting report, substituting a plank favoring the gold standard and opposing free-coinage. In the debate that followed, William Jennings Bryan made his famous "Cross of Gold" speech, and gained prominence as a presidential candidate. The financial plank of the minority was defeated and, after five votes, Bryan was nominated, with his strongest opposition coming from

\(^{1}\text{Ibid.}, pp. 537-538.\)

\(^{2}\text{Ibid.}, pp. 542-546.\)
"Silver Dick" Bland, the Senator from Missouri.43

It was perhaps significant that in his speech, Bryan gave little attention to the concrete issues of the tariff, of statism, of regulation of monopolies, which were raised by the truly radical farm leaders, while harping on the theme of cheap money. However, as the campaign proceeded, Bryan did put more emphasis on opposition to monopoly.

A formula was sought by which the Eastern wing of the Democratic party could oppose free-coinage of silver after the defeat in the convention. The Gold Democrats set up an organization known as the National Democratic party, and nominated John M. Palmer of Illinois for President. Many of the Cleveland Democrats, however, wasted no time with this new party, but went over to the Republican side.44

On July 22, 1896, there met two additional parties which were to support Bryan; the People's party and the Silver party. There had been a division in the Populist party over the matter of "fusion" with the Democrats since many of the Southern Populists owed their seats in government to fusion with Republicans. Senator Butler of North Carolina was the spokesman for the "middle-of-the-roaders" and urged that the problems of the trusts and transportation were what the People's party had come into existence to fight, saying that by the time the money question was settled, the transportation problem would still be there.45

Fusion triumphed, and the Populists nominated Bryan, although they

43Ibid., pp. 547-549.
45Hicks, op. cit., Chap. 13.
did not accept the Democratic Vice-Presidential candidate, putting forth
Thomas E. Watson of Georgia instead. The 1896 platform was almost identi­
cal with that of 1892, with the problems of finance, transportation and
land taking primary importance: the free and unrestricted coinage of
silver and gold at the ratio of sixteen to one was demanded, as was
government ownership of the railroads and telegraph, and opposition was
voiced to the "land monopoly." 46

The leading of the People's party down the "silver path" was a source
of disappointment, especially to Henry Demarest Lloyd, who had written
popular books advocating reform. After viewing the convention proceedings,
he observed bitterly:

The Free Silver movement is a fake. Free Silver is the cow­
bird of the Reform movement. It waited until the next had been
built up by the sacrifices and labour of others, and then it
laid its eggs in it. . . . The People's Party has been betrayed. 47

A later observer had this to say of the relationship of Bryan to the
People's party:

It was the singular role of this "evangelist and crusader,
with a great, musical, vibrant voice, fashioned for political
purposes," to check the impetus of the Farmers' Alliance
(Populist) movement, divert its logical drive for genuine
land reform, and shift the objective of the land uprising to
the monetary issue solely. Glazing over the laborious reforms
demanded by the agrarian radicals, this Young Christian States­
man led his followers to the social impasse of monetary
inflation, from which he promised them untold benefit—above
all, a longed-for redistribution of wealth—would certainly
flow. 48

48 Josephson, op. cit., p. 670.
McKinley, bearing the Full Dinner Pail and billed as the "Advance Agent of Prosperity," won over all of the forces of reform. McKinley received 7,111,607 popular votes to the 6,509,052 which Bryan received on the Democratic, Populist and Silver tickets. In the electoral balloting, McKinley led Bryan by 271-176. Although Bryan had a 500,000 vote deficit in the popular ballot, changes in some 21,000 votes, distributed in six States—California, Oregon, Kentucky, Indiana, North Dakota, and West Virginia—would have yielded a clear Democratic-Populist victory.49

While Bryan carried all the States south of Virginia and Tennessee—including those states—and all the States west of the Mississippi except Iowa, Minnesota, North Dakota, Oregon and California, he won no Northern State east of the Missouri and lost Delaware, Maryland, West Virginia and Kentucky.50 In Congress, moreover, the House was now strongly Republican, with the "sound money" forces in the majority in the Senate. After the returns came in, Governor Altgeld of Illinois, a Populist sympathizer, said the party was:

confronted by all the banks, all the trusts, all the syndicates, all the corporations, all the great papers. It was confronted by everything that money could buy, that boodle could debauch, or that fear of starvation could coerce. . . . It was confronted by a combination of forces such as had never been united before and will probably never be united again; and worse still, the time was too short to educate the public.51

50Ibid.
51Quoted in Josephson, op. cit., p. 706.
With their defeat in 1896, and with returning prosperity, the Populist party was doomed. This agrarian anti-monopoly party was removed from the political scene. Antitrust sentiment on the part of the farmer was far from dead, however. George E. Horton, Master of the Michigan State Grange, during the course of a committee report at the session of the National Grange at Washington, D. C., November 11, 1896, stated:

Trusts, combines and corporate greed are aggressive and persistent. Frequently accomplishing good in the successful execution of great enterprises, which are past the power of individuals to perform, more commonly their operations are a menace to the rights of the people. Those refined sensibilities of the individual man which lead him to regard his neighbor's landmark are absorbed and lost in the combine and trust, and the spirit of conquest, regardless of the rights of others, takes its place.  

While the Populist party withered away, antimonopoly sentiments held by agrarians were to play an increasingly large role in the establishment of government regulation of business practices. This was not to be accomplished through another strong, predominantly agrarian reform party, but through pressures brought to bear within the framework of the older, well-established Democratic and Republican parties.

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EVENTS LEADING TO AGRARIAN PRESSURES FOR NEW LEGISLATION

Shortly after the elections of 1896, the economy reached a post-Civil War low, and this seemed to confirm the gloomy prognostications of those who opposed the Republican party. A general price index, based on the year 1913, fell to a low of seventy-one in 1896, while a wholesale price index based on the period 1910-1914 recorded a low of sixty-eight for both 1896 and 1897. However, in 1898 prosperity was noticeably returning, not only in the industrial East, but also in the West and South.

The opening up of new gold fields in Australia, in South Africa and, later, in the Klondike, and the development of new processes for extracting gold from ore added to the world's supply of gold. Currency and credit became more plentiful. Bank loans, which had been stable for almost a decade, began to increase in 1898 and in the period 1898 to 1914 jumped from just over four and one-half billion dollars to just under fifteen and one-half billion dollars. The total amount of money in the U. S., which had also been relatively stable for a period of ten years, increased from a little better than two billion in 1898 to almost four billion in 1914.

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2 Ibid., pp. 262, 274.
In 1904 and 1908 there were brief interruptions of the prosperity which had begun in the late nineties. The recession of 1908 was of greater severity and was largely the result of the financial panic of 1907. Several railroads went into receivership, and number of New York banks failed, and some distress among workers was evident—over two million were unemployed. But the recessions were short-lived and prosperity was general.

In the latter 1890's, things also picked up for the farmer. Rain returned to the prairies. While there was a general rise in prices, food prices rose more rapidly than other prices. Wheat rose from fifty-eight to ninety-eight cents a bushel in the period 1898-1914; in the same period, corn rose from twenty-eight to sixty-four cents; and cotton, from less than six cents a pound in 1898 to over twelve cents a pound in 1913. The increase in farm prices caused a renewal of the westward movement. Land from Montana and the Dakotas to Oklahoma and Texas were again put into production, mostly in wheat and cotton. The Secretary of Agriculture, in his report for 1910, pointed out that if the year 1899 was regarded as 100, the value of farm products had risen as follows: 1900, 106.4; 1905, 133; 1907, 158.7; 1908, 167.3; 1909, 182.8; and 1910, 189.2.

The higher prices were due in large part to the increase in demand resulting from the increase in currency and credit, but they were also

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3Ibid., p. 65.


due in some part to the increased demand resulting from the growth in urban population. The industrialization of the nation had promoted the growth of population to such an extent that there was in actual fact a relative shortage of food. Indeed, in the decade before the first World War, the public at large was concerned that agricultural production would not be able to keep pace with the growth of the nation, and the high farm prices were resented by the consumers.

Those who had closer relations with agriculture, however, did not view the situation with alarm. The Secretary of Agriculture, James Wilson, wrote in 1909, with some paternal pride that, "The value of the farm products is so incomprehensibly large that it has become merely a row of figures." The Country Life Commission declared: "There has never been a time when the American farmer was as well off as he is today, when we consider not only his earning power, but the comforts and advantages he may secure." Farmers were disturbed only by the fear that the good prices might not last. Senator Porter J. McCumber of North Dakota voiced their sentiments when he said:

We are now approaching a condition when the farmer is about to secure equality of remuneration, and the moment we reach toward that goal of justice, a boycott is started against his products, both in the cities and in the National Legislature by the introduction of bills designed to destroy his profits. . . . He is, however, receiving not one cent more for any article than he is

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Justly entitled to, and in my candid opinion he is not receiving as much today as he is going to receive in the future, and in the very near future.8

Just before the First World War, however, a balance between population and food supply was struck and a check was put on the rising price of food. There were some warning signs on the horizon. The good times had not been used to rationalize agriculture. There had been difficulties in the tobacco growing industry. Perhaps most important, there were indications that export markets might not be able to hold the surplus agricultural production of the United States at a price satisfactory to the American farmer.

Americans were producing more pork than ever on Iowa corn-and-hog farms; more beef than ever on western cattle ranches; more wheat than ever as the western plains went under the plow. Simultaneously, production was soaring in Canada, South America, Australia and New Zealand, and after 1900, foreign markets for American meat and cereal products began to melt away. While total American exports had been increasing, there was a relative decrease in the importance of agricultural products, especially in foodstuffs.

The beginning of the twentieth century saw a renewal of interest in the problem of marketing farm products. Not much was done by the federal government in this area at the time, with the Department of Agriculture, for the most part, contenting itself with impressing upon the farmers the necessity for bettering the quality of their produce and increasing its quantity. Some information was gathered on the

subject, personnel were trained to study the problem and some preliminary techniques for dealing with it were developed.9

The Country Life Commission warmly approved cooperatives, one of its hopes being that cooperatives might establish prices and perhaps control the production.10 The creation of the Office of Markets and Rural Organization in 1913, which had as a task the collection of statistical information on cooperatives, was a concrete manifestation of the increased concern with the marketing problem.11

While these events evidenced the farmers' influence in politics, there were more direct methods of farmer action applied to solve the problem. Chief among these was the development of cooperatives designed for the marketing of dairy products, grain and livestock. The agrarians had long been convinced that too large a portion of the price ultimately paid by the consumer went to the middlemen rather than to the farmers themselves, and beginning in about 1900, cooperatives in the United States took a new lease on life.12

This renewed emphasis on cooperation in marketing was dramatized by the rise of a new national farm order, the American Society of Equity.

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12 Theodore Saloutos and John D. Hicks, Agricultural Discontent in the Middle West, 1900-1939 (Madison, 1951), p. 56.
James A. Everitt, publisher of an agricultural journal in Indianapolis, founded the organization in that city in the last month of 1902 with the stated object being to contribute to the farmers' profits. This goal was to be accomplished through a gigantic holding movement, through which prices could be set. Instead of allowing "the captains of industry, the promoter, the underwriter, the labor leader, and the grain gambler" to dictate to them, the farmers, Everitt was certain, could not only secure relief from the ill effects of monopoly; they could themselves, in fact, become the greatest of all monopolies.13

On the basis of market information, a board of directors was to study the demand and then place what it regarded as an equitable price on each commodity. Ideally, there would also be held annually "a convention of wheat growers, of corn raisers, of cotton planters, of tobacco raisers, of fruit growers, of livestock men—of every great agricultural interest" to consider the market situation. The "equitable price" set by the board would become the "minimum price," below which the farmers were urged not to sell. "There need be no fear," wrote Everitt, "that buyers will be out of the market long, because the world must have your goods all the time."14

During the early years of the Society of Equity, the price-setting activities centered around wheat and tobacco. The most conspicuous effort of the Society to put its production-control and price-fixing


policies into operation was in the part it played in the battle waged by the tobacco producers of Kentucky and Tennessee against the "Tobacco Trust." The American Tobacco Company, by its dominance in the field, had put the growers of tobacco in what they regarded as a hopelessly unsatisfactory bargaining position. There had been some organization of the tobacco planters well before Equity appeared on the scene, and there had been plans for the establishment of a "farmers' tobacco trust." Agitation for controlling production was common during 1903 and 1904, and in the latter year Equity joined in and took an important part in the holding movement of 1905 which resulted in higher prices. Other organizations with similar ideas, and either preceding Equity or being contemporaries of it, were such groups as the Dark Tobacco Growers' Protective Association and the Burley Growers' Association of Kentucky.¹⁵

In 1906, the Equity had a strong enough position to enable it to secure pledges from tobacco farmers not to dispose of their crops at the prices offered by the "trust." When this campaign had some success, the Burley Tobacco Society was formed by Equity and stronger measures were planned for the 1907 crop. It was suggested that the growers "produce a short crop and sell it for a long price." A threat was also made to establish tobacco factories owned by the Burley Tobacco Society if the company did not come to terms. The most radical step to be taken was announced by the Burley Society, when in the fall of 1907 it stated it would attempt to eliminate the 1908 crop altogether. This movement experienced difficulties, since some farmers were indifferent,

¹⁵Saloutos and Hicks, op. cit., pp. 121-122.
others refused to join and hoped to cash in on the higher prices, most producers had financial disabilities, an unfavorable system of land-tenure prevailed, and the tobacco company had great financial strength. Some growers employed force to achieve compliance with the attempt to eliminate the crop, and "night riders" terrorized independent farmers. However, the movement did have an effect on the crop and the American Tobacco Company did come to terms and paid a relatively high price for the tobacco held by the pool.16

The "farm strike" of 1908 marked the point of greatest achievement by the Burley Tobacco Society; thereafter the Equity movement declined in Kentucky and Tennessee. Everitt had been deposed as president of Equity in 1907, and attention turned more to cooperative marketing and buying rather than production control. The benefits of the action of 1908 were disputed, and others believed that higher prices had returned.17

In the Dakotas, Montana, Minnesota and Wisconsin, where its greatest strength lay, the greatest contribution of the Society of Equity was the Equity Cooperative Exchange, the first cooperative terminal marketing agency of importance in the United States. This exchange was used by the spring wheat growers against the Minneapolis Chamber of Commerce, the grain exchange serving the area, which was regarded as, at best, a monopoly. Equity also attempted to raise wheat prices by the "hold your wheat" strategy, but this met with very limited results. Cooperative terminal livestock marketing associations were also established, chiefly

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16 Ibid., pp. 123-125.
17 Ibid., pp. 118, 126.
in South St. Paul, and a number of cooperative grain elevators were set up. These business activities of Equity in the Middle West did not succeed, chiefly as the result of poor business leadership. At a later date, however, the Farmers' Union absorbed the remnants of Equity and operated its establishments with considerable success.\textsuperscript{18}

The Farmers' Educational and Cooperative Union was a contemporary of the Equity, being founded in Texas in 1902. While it had its early strength in the South, it later expanded into the Middle West. The founder, Isaac Newton Gresham, had been an organizer for the Farmers' Alliance, and was later a Populist and Bryan Democrat.\textsuperscript{19}

The Farmers' Union, like the Equity, believed that the farmers of the nation should have the same right to name the price of their products that the manufacturers of iron, cloth, and other commodities had to name theirs. At the fourth Texas convention, held August, 1905, a resolution was adopted favoring the holding of cotton for a price of ten cents a pound.\textsuperscript{20} The second national convention, held in September, 1906, called for enforcement of the antitrust law, among other things.\textsuperscript{21}

While agricultural combination was on the march during the early

\begin{footnotes}
\item[\textsuperscript{18}]Ibid., pp. 126-148.
\item[\textsuperscript{19}]Ibid., p. 219.
\item[\textsuperscript{21}]Charles S. Barrett, \textit{The Mission, History and Times of the Farmers' Union} (Nashville, 1909), pp. 158, 257-258.
\end{footnotes}
part of the century, it was almost completely overshadowed by the tremendous wave of combination which swept the railroad and manufacturing fields after the decision in the Knight case and with the return of prosperity. The period 1898-1903 saw the most intense era of organization into large business units in our history.

Hill and Harriman in the West and the leaders of the New York Central and the Pennsylvania railroads in the East purchased control of many smaller independent lines, but these railroad combinations were insignificant in comparison to those in the industrial field. The International Paper Co., The United Shoe Machinery Co., the National Biscuit Co., General Electric Co., The American Tobacco Co., American Telephone Co., Standard Oil of New Jersey, The International Harvester Co., The American Can Co., National Packing Co., International Mercantile Marine Co., and a host of other companies were created, each with a capitalization well in excess of a million dollars. In 1901, the largest combination of them all, United States Steel Corp., a holding company with a capitalization of more than $1,400,000,000, was formed. In some cases, combination was accomplished through the holding company device, and in others, through merger.

A number of conditions were present which favored this great movement toward economic concentration. Widening markets and continued technological progress encouraged consolidation into larger business units. Large investments in fixed plant held down the number of firms, since it was now more difficult for new firms to enter a field. As overhead costs became much heavier, and since competition threatened to reduce prices to out-of-pocket costs, cooperation seemed the wiser
course. Corporate promoters and powerful financiers saw the possibilities and were ready and willing to make the most of them, and the holding company device was available to make the task easier.

This intensive phase of the combination movement was brought to a close by a series of factors. In part, it resulted simply from the temporary exhaustion of new fields for the ingenuity of promoters. The stock market decline of 1903 made it difficult to float new issues on favorable terms. The movement was also discouraged by the failure of the United States Shipbuilding and International Mercantile Marine Companies in 1902 and 1903. The dissolution of the Northern Securities Co., a New Jersey holding company in the railroad field, under the Sherman Act, and the increased antitrust activity on the part of the federal government put the final touch on the movement. In the years before 1914, the only combination of giant size was General Motors.

The combination movement and the greatly increased activity in the Department of Justice in prosecuting such combines after Theodore Roosevelt assumed the Presidency provided the first severe tests of the Interstate Commerce and Sherman Antitrust Acts as regulatory devices.

As an anti-combination device, the Interstate Commerce Act was almost a complete failure. During the nineties the railroads went through a transition which was to be duplicated by many of the other industries. At the beginning of the decade there had been a number of great independent systems, each with its own group of subsidiaries, but each competing against rival systems in the same regions. At the end of the decade there were practically no independent systems; the various systems had been drawn into a few huge combinations which were dominated
by a single man or a small group of men working in harmony with one
another. The industry had been transformed from one dominated by hun-
dreds of competing leaders into one controlled by a small group of
financiers, and throughout the country competing systems had found it
more profitable to form communities of interest and cooperate instead
of competing and trying to ruin one another.  

The concentration movement in the railroad industry aroused con-
siderable alarm. Charles A. Prouty, a member of the I.C.C., speaking
in 1902, declared:

Five years ago the crying evil in railway operations was
discrimination, mainly discrimination between individual
shippers. While many rates were too high, the general level
was low; and in view of competitive conditions which had for
some time and then existed, little apprehension was felt of
any general unreasonable advance. Not so today. The vast
consolidation of the past few years; the use of injunctions
to prevent departures from the published tariff; the lesson
which railroad operators themselves have learned, that com-
petition in rates is always suicidal, since it does not
increase traffic and does reduce revenues—these have
largely eliminated ... competition. That discrimination
is disappearing but in its place comes the other danger
which always attends monopoly, the exaction of an unreason-
able charge.  

There was implicit in the prohibition of pooling in the Act of 1887
the hope that rates might become "reasonable" as the result of competi-
tion among the railroads. However, after the passage of the act outlawed
pooling, railroads turned to traffic association agreements by which they
sought direct agreement in rates as well as other traffic arrangements.

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22 E. G. Campbell, The Reorganization of the American Railroad System,
1892-1900 (New York, 1938), pp. 331-332.

23 Ibid., pp. 333-334.
It seemed a victory for the antimonopoly forces when the government won two leading cases against railroad combinations under the Sherman Act.

A petition under the Sherman Act had been filed in 1892 in the Circuit Court of Kansas against an association composed of railroads operating west of the Missouri River and its members, alleging a combination for the purpose of fixing uniform rates, rules and regulations for all freight traffic. The Supreme Court in a five to four decision in 1897 reversed dismissals by the Circuit Court and the Circuit Court of Appeals and a decree was entered dissolving the Association and perpetually enjoining the further operation of the combination. The Court held that such agreements were outside the law irrespective of whether the rates actually fixed were reasonable or not. It was further held that the Interstate Commerce Act did not exempt the association from prosecution under the Sherman Act.\(^24\) Since every contract and combination in restraint of trade was outlawed, there could be no exclusion of an agreement between competing railroads engaged in interstate commerce. The following year, this decision was affirmed in a similar case where the Court outlawed a rate fixing association of Eastern railroads.\(^25\)

The decisions in the two railroad cases, if their result was not to hasten combination into more durable forms, at least had little effect on competition in the industry. In 1901 the Interstate Commerce Commission reported that the cases had "produced no practical effect upon the

\(^{24}\)U.S. v. Trans-Missouri Freight Association, 166 U.S. 290.  
The decree on the same date as in the Hopkins case, as
the Supreme Court reversed the decree on
the request for temporary injunction, but the
Supreme Court reversed the decree on
the request for temporary injunction.

In the case of the Inter-State Commerce
Commission v. Kansas City Stockyards, the
Court reversed the decree on
the request for temporary injunction.

In the other case, the petition was filed against Anderson and members
of the Kansas City Stockyards.

October 24, 1927

The decree on the same date as in the Hopkins case, as
the Supreme Court reversed the decree on
the request for temporary injunction. The Court reversed the decree on
the request for temporary injunction.

The Commission reversed the decree on
the request for temporary injunction. The Commission reversed the decree on
the request for temporary injunction.

The Court reversed the decree on
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the request for temporary injunction.

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Railway operations of the country.
In the industrial field, the Addyston Pipe case, finally decided in 1899, marked the beginning of positive application of Sherman Act. Judge William H. Taft, in an opinion for the Circuit Court of Appeals in 1898, held that the agreement fell under the prohibitions of the antitrust law. He found the prices to be unreasonable, despite contentions to the contrary, and further held that even if the prices had been reasonable, the scheme would have been invalid at common law and was certainly so under the Sherman Act. A unanimous Supreme Court upheld the decision.29

The decisions of the Supreme Court prior to 1900 indicated that federal statute constituted a real danger to loose agreements and pools, but left industrial combinations through holding companies unaffected. In part, this accounted for the flood of mergers and combinations through the form of the holding company.

The flood of new combinations stimulated public interest and political action. From 1899 to 1902, an Industrial Commission conducted an exhaustive investigation of a number of combinations. During the summer of 1899, the Civic Federation of Chicago gathered together an impressive assemblage of legislators, lawyers, governors, and other prominent citizens to discuss means of dealing with the trust problem. The Department of Justice was flooded with petitions that trusts be investigated and destroyed, and in February of 1900, another antitrust conference was held in Chicago.

With the coming of higher prices and a revival of agricultural

prosperity, the farmer was not in the forefront of this new uprising against monopoly, and it might well have been that this lack of agrarian support militated against any strong governmental action. At any rate, the administration of William McKinley did not feel any great sense of insecurity, and pursued its conservative policies.

In Congress, there were some evidences that Populism and agrarian antimonopoly sentiment were not dead, however. On April 1, 1897, Senator Allen introduced a bill with a proviso in it exempting labor and agricultural organizations from the operation of the Sherman Act by amending Section 8 of that Act.\(^{30}\) Senator Butler introduced a Joint Resolution on January 10, 1900, in the first session of the Fifty-sixth Congress to destroy trusts by taking over by the government of: (1) issuing of money; (2) highways and means of transportation—meaning railroads; (3) the telegraph and telephone industry.\(^{31}\) Similar bills were introduced in the House by Representatives from agricultural states.

The first antitrust bill to be debated in Congress since the Act of 1890 was the Littlefield bill, introduced in the House by the Representative from Maine in the first session of the Fifty-sixth Congress, to amend the Act of 1890. The original bill did not contain any proviso with respect to agricultural or labor organizations. There was, indeed, no need for agricultural organizations to feel much concern as yet about the use of the Act of 1890 against them, especially in view of the fact

\(^{30}\) U. S. Congress, Senate, *Bills and Debates in Congress Relating to Trusts*, p. 557.

\(^{31}\) Ibid., p. 589.
that in the Knight case the court had held agricultural combinations, among others, would only indirectly restrain trade and therefore would not fall under the scope of the Sherman law. 32

Labor organizations did not feel the security that agricultural groups did, since they had come under attack in the courts and some courts had held that they fell under the jurisdiction of the act. As originally presented, the bill provided only for perpetual injunction against transporting commodities in interstate commerce and use of the mails by a monopoly. Common carriers and transportation companies which knowingly transported products of a monopoly could be proceeded against, punitively. 33 As in 1890, some members of the majority party were anxious to go before the people with an antitrust bill, since elections were due in the fall of the year.

The Democratic minority in the House Committee on the Judiciary proposed that Section 7 of the Sherman Act be amended by inserting the following:

Nothing in this act shall be so construed as to apply to trade unions or other labor organizations, organized for the purpose of regulating wages, hours of labor, or other conditions under which labor is to be performed. 34

This amendment was adopted on the House floor, by a vote of 260 - 8 (8 voted present, and 76 did not vote).

In the Senate, however, there was no strong inclination on the part

32 156 U. S. 16.

33 U. S. Congress, Senate, Bills and Debates in Congress Relating to Trusts, p. 643.

34 Ibid.
of the Republicans to approve such a bill. Senators Hoar and Platt, while attempting to convey the impression that they were friends of labor, engineered the defeat of the bill in committee and on the Senate floor. Hoar claimed to have given hearings to members of labor organizations, including the Brotherhood of Locomotive Engineers, and insisted that they were against the exemption of labor organizations from the Sherman Act. He then proposed another measure:

providing that legislation against trusts should not apply to organizations for the purpose of raising wages, shortening hours of labor, or improving the conditions of labor, if their action were otherwise lawful and was not accompanied by criminal violence . . . .

In claiming that this bill would have satisfied organized labor, he continued:

Congress would have done all they asked them to do, and would have declined to do only the things which, on careful reflection and examination, they were satisfied we ought to decline to do. The great general question of trusts, increasing the penalty, and exempting the labor organizations, which were never intended to be attacked by the old law, would be left to be worked out on further public discussion.

Senator Butler had this to say when the Littlefield Bill, before it was killed in the Senate by referral to the Committee on the Judiciary, was discussed on the Senate floor:

The People’s Party national convention has already been held at Sioux Falls, S. D., on May 9. It also denounced trusts as the overshadowing evils of the age, but did it stop there? No. It proceeded in a bold, intelligent and courageous manner to point out the real and fundamental causes which

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36Ibid., p. 871.
have produced these evil results.37

He went on to discuss the plank on trusts, which traditionally attacked private ownership and control of money, transportation and the means of transmission of information.

After the Knight case, there was a feeling that, without a constitutional amendment, industrial combinations were safe from federal law. One consequence was the introduction in Congress of proposed amendments to the Constitution enabling the Congress to proceed against trusts even when they only indirectly restrained interstate commerce.

The Republicans proposed such an amendment in 1900, and Section 2 stated that: "Congress shall have the power to define, regulate, prohibit, or dissolve trusts, monopolies, or combinations, whether existing in the form of a corporation or otherwise."38 In the House of Representatives, there was an adverse reaction from members from farm states, who looked askance at the proposal. Congressman Fleming, a Democrat from Georgia, stated that the Republican amendment made it possible to declare all labor organizations illegal, and:

Furthermore, under the broad language of this amendment why would Congress not have power to make it unlawful for producers of any agricultural commodity to get together and endeavor to protect themselves by combined action looking toward a restriction in the quantity of their output? The cotton producers of the South, impoverished for years by the low price of their cotton, caused in part by excessive production, met a year or more ago and sought to combine their influence so as to restrict the acreage to be planted in the future.

37Ibid., p. 756.
38Ibid., p. 779.
Do the people intend that Congress shall have the power to declare that these men who work the soil and produce their crops by the sweat of their faces shall not make a combination for the purpose of restricting their own output? Shall any power be given to Congress to compel them directly or indirectly to continue to produce an overplus of cotton in order that other people may profit by the low prices?  

The sentiments of Fleming were echoed by Representative Bellamy of North Carolina, and Ridgely of Kansas claimed that "this is a sweeping power, and might be abused to the extent of destroying all cooperation of our citizens, and every labor organization, farmers' association, or common partnership." While the amendment was supported by a majority in the lower House, it failed to receive the necessary two-thirds vote.

In the campaign of 1900, strong antitrust planks appeared in the platforms of both major parties. Confusion reigned among the Populists. At the fourth annual session of the Supreme Council of the Farmers' Alliance and Industrial Union held beginning February 6, the Council pledged support of the Alliance to the candidates to be nominated by the Democrats. The Populist party itself continued to be divided in 1900. The Fusionists gave their entire support to the Democratic ticket, but the Middle-of-the-Road Populists established an independent ticket. All were agreed on the fact that the basic evil of the age was the trust problem, urging that the principle of public ownership of public utilities be adopted. All urged the free coinage of silver at the ratio of sixteen to one. The Fusionists denounced the

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39 Ibid., p. 704.
40 Ibid., p. 779.
Gold Standard Act of March 14 as the culmination of a long series of conspiracies to deprive the people of their constitutional rights over the money of the nation, and to relegate to a "gigantic money trust" the control of the purse. 42

Despite the concern with trusts and the question of silver and gold, the paramount issue was "imperialism." In addition to American control over the former possessions of Spain, the Republicans also featured the speedy victory in the War of 1898, the prosperity prevailing since 1897 and the high tariff in their campaign. The results were a solid victory for McKinley. He accumulated over 7,200,000 popular votes to less than 6,400,000 for Bryan, beating the Democratic candidate in the electoral college by a vote of 292-155. The Middle-of-the-Road Populist ticket received only slightly more than 50,000, with its greatest strength in the South. 43

The silver question had vanished with the increase of gold production. The trust problem did not have sufficient public interest to make it a factor in the election of 1900, and with the elevation of Theodore Roosevelt, it lost what influence it had to swing elections, since all Republican candidates until Harding had some antitrust convictions. The Democratic party, having lost the favor of the big bankers, manufacturers and merchants, was forced into the role of the minority party of opposition. It was normally supported by Western agrarians, the Solid South and some city machines in the Northeast.

42 Ibid., pp. 32-33, 38-43.
43 Ibid., p. 75.
City laborers, for the most part, showed no decided preference for the Democratic party, especially during the years of the first Roosevelt. The farmer-labor class alignment of 1896 had pretty well dissolved.44

The farmer’s voice of protest was by no means stilled. In the Middle West a number of reform governors were installed and provided a link between Populism and Insurgency: La Follette of Wisconsin, Albert B. Cummins of Iowa (with his Iowa Idea of "no shelter to monopolies"), John A. Johnson of Minnesota. La Follette and Cummins later went to Congress where they were joined by such Middle Western progressives as Norris of Nebraska, Nelson of Wisconsin, Lindbergh and Clapp of Minnesota, Dolliver of Iowa and Bristow of Kansas.45

The reforms associated with the name of Theodore Roosevelt were ardently supported by the agrarian leaders of the Middle West. One such enthusiast claimed that Roosevelt was "the spokesman of the people, the expression and exponent of the reform spirit, the mouthpiece of an awakened conscience."46 Frederick Jackson Turner phrased it thusly:

Mr. Bryan’s Democracy, Mr. Debs’ Socialism, and Mr. Roosevelt’s Republicanism all had in common the emphasis upon the need of governmental regulation of industrial tendencies in the interest of the common man; the checking of the power of those business Titans who emerged successful out of the competitive individualism of pioneer America.47

44Josephson, p. 707.
45Saloutos and Hicks, op. cit., Chap. 2.
The ascension of Roosevelt to the Presidency marked the beginning of
the second major expansion of national power. An effort was made to
inject life into the Sherman Act. The passage of the Hepburn Act in
1906, giving the Interstate Commerce Commission the power, on complaint,
to prescribe maximum rates, marked the beginning of effective railroad
regulation by the I.C.C.

Theodore Roosevelt popularized a distinction between "good" and "bad"
trusts. This attitude emphasized regulation of specific competitive
practices rather than indiscriminate repression of all monopoly. To
promote this objective, there was created, by Congress, under his guidance,
a Bureau of Corporations in the new Department of Labor and Commerce. It
was to make "diligent investigation into the organization, conduct, and
management of the business of any corporation, joint stock company, or
corporate combinations" engaged in interstate commerce and to gather data
which would enable the President to recommend regulatory legislation.
The Bureau could compel the testimony of witnesses and the production of
documentary evidence, and the President, who believed strongly in the regu-
latory power of publicity, was to determine what information should be
made public.48

Another piece of legislation enacted with the hope that evidence
would thereby become easier to secure for the Bureau of Corporations was
the Immunity Rights Act of 1903, which granted freedom from prosecution
to persons with respect to matter about which they had given testimony or
produced evidence in antitrust proceedings.49 In the famous "immunity

bath" decision, the meat packers were sustained in their contention that they were entitled to immunity from criminal prosecution because of testimony rendered in an investigation by the Bureau of Corporations.\footnote{U.S. v. Armour & Co., 142 Fed. 808 (1906).} As a result, Congress limited in 1906 the right of immunity to natural persons who give testimony or produce evidence under oath in obedience to a subpoena.\footnote{34 Stat. 798.}

A case which gave Roosevelt fame as a "trust buster" was the Northern Securities Case of 1904.\footnote{Northern Securities Co. v. U.S., 193 U.S. 197.} The Supreme Court, in a five to four decision, upheld the government's contention that the holding company established to end a financial struggle between Hill and Morgan on one side and Harriman on the other was an illegal monopoly over transportation. The court condemned the holding company when used as a method of control over previously competing companies, and included this type of combination within the scope of the Sherman Act. While the decision did not restore competition—the purposes of the holding company were achieved by a "community of interest" developed by the principals—it restored some faith in the Sherman Act and indicated that the "Rough Rider" did not fear to proceed against the wealthy and powerful.

Another case of considerable significance for the Middle Western farmer, the "Meat Trust" case, was decided the next year.\footnote{U.S. v. Swift & Co., 196 U.S. 375 (1905).} From the
very beginning of the modern meat-packing industry there was little evi-
dence of intention of maintaining competitive independence. With one
minor break, pooling agreements existed between 1885 and 1902. 54 Attacks
in the newspapers and Congress caused the Department of Justice to take
action, and in 1902, a petition was filed in the Circuit Court (Northern
District, Illinois) against Swift & Co., and others, who together con-
trolled sixty per cent of the fresh meat business in the U. S., alleging
a conspiracy to eliminate competition by not bidding against each other
in the purchase of livestock, by bidding up prices for a few days to
induce cattle owners to ship cattle to the stockyards, by fixing the
selling price of fresh meat, by obtaining rebates from the railroads,
etc. In the spring of 1902, the combination was declared illegal and
the combination was temporarily enjoined. In 1903, a decree was entered
perpetually enjoining the combination, and this decree was affirmed by
the Supreme Court on January 30, 1905.

The injunction of 1902 merely had the effect of driving the large
companies into greater combination. Armour bought the property of one
of the larger members of the old pool, and joined with Swift and Morris
to merge their properties. The National Packing Co. was set up as a holding
corporation to hold the acquisitions of Swift, Armour and Morris. Since
two of the Big Five, Wilson and Cudahy, were not in the company, other
arrangements were established. By agreement, each of the companies pur-
chased a set percentage of the livestock bought at the principal markets

and at country points. In the large central markets the buyers of the Big Five would buy at the same hours and offer identical prices. 55

Roosevelt left office with no major trust yet dissolved, although suits against the Standard Oil and American Tobacco combinations had begun their way through the courts. The direct effects of his two major victories were almost nil, with community of interest within the controlling Hill-Morgan group continuing to direct the policy of Northwestern railroads, while the meat packers simply disregarded the injunction in the Swift case.

While the passage of the Sherman Act had not halted the move toward concentration in industry, the antimonopolistic farmer did not have too great a complaint against the operation of the Act until 1908. The decision in the Knight case had been reversed, at least in part, in the Addyston Pipe case; the Knight case also indicated that combinations of farmers did not fall under the scope of the act; railroad combinations, even in the form of a holding company had been successfully attacked; and the "Meat Trust" was brought to trial and found guilty. There could even be found hope for its increasing effectiveness in the future. The decision in the Danbury Hatters case was to give the farmer pause, however.

In 1902, the hatters' union, attempting to support a strike by the employees of D. E. Loewe of Danbury, Connecticut, declared a nation-wide boycott against the company's products. The next year the company filed suit in federal court for triple damages against the officers and members

55Ibid., pp. 46-99.
of the United Hatters of America, asserting the boycott was a conspiracy in restraint of trade under the Sherman Act. Although the case was not finally disposed of until 1917, the outcome was made clear when in February, 1908, the Supreme Court ruled that such a boycott constituted an interference with interstate commerce under the Sherman Act.\footnote{56} The Circuit Court of Connecticut had dismissed the complaint because interstate commerce was not involved, following the decision in the Knight case.\footnote{57} The Supreme Court (following the decision in the freight association cases) reversed this judgment saying:

> Nor can the act in question be held inapplicable because defendants were not themselves engaged in interstate commerce. The act made no distinction between classes. It provided that "every" contract, combination, or conspiracy in restraining of trade was illegal. The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act and that all these efforts failed, so that the act remained as we have it before us.\footnote{58}

The Court also held a secondary boycott of goods in interstate commerce an unlawful restraint of trade.

This \textit{obiter dictum} of the Court was gratuitous insofar as agricultural organizations were concerned, but it did cause the advocates of cooperatives some distress. There had been indictments against directors and officers of selling cooperatives under state antitrust laws, and in Louisians an indictment was brought under the Sherman Act. While none of the cooperatives were convicted of fixing prices, the farmers were

\footnote{56}Loewe v. Lawlor, 208 U.S. 274.\footnote{57}148 Fed. 924 (1906).\footnote{58}208 U.S. 301.
left in great doubt regarding the legality of their efforts to create and operate effective marketing cooperatives.59

In 1910, there was finally a case wherein the Sherman Act was applied against a combination of farmers.60 W. T. Osborne, a tobacco farmer living in Dry Ridge, Kentucky, had taken his entire crop of the 1906 season, about four hogsheads, to the railroad station agent in Dry Ridge in November, 1907, and directed shipment to Cincinnati, Ohio.
The "Burley Society" had pooled and was holding at its warehouses all the tobacco of its members until such holding, with other causes, should bring about a higher price, and it was opposed to the shipment to market of any tobacco not so pooled. Osborne and his tenants did not belong to the association, and their tobacco was unpoled.

After the station agent had received the tobacco, and before it had been shipped, a considerable number of men gathered in Dry Ridge, and some of Osborne's acquaintances went out to his farm and told him that the crowd was determined that his tobacco should not be shipped, and that unless Osborne would withdraw the tobacco, it would be destroyed and he or his property might be otherwise injured. He agreed that the tobacco might be withdrawn, and indorsed over the bill of lading to one of his visitors.

The next morning a large group of men assembled in Dry Ridge and marched to the railroad station. The indorsed bill of lading was


Hatters and Steers cases for maintaining cooperative marketing were not

grounds for overturning legal situation resulting from the Dairy

Order. The decision of the company that the patent statute was void on the same

date the court was overruled to change the position in 1917 when it was revoked

sentence rendered the entire act unconstitutional, and therefore void. The
court had held that the exemption of Forrest from a state statute

There had been, apparently, a case before the supreme court in which

upon the payment of costs.

May 12, 1912, however, the sentences were remanded by President Taft

affirmed on December 5, 1912, by the circuit court of appeals. On

although other defendants had been brought. The conditions were

sure, notwithstanding, the trust situation continued under the Sherman act.

Guilty and fines the agreed $2,400 were imposed April 16, 1910. The

prizes should be removed. relying on the theory that the same were found

sense common to the purpose of keeping the tobacoo from the market with

by increase and improvement, oblongs from the supply of the tobacoo in future.

Steers and other makers of tobacoo, sharing a considerable to promote a

without most in the circuit court, without the

right to copy and keep there by him until he was notified that the

section agent not to ship any unprocessed tobacoo. The four objections were

cession mentioned very from the section after the crowd had reached the

presumed, the tobacoo was turned over by the section agent and the pro-
to endure unchanged. In spite of the stand taken by the Supreme Court, the weight of judicial opinion held that under the common law farmers had a right to organize for collective marketing. There was also a tendency to admit that the antitrust statutes were enacted to correct abuses which had developed in the collective activities of other groups and not among the farmers. The view which eventually won out was that not all combinations restricting competition were necessarily illegal. The test of illegality came to be whether they abused their power. 63

In 1908, William Howard Taft, who had rendered the decision in the Trans-Missouri Freight Association case condemning every contract, combination or conspiracy in restraint of interstate commerce, was nominated through the efforts of Roosevelt, who refused to run for what he regarded as a third term. The Republican platform was a progressive one, calling for a strengthening of the Interstate Commerce and Sherman Acts, although the emphasis was one giving the federal government greater supervision and control over large corporations engaged in interstate commerce. 64 An indication that the platform was not sufficiently radical for insurgents is indicated by the fact that Mr. Cooper of Wisconsin, a representative of the views of Governor La Follette, proposed more radical substitutions to the platform. 65

The Democrats took a stronger view on the trust question, condemning

65 Ibid., pp. 179-180.
the Republican party as the organization of "privileges and private monopoly." In addition to favoring the vigorous enforcement of the criminal portions of the law, they favored amendments preventing interlocking directorships, compelling all manufacturing or trading corporations engaged in interstate commerce to take out a federal license, and, thirdly, compelling all such licensed corporations to sell to all purchasers on the same terms. The Democrats also favored laws limiting the issuance of injunctions in labor disputes, and Samuel Gompers threw the support of the AFL to the Democrats, since the Republicans had refused to incorporate the demands of labor into their platform.

While the Populist vote and the vote for William R. Hearst's Independence party were insignificant—they ran behind the Socialist and Prohibition tickets in the balloting—they each had planks of interest. About marketing cooperatives, the Populist platform said:

We congratulate the farmers of the country upon the enormous growth of their splendid organisations and the good already accomplished through them, securing higher prices for farm products and better conditions generally for those engaged in agricultural pursuits. We urge the importance of maintaining these organisations and extending their power and influence.

The Independence party platform plank stated:

The Independence party believes that the distribution of wealth is as important as the creation of wealth, and endorses those organisations among farmers and workers which tend to bring about a just distribution of wealth through good wages for workers and good prices for farmers, and which protect the employer and the consumer through equality

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66 Ibid., pp. 189-190.
67 Ibid., p. 190.
of price for labor and for product, and we favor such legisla-
tion as will remove them from the operation of the Sherman
anti-trust law. 68

Despite the support of labor, Bryan lost to Taft by approximately
the same margin that Parker had lost to Roosevelt in 1904. The popular
vote was roughly 7,700,000 to 6,400,000, with the electoral vote being
321 to 162. 69 There were some significant changes in the Middle West,
Mountain and Pacific states, where Bryan received much greater support
than had Parker in 1904. 70

President Taft was temperamentally more conservative than his
predecessor, and, presumably as the result of his judicial experience, was
endowed with far more faith in purely legal remedies for economic problems.
He took office with the conviction that the Sherman Act, if properly
enforced, would effectively carry out a desirable antitrust policy. His
sole new proposal, which was not pressed, called for legislation providing
for federal incorporation. Prosecutions under the Sherman Act were pushed
with unprecedented vigor. Seventy-eight suits were instituted during the
four years of Taft's administration, compared with only sixty-two during
the entire period since 1890. In 1911, the Standard Oil and American
Tobacco cases were brought to a successful conclusion in the Supreme
Court.

Insofar as enforcing the antitrust laws in relation to agriculture
was concerned, Taft was at least consistent in his philosophy of what was

69 Ibid., p. 208.
fair for one was fair for all. The Steers case had been prosecuted
during his administration, but there was also a number of cases brought
against organizations which were using their power to the disadvantage
of the farmer.

In 1911, indictments were brought against a group of milk processors
and distributors charging a conspiracy to restrain trade by fixing prices to
be paid producers for milk, charging a combination to restrain trade by
agreeing on uniform prices to be paid producers, and charging an attempt to
monopolize trade in milk by depressing the prices to be paid the producers. 71

Perhaps of major interest to the farmer was the renewed attack on
the "Meat Trust." The Department of Justice attacked the National Packing
Co., the holding company governing the properties of Swift, Armour and
Morris. In 1910, a civil suit was begun looking toward dissolution of
the holding company. This suit was dropped in favor of a criminal action
against Louis F. Swift and ten other packers. This indictment charged
conspiracy to eliminate competition and to fix prices by refusing to bid
against each other in the purchase of livestock and by fixing the selling
price of dressed meat, etc. On March 26, 1912, the defendants were found
not guilty, but they had in the meantime voluntarily dissolved the
National Packing Co. 72

Two decisions were handed down in 1911 which were of great importance
in determining what sort of combinations were to be considered illegal.

71 Y. &v. Whiting, 212 Fed. 466.

72 Y. &v. Swift, 188 Fed. 92; Harry L. Purdy, Martin L. Lindahl,
William A. Carter, Corporate Concentration and Public Policy (New York,
1946), fn. p. 498.
In the Standard Oil and American Tobacco cases, the Court, while upholding decrees of dissolution, enunciated the "rule of reason." A distinction was made between "reasonable" and "unreasonable" restraints of trade. Apparently, large combinations were not to be dissolved unless they monopolized or "unreasonably" restrained trade.

Taft was faced with problems, having a schism in the party. The insurgents were challenging the administration's leadership, fighting vigorously for conservation, for postal savings, for more vigorous railroad regulation, and against a type of reciprocity with Canada which would benefit the industrial East at the expense of the agricultural Middle West. The program of the insurgents had the overwhelming approval of the Middle Western farm constituencies, and this was vigorously demonstrated at election time in 1910. Not only were the radical leaders returned to Congress, but old-guard conservatives were retired in large numbers. For the first time since Cleveland's second victory, the voters sent a Democratic majority to the House of Representatives while the Republican majority in the Senate was reduced from twenty-eight to ten.

During Taft's administration, there was increased activity in the Congress for providing exemption from the antitrust laws for labor and agriculture. Congress had provided a special fund for the Department of Justice to prosecute the antitrust laws in bills entitled, "Sundry Civil Appropriation Bill." In the 61st Congress, the so-called Hughes


amendment to such a bill was proposed to confine the employment of this particular fund to cases against industrial combinations. The amendment read:

Provided further, That no part of this money shall be spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours, or bettering the condition of labor, or for any act done in the furtherance thereof not in itself unlawful.75

This amendment passed the House, but was stricken out by the Senate and the House eventually concurred in the Senate amendment.

A similar amendment by Representative Rodenberry of Georgia in February of 1913, toward the end of the 62nd Congress:

Provided, however, That no part of this money shall be spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours, or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful. Provided further, That no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products.76

The amendment was passed by Congress, but was vetoed by President Taft, who made this statement:

At a time when there is widespread complaint of the high cost of living it certainly would be anomalous to put on the statute books of the United States an act in effect preventing the prosecution of combinations of producers of farm products for the purpose of artificially controlling prices; and the evil is not removed, although it may be masked, by referring to the


purpose of the organization as "to obtain and maintain a fair and reasonable price for their products." 77

Although Taft had remitted the fines in the Steers case, that was before the election of 1912, and this was after.

During the debate in Congress on the various amendments to the sundry civil appropriations bills, members from farm states again expressed their strongly anti-monopolistic viewpoints and deplored the use of the Act of 1890 against agricultural combinations. Senator Quin of Mississippi said:

The powerful trusts of this country have not only held up the public and forced them to pay an exorbitant price for all the necessities of life, but they have been able to hold the produce of the farm down to the minimum price. They have forced the farmers to pay big prices for what they buy and compelled them to accept small prices for what they raise on their farms. 78

While most of the agricultural representatives held that the intent of Congress in 1890 was to exempt agricultural organizations from the Sherman Act, they were also convinced that the effects of the Danbury Hatters and Steers cases were to bring such organizations under the anti-trust laws. Among others, Senator Bacon expressed these sentiments, in the following fashion:

... the provision which is now proposed to be incorporated into the law and which was originally proposed in the anti-trust law was left out of the bill when it was finally put upon its passage because of the fact that it was generally conceded and understood and recognized that the bill as framed would not cover the case either of labor organizations in the effort to better their condition, or the case of the agriculturists in the effort to get the best prices for their products.


... there can be no question of the fact that the same logic or system of reasoning which brings the court to the conclusions that the antitrust law does cover agreements among laborers will also be used to rule that agreements among agriculturists for the purpose of endeavoring to get the best prices for their products will also be unlawful and under the ban of this law and that those who violate it will be subject to its penalties.79

Some members of Congress went so far as to say that the Court's interpretation of the antitrust laws prevented organization of farmers as such, but a more realistic and widespread view was stated by Senator Jones of Washington:

The courts have not held these organizations illegal; they have not held that the mere fact of the existence of such organizations showed that the Sherman law had been violated. Some isolated cases in inferior courts may have gone this far, but no authoritative court has done so. On the contrary, the courts of last resort have uniformly held that such organizations are not in themselves illegal, but are entirely lawful.80

With reference to the Steers case, Jones continued:

This case was not brought against the association; it was against the individuals who committed the unlawful acts of coercion and intimidation. No charge was made at any time that the organization was an unlawful organization, and this case is no basis whatever for any contention that such organizations are now unlawful... No action was taken because its members were holding their crops for higher prices; no action was taken because they had pooled their crops and refused to sell; no action was taken until an innocent farmer outside the organization was forced by threats and coercion to withdraw from commerce the products which he had already consigned.81

The representatives in Congress from farm states were split into two groups on the action which should be taken, given the particular legal

80Ibid., p. 14011.
81Ibid., p. 14013.
situation. The majority of those expressing an opinion were in favor of explicit and complete exemption for agricultural producers. When the debate on the Sundry Civil Appropriations Bill of 1913 was in progress, Senator Gronna of North Dakota offered the following amendment, in lieu of the one which was eventually adopted:

Section 1 of the Act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraint and monopolies," is hereby amended by adding the following proviso: Provided, That this act shall not be construed to apply to any arrangements, agreements, or combinations between laborers made with the view of lessening the number of hours of labor or of increasing their wages; nor to any arrangements, agreements or combinations among persons engaged in horticulture or agriculture made with the view of enhancing the price of agricultural or horticultural products.82

In support of the amendment, Senator Gronna stated that if the Sherman Act has been so construed as to apply to such organizations, it was the proper thing to do to exempt such organizations from the operations of the law, rather than encourage violation of the law by providing that funds appropriated for the enforcement of the law should not be used in case certain classes violate the law.83 Gronna's amendment was not adopted on the grounds that it proposed general legislation on an appropriation bill.

Antitrust policy was an important issue in the presidential campaign of 1912, the last time it was to be a major issue, at least up to the present. Even before the campaign, Theodore Roosevelt had indicated his irritation with Taft on the matter of trusts after the government announced that it was initiating a suit against the U. S. Steel Corporation. In 1907 Roosevelt had approved the acquisition of the Tennessee Coal and Iron Co.

82 Ibid., p. 1189.
83 Ibid.
by U. S. Steel when he was told that a large New York financial institution would have to close its doors unless it could unload shares held in the company at a reasonable figure. This the Taft administration had indicated they regarded as an error. The Rough Rider took exception to this and to the general tenor of the antitrust campaign that Taft was waging. He claimed that nothing would be gained by the breaking up of a huge industrial organization which had not offended otherwise than by its size. Such large corporations, he held, unless guilty of wrongdoing, were to be handled by regulation, not dissolution.

In the Republican party, there was considerable progressive support for Roosevelt in 1912, and when the Republican convention, which was controlled by the Taft organization, renominated Taft, the progressives walked out to form a new party. The platform of the regular Republicans, nevertheless, was itself of a progressive nature. It claimed credit for the Acts of 1887 and 1890 and for consistent and successful enforcement of the laws. It promised supplementary legislation to define specific acts which marked attempts to restrain and monopolize trade and urged:

... that no part of the field of business opportunity ... be restricted by monopoly or combination, ... and that the right of every man to acquire commodities, and particularly the necessaries of life, in an open market, uninfluenced by the manipulation of trust or combination, may be preserved. 84

The National Progressive party held its first national convention later in the summer and, after nominating Roosevelt and Hiram Johnson, presented a radical reform platform to the electorate. Among the demands were that interstate corporations be subjected to strong national regulation.

It recognized the corporation as an essential part of modern business and that some concentration was both inevitable and necessary to efficiency. To provide regulation, it urged that a strong federal administrative commission be established to provide permanent active supervision over industrial corporations engaged in interstate commerce. Such a commission would enforce publicity of corporate transactions where they were in the public interest and would attack unfair competition. The platform also urged the strengthening of the Sherman Law by prohibiting certain practices which tended toward monopoly or were otherwise unfair.\(^{85}\)

At the Democratic convention, Bryan touched off some fireworks by introducing a resolution which stated the opposition of the party to the nomination of any candidate who was the "representative of, or under obligation to J. Pierpont Morgan, Thomas F. Ryan, August Belmont, or any other of the privilege-hunting and favor-seeking class," and further asked that the above named persons or delegates representing them withdraw from the convention. Since both Mr. Ryan and Mr. Belmont were members of the convention, this caused great excitement. When the resolution was modified so as not to ask for withdrawal, it was passed.\(^{86}\)

The Democratic platform of 1912 linked trusts with the tariff, asserting that no substantial relief could be secured until import duties on the necessaries of life were materially reduced, and the conspiracies broken up. Strengthening of the antitrust law was urged, with some specific acts to be declared illegal and to prevent any one

\(^{85}\)Ibid., pp. 292-293.

\(^{86}\)Ibid., pp. 257-258.
corporation controlling so large a proportion of any industry as to make it a menace to competition. No mention of the establishment of a federal commission to deal with unfair or monopolistic practices was made, but the judicial construction of the Sherman Act was condemned. This apparently had reference to the Standard Oil and Tobacco cases, in connection with which the platform also condemned the administration for not invoking the criminal provisions of the law against the officers of the corporations.\footnote{Ibid., pp. 261-262.}

Woodrow Wilson, a progressive of New Jersey, who had been elected in the great uprising against the Republicans in 1910, and who had caused that state's liberal corporation laws to be drastically amended, was the Democratic candidate. He had severed his connections with the conservative Eastern wing and courted the Western faction of the party, receiving Bryan's support. The campaign showed a sharp division between Roosevelt and Wilson on the subject of trusts. Wilson followed Brandeis' view that excessive size in corporations was in itself a bad thing because it gave them too much economic and political power. Roosevelt, who had always distinguished between good and bad trusts, emphasized that what was needed was not new legislation and prosecutions designed to break large corporations up, but rather Federal regulation of the trusts to preserve their good points and eradicate their evil. Woodrow Wilson roundly denounced the proposal of Roosevelt to create a Federal Commission to license and supervise trusts as an "avowed partnership between the government and the trusts."\footnote{Woodrow Wilson, The New Freedom (New York, 1913), p. 202.}
Wilson received an overwhelming electoral majority in the canvass that followed: 435 votes to 88 for Roosevelt and 8 for Taft. Of the popular votes, however, he had only a plurality, receiving only 6,300,000 or 42 per cent; Roosevelt had 4,100,000, or 27 per cent; and Taft, 3,500,000, or 23 per cent. The radical temper of the voters was indicated by the progressive or radical nature of all of the platforms and the almost one million votes received by the Socialist candidate, Debs.89

Wilson's inaugural address emphasized the need for tariff and currency reform, for further regulation of the trusts, and for measures benefiting labor and agriculture. One of the first results of the Democratic victory was the passage of the Underwood Tariff in 1913. The bill intended to reduce the high cost of living by placing wheat, corn, sugar, meat, eggs, and milk on the free list, along with raw wool, flax, and shoes. Iron ore, pig iron, steel rails, rough lumber, paper and wood pulp were also put on the free list in accordance with the theory of Wilson that "the object of the tariff duties henceforth laid must be effective competition, the whetting of American wits by contest with the wits of the rest of the world."90

Wilson's theory was not received very kindly by some representatives from farm states, with Senator McComber (later to be joint author of the Tariff of 1922) saying this about the Underwood bill:

You can just leave the American farmer out of this bill. If you want to be sincere with the American farmer, if you want

to be just with the American farmer, give him the American market for 10 years as you have given the same to the merchant or manufacturer for 50 years. He has earned these markets. You deprive him of those markets. You depress the value of his products. You subject him to the competition of the whole world in his own country, and then you add insult to injury by telling him he need not obey the law prohibiting combinations to fix his prices. If you fool him with that sop, then I shall admit that I have overestimated the intelligence of the farming public.91

In spite of such opposition, the Democratic majority passed the bill into law, in the conviction that tariffs and trusts were inseparable.

So, with the uncertain situation existing as to the legal status of agricultural marketing cooperatives under the antitrust law, with the upsurge of progressivism and radicalism, with the election of a President holding strong antimonopoly views, and with the Democratic platform of 1912 promising action, the stage was set for the passage of new antitrust legislation.

While prosperity had reigned almost unceasingly since 1898, the United States seemed to be in the incipient stages of a serious depression just before war broke in Europe. At first the onset of hostilities simply increased the nation's economic troubles. In 1914, unemployment jumped up over one million persons, being about 1,000,000 in 1913 and 2,214,000 in 1914. Total private production income actually decreased in 1914 by almost half a billion dollars; from 28,391 to 27,594 millions of dollars. An index of manufacturing production, based on 1899, fell from 198 to 186. Wholesale prices fell slightly, with only textiles, building materials, metals and metal products losing any significant ground. The general price index stayed constant.¹

In 1915, French and English war orders reversed the trend and a great wartime prosperity began which was much intensified by the actual American participation in 1917. The effect of the armistice was temporarily upsetting and there was serious unemployment for several months. This gave way soon to an extraordinary postwar boom lasting from the late spring of 1919 to the end of 1920. Exports of U. S. merchandise increased from $2,716,178,000 in 1915 to $8,080,481,000 in 1920. Private production income increased in the same period from 29,114 to 60,995 millions of

¹U.S. Bureau of the Census, Historical Statistics, pp. 65, 14, 179, 231.
dollars and unemployment practically vanished. The general price index based on 1913 increased from 103 in 1915 to 193 in 1920; and, in the same period, the wholesale price index based on the period 1910-1914 went from 101 to 226.2

Agriculture was by no means left out of the war prosperity. In the three or four years immediately preceding 1914, food production had begun to catch up with the abnormal demands of urbanization and the declining export market. As a result, farm prices were leveling off, and, had there been no war, the price curve might well have turned downward. Indeed, when war started in Europe in 1914, there was no immediate increase in exports. There was instead a decided drop, especially in wheat and cotton. Production in 1914 was greater than in 1913, and when exports decreased, prices dropped.3

When, in the spring of 1915, it became evident that Europe would purchase more from the U. S. than in pre-war years, confidence was restored, and agriculture boomed. The tremendous demands of war changed the situation completely. While the total volume of production soared sharply upward, prices not only kept pace, but ran far ahead in some cases. According to an index based on 1935-1939, agricultural production for sale and home consumption increased from 86 to 92, with over 25,000,000 more acres being brought into production in the period 1915-1920. Gross farm income increased from about eight billion dollars to sixteen billion dollars in the period, with a peak being reached in 1919

2Ibid., pp. 244, 14, 231.

3Ibid., pp. 246, 106, 108.
with a gross farm income of 17,710,000,000 dollars for that year. An index number of prices received by farmers based on 1910-1914 increased from 99 to 211.4

The entrance of the United States into the war speeded up tremendously the already abnormal demand for intensive food production. Assured by official propaganda that food would "win the war," farmers planted maximum crops and even brought into production land which would normally be marginal or sub-marginal. The policy of the government was to stimulate production and, with only a few exceptions, prices were allowed to rise. For a year and a half after the end of the war the wave of farm prosperity continued. In fact, except for a flurry of excitement at the time of the unexpectedly early armistice, prices remained good on most farm commodities throughout 1919 and into 1920. The obligation to feed the Allies had ceased, but the demands of war-ravaged Europe for American foodstuffs continued. The price of wheat was supported by law until May 31, 1920, but such guarantees as were given on hog prices were removed in the spring of 1919 without a serious price break. However, drastic changes were taking place in the farm economy, with farmers being diverted from their normal habits, and while now and then a warning voice pointed out the dangers of such fundamental changes to meet a merely temporary emergency, for the most part the food producers of America acted as though the changes made during the war would be permanent.5

4Ibid., pp. 98, 99.
During the war, a powerful agency for economic mobilization was the Food Administration. Under Herbert Hoover as Food Administrator, and with the authority granted by the Lever Act of 1917, control was established over agricultural products and the materials necessary for producing them. The bill fixed a minimum price of two dollars for a bushel of wheat for the 1918 crop, and empowered the President to set the minimum price in advance for succeeding years. Hoarding and profiteering were severely dealt with, and the activities of millers were conducted under a strict system of licensing. The Administration set a fixed price for the 1918 wheat crop of $2.20 a bushel, which was more than the minimum guaranteed by the Lever Act. A government-owned Grain Corporation was established to stabilize the market and a Sugar Equalization Board was later established for a similar purpose.

Just before the World War the idea of county agents, or "agricultural experts," had taken root. Originally financed by commercial companies for the purpose of increasing farm production and thereby creating a better farm market for city goods, the idea was later taken over by the Department of Agriculture and developed into the present system of agricultural extension, financed jointly by state and federal funds. To back up the work of the county agents, a few county Farm Bureaus had been formed, composed chiefly of farmers who were interested in improving their farm practices and who welcomed the help of a scientifically trained man located in their county. Before the end of the war, a few states had federated their county Farm Bureaus into state organizations. Then, the central idea was wholly educational; the purpose was to help farmers solve their individual problems of
production on their own farms. This movement had vitality and became a powerful force in agriculture.6

Another significant change in the agricultural scene was the growth of agricultural cooperatives. By the time the First World War broke out, the task of forming a cooperative of any kind had become far less difficult than in the formative years. This was due in considerable part to laws enacted for the legal protection of cooperatives, including the Clayton Antitrust Act of 1914. The years 1915 to 1921 saw the formation of more farmers' cooperative associations than any like period either before or after. One authority estimated that there were at least 14,000 farmers' buying and selling associations in existence in 1920.7 Terminal livestock marketing companies were added to the traditional types of cooperatives in this period.

While the combination movement had been pretty well exhausted a decade before, there were still a few industrial consolidations of some importance in the period 1914 to 1920, such as Union Carbide and Carbon, formed in 1917, and Sinclair Consolidated Oil, established in 1919. There was, however, another type of combination which gained popularity in this period which did not take the form of a holding company, merger, consolidation, or "community of interest."

When other checks to combination appeared, corporations turned wholeheartedly to the trade association, and the trade association

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movement boomed during and after the First World War. A Chicago lawyer, A. J. Eddy, wrote a book entitled The New Competition in 1912 which gave impetus to an "open-price" movement by the associations. Its title page had these words emblazoned on it: "Competition is War and War is Hell." Eddy's belief was that cut-throat competition could be avoided and business stabilized if producers would provide each other with complete information about all their transactions—about sales, customers, shipments, production and prices. 8

During the First World War, the federal government fostered the creation of trade associations. Military success depended on economic success, which in turn meant that the government must deal with agencies representing whole industries rather than single units within industries. 9

Further encouragement to the organization of trade associations came with the Webb-Pomerene Act of 1918. The Federal Trade Commission had recommended such legislation in order to permit the development of cooperative organizations necessary to enable American producers to compete more equally with foreigners in export trade. The heart of the act is the provision that nothing in the antitrust laws shall be construed as declaring illegal:

an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or any agreement made or act done in the course of export trade by such association provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade

of any domestic competitor of such association. 10

A more important legislative exemption, insofar as the farmer was concerned, was the Esch-Cummins Act (the Transportation Act of 1920). There was extra significance in the fact that Senator Cummins of Iowa, one of the Granger states, who had always been chary of giving "shelter to monopoly" was the co-author of the bill. This act legalized pooling agreements when approved by the Interstate Commerce Commission and provided for the consolidation of the railroads into a limited number of systems, thereby amending Section 5 of the Act of 1887. In carrying out any arrangement duly approved by the Commission, the railroads were relieved from the operation of both state and federal antitrust laws. There was no complete reversal of policy in the act, since pooling agreements were to be authorized by the Commission only if they did not unduly restrain competition, and competition was to be preserved as fully as possible in the consolidation plan. Furthermore, an effort was made to emancipate railway operation from financial dictation. Interlocking directorates were prohibited, except where the Commission permitted. Provisions making it unlawful for officers or directors of carriers to profit from dual railroad and banking connections, and the authority of the I.C.C. to regulate acquisitions of control, consolidation, and security issues, were also designed to prevent the exploitation of carriers by financial groups. 11

The progressive movement, which was so strong during the elections

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10 40 Stat. 516.
11 41 Stat. 389.
of 1912, died slowly during the war years. While liberal legislation continued to be enacted, the crusading spirit of earlier years was gone, and eventually, as the war continued and the U. S. was actively engaged in the fighting in France, the temper of the people changed from indifference to outright hostility to progressivism.

After the Progressive party disappeared, with Roosevelt's refusal to run as its nominee in 1916, there was an effort to build a new party based primarily on agriculture. The Farmer-Labor party which appeared in the 1920 elections was backed to some extent by the Non-Partisan League, which originated in North Dakota and spread to surrounding states. The League had succeeded in capturing control of the Republican party in North Dakota and with it control of the state government. It enacted a program providing for, among other things, state-owned grain warehouses, elevators, flour mills and bank, hail insurance, regulation of railroad freight rates and a graduated income tax. The League proceeded on the assumption that cooperative marketing and buying in themselves would never defeat the grain and milling "trusts," but that a farmer-controlled government could, if it erected a state-owned industry on a scale that was big enough to have an effect on the market price. The League declined after the resignation of its founder, A. C. Townley, from the presidency in 1922. Although Townley had socialist leanings, he did not favor the establishment of a new party and those in the League who did gravitated to the leadership of La Follette.12

The first great revision of the antitrust laws came about early in

12Saloutos and Hicks, op. cit., Chaps. 6 and 7.
Wilson's first term in office. In the progressive climate of opinion then prevailing, the Administration, backed by solid majorities in Congress, began its reform of the Sherman Act. The concrete form of the administration program for trust legislation was contained in President Wilson's message to Congress on January 20, 1914. So far as substantive changes were concerned, his program was an elaboration of the ideas presented in the campaign. In expressing his ideas during the campaign, he had indicated that the worst vice of trusts was their effect in preventing little men of enterprise and ingenuity but limited capital from making their way to success in the American system. He felt that "item by item we can put into our statutes what constitutes restraint of trade, not leaving it to courts for generalizations which may fit some cases and not others."

As regards means of putting such a program into operation, Wilson advocated the establishment of a commission, something which the Democrats had left out of their platform and their campaign. He qualified this recommendation, however, by his opposition to any federal agency which would make terms with monopoly or assume any control which would make terms with monopoly or which would make the government responsible. The commission was conceived as an instrument for investigation and publicity, and for the effective enforcement of a policy of maintaining competitive conditions.

There was one group which supported amending legislation which

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favored the broad policy of the Sherman Act. The immediate reaction of this group to the Standard Oil and Tobacco decisions, with their concomitant "rule of reason," and the supposed fiasco of the subsequent "dissolutions," was a desire to repeal the rule of reason and to replace the uncompromising prohibitions against all attempted monopolies and restraints of trade into the Act. Well represented in Congress, although not organized in any cohesive form in the country at large, this group also felt that the experience of two decades warranted extension of the statute to forbid specific practices and methods of organization which had been used to intimidate or absorb competitors. Its leaders included Louis D. Brandeis, Senator Cummins of Iowa, Representatives Clayton of Alabama and Stevens of New Hampshire.\(^\text{14}\)

There were two streams of thought involved. The first contemplated substantive modification of the old law, specifying prohibited practices and eliminating the uncertainty introduced by the rule of reason. The second desired new administrative machinery, a specialized body to aid in law enforcement, to supervise the competitive system. These conceptions were presented in a number of bills, but were finally fused into two separate bills, one dealing with the Federal Trade Commission and the other, named for Chairman Clayton of the House Judiciary Committee, grouping together a host of provisions, including prohibition of two specific types of trade practices. The existence of two different approaches, and two different bills, indicated changing emphasis in antitrust legislation. For, while the legal attack on "unfair methods of

\(^{14}\) Fainsod and Gordon, \textit{op. cit.}, p. 480.
competition" was intended to eliminate business methods which operated to stifle competition and which might lead to monopoly, the law was also concerned with practices which had no direct relation to monopolizing.

Very important in the new legislation was the recognition of demands of organized groups interested especially in single phases of antitrust policy. The American Federation of Labor demanded complete exemption from the Sherman Act as well as restrictions on the use of injunctions in labor disputes. To their proposal, the Federation added exemption for agricultural organization, thus hoping to enlist the support of organized farmers. This piece of strategy was unnecessary, since Congressmen from farm states were looking after their own.

Representative Webb of North Carolina introduced an amendment to the Clayton bill, which later became Section 6 of the Clayton Act. The amendment read as follows:

Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profits, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.\(^{15}\)

There were other amendments, however, one of which was proposed by Representative Thomas of Kentucky, and read as follows:

The provisions of the antitrust laws shall not apply to agricultural, labor, consumers, fraternal, or horticultural organizations, orders, or associations.\(^{16}\)

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\(^{15}\)Commerce Clearing House, *Anti-trust Laws with Amendments*, p. 23.

There was also an amendment offered by Representative Nelson of Wisconsin to the effect that the antitrust laws shall not:

be construed to forbid the existence and operation . . . of cooperative associations formed by farmers for the purpose of buying more cheaply and of marketing their products to better advantage.\(^{17}\)

In opposition to the Webb amendment, Representative Nelson said:

This bill also contains a provision which is represented to the farmers and workingmen as righting a great wrong. It is pretended that the organizations of the toilers of the land formed to better their conditions of life are no longer to be treated as if they were trusts; but, again, upon closer examination of the bill we find the truth. The partisan sub-committee, in fact, rejected the demand of organized labor that its activities shall be exempted from the antitrust laws. Farmer organizations are legalized only when they do not have capital stock and are not conducted for profit. This makes impossible cooperative buying or selling by farmer organizations. Public-spirited men appeared before our committee to plead that nothing should be done to check the movement of cooperation among the farmers; but the partisan subcommittee, acting, no doubt, after consultation with the President, would not consider any proposition exempting from the antitrust laws farmer organizations that have capital stock or are conducted for profit. Congress sent a commission to Europe to study methods of encouraging cooperation among the farmers. The Department of Agriculture is constantly urging the farmers to cooperate; but this trust bill, claimed to be framed in the interest of the farmers, refuses to legalize such cooperative efforts to better their market conditions.\(^{18}\)

Nelson warned the Democrats that such a piece of legislation would not endear them to the farmers, who wanted cooperatives and exemption:

The great army of farmers—will they thank you for this legislation? Not at all. They do not love you overly much now. You turned them over in your tariff bill to the tender mercies of competition with foreign countries. Through their representatives and organizations they joined labor in asking that the products of their toil be not classified with capital.

\(^{17}\)Ibid.

\(^{18}\)Ibid., p. 9170.
Organisations of farmers are not trusts, no more than unions of laborers, and the Sherman law was not intended to apply to them. Farmers have acted separately and individually heretofore, and in consequence the return for their toil has been a pittance. Our progressive farmers everywhere are beginning to understand the value of acting together. Evidence was presented to the committee that East and West, North and South the farmers are cooperating to buy in larger quantities and to secure better prices through collective bargaining, but this bill puts this movement of the farmers under the ban of the law. 19

Neither the Thomas nor the Nelson amendment succeeded.

Those in opposition to complete exemption (or to any meaningful exemption) included, of course, Representative Webb of North Carolina, the sponsor of the amendment which eventually succeeded. Mr. Webb, said this concerning exemption:

We wanted to make it plain that no labor organization or farmers' organization organized for mutual help without profit should be construed to be a combination in restraint of trade or a conspiracy under the antitrust laws. Now, I will say frankly to my friend that we never intended to make any organizations, regardless of what they might do, exempt in every respect from the law. I would not vote for any amendment that does do that. 20

Representative Webb was supported in his position by Senators McCumber of North Dakota, Pomerene of Ohio, Cummins of Iowa, Jones of Washington, West of Georgia and Representative Floyd of Arkansas.

The Clayton bill also had some provisions to railroads, reiterating the Congressional policy in favor of the maintenance of competition among railroads and provided some control over transactions between railroads and the firms with which they did business when conditions of interlocking interest prevailed. In ultimate passage, the measures were supported by

19 Ibid.

20 Ibid., p. 9567.
the great bulk of the Democratic party, with the Progressive Republicans voting for them but urging their inadequacy, and the regular Republicans opposing them as dangerous encroachments on business freedom.

Section 6 of the Federal Trade Commission Act delegated broad powers to the F.T.C. It was authorized to gather and compile information concerning the organization, business, conduct, practices, and management of any corporation engaged in interstate commerce and its relations to other business firms and individuals. It could require corporations to file annual or special reports furnishing information relating the matter of organization and practice. Upon the direction of the President or either House of Congress, it was authorized to investigate and report the facts concerning any alleged violation of the antitrust laws. 21

While Congressional members from agricultural states were not active supporters of the Federal Trade Commission bill, they did not hesitate to secure the services of that organization after it had been established. Before 1921, the Commission had investigated and reported on the fertiliser industry, the beet sugar industry, milk and milk products, the meat-packing industry, the leather and shoe industries, the causes of high prices of farm implements, commercial wheat flour milling and the grain trade. The results of this activity were to be seen in legislation passed during the twenties.

There were few illusions held by agricultural spokesmen in Congress about Section 6 of the Clayton Act and its exemptions. It merely codified

21 38 Stat. 721.
the law as established by court decisions and did not render any greater exemption from the antitrust laws than was already enjoyed. Any illusions which might have remained were dissipated when a secondary boycott used by a Maine potato association to coerce outsiders was held not to be lawful conduct in obtaining legitimate objectives under the Clayton Act.

An indictment was returned in 1915 in the District Court (Mass.) against Carl C. King and other members of the Aroostook Potato Shippers Association, charging a conspiracy to boycott producers, receivers, or dealers of potatoes who were adjudged undesirable by the association and those who dealt with such undesirable. On May 25, 1917, the defendants were found guilty and fines aggregating $3,500 were imposed. This was the first case since the passage of the Clayton Act where a secondary boycott was involved, and it settled the question of whether or not the dictum announced by the Court in the Danbury Hatters case had been changed by the Act of 1914. The court held that the Clayton Act did not exempt such activities from the Sherman Act, although the association as such was not to be held as a violation of the antitrust laws.

Another case involving an agricultural association was decided in this period, confirming the decision in the King case. An indictment under the Sherman Act had been returned in 1914 against growers and distributors of cantaloupes, organized in the Western Cantaloupe Exchange, charging a combination to restrain and monopolize trade in cantaloupes. This indictment was dismissed and relief was sought by a bill in equity.

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Such a petition was filed in 1918 in the District Court (Northern District, Illinois) against the exchange, alleging a combination to restrain interstate commerce and trade in cantaloupes grown in the Imperial Valley of California by means of contracts between the exchange and its members. A consent decree was entered the same day enjoining the further operation of the combination.\(^{24}\)

After President Taft had vetoed the Sundry Civil Appropriations Bill which had provided that funds for the Department of Justice should not be used against labor and agricultural organizations, it was passed in the first session of the Sixty-third Congress and Wilson had approved it. Identical provisions with this one were part of all appropriations bills providing antitrust funds until 1923. These provisions were to have rendered agricultural associations immune to prosecution by the United States, although they were still to be liable to damage suits by private parties. It is significant that these continued after the passage of the Clayton Act, indicating the dissatisfaction with the declaration concerning agricultural associations in that law, and that the provisions were not discontinued until after the passage of the Capper-Volstead Act of 1922 which effectively emancipated such associations from the antitrust laws.

There was antitrust activity in the period against combinations of the farmer's "enemies," indicating that the picture was not all black insofar as the application of the antitrust laws went. The "Harvester Trust" was attacked for the first time in the courts, and the "Meat

\(^{24}\)Ibid., p. 114.
In the same year, an agreement of the company, the court ordered the

in all matters, especially concerning

subsequently obtained, separate, distinct, and independent corporations,

decree as to which a plan of reorganization would occur at least three

months after July 19, 1972, the court heard the company to be liquidated and ordered the

purposes of stock, formed a corporation in restraint of trade. On

ery and improvements need in the United States, and by consolidation and

excess and efficiency per cent of the harvested and exported wheat—

Court (Main) in the case against the company corporation, producing between

plunge, and the decision the Department issued a petition in the direction

to accept any decree which respected the important moment and bearing

breaks in the company into three XYZ companies. The company, therefore,

conferences in which the Department proposed a plan for a common decree

Investigation of the company by the Department of Justice led to

following years improved the position. This

results in the acquisition of companies in common

company in control of about eighty-five per cent of the production of

new firm of the firms in the company was set up as the result.

Trust never proceeded again.
this had been done, the company dropped its appeal to the Supreme Court. The Department of Justice and the company finally reached an agreement which left the McCormick and Deering plants united and required the company to sell some relatively unimportant plants, and a final decree was entered November 2, 1918, dissolving the combination. 27

There was a widespread feeling that the meat-packers had "escaped" when they had been prosecuted during the Taft administration, and when the war started, the feeling mounted, especially among the livestock producers who felt that the "monopolistic" position of the packers caused low prices for their product. The demand for investigation of the industry drew to such proportions that President Wilson ordered the Federal Trade Commission to investigate the industry from the "hoof to the table" to determine whether or not there were any "manipulations, controls, trusts, combinations, or restraints out of harmony with the law or the public interests." 28 Shortly after the F.T.C. had completed its investigation and made its recommendations, bills were introduced in both houses authorizing the President to acquire and operate the large stockyards which the commission had recommended be taken over.

The Department of Justice also concerned itself with the meatpacking industry, and was preparing to prosecute the combination in 1919, but agreed to a compromise on the request of the large packers. The Department stipulated, after a conference with the packers, that they must agree to go out and stay out, directly and indirectly, from

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27 Consent Decree, District Court, Minnesota, October, 1918.

all the lines of business unrelated to the meat business, and in addition must submit to an enforceable injunction against any act that would constitute a violation of the Sherman Antitrust Law. This eventually led to the drawing up of the Packers' Consent Decree.

The consent decree entered against the packers was the most far-reaching one in antitrust law history. A petition was filed under the Sherman Act and the Clayton Act in the Supreme Court of the District of Columbia on February 27, 1920, against Swift & Co., and four other large meat-packing companies, their subsidiaries and certain of their officers and directors, alleging that the defendants had combined to restrain trade and to suppress competition in the purchase of livestock and in the sale of dressed meats and, to achieve the purposes of the combination, had bought stock in competitive companies and public stockyards, substantially lessening competition in violation of Sec. 7 of the Clayton Act, and had acquired and operated retail meat markets, stockyard terminal railroads, and market newspapers; and further alleging that the defendants were attempting to dominate trade in products not related to the meat-packing industry. By pre-arrangement, the suit was not contested, and a consent decree was entered the same day, enjoining the further operation of the combination and prohibiting the packers from, among other things: holding stock in public stockyard companies, public cold storage plants, stockyard terminal railroads, or market newspapers; from handling and dealing in commodities not related to the meat-packing business; and from selling meats, fresh milk, and cream at retail.29

The government was less successful in a bout with the "Grain Trust." A petition under the Sherman Act had been filed in the District Court (Northern District, Illinois) against the Chicago Board of Trade, alleging a conspiracy to fix the prices of all corn, oats, wheat and rye when the Board of Trade was not in session. The combination was declared illegal, and its further operation was perpetually enjoined on December 28, 1915. The Supreme Court reversed the decree in 1918. It upheld the rule of the Chicago Board of Trade, the world's leading grain market, which forbade price changes on grain "to arrive" in the period between the close of one market session and the next opening, although actual trading during these hours was common. The "rule of reason" was applied, no showing having been made by the government of any effect upon prices in general or the amount of grain shipped. "The true test of legality," said Justice Brandeis, who could by no means be regarded as pro-monopoly, "is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition." The Court found that the rule substituted a public market for private bidding, brought buyers and sellers into more direct relation and otherwise improved the market. Having reasoned thusly, no important dent was made in the law by the Court, and the words of the Court were plead unsuccessfully in subsequent cases.

There were also decided in this period two cases concerning industries which had no close relation to agriculture, but the decisions in

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30 *U.S. v. Chicago Board of Trade*, 1 D. & J. 413.

31 *Chicago Board of Trade v. U.S.*, 246 U.S. 231.
the cases contained general rules which would be applied to combinations which did affect agriculture directly. The second Shoe Machinery case, decided in 1918, indicated that the Court would not regard large size as an offense, for in this case, there was a combination of partially competing firms having control over almost ninety-five per cent of the output of the industry. The Court was unwilling to dissolve the combination, finding that the magnitude of the organization was both the result and cause of efficiency and also finding that the charge that the large size had been used oppressively not sustained.\(^{32}\) The decision concerning large size was reaffirmed in the United States Steel Co. case in 1920.\(^{33}\) The Court first looked at the element of intent. While it was conceded that the intent to establish a monopoly had been present on the part of the organizers, the fact that the monopoly had not been achieved was sufficient to prevent the Court from holding the company guilty on that account. Concerning the element of great size, the Court said:

The Corporation is undoubtedly of impressive size and it takes an effort of resolution not to be affected by it or to exaggerate its influence. But we must adhere to the law and the law does not make mere size an offense, or the existence of unexerted power an offense. It, we repeat, requires overt acts and trusts to its prohibition of them and its power to repress or punish them. It does not compel competition nor require all that is possible.\(^{34}\)

The tolerant attitude toward large aggregations of capital manifested

\(^{32}\)U.S. v. United Shoe Machinery Co., 247 U.S. 32.

\(^{33}\)251 U.S. 417.

\(^{34}\)251 U.S. 451.
in the Steel and Shoe Machinery cases had the effect of discouraging prosecutions against consolidations in industry. Not only did the government dismiss appeals to the Supreme Court in a number of cases, but few prosecutions were undertaken thereafter. The only subsequent case involving a large manufacturing combination that the Supreme Court had an opportunity to review, before the Alcoa case, was that relating to the International Harvester Company. And there the Court was to reaffirm the position taken in the Steel case.

While the consent decrees in the Harvester and Meat-Packing cases seemed to be victories for the agrarian forces in the antitrust field, and while the activities of the Federal Trade Commission held promise, there was little other antitrust activity during the period to give comfort to the farmer. The Clayton Act was a disappointment insofar as exemption for agricultural associations was concerned, and cases had been instituted against agricultural associations despite the proviso in the Sundry Civil Appropriations bills. The growing cooperative movement and the agricultural depression of the twenties was to see new emphasis laid on agricultural combination, attempts by producers to monopolize agricultural markets and the securing of exemption from the antitrust laws.
The years 1921-1932 were years of almost unrelieved depression for agriculture, and the situation deteriorated precipitously toward the end of the period. There was a severe primary post-war depression in the entire economy in 1921. In 1921 there were almost five million unemployed, more than had ever been unemployed previously. Total income from private production fell from more than sixty billion dollars in 1920 to less than forty-nine billion in 1921. The manufacturing production index, based on 1899, fell from 242 to 194 in this time. Prices generally fell about fifteen per cent, with wholesale prices falling about forty per cent.\(^1\)

The depression in industry was short-lived, although grave. Recovery set in during 1922; by 1925 total private production income had caught up to the 1920 level, and by 1928 it had risen to more than sixty-five billion dollars. Unemployment declined to an almost insignificant level of less than half a million in 1929. Physical production in manufacturing almost doubled. Prices, both general and wholesale, remained fairly stable, with general prices recovering only slightly from the low of 1921.\(^2\)


\(^{2}\)Ibid., pp. 14, 65, 179, 231.
While there was much solid achievement during the twenties, such as gains in per capita real income and in the real wages of American labor, and in the increased efficiency of industry, there were certain unfavorable economic developments. There were the sick industries, including agriculture, the over-extension of credit and the real estate and stock market booms.

During Coolidge's occupancy of the White House stock-market prices had risen almost without interruption. Up to 1927 the advance had been normal—business was expanding and profits increasing. Thereafter, prices of common stock kept increasing, even though business activity had leveled off. Hoover's victory in November, 1928, led to a large spurt in those prices and, in September of 1929, the bull market reached its peak. The Federal Reserve Board had tried to stem the tide by raising the discount rate in 1928, thereby hoping to reduce loans by banks for speculation in the market, but to no avail.

The stock market collapse in September and October of 1929 was just the beginning. Manufacturers found their orders falling off alarmingly, with the index of total production in manufacturing based on 1899 falling from 364 in 1929 to 197 in 1932. Business failures and their liabilities mounted at an increasing rate, reaching over $100,000,000 in April of 1932 alone. While weak companies were forced out of business, stronger ones operated part time and with sharply reduced personnel. One authority states that, in 1932, over eleven million persons were unemployed. National income fell from 87.4 billions of dollars in 1929 to 41.7 billions in 1932.
Prices in general fell from an index of 179 in 1929 to 132 in 1932. The railroads were placed in a desperate situation by the declining business activity, and one-third of the nation's mileage passed into receivership. Bank failures increased, and foreclosures were pressed in order to secure funds with which to keep bank doors open. Thousands of persons, including farmers and home owners, lost their property.

The prosperity which had returned generally in 1922 did not return to agriculture. Gross farm income, which had risen to a height of 17.7 billions of dollars in 1919, fell to a low of 10.5 billions in 1921 and never rose to more than 13.8 billion in the rest of the decade. After 1929, it receded to 6.4 billion dollars in 1932, a lower figure than prevailed in the five prewar years. From 1925 to 1929, gross farm income was fairly stable, staying between 13 and 14 billions, whereas before the war, it had been quite stable at lower figures of between 7 and 8 billion from 1910 to 1915.

Between December 1, 1919, and the same date in 1920, wheat prices fell from $2.13 to $1.43 a bushel. The next year saw a further drop to almost $0.90 per bushel. Wheat recovered to some extent during the decade, but 1925 saw a peak reached at about $1.40 a bushel and thereafter the price declined, increasing the rate of decline in 1929 and finally arrived at a low of $0.38 for the season's average in 1932. Corn prices had a similar experience, dropping from an average price of $1.51 in 1919 to one of $0.64 in 1920. After 1921, corn prices were fairly stable at

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3 Ibid., pp. 179, 349, 65, 12, 231.
prices ranging from $0.73 to $0.84 a bushel, with the exception of the short crop year of 1924, which saw an average price of $1.06 a bushel. After 1929, the price of corn per bushel fell to a twentieth century low of $0.32. The average price for cotton dropped more than half in the period 1919-1920, being $0.35 a pound in the former year and $0.16 the latter. There were four years during the twenties when the cotton price was $0.20 or more, but they began to fall in 1928 and reached a low of five and two-thirds cents during 1932.5

While the period 1910-1914 is looked upon as a period of agricultural prosperity, it is a fact that farm prices, income and exports were greater during most of the twenties than they had been before 1915. Furthermore, technological progress was being made. New methods made possible the farming of vast areas in the semi-arid regions. Gasoline tractors, new combines, disk plows, power drills, new corn planters, cultivators, pickers and huskers made their appearance in great numbers. Seed and livestock breeding were improved. There were, however, complaints in great number from the farmer.

From 1910 to 1920, with agricultural prosperity and the temporary war demand, more farms had been established and the farm acreage of the nation had been increased by almost 80,000,000. From the year 1920 to 1930, the number of farms decreased, but acres of land in farms increased from 956 to 987 million as farms grew larger.6 The tremendous

5Ibid., pp. 106, 108.

technological advances in combination with the increased acreage resulted in price-depressing amounts of production. A "surplus" problem arose. Domestic demand for farm products failed to expand as rapidly as in former generations, due to the decline in immigration, changes in diet and styles, and removal of the draft animal from the farm scene.

The problem was brought into sharper focus as soldiers in Europe took up the plow after the war. New lands were being brought into cultivation in other parts of the world. While agricultural exports were greater than prewar, they no longer held the commanding place they had before 1900 relative to other exports. Whereas up to 1900 the leading exports had been cotton, wheat and meat, by 1929 only cotton maintained a position among the front-runners—wheat and meat exports had been far surpassed by petroleum products, machinery and automobiles.

There were other complaints as well. While farm prices had gone up, their ratio to prices of manufactured goods was lower than in the prewar period. Much land had been purchased at inflated values during the war, and the burden of the debts became pressing. Farm taxes, wages for farm labor, machinery prices, building costs, freight rates and distribution costs had also risen with farm prices and income. As the feeling arose that the farmer was receiving something less than an equitable share in the postwar prosperity, farm organizations were established or strengthened to meet the new challenges.

The newest farm organization on the scene was the American Farm Bureau Federation, and its rise marked the entry of an organization which was different from and even hostile to the Non-Partisan League, the Equity and the Farmers' Union. The form and objectives of the organization were
made clear at the organizational meeting in Chicago in 1919. Representatives from some sections of the country favored an educational program, but those from the Middle West intended that the new federation help solve the marketing problems of the farmer. Henry C. Wallace, editor of Wallace's Farmer and later Secretary of Agriculture, voiced their sentiments when he said:

If the purpose of this organization is to carry on the sort of work which Farm Bureaus have been doing heretofore—which is for the purpose of education and for the purpose of stimulating production... then the Farm Bureau organization will serve no great useful purpose; in fact, it will do harm. But if this is anything at all, it is a business organization to secure economic justice for farmers. . . . This federation must not degenerate into an educational or social institution. It must be made the most powerful business institution in the country.7

In the beginning, the Farm Bureau placed considerable faith in cooperative marketing and commodity-pooling arrangements to solve the marketing problems of the agriculturalist. A department of cooperation was set up in the Federation, with one major objective being the unification of local commodity cooperatives into a national marketing program. From 1920 to 1924, the Bureau looked upon cooperatives as the big hope of the farmer.

The Farm Bureau planned a national marketing program, but there were conflicting views on the course that it should take. Some wanted an arbitrary price-fixing program based on the principle of "cost of production plus a reasonable profit." Others sought the abolition of private grain exchanges and the building of public warehouses. Aaron

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Sapiro introduced a radical marketing plan involving monopolistic control over the entire wheat crop. Farmers who raised this crop were to form an association and pool their crops; the pooling member was to bind himself by contract to deliver his products to the associations for a period of years.  

A Committee of Seventeen was appointed to investigate grain marketing and to form plans for cooperative grain marketing through one or more central organizations of grain exchanges. This committee recommended that an organization called the United States Grain Growers, Incorporated, a nonstock, nonprofit association of grain growers, be established (such organizations being legalized by the Clayton Act). Each member had to pay a fee and sign a contract to sell his grain through the national agency for a period of five years.

The greatest dispute centered about the pooling issue. Some wanted a compulsory pool, arguing that unless the control of all grain was put into the hands of the sales agency, the benefits would be negligible. The opponents of such a plan insisted that the general public would react unfavorably to a compulsory pool on the grounds that it would be a monopoly. Clifford Thorne, the general counsel of the Farmers' National Grain Dealers Association, questioned the legality of a compulsory pool and expressed the belief that the courts could easily consider this a case of unreasonable restraint of trade. Another fear was that the farmers would not be willing

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8Ibid., pp. 150-151.
9Ibid., pp. 153-164.
to join a compulsory pool. The issue was settled by a vote against compulsion.10

The U. S. Grain Growers, and a similar organization, the Grain Marketing Company, were both unsuccessful. They were opposed by the grain exchanges, especially the Chicago Board of Trade, and were even opposed by other farm groups. They also experienced the financial difficulties and poor management that so many other cooperatives had, and both finally went under.11

The concern of the Farm Bureau with large-scale marketing also manifested itself in the Farmers' Livestock Marketing Committee of Fifteen. It established the National Livestock Producers' Association system, which involved a number of cooperative livestock marketing associations at terminals. These were more successful than the grain associations, and brought a number of benefits to livestock producers, although it did not greatly increase their profits.12

The Farmers' Union gained in influence during the twenties, although not achieving the power that the Farm Bureau enjoyed. A contemporary of the Equity and Non-Partisan League, it had blossomed when those organizations had spent their force, taking over many of the cooperative enterprises established by the earlier organizations, such as the Equity Cooperative Exchange, as well as a considerable portion of their

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11 Saloutos and Hicks, op. cit., pp. 299-301.
12 Ibid., pp. 304-307.
membership. It also created new cooperative organizations itself, and these were quite successful. The Farmer's Union Terminal Marketing Association, which was built on the old Equity Cooperative Exchange of St. Paul, a grain marketing association, even acquired holding-company status when it organized a Delaware corporation known as the Farmers' Union Exchange.  

The Union carried on other activities as well. It had tried to put floors under prices by setting levels below which its members were asked not to sell. It advocated production controls and the construction of a system of warehouses in which to store products to enable it to carry out its minimum price efforts by holding some produce of the market. It appealed mostly to the type of farmer who did not respond to the more conservative organizations and many advocated the formula of cost of production plus a reasonable profit. 

A reason, other than its smaller membership, why the Farmers' Union did not have as much political influence as the Farm Bureau, lay in the fact that it was never a well-integrated body, being described as "a loose federation of state organizations." There was a split in the late twenties and early thirties which militated against a united political front. There was a small group, led by a faction in the Nebraska Farmers' Union, which was conservative. Not only did it not believe in governmental aid and controls, it urged the return of a decentralized economic order in which cooperatives and small business would play a

13Saloutos and Hicks, op. cit., Chap. 8.
14Ibid.
leading role. Another group, with its major strength in Minnesota, the
Dakotas, Montana and Wisconsin, was enthusiastic about federal aids and
the bringing about of political pressure to secure those aids. Almost
all, by whatever means it was to be accomplished, were agreed that the
goal of the organizations should be cost of production plus a reasonable
profit.15

During the twenties industrial organizations also expanded, though
not for the reason that they were not prosperous. They shared the same
basic objective, however; to organize to create and maintain a prosperous
condition. There were a large number of giant combinations, in the form
of both mergers and holding companies taking place in the electrical
utility, motion picture, radio, automobile, food processing, retail,
banking and railroad industries. Despite the increased combination
which took place between 1922 and 1929, the phenomenon of one large
corporation threatening to monopolize a whole field of economic endeavor
was less characteristic of the twenties than it had been before the war.
Both Standard Oil and U. S. Steel now controlled less of the industry
than when they had been established. What had developed was an oligo-
polistic situation wherein three or four great companies in a field
dominated the industry.

Beyond the outright consolidations and establishment of holding
companies, there were developments prejudicial to price competition.
Price leadership developed, whereby the largest firm in a field would
set the price to be charged by all major firms, with price cutting

15 Ibid., pp. 252, 545.
being regarded as unethical. Competition took the form of advertising rather than price. This development was enhanced by a great increase in the number of trade associations, which moved to control the market.

The catchword of the associations was "constructive cooperation."

Price agreements were taboo, since such loose arrangements were consistently held illegal under the antitrust laws. However, the officers of trade associations, as well as other cooperative institutions, preached the sins of price cutting, and the moral was obvious to businessmen. There were outright attempts to maintain uniform prices by exchanges of information among member firms, a practice known as "open price policy," which was endorsed by Secretary of Commerce Hoover and which was not wholly condemned by the courts.

The attitude toward business by the Republican administration was that the government should give them pretty much of a free hand. New appointments to the Interstate Commerce Commission and the Federal Trade Commission were given to men sharing this philosophy and after 1925 these organizations did not actively seek to promote price competition, with the Republican appointees in the majority on both commissions. The "new guard" viewed its function as friendliness to business and gave aid in eliminating those competitive practices which businessmen themselves disfavored. There were even some gestures made toward constructing machinery for business "self-regulation." The outlook of the F.T.C. in the latter part of the decade was indicated by a statement made in one of its reports:

Opposition to "price-cutting" is very frequently voiced by trade association representatives. Such opposition has its good aspects. It is unfortunate that competition is so
largely a matter of prices, rather than of quality and service. A shift in emphasis is desirable.\textsuperscript{16}

The postwar depression gave rise to a burst of political activity on the part of the agrarian, the extent of which had not been seen since the long depression following the Civil War. Such activity had heralds in such statements as that of Senator Hamilton Lewis, who declared in the fall of 1918 that:

We are going to hear from the farmers as never before. They will tell us that their profits have been limited and their businesses regulated during the war, while others have been getting rich because of the war, without restraint. This protest of the farmer will be a big factor two years hence.\textsuperscript{17}

The Republicans had captured control of Congress in 1918, and further evidence of the farmer's discontent was shown in the landslide for Harding in 1920. California, Idaho, Kansas, Missouri, Montana, Nebraska, North Dakota and Washington came back to the Republican side, joining Illinois, Indiana, Iowa, Oregon and Wisconsin which had returned in 1916.\textsuperscript{18}

A Farmer-Labor party held its national convention in Chicago on July 11, condemning the financial barons. Among its demands were many which were to become law during the twenties: extension of the federal credit system, legislation to promote and protect farmers' cooperatives, comprehensive studies of costs of production of farm and manufactured


\textsuperscript{17}\textit{Wallaces' Farmer}, Vol. XLIII (September 20, 1918), p. 1329.

products, and federal control of the meat-packing industry. It nominated Parley Christensen of Utah for President, but the party had little success at the polls, receiving only slightly over 265,000 popular votes as compared to over 16,000,000 for Harding and more than 9,000,000 for Cox and almost one million for Socialist candidate, Debs.

An interesting aspect of the campaign was that Cummins' sponsoring of the Transportation Act of 1920, which permitted a limited amount of railroad consolidation and pooling, apparently wasn't indicative of any change of heart on the part of the agrarians insofar as the transportation "monopoly" was concerned. Smith W. Brookhart, member of the progressive movement in Iowa which had been led by Cummins, broke with Cummins over this question and attempted unsuccessfully to secure the Senate seat in opposition to him. He was supported by the Farmers' Union and the remnants of the Equity.

The events of 1920 were an indication of what was to follow; a "farm bloc" was formed, investigations were staged, important conferences were held and much legislation was passed. While the twenties saw a revival of agrarian politics, this time a new phase was inaugurated. No effort was made to build or support a new party, as the elections of 1920 indicated. Instead farm strategy was concentrated on electing to Congress sympathetic members of both major parties, welding them into a disciplined group, and utilizing the balance-of-power position of the

19 Ibid., pp. 414-415.
20 Ibid., p. 423.
21 Saloutos and Hicks, op. cit., p. 345-346.
bloc to advance agrarian interests. The farm bloc came into being because the Republicans had failed to offer a satisfactory agricultural plan in the special session which had been called by Harding. The regular Republicans wanted tax and tariff revision, while the representatives from the farm states wanted cooperative legislation, liberal credit, and the regulation of the packers.

The leadership in the formation of the farm bloc was furnished by the Farm Bureau, acting through its Washington representative, Gray Silver. Meetings were held in the Washington and Chicago offices of the organization between officers of the group and members of Congress. In May of 1921, twelve Senators, with Kenyon of Iowa and Capper of Kansas prominent among them, met and agreed to work together to relieve agricultural distress. While Southerners figured strongly in farm bloc activities, the leadership originated in representatives from the Middle West.

That the farmer did not share the Wilsonian view concerning free trade became quite apparent during the twenties. They joined the manufacturers in the clamor for higher import duties after the bottom dropped out of the agricultural market. In early 1921, the Republican Congress rushed through a bill to raise rates on agricultural products imported into the United States. It quickly passed both Houses but was vetoed by Wilson on March 3. He defended his action in a veto message, saying:

> It is obvious that . . . the imports can have little or no effect on the prices of the domestic products. . . . What the farmer needs now is not only a better system of domestic marketing and credit, but especially larger foreign markets for his surplus products.22

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22 Quoted in Barck and Blake, *op. cit.*, p. 288.
After Harding was installed, the Congress again passed the law which Wilson had vetoed, and this bill, called the Emergency Tariff, became law on May 27, 1921. This bill, having the support of the Farm Bloc, raised the duties on corn, wheat, meat, wool, and sugar to approximately the levels established in the Payne-Aldrich Act. The Fordney-McCumber Tariff Act of 1922 again raised the rates on foodstuffs, and the duties on wheat, rye, corn, beef, lamb, sugar, and wool were higher than ever before. If the hope was that the result would be to raise prices of farm products to wartime levels, disappointment was bound to come, since the farm problem did not result from the flooding of the U. S. with cheap foods and fibers from abroad. However, such duties would permit domestic producers to charge, if they could control price and production, an amount equal to the world price, transportation costs and the amount of the import duty. This attack was to be employed at a later date.

Early in the 1920's, there was legislation enacted which evidenced the continuing concern of the farmer with monopoly problems. While it didn't carry outright condemnations of all monopoly, this is not too strange, since the average farmer was not a philosophical antimonopolist. The Sherman Act is the only such statute on the books which makes an outright condemnation of all combinations, contracts, or conspiracies in restraint of trade, and this act was the one which the representatives from farm states in Congress had the least hand in. The Interstate Commerce Act and the Clayton Act were more specific, being directed toward practices carried on by identified persons or organizations.

A statute reflecting the desire of the agrarian to control specific practices of "monopolists" was the Packers and Stockyards Act of
August 15, 1921, which was passed through the efforts of the farm bloc.

Section 202 of the act reads, in part, as follows:

It shall be unlawful for any packer to:

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(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article of commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce.

Administration of the legislation was given to the Secretary of Agriculture, along with two important powers. The first allowed the Secretary, after a complaint and hearing, to order packers to cease any form of discrimination practiced against persons or localities and to desist from attempts to restrain trade or achieve monopoly. Orders were made binding after thirty days unless appeal was brought to the Circuit Courts of Appeal. If they were then modified or confirmed, they served as an injunction restraining the packer from the prohibited action. The second power transformed all stockyards using over 20,000 square feet of land into public utilities. Charges levied by the stockyards for their services, and charges of agents buying or selling animals on commission, must be reasonable and non-discriminatory, and all schedules of rates must be open to the public and filed with the Secretary of Agriculture. The Secretary has power, after a hearing, to fix the maximum, minimum, or exact charges, and to order changes in service to prevent discrimination.

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23 42 Stat. 159.
This legislation was a direct result of the Federal Trade Commission reports on the meat-packing industry. While the companies had been willing to enter into a consent decree, presumably with the intent of preventing regulatory legislation, the strategy had been unavailing. The success of the act lay more in the ending of discrimination against farmers' livestock cooperatives than it did in affecting the prices paid to the producer or the price charged the consumer.

Less than two weeks after the passage of the Packers and Stockyards Act, the Congress enacted the Futures Trading Act giving the Secretary of Agriculture similar control over the dealers in wheat and other grains. This legislation also had for an impelling force an investigation of the Federal Trade Commission. It established a prohibitive tax on speculative transactions and on grain sold for future delivery except when the transactions were made by owners of the grain through certain authorized contract markets. These authorized contract markets were placed under the supervision of the Secretary of Agriculture, who had the power to punish violators by revoking their privileges. Once the Supreme Court had declared unconstitutional the measure which had been passed in 1921, Congress passed a new law, the Grain Futures Act of 1922, which was no different from the law declared unconstitutional, except that it was based on the power of Congress to regulate interstate commerce rather than on its taxing power. This act also prohibited boards of trade and chambers of commerce—meaning grain exchanges—from rejecting the membership applications of cooperatives that dispensed patronage dividends.24

Early in 1921, the new Congress created a Joint Commission of Agricultural Inquiry to inquire into the causes of the agricultural crisis and instructed the Commission to report its finding within ninety days. The Commission found that the distress of agriculture was primarily due to the general business depression beginning in 1920, although decline of the export demand was considered to be important. Unduly high freight rates was named as contributing factors, but over-production or over-marketing of farm products in 1920 were not adjudged important causes of the price declines. The commission recommended, among other things, that preferred legal status be given to cooperative marketing associations and that freight rates on farm products be reduced. A final declaration of the Commission was that a renewal of confidence and prosperity was dependent upon readjustment of commodity prices which could not be brought about by legislative formulas but had to be the result for the most part of the interplay of economic forces.  

In 1922 another conclave was held to study the farm problem. Secretary of Agriculture Henry G. Wallace called together the first National Agricultural Conference in Washington. The meeting lasted from January 23rd to 27th and was attended by delegates representing states, farm organizations, businesses related to agriculture, and others. President Harding, in the opening address, deplored the fact that the farmers were prevented from making as effective combinations for controlling the market as manufacturers had. He did not talk in terms

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of having the federal government assume broad responsibility, but urged
that legislation be framed so as to give the farmer a chance to organize
and help himself.26

The report of the Conference stressed adjustment of farm production
to demand. It recommended that the farmers and the farm organizations
consider the problem of world supply and demand and make comprehensive
plans for production programs so as to be able to advise members as to
the probable demand and to propose measures for proper limitation of
acreage in particular crops. To accomplish this, it urged the legalisation
of farm cooperative marketing associations and price stabilising
efforts carried on by them.27

Both the Joint Commission and the National Agricultural Conference
had favored the legalisation of the cooperative marketing association
and in 1922, a bill was passed by Congress to accomplish this objective.
The Clayton Act had applied only to nonstock, nonprofit associations,
and the exemption given in the bill was negligible, since it had turned
out that while the existence of such organisations was legal, there were
activities which might be taken up by such associations which would be
adjudged illegal under the antitrust laws. Thus it was not made clear
until the passage of the Capper-Volstead Act that a cooperative marketing
association was not, by reason of the manner in which it was organized

26U.S. Congress, National Agricultural Conference, Report on the
National Agricultural Conference, 1922, 67th Cong., 2nd Sess., House Docu-

27Chester C. Davis, "The Development of Agricultural Policy Since
and normally operated, a combination in restraint of trade.

The act, 28 sometimes called the "Magna Carta of Cooperative Marketing," removed all doubts about the legality of cooperative marketing associations engaged in interstate commerce by, in effect, exempting them from prosecution under the antitrust laws. Unlike the Clayton Act of 1914, this allowed farmers to organize marketing associations either with or without capital stock, providing that no member had more than one vote and that the dividend payments did not exceed eight per cent. Another provision forbade associations incorporating under its provisions to handle products for nonmembers in excess of those handled for their own members.

While there was no explicit exemption of such associations from the antitrust laws, supervision over the activities of the associations was vested in the Secretary of Agriculture by the following section:

If the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce, to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing . . . requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade . . . . If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. 29

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2842 Stat. 388.

29Ibid.
The Department of Justice enters upon the scene only if the matter is taken to court, in which case the Justice Department is in charge of enforcing the order.

Debate on the bill revealed the current opinions of Senators from farm states on the effectiveness of the Sherman Act, the position of the farmer relative to monopolies, the intent of the bill, and why monopoly on the part of the farmer need not be feared. The antitrust laws were acknowledged to be ineffective and if industrial combinations could not be broken up under the law, the obvious answer was for agriculture to combine in self defense. Senator Norris of Nebraska expressed these sentiments in the following terms:

This is a bill that attempts to relieve from the effect of the Sherman antitrust laws the farmers and other producers of agricultural products. If the Sherman antitrust laws were effective, as its authors intended that it should be, if we had no trusts now, this legislation would not be necessary, and I would not have much interest in it; but, as a matter of practice, as a matter of practical application, the farmer is almost the only man who is affected by the Sherman antitrust law. It is all right to speak in beautiful and glowing terms, as Senators have, about laws that shall prohibit monopoly and restraint of trade. I wish we could prohibit monopoly. We have not done it. We have not prohibited restraint of trade, and it does not make very much difference whether the Supreme Court, after long and tedious litigation, decides a combination to be a monopoly and dissolves it, or whether it decides that it is a philanthropic institution working for the good of humanity and is not a monopoly, like the Steel Trust; the result is about the same. Whether you dissolve it or not, it keeps on doing business in the same way, at the same old stand. Everybody knows about it. Everybody possesses of ordinary intelligence and experience in life knows, for instance, that the Steel Trust is a monopoly and controls prices. I said "everybody"; I will exempt from that the members of the Supreme Court. They have not found it out. 30

Senator Norris continued, stating why the farmer should be allowed to enter into combinations, reasons which Senators Capper of Kansas and Kellogg of Minnesota supported:

The farmer now says, "let us be allowed to cooperate, do away with the middle man, and reach the consumer by a shorter route with our products," and everybody raises his hands in holy horror and says, "Great God! That will be a violation of the Sherman Antitrust Act!; and yet the farmer must buy nearly everything that he buys in a trust-controlled market. He buys his binder from the Harvester Trust. He sells his hogs and his beef to the Packer Trust. He sells his hides to a trust, and he buys them back from the same trust at a profit of about 10,000 per cent.

He has nothing to do with fixing the price of what he sells. He has nothing to do with fixing the price of what he must buy. The trusts control him in all he sells, and he says, "Now, I should like to combine with my neighbors and cooperate and act as a corporation, following my product from the farm as near to the consumer as I can, doing away in the meantime with unnecessary machinery and unnecessary middlemen." That is all this bill attempts to do; and I am not in favor of splitting hairs or drawing a technical conclusion from a very finely argued trust case that has been decided either one way or the other by the United States Supreme Court. 31

Senator Kellogg defended the procedure by which the Secretary of Agriculture must first make a finding adverse to an association before the Attorney General could take action by pointing out that the Bureau of Markets had the information as to what costs and prices were on farm products and could therefore tell when prices were "unduly enhanced."

He stressed the removal of jurisdiction from the Department of Justice in the following passage:

It may be said, therefore, that before such associations can be prosecuted under the Sherman Act for any restraint of trade or monopoly, whether it is a mere technical monopoly or not, the Secretary of Agriculture must investigate and

31 Ibid.
It is possible, however, to establish a monopoly in respect

from which it is evident that was passed in the
about other products and the possible results of the bill if passed in the

to establish a monopoly of any of the Advisory Committee, a request to the Secretary of Agriculture, where the opinion was that it was impossible

This was to take place of the section containing the statements of

under other methods of cooperatives in connection with
other purposes, especially for the benefit of the volunteer and for the
trade into commodities, to enable the Growers and Distributors, and any
any agricultural or marketing association that may exist. And any

the phrase and instead to amend the bill in the following terms:

decided when a monopoly of the trade under such an association to
some reservations about leaving it up to the Secretary of Agriculture to
Senator Walsh of Montana, a member of the Judiciary Committee, had

make a finding that the cooperative association in respect
rather than two or three cooperative associations organized and operating on similar lines.\textsuperscript{34}

Mr. President, that is the matter to which I am endeavoring to challenge the attention of the Senate—the possibility of the organization of combinations under this bill, entirely monopolistic in character, which would exact such prices from the consumers, particularly of milk, as to bring the whole movement for cooperative marketing into disfavor and disrepute and have such a corrosive effect as to wipe out any statute that we may enact in relation to the subject.\textsuperscript{35}

Needless to say, the amendment did not pass.

A group less successful than the farm bloc, but nevertheless an important indication of agrarian unrest during the twenties, was one composed of progressives, liberals, and radicals who agitated for a new party based on farmer-labor cooperation. La Follette assumed leadership of the group and attempted to gain the Presidency with its assistance in 1924. While the Farmer-Laborites made a poor showing in 1920, they were somewhat heartened by the showings of Brookhart in Iowa, Henrik Shipstead in Minnesota and the victory of Ladd in North Dakota. In 1922, their hopes were bolstered by the victories of Shipstead and Brookhart, and also that of Howell of Nebraska. There were also gubernatorial triumphs of progressives in Wisconsin, Nebraska and Kansas.\textsuperscript{36}

La Follette analyzed these results as an antimonopoly movement:

Can you not understand this wonderful movement which is sweeping over the Middle West? ... It is organized because there is a belief among the people that there is a power that puts them at a disadvantage by controlling the market price of everything they buy. They have appealed to the

\textsuperscript{34}\textit{Ibid.}

\textsuperscript{35}\textit{Ibid.}, p. 2157.

\textsuperscript{36}\textit{Saloutos and Hicks, op. cit.}, pp. 321, 342, 351.
Democratic Party; they have appealed to the Republican Party, and they have appealed in vain for relief, for legislation to break the power that took out of their toil just what tribute it pleased.37

The victory of Magnus Johnson, a Farmer-Laborite, in a special election held in Minnesota in 1923 to fill an unexpired term in the Senate, made vacant by the death of Knute Nelson, gave further encouragement to the progressives. The climax was reached in 1924, when La Follette bolted the Republican party, after having been passed up by the Republicans in their convention.

A Conference for Progressive Political Action opened at Cleveland, July 4. La Follette was endorsed for President, and Burton K. Wheeler, of Montana, for Vice-President. The Socialist party held its convention in the same city three days later and adopted the candidates and platform of the Progressive party. The Farmer-Labor party had held its convention in June and was captured by the Workers' (Communist) party, nominating William Z. Foster. In their platform, the Progressives demanded that the power of the federal government be used to crush private monopoly, not foster it. They deplored, however, the principle of ruthless individualism and competition, under which that government was deemed best which offered to the few the greatest chance of individual gain. To deal with middlemen, they advocated the creation of a government marketing corporation to provide a direct route between farm producer and city consumer, to assure farmers fair prices for their products and protect consumers from the profiteers in foodstuffs and

37Quoted in Saloutos and Hicks, op. cit., p. 350.
other necessaries of life.  

In his campaign, La Follette showed himself to be more an heir of the Granger and Populist traditions than a natural ally of the Socialists. He unequivocally opposed the Schech-Cummins Act, regarding it as written for the railroads and conferring upon the carriers permission to combine and consolidate and make rates such as had never been before given to corporations in America. To him, the one paramount issue of the 1924 campaign was to break the combined power of private monopoly over the political and economic life of the American people. To accomplish this, it was necessary to wrest the government from the "predatory interests" which controlled it. He firmly believed that the Sherman Act could have been an effective weapon in destroying monopoly, had it been employed properly.  

While La Follette preferred reliance on "natural economic laws," he justified his support for measures which would enable agricultural organizations to fix prices on the grounds that such action was necessary to save agriculture and that other groups performed such activities continually.  

The returns in November, 1924, gave Coolidge almost 15,750,000 votes, Davis about 8,400,000 and La Follette almost 5,000,000. La Follette collected only thirteen electoral votes, all from his native state of Wisconsin. The Republicans had been worried that La Follette would  

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40 Ibid., p. 367.
subtract from their strength, especially since their majorities in both houses of Congress had been sharply reduced in 1922. However, the subtraction was more from the Democratic vote. Davis carried only the Solid South and La Follette ran second to the Republican ticket in Minnesota, Iowa, North Dakota, South Dakota, Washington, Montana, Wyoming, Nevada and Oregon.\(^41\)

The split between the East and West which had been so prominent in 1896 was again made manifest by the 1924 Presidential elections. There was again the feeling that the Republican party had gravitated too much into the hands of those predisposed to Eastern industrialism. After the election, warnings were issued that if the Western wing was to be held, it would be necessary to restore the balance between East and West in the party.

Considerable friction arose between the regular Republicans and those who had supported the Progressive candidate. The insurgents lost their key positions on committees, had no chance at chairmanships, and suffered other indignities at the hands of the regular organization. Smith Brookhart was refused his seat in the Senate. The insurgents held the balance of power, however, and often allied with Democrats to oppose administration measures and pass legislation they favored. The elections of 1926 increased the unrest of the regular Republicans. Brookhart was vindicated, defeating Albert Cummins in the Republican primaries, and then winning over his Democratic opponent in the general election. Administration-backed candidates were also defeated in North Dakota and Wisconsin by Gerald Nye and Robert La Follette, Jr., who took the seat

of his father, who had died in 1925. While the Republicans came out with a majority of forty members in the House, their position in the Senate was critical, with the election returns indicating a composition of 48 Republicans, 47 Democrats and 1 Farmer-Laborite. The regulars gave in to the insurgents, restoring them to their former committee posts, and promising legislative concessions to them. Senator Norris led a successful move to bar two Republicans from their seats on the grounds that they had spent too much money in their campaigns.

Both the Progressive and Farmer-Labor parties dropped out of sight by the national election of 1928, but this did not mean that the political influence of the agrarian in the Middle West and West declined. Instead, the task of the Farm Bureau was taken up, wherein support would be given to candidates of the major parties who were favorable to agricultural demands. There were many insurgents, such as Norris and Borah, holding many of the same views that the Progressives did, who refused to support the candidacy of La Follette, preferring to exert their influence in the existing political parties.

With both major parties pledging themselves to lower freight rates on agricultural products, it was no surprise when in January of 1925 Congress passed the Hoeh-Smith Resolution. The Interstate Commerce Commission, after ordering a ten per cent general reduction in freight rates in 1922, refused to grant appeals by agricultural interests for lower rates. The resolution declared that the policy to be pursued by the Commission in rate making would be to consider the prevailing conditions in any industry and to adjust rates so that the commodities of that industry might move more freely. It further ordered the
Commission to effect any lawful changes in the rate structure which would promote the freedom of movement of agricultural products at the lowest possible rates compatible with the maintenance of adequate transportation service. By such a device did the agrarians secure a main goal of theirs in supporting the Interstate Commerce Act against the railroad "monopoly"—lower freight rates.

In 1926, in accordance with the recommendations of the National Agricultural Conference of 1925 and with the sentiment of the administration, the Cooperative Marketing Act was passed. The bill provided, among other things, for the establishment of a Division of Cooperative Marketing in the Department of Agriculture and legalized the exchange of market information by agricultural cooperative associations. This act was also not very warmly received, with members of Congress from farm states generally of the opinion that the bill provided very little new for agriculture. Representative Jones of Texas was afraid that it might do something for other industries, indicating that agricultural producers still felt that others should still be subject to the anti-trust laws, saying:

Mr. Chairman, my reason for offering this amendment is that Section 5 of this bill, following in large measure the provisions of the exemption provided by the Capper-Volstead Act, with some very small changes, exempts people engaged in the distribution of agricultural products from the operations of the antitrust law. Since those exemptions are granted—and they are important—it becomes likewise important that no one should be granted the exemption except persons engaged in producing these products or cooperative organizations of those engaged in the distribution thereof.

I do not think the House ought to take any steps that will give the outside organizations—the organizations which compete with the farmer—the right of an exemption or to contend for an exemption. I believe if we adopt this bill
man will be trying to get exemptions under the act. Many of the independent organizations that have long sought exemption from the antitrust laws will be given a chance to claim that exemption. 42

A farm revolt threatened the Republicans in the elections of 1928. Al Smith, the Democratic nominee, bid for the farmer's vote by accepting the principle of the McNary-Haugen bill and advocating public operation of Muscle Shoals. Hoover, while praising Coolidge's veto of the controversial bill, promised governmental assistance in the establishment of a national farm marketing system and also promised higher tariffs. The Republican vote was surprisingly high in the face of agricultural discontent, with Hoover receiving a large margin, both popular and electoral, over Smith in the balloting.

In April, 1929, Congress met in special session to redeem Republican campaign pledges for farm relief, with the administration calling for increased tariff protection and for the establishment of a federal farm board to promote the orderly marketing of agricultural products. The tariff bill ran into difficulties and wasn't passed until 1930, but the Agricultural Marketing Act was passed and signed into law by the middle of June. 43

The act called for the creation of a Federal Farm Board of eight members, including the Secretary of Agriculture as an ex-officio member. The Board was authorized to extend loans to cooperatives and to conduct stabilization operations from a revolving fund of $500,000,000.

43 46 Stat. 11.
Stabilization operations were to be conducted by corporations conducted for the purpose and would, in addition, serve as marketing agencies for the cooperatives affiliated with the Board. The corporations were to be owned and operated by the cooperatives, and the Board itself was to be prohibited from buying, selling, and fixing the price of farm products.

At the beginnings of its operations, the Board viewed its principal function as the fostering of a system of cooperative marketing associations, but the drastic decline of agricultural prices which developed in the latter part of 1929 caused the Board to become concerned primarily with the stabilization of those prices. The first efforts at such a program consisted of making loans to the cooperatives which would enable them to hold the commodities in storage until the market improved. This was followed by the setting up of stabilization corporations for wheat and cotton. These corporations took over most of the supplies that the cooperatives had been holding and accumulated additional stocks by direct purchase in the market.

The operations of the stabilization corporations resulted in heavy losses to the Board. The Board eventually concluded that success as the result of withholding supplies from the market could only be had if production were held in line somehow, by acreage-reduction if necessary.44

These stabilization corporations were exempt from the antitrust laws, having been established by legislation and also being cooperatives of the type legalized by the Capper-Volstead Act, and represented the greatest attempt of farmers to establish a national monopoly to achieve

their objectives of higher prices. Its failure was due in part to the general depression which was its contemporary, but failure must also lie at the door of the unwillingness of the farmer to accept the concomitant of monopolistic control to obtain higher prices—the reduction of production.

There was little in the period from 1920 to 1932 to encourage the farmer that the antitrust laws would be of any considerable assistance in achieving their objectives. The Federal Trade Commission had made investigations of industries which related to the farmer, but after the composition of the commission changed, such investigations were few. Prior to 1924 it had reported on the tobacco industry, on commercial feeds, on methods and operations of grain exporters, on the wheat flour milling industry and even on the wheat prices for the 1920 crop. After the change in the composition of the Commission had taken place, there were only two reports of some interest to the agricultural industry, one of competition and profits in bread and flour and the other an investigation of the cottonseed industry.

While Secretary of Commerce Hoover promoted trade associations, the Federal Trade Commission and the Attorney General did condemn certain practices and bring some associations to trial for price fixing. After 1925, however, few convictions resulted. The public was generally indifferent and the farmer had pretty much given up hope for relief from enforcement of these laws. Senators Borah and Norris deplored the turn of events, but were fairly powerless to change them.

The net effect of judicial construction of the Sherman Act under the "rule of reason," and of Congressional acquiescence, was an almost
complete abandonment of the attack on close consolidations. While the
law prevented complete monopolization of certain industries and doubt-
less deterred attempts to monopolize others, it had, after the Steel
decision, little application to dominant firms falling short of complete
monopoly. The emphasis was placed almost exclusively upon the intent
to control the industry unfairly, as evidenced by predatory practices
against independents, rather than on the economic results of industrial
concentration as seen in an industry's price and output policy.

In contrast with their attitude with respect to mergers, the courts
applied the law to loose agreements with fairly consistent severity.
Emphasis was laid on economic effects rather than the abuse of power,
with power to control or affect the market being the criterion of
illegality. While in the "trust" cases, substantial dominance of the
market was the test, trade association agreements have been condemned
on the basis of substantial control, which sometimes meant something
less than fifty per cent. As Judge Learned Hand put it, the law forbids
"all agreements preventing competition in price among a group of buyers,
otherwise competitive, if they are numerous enough to affect the market."

As a result of this judicial construction, only a mere handful of
close consolidations has been dissolved since the First World War, by
virtue of the antitrust laws, while associations and agreements in
restraint of trade have been successfully attacked by the dozens. This
turn of events led to the claim that the combination of lax construction
against combinations and strict construction against agreements actually

\[45\] *Live Poultry Dealers' Protective Association v. U.S.*, 4 F(2d) 842
(1924).
promoted combination, and that the courts had converted the Sherman Act into a force for the defeat of its stated objectives.

There were a number of cases before the federal courts during the period which served to reinforce the view held by agrarians that the antitrust laws would serve as no strong force in bringing about the relationships and practices desired.

While the International Harvester Company had agreed to a consent decree in 1918, which divested the company of some relatively unimportant plants, it was again to come under fire. The Federal Trade Commission had made a study of prices and competitive conditions in the farm implement business and had, on the basis of the investigation, recommended that the International Harvester Company be divided into three separate companies.46

The government, having reserved the right to ask further relief in the event that the consent decree did not effect a restoration of competitive conditions and a "situation in harmony with the law," filed a supplementary petition July 17, 1923, against the International Harvester Company and others, alleging that the declared purpose of the original decree was to restore competitive conditions in the harvesting and agricultural machinery industry, and that it had not achieved its purpose. Further dissolution was sought, as recommended in the Federal Trade Commission report. The District Court refused to grant this additional relief and this was affirmed by the Supreme Court in June of 1927.47


4710 F(2d) 827; 274 U.S. 693.
The Supreme Court held that competitive conditions were established through compliance with the consent decree of 1918. As in the Steel case, the Court was concerned with the business practices of the firm more than the size. Citing the Steel decision, the Court said:

The law, however, does not make the mere size of a corporation, however impressive, or the existence of unexerted power on its part, an offense, when unaccompanied by unlawful conduct in the exercise of its power.48

Also, in its decision, the Court threw cold water on whatever hopes that Congressmen from farm states had about the Federal Trade Commission being a useful tool in fashioning the industrial fabric to their liking. The report in question had been made at the request of the Senate. Data had been obtained largely from the manufacturers themselves, and was introduced as evidence over the objections of the company. The Court had this to say about the report:

It is entirely plain that to treat the statements in this report—based upon an ex parte investigation and formulated in the manner hereinabove set forth—as constituting in themselves substantive evidence upon the questions of fact here involved, violates the fundamental rules of evidence entitling the parties to a trial of issues of fact, not upon hearsay, but upon the testimony of persons having first-hand knowledge of the fact, who are produced as witnesses and are subject to the test of cross-examination.49

Somewhat greater success was had with the consent decree in the meat-packing case. The Supreme Court held the decree valid in 1928.50 On April 2, 1930, two of the defendant meat-packers, together with their

48 274 U.S. 708.
49 274 U.S. 703.
50 276 U.S. 311.
subsidiaries, filed petitions to modify the consent decree in the light of changed conditions by eliminating some of the restraints previously imposed. The Supreme Court of the District of Columbia modified the decree by permitting the defendants to deal in groceries at wholesale. On May 2, 1932, the Supreme Court of the United States reversed this decree and a final decree was entered on June 15, 1932, granting the defendants one year in which to dispose of unrelated lines of business, as required by the decree.\textsuperscript{51} Trustees were appointed to take over and dispose of stock owned by Swift and Co. in corporations furnishing stockyard facilities and in Libby, McNeil and Libby, this being subsequently accomplished.

Effective control over the "Meat Trust" had been established by the Packers and Stockyards Act of 1921, which had been sustained in a decision handed down by the Supreme Court in 1922.\textsuperscript{52} The Court introduced in this case the "stream of commerce" concept which permitted the federal government to exercise control over activities which did not actually involve interstate trade, but which stood in the stream of that trade and which might obstruct it.

There were a number of relatively minor cases concerning agriculture or agricultural associations in the early twenties. One of the more important of these was the California Associated Raisin Co. case, in which the government alleged the company was a combination to restrain and monopolize interstate trade in raisins by obtaining contracts through


\textsuperscript{52}\textit{Stafford v. Wallace}, 258 U.S. 495.
coercion, by exclusive dealing arrangements, by fixing prices and by curtailling the supply of raisins on the market. A consent decree was entered on January 18, 1922, enjoining the practices complained of and requiring, among other things, that the association release all growers from exclusive purchase contracts. 53 This case was decided before the Capper-Volstead Act, which, in effect, exempted such associations, whether incorporated or not.

Another case was decided against a trade association which had been hindering the operation of an agricultural association. In 1923, a petition was filed under the Sherman Act by the government against the National Peanut Cleaners and Shellers Association. The petition alleged that the defendants had combined to restrain trade by establishing and maintaining uniform and arbitrary terms and conditions of sale, brokers' commissions, and grades; by blacklisting and boycotting producers who failed to maintain them; by interchanging trade information for the purpose of controlling buying and selling prices; and by attempting to prevent the orderly marketing of peanuts by the Peanut Growers' Association. A consent decree was entered enjoining the further operation of the combination. 54

All of the anti-monopoly activity on the part of the agrarian and of the federal government was powerless to halt the depression in agriculture during the twenties. The installation of a new administration after the elections of 1932 was to bring basic changes in fundamental concepts concerning competition and almost total relaxation of the prosecution

54 Ibid., p. 137.
of the federal antitrust laws in order to restore prosperity to agriculture and the economy at large.
Early 1933 saw the depression at its lowest depth. National income for the entire year was approximately 39.6 billion dollars, about one billion less than that of 1932. Unemployment was slightly larger also, being almost half a million more than the 11,385,000 of 1932. The general price index based on 1913 dropped three points to 129. Financial chaos reigned. Gold was being hoarded and was also being exported in the greatest quantities in American history. Depositors lost confidence in banks and withdrew their savings. Banks closed their doors and "banking holidays" were common. The number of banks had fallen from more than 25,000 to slightly over 19,000 by 1932, and by 1933 the number was further reduced to 14,600.¹

The "Hundred Days" of New Deal legislation led to some optimism in the business community, with both stock-market prices and industrial production taking a brief turn upwards. Since there was no increased purchasing power as yet to sustain this higher level of business activity, there was another decline in the summer and fall of 1933. As government spending increased with the activation of the New Deal public works and similar programs, there began a slow climb upwards and by the end of 1936 national income was over fifty per cent more than that of

1933. Unemployment had been cut almost in half and manufacturing had reached its level of 1929. Prices were generally higher than they had been since 1929, gold was moving back into the nation and the banking situation had stabilised without one national bank failing in a year.  

In August, 1937, however, the situation altered radically. Industrial production declined and so did prices. Unemployment increased to over 9,750,000 by 1938. This recession was short-lived and recovery began in June, 1938, and by the end of 1939, much of the lost ground was recovered.  

The renewed depression fell with cruel force on the farmer in the thirties. Even at the peak of prosperity in the twenties, farm prices were only at ninety per cent of parity, and by 1932 the parity ratio had slipped to fifty-five per cent. Gross farm income fell from almost 14 billion dollars in 1929 to 6.4 billion in 1932. The depression was especially severe in the prices of the export commodities such as cotton and wheat. Credit was restricted and in many communities was unavailable as thousands of country banks closed their doors.  

There was a severe drought in 1934, covering more than half the nation, which was of unprecedented proportions. The effect was to cause the problem of "over-production" to disappear by the end of 1934 for wheat, tobacco, corn and hog products. The wheat carry-over was reduced to normal proportions. The weather again affected the 1935 crop.

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2 Ibid., pp. 12, 65, 179, 231.
3 Ibid., pp. 179, 231, 65.
Black-stem rust broke out in the spring wheat area, reducing the prospective crop by over 100 million bushels in the month of July alone.\(^5\)

The combination of government programs and drought had the effect of boosting farm prices. The average price of wheat had risen from a low of $0.38 a bushel in 1932 to $1.02 in 1936; in the same period, the price of corn per bushel increased from $0.31 to $1.04; and, in the case of cotton, the price change per pound was from $0.065 to $0.124. Gross farm income had gone up in the period 1932-1936 from 6.4 to 10.6 billions of dollars. The parity ratio had gone up to its 1929 level of 90 by 1936.\(^6\)

The year 1937 saw a return of bumper crops in corn, wheat and cotton. Prices fell again for these three crops, and they did not achieve their 1936 levels until the commencement of World War II. Gross farm income, including government payments, did not recede, however, remaining fairly stable around ten to eleven billion dollars in the period from 1936 to 1940. The parity ratio fell to seventy-seven for the years 1938 and 1939.\(^7\)

As a result of the drive for combined action on the part of the farmers and the fostering of cooperative action by the Republican administrations during the twenties, cooperative marketing had become a very well-established institution in the United States by 1937-1938. In that marketing season, approximately 2,500,000 farmers sold more than

\(^5\)Saloutos and Hicks, \textit{op. cit.}, pp. 493-497.


\(^7\)Ibid.
$2,000,000,000 worth of agricultural products through 8,300 cooperative marketing associations. Many of the earlier associations had disappeared. A few of those active dated back to the early days of the Granger movement, and over 2,000 had been in operation continuously since before 1911. About one-half of the total existing had been organized between 1911 and 1926. Of the more than 8,000 associations operating in the U. S. in 1936, fifty-one per cent were cooperative stock associations, twenty-three per cent were nonstock associations, fourteen per cent were incorporated under general incorporation laws, and twelve per cent were unincorporated.

During the thirties, three major organizations represented the general interests of the American farmer: the National Grange, the Farmers' Union and the Farm Bureau. The membership of the Grange included many nonfarmers, and its farmer members were mostly fruit and vegetable growers, dairy and poultry men. These were, on the whole, the more prosperous farmers, and were not inclined to approve strong government controls over agriculture. The Farmers' Union, which favored such controls, had its membership largely in the area stricken with drought—Montana, the Dakotas, Nebraska, Kansas, Colorado and Oklahoma. The Farm Bureau was the largest of the three. It was able to work with both of the other groups, and regarded its role as giving farmers a

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9Ibid., p. 687.

10Ibid., p. 693.
national voice in which all groups could unite. It took the lead in the enactment of the Agricultural Adjustment Act and provided the most important support for New Deal agricultural controls. There were also a host of organizations which represented particular commodities or forms of marketing organization, but they did not have the political strength of the general farm organizations, although exerting considerable influence.

The farm groups were forced into a united front by the depression, with the Farm Bureau taking the leadership in calling a conference to agree on a legislative program. Roosevelt had promised in his acceptance speech to be guided by whatever the responsible farm groups agreed on, and this gave impetus to the joining of all farm groups behind one program which could be enacted into law without protracted discussion and hearings. The Federal Farm Board was in disrepute, and when O'Neal called the conference of these organizations—the Farm Bureau, the National Grange, the National Farmers' Union, the National Cooperative Council, and many other organizations—into session in Chicago during December, 1932, a different kind of program was sponsored. A bill was prepared containing price-parity, production-control, and processing-tax provisions. This bill was similar in its essentials to the Agricultural Adjustment Act which was passed the following spring. 11

Hearings were held on a bill in the "lame duck" session of the Seventy-second Congress which incorporated the proposals of the farm

11 Wing, op. cit., p. 963.
groups, but the bill itself was defeated in the Senate after being passed by the House.

The essential features of the Agricultural Adjustment Act of 1933, signed by the President on May 12, provided for the raising of farm prices by government activity, the refinancing of farm mortgages, and the placing of greater powers in the hands of the President over the amount of currency and the price of gold. Section two declared the policy was to establish and maintain such a balance between production and consumption as would re-establish farm prices at a level that would give farm commodities a purchasing power equivalent to that commanded over the base period (1910-1914, except for tobacco). Two sets of powers were conferred upon the Secretary of Agriculture, one dealing with voluntary production adjustments through contracts and benefit payments to farmers and the other with marketing agreements and licenses. The biggest difference between this act and earlier proposals such as the McNary-Haugen bills was the recognition of the need for production control.

With the arrival of the New Deal, the farm organisations came into their own. Legislation was no longer to be based on the reports of commissions of businessmen and other public figures or what the Republican administration thought suitable, but on the demands of the farm groups. The content of the Act of 1933 was worked out in intimate consultation.

12 U.S. Congress, Senate Committee on Agriculture and Forestry, Hearings on the Agricultural Adjustment Relief Plan, 72nd Cong., 2nd Sess. (Washington, 1933).

with farm leaders and subsequent agricultural legislation registered the influence of farm groups at virtually every stage of formulation and execution.

Hearings were held on the bill after the new administration had been installed.\textsuperscript{14} No general farm organization asked to be heard, other than the National Farmers' Union, for which John Simpson spoke. While that organization had been represented in the farm conference of December, 1932, Simpson objected to the cutting of production, the regulation of the farmer and to the setting of price on any other basis than "cost-of-production."\textsuperscript{15} He forwarded instead the radical plan of having agriculture declared a public utility, with the principles of the interstate commerce law being applied to the industry.\textsuperscript{16}

Secretary of Agriculture Henry A. Wallace was the first to appear before the committee and declared frankly that the bill was drawn up to carry out as nearly as possible recommendations of the farm organization.\textsuperscript{17} It was envisioned that processors and producers would set up commodity councils to expedite agreements or licensing. Mr. Woods, president of the Institute of Meat Packers, favored the idea, suggesting that if packers and producers could cooperate more closely, a good deal of

\textsuperscript{14}U.S. Congress, Senate Committee on Agriculture and Forestry, \textit{Hearings on the Agricultural Emergency Act to Increase Farm Purchasing Power}, 73rd Cong., 1st Sess. (Washington, 1933).

\textsuperscript{15}\textit{Ibid.}, pp. 105-107.

\textsuperscript{16}\textit{Ibid.}, p. 117.

\textsuperscript{17}\textit{Ibid.}, p. 8.
"destructive competition" could be corrected.\textsuperscript{18}

Some revealing statements concerning agricultural exemption and the type of "antitrust" legislation the farmer favored were made during the course of the hearings. Chairman Ellison D. Smith stated, concerning previous legislation, that: "We exempted all farm organizations from the operation of the Sherman antitrust law and the Clayton Act."\textsuperscript{19} Mordecai Ezekiel, an economist in the Department of Agriculture, when the question of the effect of the licensing and marketing agreements on the antitrust laws as applied to processors and handlers came up, said:

The language of paragraph 2 modifies the application of the antitrust laws to a degree and in the same way that the Capper-Volstead Act modifies the application of the antitrust law to cooperative marketing associations again under the discretion of the Secretary of Agriculture instead of the Department of Justice.\textsuperscript{20}

While the bill was being debated in the Senate, Senators Bankhead and Norris introduced amendments which would explicitly exempt from the antitrust laws processors who entered into marketing agreements with the Secretary of Agriculture. The point was made that since the bill would legalize such actions, an explicit exemption would make processors less reluctant to enter into such agreements. Some Senators were reluctant to give such exemption, even though the Secretary of Agriculture was to guard against monopolistic practices. Burton K. Wheeler, who had been the Vice-Presidential nominee on the Progressive ticket in 1924, was

\textsuperscript{18}Ibid., pp. 314, 317.
\textsuperscript{19}Ibid., p. 54.
\textsuperscript{20}Ibid., p. 19.
strongly against such a move, and would agree only when the proposed
amendment was changed to make such exemption expire with the expiration
of the act. 21

After the report of the conference committee had been submitted to
the Senate, there was considerable debate about the exemptions. Senator
Clark of Missouri felt that:

This measure should be entitled "An act to promote bureaucracy,
to impose embargoes, for the abdication of its powers and
duties by Congress, and for the emasculation of the antitrust
laws." 22

While considerable opposition to the exemption existed, especially on
the part of Senators from the Mountain states, it was passed along with
the rest of the bill.

The power of the Secretary of Agriculture to enter into marketing
agreements was not limited to those commodities which were specifically
enumerated as those on which rental or benefit payments would be made.
The idea was to provide relief for the minor commodities through such a
device. Such agreements could regulate trade practices, production
quotas, prices, supply areas, and many other relationships among the
various branches of an industry. It was recognized that cooperative
marketing alone could not keep prices up in the face of a large surplus,
so it became necessary to take into agreement the other parties to the
price bargain.

Under the act, millions of farmers entered into contracts to reduce


22Ibid., p. 3118.
acreage in specified surplus crops in return for benefit payments, financed chiefly by processing taxes. Emergency purchases were made to bolster prices of pigs and sows. Not all agrarians were content with the legislation, however. In the dairy industry, there was a reluctance to enter into a program of production control, leaders of the industry preferring instead the stabilization methods of the Federal Farm Board. The administration would have none of this, and eventually satisfactory marketing agreements were worked out.23

Other indications of dissatisfaction were manifest in 1933, when prices had not increased as farmers hoped. Governor Langer of North Dakota announced an embargo on any commodity selling under the cost of production. The Farm Holiday Association, of which John Simpson also was president, drew up a code for agriculture based on "cost-of-production" similar to N.R.A. codes. In early November five governors from the Middle West appeared in Washington and submitted a program to the administration calling for price fixing and immediate inflation. Agriculture was to be regarded as a "public utility," with farmers, processors, and distributors being licensed and production controlled so as to bring about higher prices.24

After the National Industrial Recovery Act was declared unconstitutional by the Supreme Court in 1935, there was increased opposition to the Agricultural Adjustment Act by those in the food processing

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24 Saloutos and Hicks, op. cit., pp. 482-484.
industries, who claimed that the processing tax was being used for an unconstitutional purpose. This contention was confirmed when, on January 6, 1936, the Supreme Court handed down the Hoosac Mills decision invalidating the processing tax provisions of the Agricultural Adjustment Act.²⁵

There was also great modification made in the antitrust laws as the result of the demands of businessmen. The depression had brought desperate price-cutting among the members of trade associations, and the need for something stronger than open price policy for the stabilization of prices resulted in the uniform prices of the N.R.A. codes. Among larger companies, informal agreements maintained prices, but among small businessmen, name calling was not sufficient to prevent the cutting of prices as individual businessmen attempted to stave off ruin. As a result, there arose a movement for legalization of voluntary agreements for market stabilization, and even for forcing adherence to a commercial policy for an industry upon unwilling minorities.

Proposals were made that production be "balanced" with demand through cooperative allocation of production quotas. Such agreements were to be permitted by executive cooperation in antitrust administration or by legislative amendment. Advance executive approval, by either the Federal Trade Commission or the Justice Department, was commonly suggested. Advance approval would go far beyond the informal expressions of opinion offered by Attorneys General in the twenties, since there would be conferred absolute exemption from prosecution in public or private suit.

²⁵U.S. v. Butler, 297 U.S. 1,
Others favored legalized cooperative stabilization of competitive methods and prices, and the United States Chamber of Commerce favored revision of the antitrust laws to permit such stabilization devices.

The response to these business demands for price stabilization with exemption from the antitrust laws was the National Industrial Recovery Act of 1933.26 The measure provided for codification of "fair trade practices," licensing of members of an industry and for the suspension of the antitrust laws relative to practices under approved codes of "fair competition." The law linked together the development of trade association policy and the regulation of competitive methods by turning over to the associations themselves a large share of responsibility for defining unfair competition. This experiment in industrial self-government permitted trade associations to go beyond previous legal conceptions of unfair competition by letting them proclaim the sale of a commodity below a certain price as unfair.

The President was required to find that the codes proposed by industrial groups were not designed to promote monopolies, and a further proviso was made that such codes should not permit monopolistic practices. In some extreme cases, the President might subject an industry to a licensing agreement, with no unlicensed person being permitted to operate in the prescribed field. Furthermore, he might enter into or approve voluntary agreements among industrialists.

Subject to the restrictions noted above, exemption from the antitrust laws was provided by Section 5 of Title I of the act, which stated:

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2648 Stat. 195.
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WILLIAM CREAM, president of the American Federation of Labor, well

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States Chamber of Commerce, favored the measure in terms reminiscent

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we hope that such suggestions will not be taken as any manner of opposition to the measure.30

The amendments which the Farm Bureau supported were designed not to make the exemption from the antitrust laws any less effective, but to make certain that agriculture got its share and that control over industries which processed basic agricultural commodities would remain in the hands of the Secretary of Agriculture.

The bill passed through the House rapidly, but it had rougher sailing in the Senate. The threat of virtual emasculation of the antitrust laws was too much for some agrarian Senators to accept. Senator Long of Louisiana was against the bill because it created a "dictatorship"; Senator Clark of Missouri objected on the grounds that it permitted monopoly, and that monopoly was bad, and that the Democratic party had always been against monopoly; Senator Wheeler of Montana objected on the grounds that it gave the industrial producer more than the farmer got from the Agricultural Adjustment Act. By far the strongest voice raised against it, though, was that of Senator Borah of Idaho.

Borah had consistently fought for prosecution of the antitrust laws and for the maintenance of competition. He stated his position as follows:

In my judgment this bill is a very advanced step toward the ultra concentration of wealth in the country. In other words, if we repeal or suspend the antitrust laws for 2 or 2½ years and permit those things to be done which may not now be done under the antitrust laws, at the end of that time it will be practically impossible to resolve ourselves into the position

30Ibid., p. 232.
which we occupied with reference to that subject matter prior to the time the suspension took place. This is the first step to end all antitrust laws. We are to have combines as large as the industry itself, and any man in the industry who does not go along, joins it, may be put in jail.31

Borah offered an amendment which was accepted by the Senate, but changed by the conference committee, about which the Senator said:

Mr. President, on page 4 as the bill passed the Senate there was placed in it this amendment, offered by myself and accepted by those in charge of the bill:

Provided, That such code or codes shall not permit combinations in restraint of trade, price fixing, or other monopolistic practices.

That amendment was changed in conference to read as follows:

That such code or codes shall not permit monopolies or monopolistic practices.

In other words, it is the view, I take it, of those in charge of the bill that under the bill there may be formulated programs of price fixing and that there may be combinations in restraint of trade; and, as I take it, according to the bill as now drafted and construed by those who are its sponsors, any code framed by associations under this bill which may provide for a combination in restraint of trade would not be considered to infringe the rule against monopolistic practices - or any combination which would have the effect of fixing prices would not be a monopolistic practice.32

Had the amendment forbidding codes to permit combination in restraint of trade, price-fixing, or other "monopolistic practices" passed, there would have been removed from the act all the privileges which were the heart of the bill and which brought forth business support. The conference committee change was accepted by the Senate, but only after a bitter battle and by a close vote indicating that antitrust policy was not yet a dead issue among Senators from farm states. The Act became law in June, less than a month after its introduction into Congress.

32Ibid., p. 5834.
In practice, the industry codes included almost anything that the industries desired, with the National Recovery Administration willing to grant almost anything asked. Despite President Roosevelt's plea that there be the longest possible postponement of price increases, there was no incentive for voluntary compliance nor any machinery for compulsory enforcement of such a postponement. Prices were increased significantly after the adoption and approval of industry codes. There were a number of groups, including farmers, disadvantaged by such price raises, and complaints began to flood the administration and Congress. Senator Nye of North Dakota, a leader of the fight in the Senate against exemption from the antitrust laws, claimed that he alone received over fifteen thousand complaints before the act had been on the books for six months.\(^{33}\)

Since the National Industrial Recovery Act was originally enacted for a period of two years, the question of extension came up when the 74th Congress assembled early in 1935. In the Senate there was considerable sentiment for restoration of the antitrust laws or, at a minimum, substantial curtailment of code authority powers. Leadership in the Senate against extension was in the hands of Senators from the agricultural states. When Roosevelt had asked for extension, although tempering it with a demand for the elimination of "monopolies and private price fixing," a bill was drafted by the National Industrial Recovery Board and introduced into the Senate. The opponents of extension secured a resolution for a general investigation of the operations of the act, with special reference to its effect on small business. When the Finance

\(^{33}\text{Fainsod and Gordon, op. cit., p. 586.}\)
Committee reported the bill out, it contained a resolution sponsored by Senator Clark of Missouri, which continued the act for only ten months and which forbade the fixing of prices under code provisions except under government supervision in natural resource industries found by the President to be affected with a public interest. All existing codes were to expire in thirty days unless revised to conform to the new requirements. This resolution passed the Senate without a record vote on May 14, 1935. 34

If the Clark resolution had been made law, it would have killed the NIRA. The time periods granted were too short in which to accomplish any effective changes. In the House, the administration received more support for a compromise measure, which provided a two-year extension, exemption of small or local enterprises and elimination of price fixing except under government control in order, among other things, to deter the growth of monopolies. A majority of the House Ways and Means Committee favored this bill, but the legislative process was cut short at this point by the handing down on May 25th of a decision by the Supreme Court in the Schechter case which declared the act unconstitutional. 35

The decision in the Schechter case and the opposition in the Senate clearly rendered any revival of the National Industrial Recovery Act in toto out of the question. Separate groups, such as labor, received special legislation to achieve the same results, however. One group

which succeeded in securing legislation of a peculiar "antitrust" flavor was composed of wholesalers and independent retailers who were struggling against the newer forms of mass distribution, such as the chain stores. One bill enacted on their behalf was the Robinson-Patman Act\textsuperscript{36} which amended Section 2 of the Clayton Act, the provision against price discrimination. Senators Borah and Van Nuys offered a milder measure than that favored by the opponents of the chains—who would have liked to outlaw all price discrimination, whether justified or not. The bill sponsored by the farm state Senators provided criminal penalties for a number of discriminatory activities, including geographical price discrimination for the purpose of destroying competition or eliminating a competitor.

In the end, both bills were enacted into law as separate sections, but the Patman bill was greatly modified. Price discrimination was forbidden in interstate commerce:

\begin{quote}
where the effect . . . may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.\textsuperscript{37}
\end{quote}

Exceptions were made for discounts making only due allowance for cost savings resulting from differing methods of sale or differing quantities, but it was stated that the FTC might limit quantity discounts if purchasers in large quantity were so few that the price saving would be "unjustly discriminatory or promotive of monopoly." The Borah-Van Nuys

\begin{footnote}
\textsuperscript{36}49 Stat. 1526.
\textsuperscript{37}Ibid.
\end{footnote}
bill was included without alteration.

After the recession of 1937-1938, there was increased federal activity with respect to the antitrust laws. The Hoosac Mills case of 1936, declaring certain portions of the Agricultural Adjustment Act unconstitutional, was generally held not to affect other parts of the act. However, Judge Brewster in the Boston Milk case rendered a decision which caused some concern in this respect, so the Congress reenacted certain portions of the original act as the Agricultural Marketing Agreements Act of 1937, which was signed into law on June 3.

This act gave the Secretary of Agriculture the same authority to enter into marketing agreements with processors, producers, associations of producers and others engaged in handling any agricultural commodity or product thereof, and exempted such agreements from the antitrust laws. The statute applies not only to farmers and farm organizations but also to industrial establishments that process farm products and to traders who sell either the original or the processed products. Its field, therefore, is not only agriculture, but substantially all of the food industry and considerable portions of other industries as well. There are no limitations on the subject matter of the agreements except the general provision that they shall carry out the objectives of the law. The exemption from the antitrust laws is complete, including not only the right to create combinations in restraint of trade but also the right to coerce competitors and to create monopolies. Protection for

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39 50 Stat. 246.
the public interest rests entirely in the discretion of the Secretary of Agriculture. His assent is necessary to give effect to the original agreement, and he is authorized subsequently to obtain reports from the participants and to determine whether the exemption from the antitrust laws has been abused. By withdrawing his approval of an agreement, he can restore the applicability of the antitrust laws.

Also in 1937, Congress passed the Miller-Tydings Act, which amended Section I of the Sherman Act in order to legalize resale price maintenance. The Court had consistently refused to condone price maintenance contracts, either explicit or implicit. Legalization had been previously attempted through amendment of the Sherman Act by the Capper-Kelly bill of 1930, but it was defeated in Congress by not too large a margin. The Federal Trade Commission had refused to endorse such legalization and the Roosevelt administration had supported them in their stand. State governments were not reluctant to enact such legislation, and, beginning in California, a wave of "Fair Trade Acts" swept across the nation, providing that the minimum price set in a contract between a manufacturer and a single dealer became binding, after notice, upon all dealers, whether or not parties to the contract. There had been some doubts about the constitutionality of such legislation, but in 1936 the Supreme Court had sustained such legislation, when limited to branded or trade-marked commodities, as a legitimate means of protection to manufacturers' good will.

40 50 Stat. 694.

While there was almost nation-wide approval of resale price maintenance by the states, the contracts dealing with commodities in interstate commerce were still subject to the limitations of the federal antitrust laws. The Miller-Tydings Act, attached to the District of Columbia Appropriations Act for 1937 as a "rider," authorized such price maintenance in those states where it was permitted by state law.

While such legislation is not inherently in harmony with a general antitrust policy, it has been endorsed in the farm states. It may be defended as a means of forestalling "monopolisation" of distribution by mass distributors, but the intense competition among the chains makes such a result seem quite unrealistic. States that had been eager to pass antimonopoly legislation around the turn of the century in the hopes that prices would decline were now passing laws in order to maintain prices.

During the early years of the New Deal administration the attitude toward government regulation of the economy was vastly different from the traditional antitrust policy of attempting to break up large combines and promote price competition, as the National Industrial Recovery Act indicated. However, there was a decline in the combination movement after the stock market crash of 1929, and there was little to encourage investment bankers to promote new combinations during the thirties, with the exception of the banking industry itself, where the depression accentuated the merger movement and the development of giant banks.

While the administration was not interested in dissolving large firms, it did foster new regulatory controls. In the field of
transportation, the jurisdiction of the Interstate Commerce Commission was broadened to embrace motor and domestic water carriers as well as railroads. Air carriers and the merchant marine were subject to additional controls, although there was considerable promotional legislation in this field. In communications, the Federal Communications Commission was created to replace the old Radio Commission, and was vested with considerable authority to regulate interstate telecommunications.

In the public utility field, changes were even more significant. The jurisdiction of the Federal Power Commission was expanded to embrace interstate activities of electrical and natural gas companies. The Securities and Exchange Commission was vested with power to regulate utility holding companies and to secure simplification in their corporate structure. There was a vast expansion of public enterprise in the electrical utility field, and public ownership became a significant regulatory device in the drive to reduce electrical rates.

Along with the new policy concerning regulation of economic activity there was considerable exemption from the antitrust laws where other regulation was provided. The Emergency Transportation Act of 1933\(^4\) went further than the Transportation Act of 1920 in exempting all approved forms of consolidation, even that brought about by holding companies, from the operation of the antitrust laws. The Fisheries Cooperative Marketing Act of 1924\(^4\) permitted combinations in the processing, canning and marketing of fish products, such cooperative

\(^{42}\) 48 Stat. 211

\(^{43}\) 48 Stat. 1213.
associations to be exempt from the operation of the antitrust laws.

In the field of communications, consolidations approved by the Federal Communications Commission are exempt, according to the Communications Act of 1934.\textsuperscript{44} The Motor Carrier Act of 1935\textsuperscript{45} permits combinations of motor carriers to be free of the restriction of the antitrust laws when such consolidations are approved by the Interstate Commerce Commission.

Also in 1935, the Congress passed the Bituminous Coal Conservation Act.\textsuperscript{46} Under the statute, district boards were set up to establish minimum prices and there were also established combinations of producers through joint marketing agencies. Such agencies, if approved by the Coal Commission, were to be exempt from the application of the antitrust laws. While the act was later declared unconstitutional, it was re-enacted in acceptable form as the Bituminous Coal Act of 1937.\textsuperscript{47}

The significance of these bits of legislation, insofar as the relation of agriculture to federal antitrust activity is concerned, is in the fact that it would have been impossible to make all of these legislative exemptions from the antitrust laws without at least the acquiescence of Congress members from farm states.

By 1937, there were indications that a change in regulatory policy was to be made. Progressive improvement in the condition of the economy,

\textsuperscript{44} 48 Stat. 1064.
\textsuperscript{45} 49 Stat. 543.
\textsuperscript{46} 49 Stat. 991.
\textsuperscript{47} 50 Stat. 72.

The structure of the American industrial order, which is an eye toward a broad interest, it appears, indeed a broad interest toward longer tenure of officers, introduced a broad interest toward the enforcement of the antitrust laws. The government proceeded for a new generation of antitrust enforcement, which led to proposals for a new generation of antitrust enforcement on the monopoly, the monopoly, and the antitrust enforcement on the monopoly. The Supreme Court upheld the antitrust enforcement of the monopoly, which was substantially upheld by the Supreme Court.

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renovated trade regulation policy. The other sought more immediate objectives through an unprecedented "trust-busting" splurge on the basis of existing legislation.

The revivified Antitrust Division, under first Robert H. Jackson and then Thurman Arnold, stated its conviction that the law had been hampered in the past both by unfavorable judicial interpretation and by inadequate efforts at enforcement. It therefore sought to obtain greater appropriations by which it could give the Sherman Act a "fair trial." With the backing of the administration, the funds for the division were greatly increased and the number of investigations and suits brought also increased greatly by 1941. There was no immediate statutory revision to strengthen the antitrust laws, though Senator O'Mahoney sponsored another bill in Congress toward the end of the 1939 session.49 The bill would have made responsible officers and directors of a corporation both civilly and criminally liable for offenses, along with the corporations themselves.

Contemporaneously with the increased activity of the Antitrust Division, Congress authorized a far-reaching inquiry into the extent and consequences of concentrated economic power. President Roosevelt had asked a comprehensive study of the existing economic structure in a special message to Congress in 1938—the study to be undertaken by the executive agencies concerned. Congress appropriated money for and created the Temporary National Economic Committee of twelve members, three from each House of Congress, one each from the Departments of

Justice, Treasury, Labor and Commerce, and one each from the Securities Exchange Commission and the Federal Trade Commission. Senator O'Mahoney was chairman, with Borah and King being the other two members from the Senate. It made a preliminary report in 1939. That the general philosophy of the committee favored a reinvigorated antitrust policy was evident from its brief general conclusions.\(^{50}\)

After 1937, the Federal Trade Commission also became more energetic. The personnel of the commission had been altered during the earlier years of the Roosevelt administration, and the new members were more in sympathy with the original purposes of the organic act. Congress broadened the powers and simplified the procedures of the FTC in the Wheeler-Lea Act of 1938,\(^{51}\) which amended the 1914 statute. It is significant that Burton K. Wheeler, the senior Senator from Montana, long a supporter of vigorous antitrust action, was a sponsor of the measure. One of the first reports of the commission after its invigoration was on the investigation of the agricultural implement and machinery industry.\(^{52}\)

While there was increased antitrust activity in the latter part of the thirties, there resulted no convictions of combinations or persons whose interests were opposed to those of the farmer before 1940. Indeed,


\(^{51}\) Stat. 111.

there were two instances of adverse decisions. The National Peanut Cleaners and Shellers Association had been enjoined from doing certain things, including preventing the orderly marketing of peanuts by the Peanut Growers' Association, in 1923. On June 1, 1933, the decree was modified so as to lessen the restraints previously imposed in view of changed competitive conditions and on April 2, 1934, the decree was further modified to permit compliance with the NRA code for the raw peanut milling industry, approved January 12, 1934. On January 6, 1939, a decree was entered dissolving the consent decree and dismissing the original petition for injunction in view of the changed conditions in the industry.  

A case of considerably greater importance was the Borden case, which involved an association of milk producers and which settled the degree of exemption which such associations had received from the anti-trust laws. The Pure Milk Association was an organization of producers in the Chicago milk-shed which had been approved by the Chicago Board of Health. The association was the sole marketing agent for its members and combined with the Associated Milk Dealers, Inc. (who were the major distributors of milk in the Chicago area), the Milk Dealers Bottling Exchange (which was controlled by the distributors), the Milk Wagon Drivers Union and the Board of Health to restrict trade in fluid milk in the Chicago area and also to fix both the prices paid to producers and the prices charged consumers. No marketing agreements or other arrangements had been effected with the Secretary of Agriculture.

On November 15, 1938, an indictment was returned charging that these groups conspired to monopolize the milk industry in Chicago. One charge was that the big dairy companies agreed to take the entire production of the milk producers, paying a price below the fluid milk price for the surplus, which was used for ice cream, butter, cheese and canned milk. On July 13, 1939, the District Court (Northern District, Illinois) sustained demurrers on the major counts on the ground that the conduct charged therein was exclusively within the jurisdiction of the Secretary of Agriculture under the Agricultural Marketing Agreements Act of 1937. The court held that the industry had been set aside for special treatment and hence could not be brought under the purview of the Sherman Act. An order of dismissal, entered July 28, 1939, also provided that the Capper-Volstead Act and the Clayton Act gave the Pure Milk Association immunity from prosecution under the Sherman Act for the acts charged. 54

On appeal, the Supreme Court reversed the decision on several counts. The Marketing Agreements Act was held to remove only those articles of commerce which were covered by marketing agreements from the scope of the Sherman Act. It also held that neither the terms of the Clayton Act nor those of the Capper-Volstead Act authorized the type of conspiracy between farmers and others which was being prosecuted. It further held that the Capper-Volstead Act did not make proceedings thereunder a condition precedent to prosecution of cooperative associations for violating the Sherman Act. 55

The case involving the milk producers was finally settled in 1940. On September 14 a civil suit under Section 1 of the Sherman Act was filed. On September 16, a consent decree was entered enjoining the defendants from continuing the alleged practices and on the same day a nolle prosequi was entered as to all defendants in the criminal case.  

While the early forties saw some results of the renewed antitrust activity, behind which there was the force of at least some agrarian Senators, World War II and the post-war prosperity has rendered the monopoly question insignificant insofar as the bulk of farmers and their spokesmen are concerned, although there was some post-war carry-over of prosecutions instituted as a result of the resurrection of the agricultural antitrust activity in the latter thirties.

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AGRARIAN OUTLOOKS ON MONOPOLY SINCE WORLD WAR II

The defense and war efforts caused the problems of low prices, production and employment to fade. New problems of inflation, production deficiencies and manpower shortages took their place. National income more than doubled in the period 1939-1945, increasing from 72.6 to 182.8 billions of dollars. Wholesale prices on all commodities increased, index-wise, from 77.1 in 1939 to 105.8 in 1945, based on the year 1926.¹

During the war years there were gloomy prognostications of transitional difficulties, but they did not appear despite substantial curtailment of government expenditures and rapid demobilization of the armed forces. Private expenditures increased much more rapidly and by larger amounts than had been anticipated. The expansion of consumer expenditures, the intense demand on the part of business for new plants, equipment and inventories, and a tremendous rise in exports combined to raise production and civilian employment to new peacetime highs. By 1948, national income had expanded to 224.4 billions of dollars. The Bureau of Labor Statistics wholesale price index, based on 1926, had risen to 165.²

There were the beginnings of a recession in 1949, but the entry of

the United States into the Korean War caused governmental expenditures to increase sharply and the high level of prosperity existing since the beginning of World War II was maintained.

The American farmer has had at least his share of the prosperity which came with the beginning of the Second World War. The value of farm output increased from 10.5 billions of dollars in 1940 to 24.5 billions in 1945. With the ending of price controls and the continued strong export demand, the value of farm output increased to 36.1 billion in 1948. While the next year saw a slight decline, the figure rose again in 1950, although not reaching the 1948 level. The decline in the number of farms, though acreage was increasing, meant that the income of the individual farmer increased more rapidly than the value of farm output.3

Increased production accounted, in part, for the increased receipts of the farmer. Pre-war agricultural programs had been set against a background of heavy surpluses and had attempted to raise farm income through the restriction of production. As agricultural shortages developed in 1942, the federal government undertook a comprehensive program of production expansion, establishing production and acreage planting goals and seeking to meet them through a complex system of incentives including price supports, commodity loans, government purchases and subsidies. An index of gross farm production, based on 1935-1939, increased from 108 in 1940 to 123 in 1945; it further increased to 131 by 1948 and has stabilized slightly below that level.4

4Ibid., p. 608.
A more important factor in the greatly increased farm income was the general rise in prices of farm products. An index of prices received by farmers based on the period 1910-1914 stood at 100 in 1940. By 1945, it was at 206, reaching 285 in 1948. While it dropped in 1949 and 1950, it reached 302 in 1951. While prices which farmers paid also increased during the period, the parity ratio increased from 81 in 1940 to 109 in 1945. The ratio dropped from 110 in 1948 to 100 in 1949 and 1950, but in 1951 it again increased, this time to 107.5

The war and post-war prosperity saw the end of effective agrarian pressure for new general antitrust legislation and vigorous prosecution of the existing laws. Senator O'Mahoney, the least staunch of the three antimonopolistic Senators originally on the T.N.E.C., was the only one of the three still on the committee when the final report and recommendations were made, both Senators Borah and King being replaced. Before the new agricultural prosperity caused the farmer's outlook to change, there were evidences that agrarians still felt keenly about the problem of monopoly.

During the latter part of 1939, the general farm organizations were giving at least lip-service to free competition and to the vigorous enforcement of the antitrust laws. The National Grange held its annual convention at Peoria, Illinois, November 15-23. In the legislative program for 1940 adopted at that meeting, there were demands for more adequate enforcement of the antitrust laws, for more effective regulation of the marketing of livestock by amendment of the Packers and Stockyards

5Ibid., p. 590.
Act, and vigorous enforcement of the Commodities Exchange Act.  

Among the resolutions adopted by the Farm Bureau at its twenty-first annual meeting held in Chicago, December 3-7, 1939, there were some dealing with combinations. The Department of Justice was commended in its efforts to enforce the antitrust laws against unlawful restraints, illegal monopolies and practices, whether fostered by labor, industry or agriculture. However, with respect to transportation, the organization asked that the railroads be given reasonable freedom in fixing rates and consolidating so that the public interest might be better served.

There were some fairly immediate results of the increased pressure for antitrust activity on the part of the federal government. Findings in the investigations of the T.N.E.C. led to the prosecution of a number of firms by the Department of Justice, especially in the meat-packing industry. Recommendations of the committee in its final report were aimed at an increase in competition, with greater prosecution of the antitrust laws.

Senator O'Mahoney made personal recommendations in the final report of the committee, some of which echoed traditional demands of agrarian antimonopolists. He asked national charters be required of national corporations, effective and thorough enforcement of the antitrust laws, encouragement of small business and new industry by revision of the tax laws, and that a national conference be called of business, labor, agricultural and consumer organizations to draw up a "national economic

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6 Wing, op. cit., pp. 950-954.
7 Ibid., p. 969.
That his belief in free competition was not thorough-going was indicated when he dissented from a recommendation of the majority of the committee that the Miller-Tydings Act be repealed.

One of the monographs published by the T.N.E.C., the author of which was an economist in the Bureau of Agricultural Economics, gave rise to a host of prosecutions against the major firms in the meat-packing industry. The investigation had revealed the interesting fact that while from year to year tremendous changes occurred in the total sales of meat, Swift, Armour, Wilson and Cudahy kept their sales and purchases in a remarkably steady relation.

Eleven cases were instituted by the Department of Justice in the period from June 19, 1941, to October 2, 1942, against the meat-packers, the American Meat Institute, livestock companies, livestock exchanges, joint marketing committees, commission companies and individuals connected with the organizations. The charges included the fixing of sales prices, agreement upon respective shares of livestock to be purchased and elimination or control of "direct purchase" at country buying points. The suits resulted in almost complete failure. Up to 1949, there was no conviction resulting from the prosecutions. Some indictments were dismissed, either by the court or by motion of the government. In others, juries found the defendants not guilty; and still others were pending in

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9 Ibid., p. 33.

1949.  

There were some cases involving the milk and fruit industries in 1941 and 1942 which served to clarify the status of agricultural cooperatives under the antitrust laws. An indictment was returned in June of 1942 under the Sherman Act in the District Court (Oregon) against a farmers' cooperative and ten individuals charging a conspiracy to monopolize production and distribution of milk in the Portland area. On January 29, 1943, the court found the defendants not guilty, holding that under Section 6 of the Clayton Act a farmers' cooperative association, even though it becomes monopolistic, is, if it acts alone, exempt from prosecution under the antitrust laws.  

Another indictment against an agricultural cooperative in the milk industry was entered in April of 1942 in the District Court (Northern District, Iowa) charging a conspiracy to restrain interstate commerce by fixing prices for milk as well as fixing a uniform premium above minimum prices paid by milk handlers to producers under a market order established by the Secretary of Agriculture under the Agricultural Marketing Agreements Act of 1937. The defendants were all found not guilty on May 1, 1943.  

In the cases dealing with the fruit industry, fruit growers came off second-best. In June of 1941, an indictment was filed under the

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Sherman Act in District Court (Northern District, California) charging the Dried Fruit Association of California, member corporations and individuals with a conspiracy to restrain trade and a conspiracy to monopolize. Among the charges was one charging the defendants with combination to fix prices so as to depress the prices paid by packers to growers. Some counts and defendants were dismissed, and the remainder of the defendants were found not guilty by a jury.14

The California Fruit Growers Exchange was brought under attack when an indictment under the Sherman Act was returned on December 17, 1941, in the District Court (Southern District, California) against sixteen citrus firms and twenty-three individuals charging a conspiracy to restrain interstate commerce by restricting the flow and controlling the prices of citrus and deciduous fruits. The indictment as to all individuals was dismissed November 16, 1942, but all the corporate defendants pleaded nolo contendere and on August 31, 1943, fines in the total amount of $80,000 were imposed. A civil suit had also been filed, and on November 18, 1942, a consent decree was entered enjoining the practices alleged.15

As the war progressed, the farmer's mind was taken off "trusts." He had a preferential position with respect to price control, assurance that industrial prices would not rise and members of Congress who were eager to look out for his welfare. With this climate of opinion existing, there was little resistance offered by agriculture to new legislation

15Ibid., pp. 266, 290.
further modifying the antitrust laws.

In order to prosecute the war effort more effectively, government agencies made arrangements to deal with groups of producers. Some producers were hesitant to enter into such arrangements since they might possibly be attacked under the antitrust laws by others, though the government agreed not to press charges. As part of a larger program involving the postponement of antitrust prosecutions and the suspension of the running of the statute of limitations applicable to the antitrust acts and the Federal Trade Commission Act, the Administration asked for, and the Congress passed, an Act to Mobilize Facilities of Small Business for War Production. The act specified that when the Chairman of the War Production Board certified to the Attorney General that certain acts were in accordance with the regulations, orders, requests, or approval of the Chairman, those acts would not be deemed in violation of the antitrust laws or the Federal Trade Commission Act.

Not all wartime legislation dealing with the antitrust laws relaxed the provisions of those laws. There was still sufficient concern in Congress to incorporate into the Surplus Property Act of 1944 prohibitions against disposing of surplus property where the effect would be to increase the concentration of power. The War Mobilization and Reconversion Act which was passed the same day as the Surplus Property Act was concerned with factors in mobilization and reconversion which might tend to

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1656 Stat. 537.
1758 Stat. 765.
1858 Stat. 785.
eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote an undue concentration of economic power.

With the renewal of agricultural prosperity, there came a significant shift in the political climate of opinion. The end of the war was marked by a resurgence of conservatism, and the 1946 congressional elections saw the completion of a trend which had been apparent earlier when the northern agrarian constituencies returned to the ranks of the Republican party. Once again there was an alignment of political forces which found both business and agrarian leadership working within the same party.

The Eightieth Congress passed the Reed-Bulwinkle Act, which amended Section 5 (the anti-pooling section) of the Interstate Commerce Act. There had been an earlier amendment of the Interstate Commerce Act in the period, when Congress passed the Transportation Act of 1940. The earlier act eliminated the requirement that railroad consolidations or unifications should conform to a commission-made plan. While consolidations must still meet with the commission's approval, the standards set up no longer contained a provision that competition be maintained. When such consolidations are approved, they are, as before, exempt from the anti-trust laws.

The Transportation Act of 1940 only slightly modified existing policy, but the Reed-Bulwinkle bill reversed a long standing prohibition against the joint making of rates. Formal rate agreements were prohibited

by the Act of 1887 and by the Sherman Act as construed in the Traffic Association cases. Informal rate agreements took their place, but there was no legalisation of such action even in the Emergency Transportation Act of 1933.

Section 5 of the Interstate Commerce Act was amended by the addition of Section 5a, which states:

Any carrier party to an agreement . . . relating to rates, fares, classifications, divisions, allowances, or charges . . . may . . . apply to the Commission for approval of the agreement if it finds that, by reason of furtherance of the national transportation policy declared in this act, the relief provided in Paragraph (9) should apply with respect to the making and carrying out of such agreement.21

Paragraph (9) of the section relieves parties to such an agreement from the operation of the antitrust laws. The Commission may not approve such an agreement if it is between carriers of different types, if it is an agreement with reference to pooling or if parties thereto are not accorded free and unrestrained right to take independent action. While it was the originator's intent to exempt those traffic associations of railroads commonly known as rate or traffic bureaus, the act exempts all carriers subject to the jurisdiction of the Interstate Commerce Commission.

While the bill was opposed by some members of Congress from agricultural states, sufficient strength was mustered to override a veto by President Truman. Most of the opposition came from the South and the West which felt that they would be discriminated against by a freezing of the existing classification and rate structure. The

prevailing situation was felt to be retarding the development of the sections—not the agricultural development, however, but the industrial. Further evidence that this was not an issue between agriculture and the transportation "trust" is found in that its sponsor in the Senate was Clyde Reed of Kansas. Reed cited an impressive number of farm organizations, including the Farm Bureau, which were in favor of the bill.\(^{22}\)

During 1948 there was a brief flurry of antitrust cases involving agriculture. An indictment was brought under the Sherman Act against the Virginia Milk Producers Association, its secretary-treasurer and seven corporations in the District Court of the District of Columbia charging a conspiracy to restrain interstate trade by fixing prices on milk and milk products sold in the Washington metropolitan area. The distributors were charged with conspiring to eliminate and suppress competition in the purchase and sale of milk in the area by an agreement to purchase their entire milk requirement from the association and to fix the prices of milk from an adopted classification. On April 27, 1948, the District Court granted the defendants' motion to dismiss the indictment on the grounds that the Clayton, Capper-Volstead and Agricultural Marketing Agreements Acts exempt their activities from the Sherman Act.\(^{23}\)

That such activities would be condoned only when a milk producers association was involved was made clear by two other cases during 1948.


Two dairy companies in St. Louis were found guilty under the Sherman Act for conspiring to restrain trade by fixing prices of fluid milk in the St. Louis area. Later in the year, three companies in the Louisville area were found guilty and fined under an indictment charging a conspiracy to fix and maintain the price of milk in the area.

Action against the meat-packers and the manufacturers of farm implements and machinery was also resumed during 1948. Civil cases were commenced under Section 1 of the Sherman Act and Section 3 of the Clayton Act in the District Court of Minnesota against J. I. Case Co., Deere and Co., and International Harvester charging a conspiracy to restrain interstate commerce by entering only into exclusive dealership contracts. Injunctive relief was sought. In the only case as yet reported, the bill against the J. I. Case Co. was dismissed because the government failed to prove unreasonable restraint of trade and a tendency to lessen competition and create a monopoly.

The meat-packers also were proceeded against in a civil suit (the criminal cases of the early forties resulting in failure). The complaint, filed in District Court (Northern District, Illinois, Eastern Division) alleged a conspiracy in restraint of interstate trade and commerce in livestock, meat and meat products, alleging that the market sharing of

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livestock purchases and the identical buying and selling policies and practices suppressed competition. The government asked that the practices be terminated and the defendants be divided into fourteen separate and competing companies and such other and further relief as the court might deem proper. No final disposition has been made of this case as yet.28

The Eighty-first Congress, elected in November of 1948, began a study of monopoly power by a subcommittee of the House Committee on the Judiciary. This investigating body was headed by no agrarian antimonopolist, but by Representative Cellar of New York. Hearings were held in 1949 and the witnesses were in general agreement that the antitrust laws were unsatisfactory in their present form. Economic concentration had not been slowed down, and effective antitrust laws were urged. Special exemptions, such as the Webb-Pomerene, Miller-Tydings and Reed-Bulwinkle Acts, were criticized.29

While no farm organizations were heard at this time—indeed, there had been no such representatives at the T.N.E.C. hearings—the Secretary of Agriculture, Charles Brannan, represented the agrarian view. He cited instances of antimonopolistic activity on the part of the farmer, including such activities as the gathering of agricultural statistics, the price-support program, the rural electrification program as well as the Packer and Stockyards Act, Capper-Volstead, the Commodities Exchange


Act and the Agricultural Marketing Agreements Act. While of the opinion that such activities had bettered the position of the farmer with respect to the "monopolists," he recommended further action, specifically studies of the food manufacturing industry, marketing charges, "open-price" practices, pulpwood prices, the fertiliser industry and the transportation industry.\textsuperscript{30}

It was, perhaps, no coincidence that the Federal Trade Commission issued a report on the fertiliser industry the year after Mr. Brannan made his suggestion.\textsuperscript{31} The commission, although not exhibiting the vigor in investigating industries and practices related to agriculture that they had during the twenties and thirties, had also reported on the manufacture and distribution of farm implements in 1948, which report served as a basis of the attack on certain distribution practices, such as exclusive dealerships, of the manufacturers of farm machinery and implements.\textsuperscript{32}

In 1952, representatives of the National Grange and the Farm Bureau appeared before the Geller subcommittee. They came for a specific purpose—to indicate the opposition of those organisations to the Miller-Tydings Act. Amendments had been introduced to put more teeth in the act when a court decision indicated that non-signers of price maintenance contracts could not be legally enjoined from selling the

\textsuperscript{30}Ibid., pp. 163–191.


products at less than the minimum prices fixed.

Lloyd C. Halvorson, Economist, the National Grange, quoted a statement adopted by the delegates of the National Grange at the Eighty-fifth annual session held in November of 1951:

'It is entirely certain that the fair traders who are organized will try to get a law through Congress which will reverse the Supreme Court decision. The grange should resolutely oppose any effort by any group to secure legislation which will destroy the full effectiveness of the Sherman Antitrust Act for which the grange fought so hard and successfully in its early days. It is laws like the fair-trade laws which legalize resale price fixing that keep prices on things farmers buy rigidly high even when farm prices fall, and which increase the squeeze on farmers between falling prices and rigid costs.\textsuperscript{33}

An interesting aspect of the testimony of the representative of the National Grange was the implication that small business rather than big business kept prices up. Illustrating the farmer's perennial concern with the prices he pays and the intent of farm organizations to attack those who caused high prices, here was the spectacle of an avowedly antimonopolistic farm group praising efficiently organized business, such as the chain stores. Halvorson, who must be presumed to have reflected the views of the organization, went so far as to praise large-scale manufacturing as having brought down the cost of production. The bugaboo of monopoly no longer held terrors for him, since he felt that "workable competition" among a few giant firms was superior to perfect competition among many small firms, saying:

The economists have come to recognize that . . . we could not by any means today break down these big giant corporations in order to have a lot of producers. The country would be worse off. The cost of producing items would be higher.\textsuperscript{34}

\textsuperscript{33}U. S. Congress, House, Committee on the Judiciary, Hearings before the Antitrust Subcommittee, 82nd Cong., 2nd Sess. (Washington, 1952), p. 158.

\textsuperscript{34}Ibid., p. 169.
Matt Triggs, Assistant Legislative Director, American Farm Bureau Federation, shared the views of Halvorson and the Grange relative to the fair-trade laws. He quoted the annual meeting, held at Chicago in December of 1951, as restating its opposition to such legislation—the Farm Bureau had opposed it in 1937—in the following statement:

So-called fair-trade pricing legislation is inconsistent with the maintenance of the principles of a free competitive economy. Flexible and freely moving prices are an important element of these principles. We oppose legislative efforts to require nonsigners of fair-trade contracts to comply with their provisions. We favor legislation to eliminate fair-trade pricing provisions of law.35

Triggs went on to reflect the concern of the Farm Bureau that such legislation might lead to "planned economy or socialism," and the destruction of the profit system. When asked if the price-support laws were not in conflict with notion of freely fluctuating agricultural prices, the reply was that they were not. The price-support program which the Farm Bureau endorsed was more in the line of establishing floors under prices, similar to the minimum wage laws, rather than the fixing of prices at a high level. According to Triggs, price-support programs do not ensure the farmer a profit, while the purpose of fair-trade is to provide profitable operation for the small retailer. However, the Farm Bureau did favor legislation against "loss-leaders," which it likened to the price-support laws.36

The investigations of the Celler subcommittee did not result in any new antimonopoly legislation, and in the continuing prosperity and

35 Ibid., p. 536.
36 Ibid., pp. 538-540.
with a conservative administration and Congress installed in Washington, the prospect for a new antimonopoly wave is almost non-existent. There is, further, little evidence that major farm groups--outside of the Farmers' Union—are exerting pressure for such a move.

In the resolutions adopted at the thirty-fourth annual meeting of the Farm Bureau, held in Seattle during December, 1952, the organization indicated that its concern with monopoly was not with that of industry, but that of government and labor. In its resolutions, the following "fundamental beliefs" appeared:

In order to maintain and improve our capitalistic system, help reverse the forces moving us toward communism and prevent further steps in the trend toward state socialism, we assert the following beliefs:

* * *

We believe in the American competitive system under which supply and demand in the market place is the ultimate determinant of price.

* * *

We believe that monopoly in any form is dangerous, whether it is by government, industry, labor, or agriculture.37

In the resolution on monopoly, the types of monopoly which the Farm Bureau feared became clear, when it stated:

The most dangerous form of monopoly is big government—benevolent or otherwise. Other forms of monopoly may be restrained by government. But if big government develops to the point that it may perpetuate itself in office by the support of those to whom it grants benefits, favors and vested interests, then freedom and liberty are lost.38

While the organization resolved that the authority and ability of the Federal Trade Commission and the Department of Justice to deal with

38 Ibid., p. 29.
monopolistic and restrictive practices should be enhanced, and though
fair-trade legislation was condemned, the economic group which the Farm
Bureau believed should be proceeded against was labor.

The organization resolved that the basic principles of the anti-
trust laws be extended to cover labor unions and their activities.
Industry-wide bargaining was condemned, with the root of the problem
being regarded as the growth of labor monopoly. Why farmers had a stake
in the matter was explained as follows:

Farm people have an appropriate interest and concern in this
development; first, because labor monopoly is centralizing in
the federal government the function of wage fixing and the
responsibility for the settlement of labor controversies;
second, because unwarranted interferences in production are
contributing to inflation; and third, because the monopolistic
practices of labor have been exercised in flagrant disregard
of individual rights and the national welfare.39

The National Grange held its eighty-sixth annual convention at
Rockford, Illinois, during December of 1952 and adopted resolutions
similar to those adopted by the Farm Bureau. While also paying lip-
service to the ideal of free competition, the platform favored marketing
agreements for all commodities that could use them and legalized con-
certed sales campaigns by farmers, processors, distributors and retailers
for surpluses. The platform also favored a study to determine if
industrywide collective bargaining should fall under the antitrust laws.40

In the address of the Master of the National Grange, Herschel D.
Newsom, repeal was asked of "economic institutions or devices that

39 Ibid., p. 30.
seek to offset or eliminate the effect of competition." He further said:

We have fallen into the dangerous habit of using the power of political pressure and force, the power of governmental regulation or restrictions, the power of monopolistic pricing practices, and even now the power of industry-wide collective bargaining, to eliminate or restrict the effects of competition.41

In accordance with this demand, review of both the antitrust laws and laws permitting industry-wide bargaining to determine whether they restrain or promote monopoly was asked.

The National Farmers' Union, in its "Golden Jubilee Convention" held in Dallas in March of 1952, had a different view of the economic system and of the monopoly problem. While belief in a free, private enterprise economy was expressed, the further belief was stated that the government should take whatever economic action is necessary for the performance of those tasks for the common good which cannot or are not being performed by individual enterprise or cooperatives.42

The convictions of the Farmers' Union on the subject of monopoly were put in these words:

We are convinced that the greatest stumbling block now standing in the way of resource development and full employment is the existence in our society of a vast interlocking concentration of monopolistic economic and political power. It is a major long-term purpose of Farmers Union to reveal such monopoly wherever it may exist and reduce, adjust or regulate it to serve the common good.43

41 Ibid., pp. 14-15.


43 Ibid., pp. 8-9.
Action demanded to check the "alarming growth of monopoly and concentration of industry and finance," included vigorous antitrust prosecution, enactment of laws to break up powerful combines, growth of cooperatives, a published cost analysis of all products and services made by the federal government, direct government production where industries fail to expand to meet increased demand at reasonable prices, and promotion of small business.44

Counter-combination of the farmer was justified in terms such as these:

Until such time as monopolistic practices are outlawed in business and industry, we are convinced of the moral right of family farmers to obtain and use marketing agreements and orders to help them obtain parity returns for the commodities they produce.45

So, while there still exists strong agrarian antimonopoly feelings on the part of farm organizations, only a minority directs these attitudes against industry. While this change in emphasis had been taking place since the twenties, there had been ardent antimonopolists from agricultural states in the Senate to carry on the fight in the legislative halls. At present, however, there are none in the tradition of La Follette, Norris, Clark, King, Borah or even O'Mahoney. Conservatives such as Wherry, McCarthy, Walker, McCarran, Mundt and Reed have recently represented the same constituencies as did the agrarian liberals. Utah, which once sent William H. King to the Senate, is now represented by Wallace F. Bennett, former president of the National Association of Manufacturers.

44 Ibid., p. 27.
45 Ibid., p. 16.
While there is little prospect that the changed attitudes on the part of the major general farm organisations and Senators from farm states will lead to substantial modification of existing antitrust and related legislation, there is also little prospect that agriculture will soon be in the forefront of the drive against industrial monopoly as it was in the past, when it was so influential in shaping the anti-trust laws.
The years 1850-1890 saw a remarkable change in the American economy. A new agriculture found itself in a new industrial age and reacted vigorously. Railroads transformed markets and made possible the opening up of the West to agriculture. As agriculture and manufacturing grew along with the railroads, corporations, Trusts and other forms of business combination confronted the farmer in his business dealings.

Early reactions to "monopoly" on the part of agrarians were directed at the railroads. Discrimination against the farmer, frauds and political activities were decried, but the greatest complaint was against high rates. There had been a reaction to the activities of the railroads after the Panic of 1857, but this died with the onset of war prosperity. When the post-Civil War depression set in, anti-railroad agitation was renewed, and the Order of Patrons of Husbandry was adapted into a tool against the railroads. While the Grange, which had adopted an antimonopolistic "Declaration of Purposes," did not directly participate in such action, Grangers did.

Other national farmers' groups were established prior to 1890, with the Alliances being the most important of them. The granges and the newer organizations attacked "monopolists" in the form of middle-men and manufacturers through the device of cooperative purchasing, marketing and manufacturing. While most of these ventures were
unsuccessful, the beginnings of a cooperative movement in agriculture were made.

These agrarian organizations also took action on the political front. Farmers had supported national reform parties during the early seventies, and also supported third parties in the states strongly enough so that the so-called "Granger laws" governing railroads resulted. National railroad regulation was also sought during the seventies. While an investigation was made by a special Senate committee and while bills were introduced in Congress, no legislation resulted.

Farmers also gave some support to the Independent National, or Greenback, party, which, while for inflation, was also antimonopoly. This party was not directly successful in the elections, but it was one of a number of reform parties receiving the backing of farmers which had special significance since margins of victory of the major parties were very small. In 1884, the Greenback party and the new Anti-Monopoly party backed the same candidate, and, as in 1880, third-party activity resulted in a close election, with a Democrat being installed for the first time since the Civil War.

The Interstate Commerce Act of 1887 was largely the result of agricultural discontent and contained a prohibition against pooling, reflecting the antimonopoly views of the farming class. Debate in Congress revealed that the hope was that enforced competition would bring rail rates down.

The year 1888 saw new antimonopoly third parties on the national scene, and, though they were named labor parties, their platforms and
following revealed agrarian influence. Again the third party vote caused the victorious party—this time the Republicans—to have only the narrowest of margins.

With their control of the national government hanging on so slim a thread, and with the Alliance-supported People's party on the rise, the Republicans were willing to make concessions to the Western wing of the party to keep them in the party fold. The alliances had manifested their antitrust sentiments in a number of declarations and the passage of antimonopoly legislation in agricultural sections also indicated that the trust issue was one of which political capital might be made.

Senator John Sherman, of Ohio, acting for the Republican party, introduced an antitrust bill in Congress and, while it did not pass, the final act bore his name. Congressional debate revealed the intense feelings which members from farm states held on the subject. Most of them favored enforced competition, though a minority preferred counter-combination. Congressional debate and statements made by public figures also disclosed that the issue was being used by both major parties to gain agrarian support, when the leadership of neither party believed strongly in such legislation.

The Sherman Silver Purchase Act and portions of the McKinley Tariff Act (which was the main business of the session), both of which were enacted in 1890, were also intended to conciliate the Western wing. The continued rise of the Populist party and the resounding defeat of the Republicans in the congressional elections of 1890 gave notice that none of this legislation served its purpose.
The post-war depression, which had continued almost without relief since the Civil War, reached its greatest depth in the period 1890-1896. Railroads were bankrupt, financial panic reigned, unemployment increased and prices continued to fall. Early decisions under the Sherman Act revealed that successful prosecution against industrial combinations were difficult to secure, although the courts did not hesitate to apply the act to labor unions. Early administration of the law was half-hearted, and no relief for agriculture was obtained from "trust-busting."

Agrarian revolt reached its peak in the period 1890-1896. Populists had entered the Congress as a result of the elections of 1890 and introduced new antitrust bills. A national convention was held in 1892 and a Presidential candidate was nominated to run on an antimonopoly platform. The Populist nominee received over one million votes and the victorious Democratic candidate, Cleveland, had only a plurality of the popular vote.

Cleveland's second administration was far from satisfactory to the agricultural class, and members of Congress from farm states fought administration-sponsored measures and caused new antimonopoly legislation to be passed. The elections of 1894 saw some new successes achieved by the Populists and conditions from 1894-1896 indicated that agrarian protests in the Presidential election would be stronger than in 1892.

The "Money Trust" and "Bond Syndicate" had been under attack during the early nineties, and with the spread of the demand for free coinage of silver, the Populist revolt was channeled into a demand that inflation be achieved by defeating the "monopolistic powers
gathered around the gold candidate." When the candidate of both the Populists and Democrats, Bryan, failed, the Populist party declined. As prosperity returned, agrarian antimonopoly parties passed from the scene, although antitrust sentiments were still held by farmers.

Prosperity returned after the election of 1896 and lasted through the first two decades of the twentieth century, with only brief and not very severe interruptions. Agriculture had more than its share of the prosperity and there was no impetus for the establishment of new parties to battle the "trusts." There was, however, new emphasis on cooperative marketing of agricultural products, and organizations such as the American Society of Equity sprang up, the objectives of which were to increase the price received by the farmer by holding agricultural products off the market. These organizations had some success in the tobacco industry, forcing the "Tobacco Trust" to come to terms.

Industrial combination after 1896 far overshadowed organization by the farmers. This combination movement, which came to a halt by 1903, caused new steps to be taken against the trusts. Some early successes were had in prosecutions of traffic associations of railroads and against an industrial pool, although livestock associations were held not to come under the Sherman Act. New antitrust conventions were held and new antitrust bills were introduced in Congress. In 1900, there were bills and constitutional amendments debated in Congress, but no new legislation resulted.

There were reform movements in the farm states of the Middle West during the first decade of the century and these states supported Theodore Roosevelt, who gained some repute as a "trust-buster." Under
the guidance of Roosevelt, new antitrust legislation and activity was put into operation, and he gained considerable reputation from his prosecution of the "Meat Trust" and the Northern Securities Co.

While the antitrust laws and activity had not been successful in halting combination, there was no great demand on the part of farmers for basic changes in the laws until it was said in the Danbury Hatters case that agricultural organizations came under the law, and until a combination of tobacco farmers was convicted of criminal conspiracy under the Sherman Act.

The elections of 1908 saw increasing emphasis put on the trust issue and platform planks were laid which were to result in the antitrust legislation of 1914. Taft caused the attack on combinations to be renewed during his term of office, and there was considerable success in the courts, especially in relation to the Standard Oil and American Tobacco companies. The action against the tobacco farmers took place during his administration, however, and he was unwilling to provide exemption from prosecution under the Sherman Act to agricultural groups. Congressional debate indicated the concern of members from agricultural states that the decisions of the courts might be to restrict the organization and operation of agricultural marketing cooperatives and bills were introduced to exempt such organizations from the antitrust law.

The antitrust issue was a major issue in the campaign of 1912, the last time it was to be so. Since all parties supported some sort of new antitrust legislation, the Clayton Act and the Federal Trade Commission Act were passed early in Wilson's first administration.

Wilson's two terms in the White House saw increased prosperity
until the recession of 1920. Agricultural cooperatives grew by leaps and bounds and there was even some increase in the number of combinations in industry, with the trade association movement representing a new type of combination. The war years saw a decline in progressivism, and a tendency to encourage combination on the part of trade associations and railroads. Before the progressive movement died, important changes in the antitrust laws were made by the legislation of 1914.

Those forces behind strict prohibition of combination had to compromise with those who favored, instead, the prohibition of certain practices and types of organization, with a new administrative commission to supervise the competitive system. The Clayton Act contained a provision which purported to exempt farmer and labor organizations from the antitrust laws, with the important proviso that their activities must not violate them.

Agrarians were not too contented with the provisions of the legislation, but there was no hesitancy in making use of the Federal Trade Commission to investigate organizations which the farmer felt might be operating to his disadvantage. Court decisions during the second decade of this century indicated that the antitrust laws would still be used against farm organizations, though there was some comfort to be derived from consent decrees in the harvesting machinery and meat-packing industries resulting from F.T.C. investigations and Department of Justice action.

While general prosperity reigned in the years 1920-1929, there was almost unrelieved depression in agriculture. A reaction to the disparity of agriculture in the period was the rise of new farm organizations and
and the Great Purge of the 1930s, the attack on monopoly took the form of the Packers and Stockyards Act of 1922, the Pure Food and Drug Act, and the Clayton Act. The NIRA was designed to prevent the use of price discrimination and to control monopolies, especially in the agricultural sector. The AAA, on the other hand, allowed the government to control prices and production levels.

The American Farm Bureau Federation opposed the AAA, arguing that it was a violation of farmers' rights and that it would lead to higher prices and a decrease in agricultural production. The AAA was eventually declared unconstitutional by the Supreme Court, and the government's efforts to control the agricultural sector were largely unsuccessful.

The AAA and the AAA were replaced by the Agricultural Adjustment Act of 1933, which provided financial assistance to farmers who agreed to reduce their output and prices. The AAA succeeded in reducing prices and increasing farm income, but it also led to criticism from those who believed that it was a form of government intervention in the economy.

The AAA was replaced by the Commodity Credit Corporation in 1934, which provided loans and guaranteed sales to farmers. The Commodity Credit Corporation was later replaced by the Agricultural Stabilization and Conservation Service, which provided assistance to farmers through the 1940s and 1950s.

The Great Depression and the New Deal led to a reevaluation of the role of government in the economy. The government's role in the economy expanded significantly during this period, and the AAA was one of the earliest examples of government intervention in the agricultural sector.
consolidate and cooperate. In the campaign of 1928, they were sufficiently concerned to promise a national marketing agency to serve cooperatives. Such an agency could act as a monopoly, yet, being established by the government, would be immune to antitrust prosecution. The stabilisation corporations established under the act were doomed to failure, since they had to operate during a period of drastically declining prices.

Prosecution of the antitrust laws during the twenties was relaxed, and in cases which affected agriculture, such as the International Harvester case, there was not much advantage gained for the farmer.

The coming of the New Deal saw a new attack on the problem of depression. There was some increase in prosperity during the New Deal period, but conditions still were not satisfactory in 1939. The increased number of cooperative marketing associations and the growing strength of the farm organisations led to demands by these groups for a farm bill which would permit cooperative associations greater latitude under the antitrust laws than that provided by the Capper-Volstead Act. The Agricultural Adjustment Act of 1933 permitted them to enter into marketing agreements with processors and handlers, such agreements to be exempt from the antitrust laws when approved by the Secretary of Agriculture. The Secretary was also given the power to issue marketing orders when agreements would not be entered into.

While there was willingness to exempt agricultural associations, agrarians in Congress were less willing to provide exemption for industrial associations under the National Industrial Recovery Act. The Farm Bureau gave the bill its approval, and the bill did pass, despite the efforts of Senators Borah, Wheeler and Clark,
There was increasing agricultural opposition to the N.R.A., and
when a bill was introduced to extend it, Congress members from farm
states amended it so as to kill the act. The Supreme Court decision
rendering it unconstitutional put the final touches on it. Agricultural
support for antimonopoly legislation was evidenced in bills introduced
in Congress during the remainder of the thirties, and in its support of
the Robinson-Patman Act. That their antimonopoly sentiments did not
extend to agriculture was revealed when the Agricultural Marketing Agree-
ments Act was passed in 1937, reenacting part of the Agricultural
Adjustment Act, after some doubt had been cast on its applicability
after the Hoosac Mills decision. There were also a number of acts
passed with the support of agriculture which provided for the exemption
of industries from the antitrust laws, but only after they had been
brought under the control of some government agency.

The recession of 1938 revived antitrust sentiment, and the Depart-
ment of Justice began a new assault on combinations, while Congress
established the Temporary National Economic Committee to investigate
the economy. Agrarians backed both moves, and Borah, King and O'Mahoney
were original members of the T.N.E.C. New bills to control trusts were
introduced, and the Wheeler-Lea Act, strengthening the F.T.C., was
passed.

A milk association came under fire in the Borden case, and the
decisions of the courts clarified the meaning of the Capper-Volstead,
Clayton and Agricultural Marketing Agreements Acts as applied to such
associations. The association did not have a marketing agreement filed
with the Secretary of Agriculture, and the Court held that this, in
addition to the fact that neither the Clayton nor the Capper-Volstead Acts permitted such activities, rendered the arrangement illegal.

The defense and wartime prosperity, of which agriculture had at least its share, saw the end of effective agrarian pressure for new general antitrust legislation, and for vigorous prosecution of the existing laws. While the general farm organizations favored such activity in 1939, the post-war statements and activities of these groups indicated important changes in outlook.

As a result of the pre-war activity, there were a number of cases prosecuted in the early forties. A host of criminal cases against the meat-packers, based on a T.N.E.C. monograph, were unsuccessful. While some cases against milk associations failed on the grounds that such groups were exempted by the Clayton and Agricultural Marketing Agreements Acts, fruit growers met with reverses.

There was legislation during the period which further loosened the bonds of the Sherman Act. The Transportation Act of 1940 permitted greater latitude in railroad consolidation. Legislation and administration policy during the war permitted closer cooperation in industry to further the war effort. And with the change in the political climate of opinion after the war, the Reed-Bulwinkle Act was passed, with some agricultural support, amending the anti-pooling clause of the Interstate Commerce Act.

There were some post-war cases further clarifying the law in relation to milk associations. So long as they acted in combination with associations, dairy companies were exempt. Action against meat-packers and manufacturers of agricultural machinery and implements again failed.
A new committee to study monopoly was set up, but its lack of agricultural support was significant.

Statements made before the Celler subcommittee, which was studying monopoly power, by representatives of the Grange and the Farm Bureau, along with recent resolutions adopted by those organizations, indicate that, outside of the fair-trade laws, the opposition of these organizations is no longer directed against industry, but against "labor monopoly" and "government monopoly." Among major general farm organizations, only the Farmers' Union, a direct descendant of Populism, is still concerned with industrial monopoly, favoring both "trust-busting" and counter-combination. With the change in attitudes of the larger farm organizations, and the disappearance from the Senate of agrarian antimonopolists, there is little prospect that agriculture will be in the forefront of any new drives against industrial monopoly.

An inescapable conclusion is that agrarian pressure has been fundamental in the establishment of antitrust legislation passed by Congress, and in the modification of those laws. While in the forefront of the movement for antimonopoly laws, agriculture has also led other groups in securing exemption from the operation of those laws.

The views of agrarians concerning the antitrust laws have gone through three distinct stages:

1. Prior to the turn of the century, it was felt that establishment of antitrust laws would enforce competition and bring industrial prices and railroad rates into a more desirable relationship to agricultural prices.

2. During the first quarter of this century, the feeling grew
that the antitrust laws were having little or no effect on industrial
combinations or prices. This brought about the view that the antitrust
laws should be modified so as to permit combinations of farmers, with
the expectation that this would increase agricultural prices to a "fair"
level.

3. Since 1925, the attitude has been that the antitrust laws are
ineffective in reducing industrial prices and that agricultural combina-
tion, with exemption from those laws, has not been sufficient to raise
agricultural prices, generally.

While some agricultural leaders were convinced antimonopolists who
believed the solution lay in the atomization of industry, the legislation
which has been directed toward the "monopolies" and "trusts" for which
agrarian pressure groups have been responsible indicates a less utopian
outlook. It must be remembered that the Sherman Antitrust Act was not
passed at the behest of any "farm bloc"—John Sherman was no 1890 counter-
part of Capper of Kansas.

The Sherman Act, while a product, in large part, of agrarian pres-
sures, is different in an important respect from other regulatory
legislation favored by the farmer. Other antimonopoly legislation is
concerned with specific practices and specific persons or organizations,
while the Act of 1890 is the only general prohibition of contracts,
combinations or conspiracies in restraint of trade and of monopolies and
attempts to monopolize. Bills introduced by agrarians in 1889 and 1890
were more specific, and, for example, provided for the exemption of
labor and agricultural organizations and attacked certain practices such
as trading in futures. The Interstate Commerce Act, Clayton Act, Federal Trade Commission Act, Cotton Futures Act, Grain Futures Act, Packers and Stockyards Act are in the usual pattern of antimonopoly legislation favored by agriculture, all being concerned with certain practices and entities.

The task the farmers were moved to take was to prohibit by law the "unfair" trade practices of their enemies. They were reluctant to put the enforcement of these laws into the hands of commissions or the Department of Justice, over which they did not exercise such direct control. The Capper-Volstead Act put the enforcement power over agricultural combinations into the hands of the Secretary of Agriculture. The licensing power held by him under the Agricultural Adjustment Act accomplished a similar objective, for, if processors were to indulge in "unfair" practices, he could take their licenses away from them.

The farmers' relationship to antimonopoly legislation indicates that to be against "monopoly" is not necessarily to be for free competition. Agrarians were against certain economic phenomena alleged to be the result of monopoly and were more interested in alleviating the "symptoms" than curing the fundamental malady. Neither Taft's nor Wilson's insistence on free competition had great appeal for them, they certainly didn't hesitate to combine and seek exemption for their combinations, and they favored, during the twenties, high duties on agricultural imports.
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