

University of Pennsylvania Law Review

And American Law Register

FOUNDED 1852

Copyright 1939, by the University of Pennsylvania

VOLUME 87

FEBRUARY, 1939

No. 4

THE MONOPOLY ISSUE *

DONALD R. RICHBERG †

In the year 1776 the Declaration of Independence was written in America and Adam Smith published, in England, *The Wealth of Nations*. Sweeping across the world, the principles of political and economic freedom unloosed the amazing creative energies of the nineteenth century.

Democracy endowed men with the mystic strength of constitutional rights. It promised to secure these rights with self-government. It offered a boundless satisfaction for the "sacred hunger of ambitious minds".¹ The political economy of free competition reduced the handicaps of inheritance, broke down the barriers of privilege, declared unending war upon public and private monopolies, and ordained economic liberty as the birthright of the free citizen.

It is hard to avoid grandiloquence in describing the evolution of a new economic world within the lifetime of one man who lived to be as old as my grandfather. Throughout the nineteenth century self-government and free competition sustained each other in the development of an industrial civilization, which transformed the economic man more in that hundred years than in all the centuries of documented history. The biological and spiritual progress of the human race is so infinitely slow as to be hardly perceptible. It is even seriously debated as to whether our bodies, our minds, and our idealisms have advanced at all from the top levels of Greco-Roman civilization. But our economic growth—the improvement of man as an economic force—in the short space of one century is an awesome fact.

* This paper was read at a meeting of the Law Club, December 2, 1938, at Chicago, Illinois.

† A. B., 1901, University of Chicago; LL. B., 1904, Harvard University; General Counsel NRA, 1933; author, *A Suggestion for Revision of the Anti-Trust Laws* (1936) 85 U. OF PA. L. REV. 1, and of articles in other legal periodicals.

I. SPENSER, THE FAERIE QUEEN, bk. 5, canto 12.

Let me summarize this growth in the words of Stuart Chase, describing Modern Man:

"His eye at the lens of a telescope becomes one million times stronger; his voice before a microphone can be heard ten thousand miles away. His ear picks up the vibrations of a woman's singing in another continent. Although his naked thumb can measure hardly to the thickness of its nail, with an electron tube micrometer he can judge space to one billionth of an inch. . . . With his own hand he can write fifty words a minute, but with a rotary press he can, in an equal time, lay down two hundred thousand words.

"With his back he can sustain perhaps one thousand pounds and carry half that weight for a short distance. With the electrical controls of a travelling crane he can lift 430 tons and carry it as far as the mechanism extends. With his fist he can perhaps knock down a man; with a steam hammer he can crush a three foot bar of steel. He picks up a stone and throws it a few hundred feet at most; he presses a button on a siege gun and throws a ton of metal sixty miles. . . . The peasant in his fields is six feet tall. But this man has swelled into a colossus, straddling continents. Power unlimited; sensitiveness unbounded." ²

This extraordinary progress of man in economic power must be credited in part to the energies released by the practical idealisms of self-government and free competition that dominated the nineteenth century. And yet today those idealisms are challenged by hostile forces that throughout the world are destroying the political economic structure into which we were born. We do not meet this challenge to our traditional philosophy when we indulge ourselves in emotional orgies of resentment or despair.

In blind resentment we shut our eyes to the proven weaknesses in a political economy that built a new structure of civilization, but that is now failing to maintain that structure as a permanent and safe abode.

But when we yield to despair we shut our eyes to the proven values in that same political economic creed that served so well the needs of preceding generations. We lose the lessons of earlier success in grieving over recent failures.

It is our present obligation to ourselves and to posterity to reëxamine, with all the cold logic which we can command, the principles and doctrines in which we have placed our trust. It was Adam Smith, justly regarded as the father of economics, who wrote: "Science is the great antidote to the poison of enthusiasm and superstition." ³

2. CHASE, *MEN AND MACHINES* (1929) 7-9.

3. SMITH, *THE WEALTH OF NATIONS*, bk. 5, ch. 1, pt. 3, art. 3.

The challenging question of today, which demands a scientific answer, is: "Can the proven values of our political economy be preserved and its weaknesses repaired; or must we accept as the necessary order of tomorrow those autocratic controls of government and industry that promise national and individual security at the heavy price of liberty?"

In the spring of this year the Congress established a Temporary National Economic Committee which for some months has been preparing to study a maze of problems all involving the relationships of government and business. Because this study was stimulated largely by the perennial controversy over the merits and menaces of "big business", the pending investigation is popularly regarded as an anti-monopoly crusade. Ostensibly the object of an anti-monopoly crusade is to restore free competition as the automatic regulator and stimulator of trade. But actually the object and result of every anti-monopoly crusade in the last fifty years has been the further regulation of competition—the increase of governmental controls over business.

It is now becoming evident that, in our efforts to preserve a system of private enterprise, we have been rapidly making it unworkable. And so I hope that, before the banners of another crusade are raised, the Temporary Economic Committee will use the microscope and the X-ray to reveal the nature and causes of "the monopoly issue", so that we may have some idea of where we are going and why we are going there, in the next march of business down the road to a promised salvation.

It is the purpose of this monograph merely to indicate the educational value of asking economists, lawyers and business men to answer such questions as:

(1) Why is it true (as Brandeis observed more than twenty-five years ago) that—"Unrestrained competition will lead necessarily to monopoly"?⁴

(2) Why is "free competition" literally an anarchistic conception?

(3) What variety of regulated competition met the needs of yesterday and what will meet the needs of tomorrow?

(4) What are undesirable and what are essential restraints of trade?

(5) When are cooperative restraints of trade monopolistic and when are they anti-monopolistic?

4. For this quotation and other authorities, see VAN HISE, *CONCENTRATION AND CONTROL* (1912) 98.

(6) If we would preserve a competitive system of private enterprise, what are the respective spheres of competitive, monopolistic and governmental control? ⁵

Of course, before we can even enter upon these inquiries, we must make a reasonable effort to define our terms. What do we mean by such loose, wanton words as "monopoly" and "competition"—words beloved by serious thinkers and constantly losing their virtue on the lips of careless politicians?

"Monopoly", as an economic term, means an exclusive control over production or distribution through which prices may be arbitrarily fixed. The essential element in this control is a governmental sanction. It makes no difference whether a king grants an exclusive privilege to a royal favorite, or a republican government authorizes property rights in national resources, or grants a patent, or permits a corporate consolidation, there must be support of economic power by government as the basis for a monopoly. For that reason the monopoly issue is essentially political.

But monopoly, as a political term, no longer means an absolute and single headed control. It is more commonly used to define concentrations of economic power in comparatively few hands. A popular demand for the enforcement of the anti-trust laws calls for much more than an attack upon "combinations in restraint of trade" or price-fixing agreements. It seeks political restriction of the advantages of bigness. In order to fuse the political issue and the economic issue let us have a common understanding that any large business activity which discourages, limits, or interferes with the competitive effort of a small business man is popularly regarded as "monopolistic".⁶

There is nothing immediately monopolistic in the establishment of four chain stores in one block on Main Street. But the threat of extinction presented to the independent merchant rouses the same wrath that explodes against the so-called Steel, Tobacco, Cement, Aluminum or Lumber "trusts". This hostility of the "little fellow" seems often illogical and indiscriminating. Yet there is a sound instinct at the bottom of it.

There is probably no more vicious, dog-eat-dog competition than that which may be temporarily carried on by huge corporations. Chain stores, tobacco companies, steel manufacturers and tire makers fight with battle-axes to capture markets and to gather in consumer dollars. But as the competition narrows down to a few powerful enterprises

5. A most dispassionate, enlightening consideration of such questions will be found in CLARK, *SOCIAL CONTROL OF BUSINESS* (1926).

6. See Ch. II, "Monopoly and Competition" in RICHBERG, *THE RAINBOW* (1936), a book reviewing the NRA by the present author.

they become weary of the wastes of duplicating expenditures. They bemoan the need of selling near, or even below, cost to meet a competitor's price. Since they are few in number, private agreements to divide territory and to maintain prices offer a logical means whereby all can make more money.

In comparison with the insecurity of a "little fellow", a great corporation seems invulnerable; but in a battle of giants the hazards of big business become enormous, with losses of millions resulting from a single error of judgment. Carrying such responsibilities, the pressure upon executives to seek security in monopolistic agreements steadily rises. It is not merely a greed for greater profits, it is a lively fear of eventual bankruptcy that drives many a large enterprise into the arms of a competitor.

The "little fellow" has good reason to feel that the competition of the "big boys" will not be permanent. He is not interested in transient distinctions between what is a "monopoly" and what is merely a big business, or between practices which are now unfair and oppressive and "fair" practices which will eventually destroy him. Whether he is a business rival or merely a consumer, he looks upon the monster enterprise with a suspicious eye. It may serve him today, but instinct and experience warn him that it may tap his veins tomorrow.

The political relief offered by the State Socialist does not appeal to the "little fellow". Glorifying in his precarious independence, he is not attracted to the idea of becoming the servant of a government monopoly. The only safeguard to his ancient liberties appears to lie in demanding that business remain ruthlessly competitive, in fighting against bigness, in commanding that the field of competition be kept always open to the small enterprise.

As a result, we have had fifty years of experimentation in laws designed to prevent or to retard the growth of big business and to preserve the historically free and uncontrollable competition of a host of small producers and distributors. But all this time the advance of an industrial civilization has remorselessly created larger and larger organizations to manufacture, to transport and to sell necessary goods and services. During this time millions of wage earners have been regimented into the employ of huge corporations; and millions of consumers have been regimented into the use of standard quantities and qualities and brands of things they need, or which they have been educated to think they want.

Where is that free competition visualized in the political economy of Adam Smith? There is a very different competition now stimulating the entire business world—a competition between giant enterprises—a

competition between industries—a competition between big and little business—but a competition so regulated by public law and private agreements that we only delude ourselves by calling it free competition.

Indeed an absolutely free competition has not existed under any government which human beings have ever established; and the number and complexity of regulations of competition have increased in correspondence with the increase in the number of people subject to one government. But the illusion that absolutely free competition is an ideal has persisted for the same general reasons underlying the persistence of the ideal of absolute individual liberty. An energetic man or woman, maturing in a society in which a large number of restrictions are imposed upon the freedom of *other people*, becomes easily impressed with the idea that if *he* can freely use *his* physical and mental powers, he can take care of himself satisfactorily. He assumes the validity of all the restraints imposed on others which give him his freedom. But he resents almost every restraint imposed upon himself.

As a result, groups with a common economic interest are found constantly advocating laws to restrain their competitors, but bitterly opposing laws which restrain their own freedom of competition.

We find good examples of this inconsistency in all our modern efforts to deal with combinations and contracts in restraint of trade. Modern industry involves a complicated series of cooperative arrangements, all of which must be given sanction by the government. Agreements under which it is possible to have thousands of men invest in one enterprise and employ thousands of other men and sell to hundreds of thousands, all call for the exercise of liberty of contract over a wide range of subjects and activities—and result in serious restraints upon the liberty of investors, workers and consumers.

We seldom stop to think that in the very organization of a corporation there is a sweeping restraint upon the freedom of individuals to compete with such corporate enterprises. The individual stockholder is relieved of a host of personal liabilities imposed on the individual business man. The corporate enterprise becomes possessed of powers so great in relation to the puny strength of a one man enterprise, that little freedom of competition is left to the individual, except by the method of associating himself with others and thereby submitting to the control of his property or his labor by an organization which regulates his activities to a degree which he would regard as intolerable in government.

Despite the early antagonism of individual business men to corporations, the various advantages of corporate organization have compelled government to sanction the resulting great variety of restraints

upon competition. But when the increasing power of corporate concentrations brought about a new popular reaction, with a desperate desire to preserve some of the fast vanishing individual liberties, anti-trust legislation developed.

Now, as a result of sanctioning, by law, the cooperation necessary to create and operate large scale industries and then of the effort, by law, to regulate and restrain these vast cooperative activities, we have been meeting, in the last fifty years, new problems of regulated competition, wherein there is a just complaint constantly arising against both inadequate governmental control and excessive governmental control. We have, on the one hand, from a social standpoint, intolerable abuses of economic power and intolerable weaknesses in the operation of our industrial system and, on the other hand, we have a host of hampering, unjustified restraints upon the efforts of men carrying vast responsibilities of private enterprise to fulfill their obligations to those who, by investment of money, or by the use of their labor, or by their need for goods and services, are dependent upon the well-planned, coordinated operation of great industries.

We are never going to solve these problems by invoking principles of free competition and idealisms of individual liberty which have no relation to the actualities of a modern, industrial civilization. We would not try to preserve our institutions of self-government by abolishing the complex structure of municipal, state and federal governments, in the hope of reestablishing the village unit and the town meeting method of lawmaking and taxation. And so in this interdependent world of trade and industry, wherein huge business organizations alone can meet the requirements of mass production and distribution, why should we waste energy trying to reestablish the individual competition of small enterprises as the automatic regulator of supply and demand and production and price? Does it not make better sense to use and to improve the competitive regulators which have developed in the industrial system that we actually have?

It may worry some people to realize that they have made themselves dependent on large investments, skilled management and faithful daily service in order to have electric lighting in their homes, and that they are exposing themselves to possible abuses of monopolistic power by strong organizations of money, management and labor. But most of us rely comfortably on a combination of public and private regulations and competitive incentives to assure us a constant supply of light wherever we go. We do not advocate a return to the competition of candle makers and to the blessed independence of the "good old days"

when we could buy and light and blow out our own candles without paying tribute to Wall Street or the Electrical Workers Union.

In the same way, outside the field of public utility services, we have become dependent on large enterprises to supply daily needs in millions of city homes. But fears of a monopolistic control of such an essential as, let us say, milk do not make it desirable or practical for each householder to own and milk a cow. He prefers to trust to a degree of competition and intermittent governmental regulation to protect him from arbitrary prices.

Perhaps if we look closely at the monopoly issue, we may see that a large part of that hostility to big business and to cooperation among competitors that is denounced as a "conspiracy in restraint of trade", does not spring from a desire to protect consumers or even from a profound faith in free competition. We shall see business men often demanding the prosecution or destruction of large competitors solely because they are furnishing a better service at a lower cost than is profitable or even feasible for a smaller organization.

These cases take a wide range, including such examples as recent anti-trust proceedings against automobile manufacturers and finance companies, and current efforts to destroy chain stores by taxation. There will be usually a camouflage of public service to conceal the real nature of the complaint, but to any close observer it will be evident that one group of competitors is seeking, by political action, to destroy rivals with whom they cannot compete successfully on the merits of goods, services and price.

These cases raise a serious question as to what percentage of the business world is actually desirous of submitting its welfare to the arbitrament of free competition. Probably more business men would confess to their distaste for a fair field and no favor if more of them realized that one essential element in the soundness of Adam Smith's competitive theory is being rapidly eliminated by industrial civilization. As this element disappears, unrestrained competition loses all of its assumed virtue as a desirable regulator or an effective incentive for private enterprise. A brief review of economic theories should help to explain why so many business men who publicly and sincerely avow their faith in free competition, find it necessary privately to modify its rigorous rule by agreements and practices that are popularly, but not always accurately, called "monopolistic".

The gospel of Adam Smith taught us that the natural tendencies of man, when free from the artificial controls of government, would lead to the production of the greatest amount of goods that could be

absorbed and their sale at the lowest possible prices.⁷ Then along came Malthus with his Law of Diminishing Returns and his dismal fears of population increasing more rapidly than the production of food and other necessities.⁸ He was followed by Ricardo with his Iron Law of Wages.⁹ The economic outlook thereupon became a miserable progress toward the stationary state in which profits would practically disappear and wages remain at a subsistence level, and, as a matter of necessity, excess populations would be eliminated from time to time by wars, famines and plagues. Even the more hopeful John Stuart Mill could not lighten the gloom of this period of economic thinking.¹⁰

Happily the industrial revolution gradually brightened the skies, with a vast increase not only in manufactured goods, but also in agricultural products. In America at least any prospect of wholesale starvation disappeared—particularly in view of a birth rate declining to an extent undreamed of by the pessimistic Malthus.

It was logical then that here, in the land of boundless natural resources which were being developed by an aggressive and comparatively small population, the economics of Adam Smith would become a national faith. But the importance of preserving one element in our economy in order to maintain free competition as the perfect and automatic regulator of trade, did not impress itself on our people until recently—not until a good many industries had developed a productive capacity more than sufficient to satisfy the effective demand for their goods and services. Then it was suddenly made clear that Scarcity was the real incentive and regulator of our economy.

Consider the unhappy awakening of farmers in the land of promised abundance and actual destitution! Steadily and hopefully these independent workers had increased the total acreage of farm lands. The factories year by year had put more mechanical power at their command. Optimistically they had prepared to feed and clothe not only America, but many other nations. And then, with an abundance of good and useful products pouring out of the factories and from the farms, all the workers of America in the cities and on the farms found themselves moving under relentless pressures toward the ultimate, but dreadful and undesired goal of free competition, a price level which at best returned only the bare cost of production—and, in glutted markets, forced the sale of products at less than cost.

Industrial managers did not stop to reason out an economic theory. They simply stopped work. They knew without any scientific reason-

7. SMITH, *THE WEALTH OF NATIONS*.

8. MALTHUS, *ESSAY ON POPULATION*.

9. RICARDO, *PRINCIPLES OF POLITICAL ECONOMY AND TAXATION*.

10. J. S. MILL, *PRINCIPLES OF POLITICAL ECONOMY*.

ing that, as a matter of cold fact, when supply exceeded demand, they could not get a satisfactory price. They knew that with a scarcity of products they made money; and that with a surplus they lost.

When they could hold down production, by means that might or might not be lawful, they could stabilize markets and keep operating. When there was no other method available, they simply shut their plants down. No one could be expected to operate at a loss—except to tide over a brief depression. The chief burden of waiting for demand to reappear, the anxious, painful waiting for a new period of healthy scarcity, fell upon little men who had no reserves, small manufacturers and merchants with nothing to live on when profits stopped, and upon wage earners who had not had even a chance to save up for a rainy day.

So, in the industrial areas of America, the economy of Adam Smith worked fairly well in the upturns of the business cycle—and on the downward slopes men waited with such patience as they could, praying for a new day of scarcity that would bring a renewed effective demand for goods at profitable prices.

But the full sorrows of the abundant life fell, first, upon the farm population. Unless a drought brought a patchwork of feast and famine, there was sure to be, year after year, a total production exceeding total demand. But when once started the year's production could not be stopped and losses reduced. Of course, fruit could be left to rot in the orchards and grain left in the fields. But most men would keep on hoping and reaping, so long as taxes and interest on the mortgage could be paid, so that a man could hold his land.

It is needless to review the various political efforts to relieve the farmer. Nor is it necessary in this discussion to appraise the wisdom or wickedness of the various New Deal experiments to date. It is worth while, however, in passing to pay a tribute to the unconscious humor with which many business men expressed their horror of any government, or any private association of farmers, that would advocate making food scarcer in order to raise its selling price above its production cost.

Particularly impressive was the protest of a great manufacturer who, having shut down his factory because he could not sell his product at a price substantially larger than operating cost, devoted his leisure to condemning the unnatural, wicked farm policy of not planting, cultivating and reaping a crop, merely because the crop could not be sold except at a loss.

One should readily concede that it seems a wicked thing to keep food scarce enough so that it will command a reasonable price.¹¹ But

11. "Crazy, perhaps, but quite orthodox in a society which still plays the game according to the rules of scarcity." WALLACE, *NEW FRONTIERS* (1934) 172.

it seems almost as wicked to keep fuel and clothing and medicine scarce enough to command a reasonable price. Yet it is seldom suggested that coal mines, textile plants and chemists should go on producing at cost, or at a loss, because there are people who need their products. Indeed it may well be an economic law that, in an economy where a large part of the managers find it necessary to stop producing until demand is greater than supply, all managers are compelled to use the same defense against involuntary servitude.

We need not determine at this moment the validity of such an economic law. It can simply be submitted for review in the supreme court of future experience.

Let us assume, in conservative fashion, the invalidity of the law. Then we can agree that, if there is any way in which farmers can go on competing in the production of more products than can be sold without loss, and if these farmers can, at the same time, avoid losing so much money that they will eventually lose their homes, such a policy would be much better for the rest of the people than for farmers to act like business men. The great difficulty is to find a reason that will convince anyone, whether a business man or a farmer, that he should work harder and produce more in order to increase his losses.

Let it be acknowledged that this might be a splendid social service if one could figure out how a man would support himself and his dependents on an income which was an increasing minus quantity. Not being able to work out this solution certain conclusions seem inevitable to me.

1. Free competition, the life of trade, flattens out as the time approaches when supply can be continually maintained at practically the level of demand, so that all competitors will be forced to cut their profits down to a bare subsistence level.

2. When there is a continuing abundance of supply, with surpluses available at cost or less, the incentives of competition will cease. Men are not inspired to work for nothing.

3. When there is a continuing abundance of supply, there will be no inducement for additional capital investment—and little inducement to employ capital already invested. Thus the imminent prospect of abundance stops the motive power of the system that promised to create abundance.

4. Since the object of business competition is profits which can only be realized when there is a scarcity of supply, competitors have always sought, when natural scarcity failed them, to create an artificial scarcity through what are commonly classed as monopolistic practices.

5. Thus it finally develops that as our system of free competition has threatened to flower into an unprofitable abundance, business men have instinctively sought to create and discreetly to use the obvious corrective of monopolistic controls—designed to restore scarcity prices.

The heart of the monopoly issue today lies in this riddle. A system of free competition is effective only in a scarcity economy, which, as we approach abundance, is maintained by monopolistic restraints upon trade. Is it possible to maintain a competitive system without tolerating cooperative restraints upon production or the maintenance of scarcity prices by artificial means? One obvious danger in such controlled prices is that unless they are sustained by controlled production, they cannot stand up against the flood of products induced by the prospect of profitable prices. Thus abstract reasoning brings us apparently face to face with a discouraging choice between tolerating a limited degree of private cooperative restraints upon competitive overproduction and underpricing, and the socialistic alternative of a state control of all essential production and distribution.

Being at heart an individualist, loving liberty as an opportunity to make my own mistakes and to seek satisfaction in my own small achievements, I cannot see any attractions in a regimented society. I detest the prospect of regimentation under the dictation of a private master as much as under a political dictatorship. And so, in common with a large majority of Americans I should like to see some way of avoiding a planned economy controlled by private monopolies without steering our course into a planned economy of state monopolies.

It is my faith that such a way can be found and that from the achievements and failures, the wisdom and follies of the last fifty years we can plot a sound consistent course of progress. But we need to start with an understanding that we cannot make things over in a few years; or establish new habits of thought and action in one generation.

We have been experimenting for years with efforts to increase mass purchasing power, so that effective demand might keep ahead of available supply. Thus, it has been argued, while maintaining a competitive economy of scarcity, we might be able to continue progress indefinitely toward the more abundant life. Long before the dawn of the New Deal, with its far reaching controversial experiments in re-ordering our political economy, business managers and labor unions were seeking to solve our economic riddle by higher wages and shorter hours, which were intended both to increase and to spread purchasing power. Mass production was making its contribution in the reduction of costs and prices.

At the same time many trade associations were performing useful services in helping to reduce the wastes of ruthless competition, in eliminating some of the unfair advantages of mere size and in bringing better order and stability into business operations, thereby promoting the security of employment and the maintenance of purchasing power.¹²

Such internal efforts to improve our economic system were unfortunately also being nullified or counterbalanced by exterior forces. Lawmakers, misdirected by short-sighted constituents, judges, misguided by irrelevant precedents,¹³ publicists warped by class and sectional interests, were continually increasing the confusion and uncertainty over legal rights and obligations which needed clarification and restatement in the light of changed conditions.

Then a world war with its mountainous burden of debt was followed by a reckless expansion of credit, and the financial structure of our economic system became a leaning tower doomed to fall, as it rose higher and higher in futile defiance of economic laws of gravitation.¹⁴

There were so many contributing causes to the great Depression, so many evident obstacles to a sustained recovery that every specialist and every victim of a particular wrong could justify himself in proclaiming that, if some one major mistake were only remedied, if some one major evil were only rectified, or if some one corrective principle were applied, everything would be all right again. The experiments of the New Deal provided a host of further excuses for advocating wholly negative programs.

Public opinion has suffered for years from a deluge of destructive criticism. As a result, probably a composite majority of the American people believe today that, if only the proven follies of the pre-depression economics were permanently outlawed and all the debatable experiments of the New Deal were discontinued, the country would move swiftly forward into an era of unexampled prosperity. But when our economic system is examined under the microscope, and when we turn the telescope upon the conflict between violent economic and social forces which is raging throughout the world today, it should become clear beyond all doubting that no such program of mere elimination will serve to reestablish the political economy of our pioneering parents as the economic order suitable for our machine-ridden, industrialized children.

Our ideals may well be individual freedom and social justice. But we will not achieve them, either by letting individuals exercise vast

12. See dissenting opinion of Mr. Justice Brandeis in *American Column & Lumber Co. v. United States*, 257 U. S. 377, 418 (1921).

13. *Ibid.*

14. See GARRETT, *A BUBBLE THAT BROKE THE WORLD* (1932).

economic powers without social responsibility, or by creating a political organization to relieve us of individual responsibility for our own lives, which is the essence of personal liberty.

In our constitutional democracy we have limited the power of society to control the individual and the power of the individual to control society. In impatience with these limitations, as they seem alternately to impede social progress or to restrain individual freedom, we swing from demands for more power in government to demands for less government. The statesman who would preserve democracy must be always seeking a middle road, a compromise that will restore a balance of power which has been temporarily lost.

We have not yet really tried to plan and to control in democratic fashion our competitive system. We have not yet really tried to regulate competition within industries and between industries by self-imposed restraints upon wasteful, cutthroat practices, enforced primarily by self-discipline and only secondarily by government.

Many people think we tried this program in the NRA and that it failed. The truth is that the NRA was an emergency effort: first, to revive stagnant business and relieve unemployment; second, to reorganize trade and industry overnight into a planless cooperation of competitors pledged to a free for all fight as soon as the rules of humane slaughter could be adopted and approved by government umpires.¹⁵

It is true that the underlying purpose of the recovery Act was the gradual establishment of what has been called self-government in industry. It visualized the ultimate emergence of a cooperative program, under which a competitive system of private enterprise would be preserved as an orderly method of self-advancement combined with public service, instead of as a ruthless, wholly selfish struggle for existence. But the NRA did not live long enough even to lay the foundations for such an economic structure. It did not live long enough to develop even a tentative program for a continuing and balanced increase of production and purchasing power that would steadily increase employment and give assurance of a recovery that would be sustained.

We cannot absorb an abundant production except through the enlarged buying power of a fully employed and adequately paid working population. We cannot end the crushing burden of widespread unemployment and discouraging taxes, except by stimulating the increased employment of capital and the expansion of private business.

We can spread work, but we cannot increase total purchasing power, merely by shortening hours. We can raise and lower nominal wages and prices by inflationary and deflationary monetary policies;

15. See RICHBERG, *op. cit. supra* note 6.

we can raise and lower the purchasing power of one class at the expense of another by special legislation and by organized coercion; but total purchasing power will not thereby be increased. We can only achieve an actual increase of total purchasing power through generating a well balanced increase of exchangeable products throughout the nation. The resulting larger volume of exchange will mean an actual increase in national income.

In the development of such a program through the carefully planned cooperation of management, labor and government, and in faithful service to its high purpose, lies the hope of preserving our heritage of free enterprise and self-government.

It has been my present effort to analyze a problem—not to offer a simple solution. And the effort has been to analyze that problem with a dispassionate candor impossible to anyone who is emotionally convinced that there is only one sure road to one true goal and that he has found it. I do not believe that there is today any man or group of men, however highly educated or scientifically trained, with the ability to plot an absolute course to an assured destiny for any nation to follow through the political and economic difficulties of this era of great change.¹⁶ The reactionary who claims to know exactly how to return to a world that has vanished, and the self-confident radical who claims to know exactly how to advance into a world that has not yet been created, are alike false guides.

But we must move forward into the opportunities and responsibilities of a new world. We must be willing and prepared to go forward over roads in process of construction because forces beyond our control have been destroying the roads over which we have moved into the civilization of our day. And in this adventure I must confess one emotional bias, which is an underlying faith that democratic processes and the voluntary cooperation of free men offer the best assurance that safe roads to a desirable goal will be found.

16. For a vivid photographic portrayal of the rapid evolution of our industrial civilization, see SPENCER, *THE GREATEST SHOW ON EARTH* (1938).