

The Economic Club of New York

127th Meeting

The Honorable Thurman Arnold
Assistant Attorney General

The Honorable Millard E. Tydings
U.S. Senator, State of Maryland

February 2, 1939

Hotel Astor
New York City

Introduction

President Wendell L. Willkie

Now, gentlemen, in accordance with the established practice of the Economic Club in bringing before you subjects of vital interest, we expect to have discussed this evening the subject of “How Far Should Government Control Business.” You, of course, understand that we mean by “business” such business as there is still remaining. (Laughter)

In order to have this subject thoroughly discussed, we have brought to you the two men in America we think can most ably discuss it.

The first man, the Honorable Thurman Arnold, is a lawyer, a distinguished student of law, a college professor and then, too, he is an author. He wrote a book called the “Folklore of Capitalism.” It must be a good book because the reviewers said so, and because I read it twice and couldn’t understand it. (Laughter) He is the man, when he gets up with a grouch; all the leading businessmen of the country have tremors of the spine. He is a great raconteur, but sometimes his humor takes a bit of an ironical turn.

I had an experience with it this summer. In a moment of weakness I consented to spend a weekend at a one-hundred percent New Deal party. Mr. Arnold arranged so that his entrance should be late – you know he is quite a dramatic fellow – and all of us had been gathered around

for quite some time. Some time two or three hours later he appeared on the scene and all the New Dealers rushed up to tell him the Attorney General had been seeking him. Thurman Arnold announced that he was under great distress, that he had received a telegram from Washington that he had obtained an indictment against Wendell Willkie, but said that in view of the fact I was a fellow guest for the weekend he had prevailed upon the Attorney General to postpone it until Monday morning. They were all fully conscious of the fact that I should be indicted, and I was conscious of the fact that I should be indicted, and I was conscious of the fact that they would indict you for anything. So you see he is a regular fellow, whatever his political or social or economic views may be!

I have the privilege of introducing to you my friend the Honorable Thurman Arnold, Assistant Attorney General. (Applause)

The Honorable Thurman Arnold

Assistant Attorney General

I regret the indictment of Wendell Willkie had to come up because the subject tonight is, “How far should government control business,” and I know everyone of you would agree it at least ought to go that far! (Laughter)

I am not here tonight to point out the errors of the administration; I am here to talk on its merits.

“How far should government control business” is not a good subject for me because I am not a preacher. It is one of these broad subjects – I know the formula – it should begin on a note of warning and end on a note of either hope or despair depending on your audience. Possibly this audience would prefer a note of despair. In any event, in discussing that subject we first study the fundamental economic principles and discover that there is not any conceivable position that does not receive support from reasonable economists. We go back to the lesson of history and find ourselves in the same dilemma that they were at the close of the Feudal Age.

How much better it would have been when the people of Europe decided to abandon feudalism if they had gotten together and decided that since they were going to adopt the mercantile system that they would adopt a better one than they did adopt.

It seems to me that these broad subjects can only be treated by a simple restatement of an ideal – you cannot get them concrete because people do not plant such things as how far government controls business. It is not true that the Germans, having a choice between the right and the wrong principles, chose the wrong principles and then got Hitler and then started to persecute the Jews. I do not deny the tremendous utility of reaffirming and restating our ideals, but my excuse for making the jump I am about to make from the broad subject to the narrow one of my own shop is the fact that I am not in any sense a good preacher, and I see at least this danger in the discussion of such broad subjects. I know that you come out of them with pretty much the point of view that you went into them with; only tremendously emphasized. If you lean to the Left,

you come out with a broad plan for everybody, which plan you are in a hurry to put into effect at once. If you lean to the Right, you get yourselves in such a state of phobia that you are unable to adopt the opportunistic attitudes which are necessary in any practical situation.

So, although I admit the validity of the enthusiasm over the ideal as expressed in this title, which, I take it, is an ideal we all agree with, the idea of a competitive system composed of free and independent enterprise, nevertheless, those dangers are apparent.

My own answer to the subject – how far should government control business – granted our objective is a society of free and independent enterprise, is that it depends entirely upon the business and also upon the time in which you are exercising that control; and my own philosophy is that granted a certain unanimity of opinion upon the ideal, the only way we are going to get anything is to take up one thing at a time, one organization at a time.

The moving picture problem is not the same problem as steel; milk in Chicago is not the same problem as milk in Detroit; the businesses are not alike, their problems are not the same, and we need, it seems to me, in the government control of business, a technique by which we can keep the ideal in front of us, but in practice take up one principle and one organization at a time. I think that is the only way such problems will ever be sensibly worked out.

That is the kind of instrument which I believe the Antitrust Laws give us. In the past the anti-

trust laws have represented the devotion to the ideal of un-regimented economic society. I have stated frequently, and I think it is true that there has been a certain ritual, for the most part their enforcement has been ritualistic, even in the Theodore Roosevelt campaign there were only five attorneys and four stenographers engaged, and you cannot police America with a Corporal's Guard. But at least this much we have kept alive, we have kept alive that ideal, and I think there is no political group in the country today which desires to abandon it.

I have an analogy of the inevitable result of abandoning that anti-monopolistic or anti-trust tradition and I speak of it now as an attitude in Germany which fascinates me. I do not mean to predict that we are going to be like Germany. Of course I recognize the vast differences in the conditions; yet there are some startling similarities in the growth of the cartel system in Germany.

In Germany before the war there wasn't anything resembling remotely, anti-trust laws. Boycotts by one group for self protection or stabilization of prices were a recognized and legal thing. That system was counterbalanced by a very strong government, accustomed to take measures that it regarded as extremes of socialism, such as workmen's compensation, and so forth.

That was Germany before the war. In this country we had, we will say, no anti-trust enforcement. The problem was ameliorated by the fact that we had an expanding frontier. After the war that

same process of cartelization went on with a weak government and more rapidly because everyone knows, in the midst of a depression, it is inevitable that businessmen should gang together for mutual protection, and the only thing they can think of is to raise prices and keep the inventories at the values they are accustomed to thinking of them, so they will not suddenly have to mark them down and realize they are broke. That process went on during the German depression, until, under the complaints that always come under such structures, they passed something which could be called an anti-trust law.

You couldn't run a boycott without the consent of the Cartel Court, and there were also civil panels. In an anti-trust law there must be an exercise of judgement between reasonable and non-reasonable organizations, and in Germany in no single instance was the decree of 1923 enforced. In 1927 the last dying gasp of the competitive system occurred in Germany. It came through the appointment of the Economic Commission to study the monopoly problem, under arguments and publicity which are almost identical, and translated into English with the general publicity surrounding our own temporary Economic Committee.

That Commission sat for three years and produced forty volumes, and the process by which they were produced is interesting because you can translate verbatim today every argument being used against trust enforcement and find it used in Germany. In the first place there was this something caused by the necessity of first exercising an economic judgment, if you like, on the question of whether the commission is reasonable in deciding, and in the second place the

necessity of the courts confirming or refusing such economic judgment – and such economic judgment is not acceptable to rule of thumb. And that disturbed German business.

In the second place there were the socialists, men of high intellectual caliber who might roughly be compared to the type of a man I admire tremendously in this country, Charles Beard, who wrote an article for the New Republic saying, “When are we going to drop the anti-monopolistic talk and get down to heroic measures?” And the socialists in Germany saw the need for the same heroic measures and they joined in, and the cartels joined in, and finally the trade associations joined in, which were growing by leaps and bounds.

You know the type of association – the group of doctors, the group of contractors, and so on, who desire to clear everything through some central office and cut out the chiseling. And finally labor saw its salvation in strong cartels and strong trade associations. The cartel system never gave the results of stabilization which were predicted, but it did so far organize Germany that it had to have a general. Germany became organized to such an extent that a Fuehrer was inevitable, and if it had not been Hitler, it would have been someone else. When you get a state so far organized that it will not work without a general, when the regiments are there, and so forth, you generals are going to come, and when Hitler came in there was practically no economic dislocation, and it was necessary for him to do two things. First, make an organization in cartels compulsory and another thing, he said, “What are the stockholders doing in the management?” He said, “What are they doing in the management – they are a group who know

nothing about business so we'll protect their financial interests better by taking away their control from the directorship of corporations." And with those two moves, business and labor again survives. The technicians who produced goods in Germany are still there. It is idle to say that the army system of distribution of goods is not a way, and, as Chamberlain can testify, it seems a very effective way; but it is a form of society which I think everyone of us would repudiate.

And I am pointing out that it was not arrived at by preaching. Most of the talk, while Germany was becoming this self-regimented army, was talk on general ideals of freedom, and so on, as we are talking now. So it seems to me the important thing to do is to look at organizations; and when you do, let us take one organization up at a time, and I say that with respect to judicial organizations and also to legislative amendments.

Now what is the problem which confronts us today and which has created this emphasis on the anti-trust laws? I think the emphasis is a normal thing because everybody is going back to our traditions. But what is the problem and what are we going to do about it? I prefer, however, rather than call it an anti-trust monopoly or anti-trust problem, the problem of distribution.

We have, I am told, a production system which, per man hour, is more efficient than in any other country in the world. Yet, if you look at it from any point of view, the distribution system is not functioning; our system of distribution of goods has not caught up to our productive capacity.

This may be illustrated in many ways.

Look at it in terms of production. It is undisputed that we might have produced in the past ten years much more goods and services than we did produce. The conservative Brookings Institute estimates the economic loss due to our failure to use our productive plant to capacity amounted during a ten-year period to the colossal sum of 248 billion dollars. This amounts to \$8,000 a family – more than 90 percent of our families could save in a lifetime. This is a dangerous kind of waste because it presents to those in need the spectacle of goods withheld from them for no understandable reason.

Look at it in terms of distribution. Most of our advertised price levels are based on the assumption that the ordinary family gets somewhere between \$2,500 and \$5,000 a year. Actually only 13 percent are above the \$2,500 family income level. This is far less than the population of the state of New York. We cannot produce goods for a country the size of America and base the distribution of them on the population of a single state.

Or look at it from the point of view of total national income. (Charts) From 1850 to 1920 national income – that means the total of goods produced and per capita income – went up in a steady line. Here is the depression of 1873 and all of the depressions are in here, but you don't see any jogs of the chart because it is drawn in ten-year periods. And at the end of each period we were richer than ever before in production and distribution. But look what has happened

since. For the first time in the history of American we have actually ended up a ten-year period worse off than we were before. In the year 1938 we descended to the income levels of nearly 20 years ago in spite of our vastly increased productive wealth.

In other words, the problem of distribution can be stated in any one of these three ways. The anti-trust approach puts the emphasis on bringing prices down within the reach of purchasing power, and as purchasing power takes goods, of course, incomes go up, because incomes and goods are different ways of saying the same thing.

Now it seems to me that broadly speaking either prices are going to reach down to purchasing power or whoever is in the government are going to have to add to the incomes by direct government subsidy. I am not one who believes that a patient suffering with a fever does not need medicine. The emphasis of our own particular shop ends in getting prices down. Now in the method pursued in getting prices down we find the traditional method of releasing the competitor who is so often in this country called a chiseler. Possibly I have a jaundiced point of view from the thousands of complaints which come to my office, and I am not speaking from a basis of statistical surveys, yet there is evidence which I am unable to investigate with the present size of my personnel, there is evidence that there is no community untouched by gangs and groups formed by the nicest people in the world, formed in an effort to keep up the price structure.

It is the situation that might have happened had Henry Ford not been successful in getting into

the close type of association which were manufacturing the automobiles when he first started. I wasn't there in that situation but I'll bet it ran something like this: We have a decent industry, as efficient as can be, and we must protect profits, and we think this is an outrageous Tin Lizzie this man is producing and is proposing to manufacture. It will tear the rest of us down with him, so we are going to stabilize the industry and are going to keep Henry Ford out. And I think there is reason to believe that had all those industries, I forget how many, been successful in their efforts to stabilize inventories and profits, the automobile would still cost today around five thousand dollars.

We see it everywhere we turn; merchants by various types of combinations keeping the chiseler in abasement, keeping the cut-rate drug store off the corner, and so forth, and not making any money because their cost-accounting system is too high. Then they say, "There is the fellow who is destroying the small industrial people," or "the larger industrial people." because the same psychology occurs in any group, and they try to legislate the chain store out of business and they say "It is the competitor out of state" – and, frankly, it is alarming to see the protective barriers growing up in the United States. Of course they are not called that, but they are protected as related to inspections, and so on, and the people caught in the system are somewhat helpless.

I recognize that in most cases of anti-trust prosecution there is no moral problem involved. A large number are caused by the necessity of fighting one gang with another, and of course, when the referee is absent from American industry the man who forms the gang is going to win, and

the man who declines it will get his reward in heaven, perhaps, but not here.

So I think the intelligent enforcement of the anti-trust laws is something we are going to have to have, or there is reason to believe this tendency will not stop.

There are two separate problems in the application of the anti-trust laws. The first concerns situations which can be solved by preventive measures alone. This problem relates to industries where a minimum of concerted action is necessary in order to produce or distribute goods. The second type of problem is one for which prevention by itself is not the sole solution. This involves the industrial activities where concerted action is necessary for efficiency.

The problem of prevention can be reached by an increase of personnel devoted to enforcement of the Sherman Act. We can't enforce the anti-trust laws; we can't even investigate the complaints, with only about 45 men to do it.

And there is another aspect of intelligent enforcement of the anti-trust laws that is most important, and that is to get rid of the notion too prevalent in business today that the Sherman Act was passed in memory of Sherman's march to the sea. (Laughter) The rule of reason in the anti-trust laws has never been sufficiently formulated so that it is understood by the majority of American businessmen. I am attempting a formulation which runs like this: Anti-trust enforcement should not hamper efficient mass production if a combination can be effectively

justified on that ground, and then, if it is large, it should not be broken up for the pure joy of busting it. If it is a monopoly, we need amendments of a nature similar to the regulating public utility laws.

The second formula, economically important, is the necessity of concerted action on the part of groups of competitors in order to insure orderly marketing conditions.

The third situation to which the rule of reason must be applied has been created by our lack of enforcement in the past. A short phrase to describe it would be to call it the problem of unscrambling the eggs. Where competition has been destroyed, mere imposition of penalties does not recreate it. Economic dislocation in great industries must be avoided.

All of those exercised of judgment are justified by the Supreme Court of the United States and all of them require a determination as to whether the combination can come within one of those three classifications. But we might as well recognize that the intelligent enforcement of anti-trust law does require an exercise of judgment, first on the part of the prosecutor and second on the part of the cause. I think we should second procedural amendments which would classify the division of responsibility.

The problem then falls into two categories; first the pure prevention, and second, what I would like to call the constructive application of the anti-trust law, and with respect to that business,

needs more of a guide than it can get today. These principles have no meaning except when applied to concrete situations. A constructive application of the anti-trust laws requires informing businessmen what they may do in their own industries where these principles are involved. Penalties look to the past. They must be supplemented by a guide for the future.

An important part of our task is to facilitate compliance with the law by helping conscientious businessmen to understand them. Forty years of sporadic enforcement of the anti-trust laws has left us without precedents in most concrete business situations.

This clarification can only come by the case by case method. In the abstract, the antitrust laws can only represent a competitive ideal. The case by case method is our traditional method. It is the way our common law has grown up. It is the only method by which clarification of the anti-trust laws can be achieved.

The anti-trust laws by virtue of the fact that they are not ordinary problems do provide for the concurrent use of civil and criminal procedures, and in the civil procedures we have an opportunity to approve voluntary plans which are presented by defendants. Our position is this: we prosecute a combination for doing certain practices. They tell us they are willing to stop but they say, “We can’t run this business without some sort of concerted action.”

We say, “Well, you know the business; we don’t. Tell us what is necessary and we will see if a

combination is not a reasonable one,” which will be a conclusive adjudication in their case or a precedent in other cases.

Now it seems to me that while enforcement of the anti-trust laws does not fill the entire picture, it does offer us the most convenient method we have today of both formulating principles and precedents, one industry at a time, and formulating legislation where any trust laws are inadequate, one industry at a time. And it seems to me in a country where we are as close together on our general ideas as we are here, the problem is one of organization. I think, personally, the anti-trust laws are America’s great contribution to economic legislation and I believe that a wise business will accept the judiciary as a referee, because it seems to me the alternative is to drift into gradual self-regimentation of the business structure. (Applause)

President Wendell L. Willkie: I think Mr. Arnold will find no dispute about the condition of the national income at this time, but we may find quite a dispute as to the cause of it.

Now Mr. Ely, who really runs this program and this Club, is very proud of his program and he has asked me to call your particular attention to it. He prepares his program with complete balance. On the next to the last page you will find a quotation from Nicolay and Hay, which reads:

“His birthright was privation and ignorance; he burst through those enchaining conditions by the force of native genius and will. He came to the awful responsibilities of power in a time of terror

and gloom. He met them with incomparable strength and virtue. He was as just and generous to the rich and well born as to the poor and humble.”

Then, in order to keep to the middle of the road, the next quotation is from Owen D. Young; and the last, to provide the balance, is from President Roosevelt.

The next speaker is a rather peculiar fellow. He is a politician with principles. He is a Senator who never learned how to bow or to truckle. In addition, he is an authority on “bridges” – I should not be so impertinent as to suggest to the Senator what he should discuss this evening, but I should think it might be apt to discuss bridges, the three bridges — Senator, Harry, or Maryland. (Laughter) It is my pleasure to introduce to you the Honorable Millard E. Tydings, Senator from Maryland, and a soldier in the fight for justice. (Applause)

The Honorable Millard E. Tydings

U.S. Senator, State of Maryland

Mr. Willkie, Mr. Arnold, ladies and gentlemen: My one regret as I start to speak to you this evening, from the applause which greeted my station here at the rostrum, is that you gentlemen were not present last September in the State of Maryland. I could have used you to advantage.

(Laughter)

In addressing myself to your question, to wit: “How Far Should Government Control Business?,” it is important, as they say in medical parlance, that I first isolate the word “control,” analyze it carefully, and present a point of view based upon the varying definitions of that word, in order to avoid misunderstanding.

What does the word “control” mean? The dictionary gives it many shaded meanings, for it says “to control” means to “exercise restraining or directing influence over; to dominate; regulate; hence, to hold from action; to curb, subject, overpower.”

Insofar as the word “control” means to dominate, to hold from action, to subject or overpower business, my answer to your question can be definite and immediate. Government has no constitutional power, as I see it, to do these things to business; and again, even if it had the power, it would be unwise to do them as a matter of national policy.

If our form of government has the power to control to the extent of dominating, withholding from action, subjecting or overpowering the everyday business of the nation, then, in sum, we have a charter of State Socialism unlimited, and not a charter of human liberty and of free enterprise or a government of limited powers.

Let us examine for a moment the genesis of the government of the United States of America.

Ours was conceived as a government which would be the very antithesis of dominating, holding

from action, subjecting or overpowering either the individual in his person or the individual in his effects, which means nothing more nor less than the individual's business.

This nation was conceived to dignify and exalt individual man. It came into being because one hundred and fifty years ago there was no political equality among men. It was created to cure that condition.

The rulers for the most part then existing, on thrones and in parliaments, held office by divine right. Political democracy did not exist. Men in the mass were inarticulate. They were the servants of their rulers and hence of the state, and were so treated. It was a government of men and not laws. Man at that time occupied a position above that of domestic animals, yet below that of those who ruled him.

With the termination of the Revolutionary War, the old longing of mankind for a new concept of his status came into being with the formulation of our national American government. The motivating purpose of that concept was to make the individual supreme, to give him a government of laws and not of men, to give him a government in which he was the master and not the servant of the government.

Man in the mass thus reached a new station along the highway of his destiny. He stood forth free. He was in reality his own government. He was the creature alone of Almighty God. He was the

vassal of no other man.

Government, he said, in the Constitution which created it, could do nothing which interfered with the security of his person, with the security of his home, with the security of his family, or with the security of his effects – that is, of his business.

Lest there should be any mistake about this new state of man, the first ten amendments to the Constitution, man's Bill of Rights, were immediately adopted to expressly put this matter beyond the realm of speculation.

The government was to be one of limited powers, but in order that there be no mistake about that, the Constitution provided that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people."

That still is the Constitution of the United States of America in 1939. These things have not been changed by the people who have lived under this form of government for 150 years. There is no provision in this Constitution, expressed or implied, which rightfully allows the Federal government to dominate, to hold from action, to subject or overpower the business of the nation. And where attempts are made to exercise such powers, whether the courts uphold or reject these attempts, they are clearly at variance with the expressed purpose of our national charter to exalt

the individual, and therefore prohibited by the charter of our government itself.

However, within the last few decades, because transportation, communication, and information have all traveled with lightning-like speed; because society, once scattered in this nation into sections, has been brought into a composite state; because transactions which once were purely local are now national in many cases, we are told we must re-examine the ancient foundations to see whether or not they are suitable to modern conditions and events.

This metamorphosis having taken place, there are those who say that government has not kept abreast of this march of progress, that the time has now come to scrap the old philosophy and end 150 years of American tradition, of the American system, of the American way, by having government control the various ramifications of our business life.

These people contend that the old tenets of individual exaltation and free enterprise, if you please, are outmoded, archaic and valueless, and, ergo, that if government only will exercise control and domination over business, there will be more prosperity, more of The Abundant Life and more happiness for all.

These are the men who, without any amendment of the Constitution whatever, seek to change its philosophy by indirection. They unhesitatingly, by precept and proposed legislation, attempt to have the Constitution embrace this right of government to dominate, subject, and overpower the

business of the nation. They do not take the trouble to amend the Constitution. If the courts say they cannot do what they propose, they attack the courts. In effect, they use every artifice of amending the Constitution except the way provided in it for an amendment to it.

They are, in truth, dissatisfied with the American system and with the American way. Their concept is that there is not a government of limited powers, but rather that there is no limit on the national government's power whatsoever.

In pursuit of this philosophy, they attempt to tell the farmer what he can plant and what he cannot plant; to tell the businessman whom he can hire and whom he cannot hire; what he can sell and what he cannot sell, when he can dig coal and when he cannot dig coal, and what price he shall charge for the products of his labor. These are not the measures of democracy.

These men, in effect, always claim they are doing this to save the American system and the American form of government – when, as I see it, really stripped of camouflage, they are the vanguard of State Socialism on the Russian model, or else are the vanguard of State Socialism by the more gradual processes now in force in Germany and Italy.

They are neither Republicans nor Democrats. They do not wear the clothing of democracy, and their correct uniform should be either red, brown, or black shirts, if they were truly ingenuous.

They preach democracy and free enterprise, while they set in force the machinery to destroy it, stating it is necessary to partly destroy it in order to save the remainder. In one breath they abuse the governments of Russia or Germany or Italy, heaping their dislike upon these governmental systems of business control, and in the next breath they advocate the measures which will imitate them.

They are the enemies of the American system, of the American way, the saboteurs of American tradition, the termites of American democracy – in action, they are the real disciples of the Hitler, Stalin, and Mussolini form of government.

In their advocacy of economic policies, they embrace the identical systems which they in generalities frequently condemn. They proclaim that the American system of government under which we live, and which has brought us to the highest standards of living in all history, is a great failure, and must be discarded for systems that have proved over and over again to be a sure means of ruin.

They are the disciples of the New Day that is dawning – or, as I see it, the new night that is falling – that is as old as Augustus in Rome, Louis XIV in France, and the NRA and AAA of the recent past.

They profess to believe in democracy, while pursuing none of its philosophy. The privileges of

democracy they seem not to value; and what they would attack, were their administrative orders and decrees to emanate from another source, they can see no evils in if they emanate from themselves.

In short, “I have little fear,” say they, “in driving my car at 100 miles an hour if I am driving, but I would not want to ride in a car going that fast if anyone else were driving.” They are not concerned about the effect upon the car or of its direction, or the accidents and dangers along the roadway. Whether or not they take the ride is determined solely by “who shall drive?” rather than by the wisdom of the ride. They proclaim any change as progress.

These are the men who would dominate, withhold from action and overpower what we might call the everyday business, the free enterprise, of the nation. Control with them does not mean to regulate, as we used to use that word, but means to dominate. This was exhibited beyond argument by the operation of the NRA in the field of business and the AAA in the field of agriculture, as well as in other measures. Regulate is a poor synonym for control in their private dictionary.

But you are talking generalities, you say. My reply is, no, I’m not talking generalities to even a small extent as compared to those who talk in support of the public control of private business. But to meet your charge of generalities, let me present a few facts taken from history. Millions of people in America think that the NRA was new, that nothing like it had ever been tried before by

any nation, that it was a great forward step in human experience. How sad! It would be possible to dig up dozens of NRAs out of the pages of history and parade them and their consequences before you in proof of the general statements I have made. May I use just one example from history to illustrate my point:

Let us go back over 200 years to the time of Louis XIV, in France. Let us take down from the archives the four big dusty volumes and there on the twenty-two hundred pages – think of it – read the regulations promulgated by the King, stating the conditions under which the textile industry could manufacture its products and how the employees therein must conform to the King's decrees.

For example, it was provided that textile fabrics made in the City of Dijon were to be put in reeds 1 3/4 ells wide, the warp to contain 1,408 threads. Now in Samur, textiles were to have 1,376 threads, while in Chatillon; none were permitted to be manufactured save those that had 1,216 threads.

Of course you know that these regulations for textile manufacturers – in 1934 called “codes” – were written by the then existing manufacturers themselves, under supervision of the King, just as they were frequently written in the days of the Blue Eagle. They were written over two centuries ago by those who, having their machinery already set up, found the might of the King's regulations a handy device with which to forestall the competition of enterprising innovators and competitors. The government threw the entire weight of its authority behind the established

interests and in cases made death the penalty for the violation of these regulations.

The system had many years of trial. The government spared no effort to enforce the regulations to the letter. The more the regulations were violated, the more new regulations were multiplied. Thousands of lawsuits were docketed. An orgy of smuggling and bootlegging prevailed in the outlawed products, which, in spite of the King's regulations, had a very wide popular support in France.

As these violations occurred, the government did not stop to temporize. It clearly said on every occasion and in every court that it meant business and these regulations would be enforced to the limit.

Of course, all students of history know that these drastic measures of economic regulation cost the lives of some 16,000 French people, partly through execution, partly through armed affrays. Think of it! And, this 16,000 figure does not reckon at all the certainly much larger number of Frenchmen who were convicted and sent to the galleys or punished in other ways.

It is recorded that on a single occasion in the City of Valence, 77 were sentenced to be hanged, 58 were to be broken on the wheel, 631 were sent to the galleys and none were pardoned. And, the crime they had committed was that they preferred to make textiles, not as the government wanted them made, but as the workers and inventors themselves wanted to produce them for

public consumption. However, none of these punishments stopped the violation of the law. The greater the number punished, the greater the number of new violators. But in spite of this failure in France over 200 years ago, it was sure to work in the U.S.A. in 1934, we were told.

It is curious that even in a country like ours, where the overwhelming majority of the people are against State Socialism and where the Socialists have never been able to poll a very large vote, that many groups support more or less actively, or regard with indifference, measures similar to the NRA and the AAA, which added one by one, arrive inevitable at the goal of State Socialism. In other words, people are opposed to State Socialism as a whole but accept with complacency the rapidly multiplying steps which lead directly to it.

Thus we have in America people who favor government ownership of power companies but who are opposed to government ownership of farm or government domination of business generally. Without forming a clearcut idea of the functions of government, they stand both in the camp favoring government operation and in the camp opposed to it, at one and the same time. They tell you they are not socialists and that they do not like the German, Russian or Italian system, but they have no objection to arriving at that goal by inference, if it is gradual. They are like members of Congress who used to proclaim their faith in national prohibition on the floor, and satisfy their appetites for John Barleycorn off the floor, during the prohibition era.

Free enterprise on the one hand and State Socialism on the other will not long survive together in

the same country. One is sure to perish. We must make our choice. To put it differently: We must choose between voluntary cooperation on the one hand and compulsory operation on the other.

Still another way of looking at it: Do we want a highly organized body of office holders attempting to run the private business of the nation, or men who have spent their lives running the businesses of the nation continuing to do it, under the condition where government only makes the rules, and leaves business to its own resources.

May I lift a paragraph I once read from the essays of Herbert Spencer, which might be apropos here? He said, “There is nothing more dangerous than hampering the power of the human intellect, nothing more dangerous than any legislation that puts a limit to the daring on the enterprise of men. In the ancient days the sailors dared not go out of sight of land. The wanderings of their ships following the coastline.” The daring of Columbus, however, gave humans a new heaven on earth.

Any kind of governmental regulation which keeps our business navigators within sight of the shore hurts America and every man who works within it. The need is for more business Columbuses and less business land sailors.

All contact of government with business should be patterned with two general objectives in

view; on the one hand, to protect the individual against the greed and cunning of others, and on the other hand, to prevent interfering with the fullest development of human ingenuity and power. Between these two gateways lies the only real field for constructive government control, or, as I prefer to say, regulation of business.

We must not forget that often government is as vicious in its ruthlessness as are the objects against which it directs its regulations. Again let me resort to history. Congress passed the Undistributed Profits Tax, under its taxing authority. Every informed person in America knows that in that case government used its taxing power, not for the purpose of raising revenue, for which purpose it was given that power, but so it might in effect become a member of the board of directors of every corporation in the land and thus force each board to adopt policies of management which the real directors as a whole did not think it wise to adopt.

Thus, under the guise of taxation, government sought not to prevent acts which were wrong in themselves, but sought to assume administrative and management rights belonging entirely to those who owned the property. This action was not the action of regulation; it was the action of control in its dominating, overpowering synonymous sense.

Again, let us reflect on human nature in recent events. Our government is one of three branches, the Executive, Legislative, and Judicial. Each is an independent branch, beyond the control of the other two. Yet have you not seen the Executive branch try to dominate, subject, and overpower

another independent branch, the Supreme Court? Have you not seen the Executive branch in recent elections try to dominate, subject, and overpower state elections wherein senators were to be chosen for the Legislative branch?

Consider what would be the state of your government if the court fight and the senatorial purge had been successful. Then you would have had executive control of both the Supreme Court and the Congress and three independent branches of the government would no longer exist.

Next, consider the attempt to dominate the business of the country by the NRA and the farms of the country by the AAA, as well as other recent acts. When you are asked, therefore, to fix the degree of control that government may have over business, don't lose sight of these lessons from recent history, for they are as indicative of trends as was the illustration I presented from the reign of Louis XIV.

One may make a beautiful case for theoretical control but in practice, control is at variance with the theory presented to obtain it.

Remember, too, what we mean by business. Business is agriculture, mining, electric light, power and gas, manufacturing, construction, transportation, communication, trade, finance services, etc. Only from these sources does government get the revenue upon which it exists. Only from these sources do the 50 million normally employed obtain work and their daily bread. Business is not

only the president and vice president of a particular concern, or its board of directors. Business is also the thousands of people employed in that concern.

Under this very administration, the U.S. Department of Commerce has issued two volumes entitled, "National Income in the United States from 1929 to 1936, inclusive." These volumes analyze what proportion of the business income dollar goes to labor and salaries. An average of 82 cents out of every manufacturing income dollar went to wages and salaries. An average of 70 cents out of every transportation income dollar went to wages and salaries, and an average of 66 cents out of the income dollar of all types of business combined in this country went to salaries and wages.

Truly business is the life blood of this Republic. Therefore, when you begin to control business you begin to control the employment of the 50,000,000 people who work in business and who between them make up the entire national income of the United States.

When an automobile is manufactured in Detroit, cotton must first leave the plantation in Georgia, lumber the forest in Oregon, fish must leave the ocean at Cape Cod, coal the mines of Pennsylvania, cattle the plains of Kansas and rubber must come from far off Java and Sumatra.

Too often the working man in a plant sees only his own labor in the fashioning of an article. He does not take into account all the labor that goes into the production, transportation, and

processing of the component parts of his finished product.

It is my belief that if every working man, every businessman and every member of Congress would read the two volumes to which I have referred, there would be an entirely new conception of national income in this nation, for all would realize how much is at stake in the survival of the system of free enterprises and of free institutions.

Of course government has a proper field which it may enter in the regulation of business. There are first its own functions, its taxing policy, its tariff policy, its interstate commerce policy, its policy in fixing the value of money, all of which directly and indirectly affect the business life of the nation.

These policies, however, should be employed for the purposes of government only and not for the purposes of business management per se. Again, government should regulate, as differentiated from control, the business of the nation. It should outlaw dishonest practices. It should set up uniform standards of weights and measures and quality. It should declare what is not healthful. It should make rules for human conduct and fix penalties for transgression. It should regulate business so as to insure honest competition and to insure the continuance of competitive business. It is not necessary for it to enter business to accomplish any of these aims.

Government is there to define clearly the rules of the game and then let business have a free hand in the pursuit of free enterprise. Government has no right to enter business of any kind except those which are clearly a part of government itself, like the government printing office, government hospitals for its soldiers and sailors, navy yards to build and repair purely government property, dams to control the waters of its rivers and streams.

It was not conceived as a competitor to private business, either in the manufacture of women's dresses, of automobiles, moving pictures, electric light bulbs, or condensed milk. Government is there to govern and regulate and not to operate. It is there to regulate business and not to dominate, overpower, or subject it.

When government, in violation of the wisdom of sticking to its milder function of regulation, wherein it but defines the rules of the game of free enterprise, and commences to dominate and overpower or to enter and operate someone's business, inevitably the precedent will be used to permit it to embark in every business. And why not? If it is proper for government to be in one business, it will be argued that it is equally proper for it to be in another business.

The failure to comprehend that the working man, the wage earner, the general public, the man in the street, have more at stake than anybody else in the continuance of free enterprise in this nation and in the revival of business by allowing it to continue as a free enterprise, is to drift further and further down the road on which we are now traveling, leading to conditions which

threaten the home and fireside of every citizen – his job, whatever it may be – his income, and the free institutions of his country.

The present state of affairs should lead to a realization that business in every form should be encouraged, not discouraged; helped, not hindered; supported, not attacked; for in a revival of business – and it can only come by free enterprise and confidence in the right to free enterprise – there is work for the unemployed, a better market and better prices for the farmer, a decrease of the governmental burden of taxation and a normal way of American life.

May I close by restating your question: How Far Should Government Control Business? My answer is, it should not control it at all. Control is too brutal a word and in its accepted meaning, too brutal a remedy for the evils that may exist in free enterprise.

Well, then – How far should government regulate business? That cannot be answered in a sentence. Just as the airplane of today has outmoded the transportation of yesterday, so old regulations will from time to time be outmoded and new ones be made necessary. The degree of regulation cannot be fixed on any definite and permanent basis. The task of government today is still what it was in the day of Aristotle – that is, to find the just medium, to avoid excess, to strive for the ideal for the common good. Or as Aristotle himself said of government, “not too much, not too little.”

Generally in this restless world in which we live, there is more to be feared from too much control than too little, and hence I have devoted myself primarily to that fear in my answer. I believe recent history supports my point of view. In bringing these answers to the question you have presented, I have done so in the hope that I might make some slight contribution here to the future of America, with the sole desire to make that future, insofar as I may influence it, as glorious and great as its past. For truly, its past is the greatest of them all, and its future will be only as great as we make it. (The audience arose and applauded)

President Wendell L. Willkie: Now we are going to introduce part of the program tonight in the creation of the panel. We have asked five gentlemen to make four-minute comments upon the talks made by Mr. Arnold and Senator Tydings. I want to say this to you. This is an Economic Club where we are seeking to get all viewpoints, and because it is obvious that a substantial percentage of us are sympathetic with the views of Senator Tydings, I wish you would give particular attention in the discussion by these members of the panel of the viewpoint supporting Mr. Arnold's ideas of government control.

Following this panel discussion we are going to have questions from the floor. Both Mr. Arnold and Mr. Tydings have said they would answer any question they could.

PANEL DISCUSSION

PRESIDENT WENDELL L. WILLKIE: Now the first member of the panel who will make a discussion of the speeches made by these two gentlemen is Arthur D. Whiteside, President of Dun and Bradstreet.

ARTHUR D. WHITESIDE: Everything seems messed up to me here tonight. (Laughter) I understood that the panel was to start asking questions and that if anybody talked more than four minutes, not consecutively, but altogether, that the panel would be abolished and there wouldn't be anymore. That is absolutely a statement of fact. That is what Mr. Ely conveyed to me, and he usually gets things straight.

The part of the comments that I was going to make, Mr. Willkie took, because I was going to talk about the redistribution of wealth, and refer to the reference to Lincoln. So, I will now ask a question of Mr. Arnold. I told Arnold that I was going to ask questions, and he very, very kindly sent me a copy of his speech before the meeting. I thought that I would be just as fair and courteous as he had been, thinking that it would be rather easy to prepare a question when I knew what he was going to say, that would be rather clever, so I did not look at the speech. Well, it turned out he didn't make that speech, and he used a different one. (Laughter) He does those things at times. (Laughter)

Well then, knowing his philosophy quite well, and having heard him speak on two or three occasions, I made up a question of my own, knowing that he would refer to the subject and

emphasize it at great length, so I wrote the question out, and he did not speak of it at all. So I'm going to ask the question anyway. Are you, Mr. Arnold, as strongly emphasizing the necessity for indictments accompanying civil actions today as you were in June when you first spoke in New York? If you are, would you care to tell us why you are, and if you are not, would you care to tell us why you changed or modified your theory?

THE HONORABLE THURMAN ARNOLD: Mr. Whiteside, I see no way of enforcing the present anti-trust law outside of the procedure for indictment. I have attempted in utilizing that machinery to take the moral element out of it. We do not get jail sentences. I can conceive of a different procedure than that which is hallowed since 1890.

I am not in a position in two or three moments to outline that procedure; but at present it is my conviction that the civil remedy as a preventive measure is only a form of unemployment relief for attorneys. It is simply a cease and desist order, and of no practical effect, and that the civil procedure is most useful under the anti-trust laws as they are at present set up and as they might have the effect of guiding businessmen as to what are reasonable combinations.

Now, I haven't time to go into our statements in this brief five minutes of the methods of nolle prossed by which a consent decree is obtained and an indictment is dismissed, as it was in the Ford and Chrysler consent decree. I would be glad to explain it later on the floor, or if any questions are asked, but I will be using some other speaker's time.

PRESIDENT WENDELL L. WILLKIE: Apparently Mr. Whiteside is correct, the members of the panel have the privilege of either speaking or asking questions, and the next member of the panel to discuss this question with you will be Mr. Vanderlip.

FRANK A. VANDERLIP, JR.: Mr. Ely told me that this panel was to act much as a Greek Chorus, it could express approval or disapproval. It would be difficult to express disapproval of anything Senator Tydings has said.

Mr. Arnold has been, I think, extremely fair in his telling us that judgment had to be used in all the cases when one had to decide whether to prosecute or not. During my fairly brief business career, there has been one large trust built, that is the labor trust with the closed shop which is coming to have such completely dominant a position in some businesses. The question I would like to ask is how soon can we look to the use of fair judgment in controlling that particular trust?

THE HONORABLE THURMAN ARNOLD: It seems to me that there is a general impression, and I don't know where it arises, that the Constitution does not prosecute labor. Out of the 40-odd men employed by the anti-trust division, a great number of them have been engaged in labor prosecution more than in anything else. You will recall, too, that Mr. Arnold made his reputation as an employee of the anti-trust division, prosecuting labor, and you will note that we have just indicted in the Chicago milk situation, certain labor organizations.

Now you cannot, Mr. Vanderlip, police America with a Corporal's Guard. We do not cover our complaints and we do not cover American industry. I would only state that in the exercise of judgment – and I think judgment needs to be exercised on the question where concerted action is required – I think there are a large number of prevention cases where no judgment needs to be exercised at all. In that exercise of judgment I think we will get better results by prosecuting industrial organizations, rather than individual offenders, since we are dealing with an anti-trust law.

I may, I think, without any reference to the merits of our case, and on the assumption of course that we believe we have grounds for that prosecution, refer to the Chicago milk situation. There, we have completely taken in every element in the distribution of Chicago milk. Labor is indicted, the Board of Health is indicted, the large dairy companies are indicted, farm organizations are indicted – and we have even got a university professor.

Now curiously enough, we have noted the hostility even from labor in that indictment, that we have had from the New York indictments of labor done by Mr. Abrams, but here is a method of distribution of milk in Chicago, an artificial milk shed – these are the charges, I mean, assuming however, that our charges are correct – here is a perfectly absurd method of delivering milk in which all the parties are contributing.

What are you going to do when one gang forms? You have got to have another gang, I think, and if you take them all into the situation you have a chance of solving the situation. And we are only guiding the various factors engaged in distributing milk – we are not telling them how it should run the business, but we believe that out of that prosecution done by hope and sympathetic understanding of the situation from which it arises, we are going to get a more reasonable method of distributing milk in Chicago. And remember this, we distribute, with six times the available milk supply around Chicago, we distribute less than health requires in Chicago, and if I can trust the figures, we distribute less in Chicago than they do in Berlin.

There you have a situation with plenty of milk, but with a perfectly absurd method of distribution, and we hope whatever arrangement we will take up, its reasonableness will be on its own footing in the Chicago milk situation, and won't utilize the same footing as in Detroit. That is our technique with respect to labor.

PRESIDENT WENDELL L. WILLKIE: I have some embarrassment about making a public application for a position, but if he will appoint me as assistant to prosecute the professor, I will resign my present position.

Now, the next member of the panel who shall either have the privilege of commenting or of asking a question will be Mr. Henry Pratt Fairchild, President of the Town Hall Club.

HENRY PRATT FAIRCHILD: I don't know why Mr. Willkie took occasion to display his desire to prosecute a college professor, because he called on me. But at any rate, I am going to make an observation or two, really two, briefly.

In the first place I want to take up a point made by Senator Tydings which seemed one of the best points in his speech but which he passed by incidentally, and I want to express my agreement in his dislike of the word control, it is an ugly word. Unfortunately our English language is so difficult at times – it is difficult to find the proper word when we want to express a certain line of thought. And if one turns to the dictionary and takes all of the definitions he can find there, he is almost certain to find something disagreeable with which to prove a point.

The point I am trying to make is that the very wording of our question tonight seems to be sufficient evidence that we were not meant to take the extreme extent of the definition to be found in the dictionary. We don't talk of how far shall we overthrow something – we either overthrow or we don't overthrow.

So I think the word Mr. Arnold turned to comes closer to the subject, the word “regulate.” The point he made which struck me as being important was the frank admission that we must have enough regulation to protect business, and I would here like to point out a kind of protection seldom thought of.

We must have government regulation to protect the conscientious, public spirited, socially-minded businessman against the competitors of another character. It seems unquestionable that there seems to be a sort of Gresham's Law operating in the social and economic world as well as in the financial world. Just as bad money tends to drive out good money, so bad business tends to drive out good business – not out of existence, necessarily, but to drag it down to the level of that which is represented by the less conscientious and the most unscrupulous in the field. That seems to be the inevitable tendency in the realm of absolute competition.

For example, suppose we take the matter of private housing. One hundred years experience of private housing has shown beyond question that the houses that were actually built and lived in will conform to the lowest minimum standards permitted by the laws of the community at the time being, and anybody having any doubt of that, need only read back in the housing history of this country and remember them passing a law they thought was a good law.

I doubt if there is a single business represented here tonight that would be willing for the sake of its own conscience and its own self-respect, to be forced to operate on the level they would be if there were no laws touching the business whatsoever. In other words, it becomes absolutely necessary to have government regulation to establish a floor to all business, every business, applying a minimum level below which competition will not be allowed to take place, competition being permitted to take place above that minimum level.

The talk of business control should be as our subject indicates a question of how much, how far. It cannot be settled on the basis of a general principle, it becomes a matter of expediency, of social conscience, of protection of the socially-minded businessman against the unscrupulous — the sort of thing Mr. Arnold was talking about.

It seems to be economically indisputable that the area of control must correspond to the area of organization. We know that the whole tendency of business developments, of business organization is toward an expansion of the area included and it seems to me completely anomalous there should be a demand for the regulation of business on a scale smaller than business itself. That was impressed on me pointedly during the years of vigorous struggle for a federal child labor amendment. It seemed to me then and it still seems to me the height of absurdity to see representatives of national business and commercial organizations appearing before Congress to protest against the federal regulation of child labor, and to insist it must be on a state basis.

There can only be efficient regulation of any kind when the degree and scope of regulation corresponds to the degree and scope of organization, and since in this country we have no middle ground between the state and the federal government, we have no regional governments, it becomes a question of federal or state regulation and a choice between the two, and since almost all of the great businesses in this country are organized on an inter-state if not a national basis, it seems to me that whatever regulation we have must necessarily be on the basis of the federal

government.

PRESIDENT WENDELL L. WILLKIE: Thank you very much, Dr. Fairchild. The next member of the panel to comment or to ask questions is Mr. Russell Potter, Director of the Institute of Arts and Sciences, Columbia University.

RUSSELL POTTER: Mr. President, having heard these two very able and stimulating addresses, I find myself in the position of the old colored man in the South in one of the so-called “Moonlight Schools.” Someone asked him what he was studying and he said, “Reading.” “Reading? – well, are you learning to read?” The old man smiled and said, “Well, going down the road when I come to a road sign now, I can read how fur, but not whur to.” (Laughter)

I think we are all indebted to Professor Fairchild who helped to clarify what I think is really a basic problem here, the use of terms. I suspect that if we could get our two speakers off in a corner together and let them thrash it out, we would find that they would agree that they were not talking about “control” but about “regulation,” and then they would go to talk about how much regulation and by whom and for what end.

I only want to say that there is abroad – you will find it in the press and in the editorial columns, coloring news stories, you will find it in the journals of opinion and you will find it in speeches – there seems to be a bugaboo about the land, the idea that democracy is on its last legs, democracy

is just about done in, and we have come to a place where it is either a Fascist control or a Communistic control.

Well, I would like to say, and I would like to say it so that everybody in the world could hear it, that that is all poppycock, yes, the most nonsensical kind of poppycock.

The fact that we are here tonight and that you have heard Mr. Arnold and that you have heard Senator Tydings, and that we are going to have some questions, and I hope they will be good, hot ones – put them on the spot – the fact that we are here engaged in honest give and take on basic and vital problems, means that democracy is working in America today.

Mr. Arnold, I want to tell a funny story, but it is getting late – but I do remember the English speaker who said that the thing that annoyed him most on his speaking tour in this country, was, as he spoke and looked out over the audience, to see people looking at their wristwatches. That doesn't bother me, what burns me up is when they put their watches to their ear to see if they are going. (Laughter)

PRESIDENT WENDELL L. WILLKIE: Now we have one more member of the panel to comment. I want to say that following these discussions we will have questions from the floor. Therefore, I wish you would begin to prepare such questions so we will be ready to present them to the speakers at the conclusion of the next comment.

The next member of the panel to comment is Mr. William K. Huff, Executive Director of the Philadelphia Forum. Mr. Huff. (Applause)

WILLIAM K. HUFF: I have before me the documentary evidence that all I need to do is ask a question. Just before I left Philadelphia this morning, I got this letter from Mr. Ely, the first intimation that I had that I was sentenced to this chain gang, and although I have had many letters over many years from Mr. Ely, beginning in a very friendly and intimate fashion, I was rather frightened by this letter, by the salutation, “Dear Comrade:” (Laughter)

Senator Tydings is worried that the Bolsheviks have captured Washington, and I am afraid they have also taken the Economic Club into camp.

I would like to ask Senator Tydings one question, if I may. Do you Mr. Senator, accept Mr. Arnold’s figures that roughly 20 million of the 30 million families in this country are on the verge of starvation, or at a place where they are likely to approach the verge, and if that is the case in 1939, how different was it in the yardstick year of 1926, if that is the highest standard in the history of the world, and if that is the American Way is not some modification of the American Way necessary?

THE HONORABLE MILLARD E. TYDINGS: Let us suppose, first of all, that Mr. Arnold’s

figures are accurate (Laughter), namely, that the designated number of families are on the verge of starvation. What has that got to do with how far government should control business, insofar as to assume that more control of business by government is going to get them off the starvation rolls?

The point I was attempting to make is that government can't plant a grain of corn, cut down a single tree, make a single steel rail or operate a single railroad in the country. Men do that, free enterprise, and the point I am making is that by persecuting or rather dominating free enterprise beyond what I think is a reasonable regulation, isn't going to get the eight million who are near the starvation line in any better condition. Does that answer your question? (Applause)

Let us assume, to put it a little more clearly, that the condition pictured here is true, then, more control over business, in my opinion, is not going to accomplish more wealth. Mr. Arnold himself says that our problem is one of distribution. Well, if it is one of distribution, what has business got to do with that? That is the function of government, of course, but how is dominating or regulating business going to make for more distribution? And certainly, if you increase the cost of production, which you do when you attempt to regulate, you increase the cost of the article produced, and therefore you put the poor still poorer, in the relative positions that they once occupied, and occupy now.

I do not accept Mr. Arnold's figures as accurate. There will always be some poor people,

unfortunately, in any system of society, to which we can properly direct every energy we can to improve their condition. But as I see it, their condition will be the more quickly improved when business feels it has the right to pursue free enterprise than will their condition be improved when business feels it has not the right to pursue fee enterprise. (Applause)

PRESIDENT WENDELL L. WILLKIE: You probably have noticed some commotion here on the speaker's platform. It has been occasioned by the fact that we are anticipating the presence of Ex-President Hoover shortly. He is to be our Honor Guest here this evening. (Applause) Two gentlemen have gone upstairs to escort him to our banquet here; Mr. Holby, President of Lord and Taylor; and Colonel Hodges, Chairman of the Board of the New York Sun.

I may say that at any point in the program when President Hoover appears, I shall suspend all other activities. If there is any gentlemen speaking at that time, or asking a question, I shall ask him to step aside.

We have no here a question addressed to Mr. Arnold. "Have you found the real problem of monopoly in a large company controlling an industry, or is the difficulty more in a number of small companies "ganging together?"

THE HONORABLE THURMAN ARNOLD: The question is a real one, although it is a little like asking which came first, the chicken or the egg. In other words, let us take a building, a

house, which costs at the cheapest possible figure \$3,000, even when the government lets the bid, and even at that figure, it does not permit many people to buy. Incidentally, they are not my figures, they come from the National Resources Board.

There you have the greatest tangle of goods and services you can imagine. Let us assume a given city where the contractors are ganging up, where labor is ganging up, and where the heavy industries are putting in identical bids. Now, who is doing that? They are all three doing it. Which is the more important problem? I don't know. I only say that the technique of handling that problem is to take them all in together.

It seems to me that if the answer should be: that the concerted price drop on the part of all the heavy industries would be a socially beneficial thing, a reasonable type of concerted action, it might be accomplished in that way.

Take them separately. Can the heavy industries – can any single heavy industry drop their prices? I was talking to a man from Sears Roebuck, who said, “We can't sell any more refrigerators if we drop the price from \$130 to \$100. I said, “If it was part of the house, and you dropped the whole house, you might,” and he said, “yes.”

Can the heavy industries by themselves? They tell me that the contractors will get it all; and the contractors say: “We are protecting ourselves against labor;” and labor says, “If we reduce our

wages, then the contractors and the heavy industries will get it.”

It seems to me that if you take them all up at once, and assuming that were a solution in a particular city, we could say to the heavy industries: “We have the contractors under control. We are breaking up this gang. You needn’t worry about this drop.”

We can say to labor: “We will give you the same thing, in effect; you can accomplish the same thing that the heavy industries are accomplishing, a greater annual income for a decreased hourly wage; “and at that point conceivably your specific pump-priming would do more good because it would be (a housing program) directing and starting this volume.

Now, curiously enough, the labor people I have talked to say, “Yes. I don’t know whether we would object to indictments under those circumstances?”

So, the problem leads to those remarks. But, I don’t think there is any real answer as to which of these three people, all banded together – you can understand perfectly how they feel, they have got to get together in that tangled situation. As to which one is the worst, that depends on which is liked the most. Maybe this group would say, labor. (Applause)

PRESIDENT WENDELL L. WILLKIE: Senator Tydings, don’t you think that the one-third underfed will be better off when the two-thirds are prosperous?

THE HONORABLE MILLARD E. TYDINGS: Of course, that is obvious. It needs no answer. But, may I point out, as long as the question is somewhat in line with what I shall suggest, that you gentlemen in the back of the room look at these charts on the wall. They represent what happens to the income dollar of this country. Labor, in practically every chart, gets above 60 cents of that income dollar, and salaries and labor together get about 80 percent. Now, by salaries is not meant what the President gets. Salaries are stenographers, clerks, bookkeepers, salesmen, and the like, as differentiated from the workmen.

Now, the cost of the articles is so high that the poor cannot buy them in sufficient volume. There is your problem. You can't take off interest and still borrow money. You can't take off some little dividends and still keep a capital market. You can't take off agents or entrepreneur withdrawals and still keep a market.

Now, what man in the national government is going to tell labor, which is the great component part of the cost of every article, that it has got to reduce its cost so that things can be sold more cheaply, so that the undernourished one-third, the relief people, can buy the articles, if they have any money; and even if you do, you will take from labor by reducing its part of the component cost, its corresponding purchasing power as a customer.

PRESIDENT WENDELL L. WILLKIE: "Mr. Arnold, isn't it true that up to the end of 1937

almost all of the legislation of the New Deal had as its main objective the raising of prices rather than the lowering of prices, even including such bills as the Robinson-Patman Bill, and the Miller-Tydings Bill? (Laughter)

THE HONORABLE THURMAN ARNOLD: I think it is true that all the pressures from organized groups were for the raising of prices. I don't think it is true that all the legislation – and I think there has been a constant realization of the point of view that I am now representing. I think it is true that traditionally with our lack of anti-trust enforcement, we did not, and have not as yet, accepted the expansion of the program that I am now advocating; that is, there were 15 men in the anti-trust division. I have noticed since I came into office in practically every industry, and I can't call them by name, but representatives come in to me and say, "Now, you want competition." I say, "Yes." "Well, in order to have competition, you must keep competitors alive, and they must make money." And I say, "Well, I don't know whether that is true or not." "Well," they say, "it is true, because we are on a profit system; therefore, we don't want these chiselers in the picture, and won't you fix us up some prescription composed of the Appalachian case and the Board of Trade case, and let us, in the interest of preserving competitors, keep the prices up?"

That is the pressure that is on us. As to whether those pressures are justifiable or not, I can't discuss in the abstract. I give you one case where I think they conceivably would be justifiable.

A group of people from a large city engaged in the waste paper industry came to me, and there is a single buyer of waste paper, and, incidentally, in this community, there were 5,000 people engaged in the collection of waste paper, and there was only one man to buy it, and the price was such that it cost them, I think (I forget the figures: it may be even \$2.00 a ton, under what they were actually paying for collection.) I said, “Well, you don’t you quit?”

They were a rather desperate looking lot of people, and the leader broke down and started to cry. He said, “We can’t quit. All I have in the world is tied up in this little organization that I have. If I drop it, I am through; I am on relief.” The same thing may be true in many agricultural industries. In other words, you have in some cases a justifiable pressure, and in other cases an unjustifiable pressure.

All I have to say with respect to the Fair Trade Acts, and our distinguished Senator Tydings Act – I can quite concede that in a situation like Chicago (we will take, again, this milk) it might be reasonable for people not to chisel on copyrights; for Chicago, under those peculiar situations – and the law, however, which applied to both Chicago and Detroit, it seems to me, might be used to create combinations under the guise of the law passed with a perfectly sound ethical idea.

I don’t want to debate that with the Senator, and I will only say that my leaning, my preference, not only to that, but to the Volstead-Kapper Act, which allows farmers to combine – all of them – is that if that principle were subjected to the covering principle that no combinations or no use

of any law, patents, Miller-Tydings, or anything else in restraint could be used to unreasonably restrain trade, I think I could operate under them very well.

Now, the pressures always in a rapidly organizing society are to raise prices, and some of them are justified because the people selling are selling in an uncontrolled market, and buying in a controlled market.

My only answer to those problems is that I can't talk about them in general. I can talk about milk; I can talk about steel; I can talk about the movies; but I cannot talk about everything at once, nor do I think we are going to get sensible decisions or legislation if they cover everything at once.

In other words, I reiterate that the great advantage of the anti-trust technique is in that it permits us to take up one industry at a time in the light of its peculiar facts. (Applause)

PRESIDENT WENDELL L. WILLKIE: I think Mr. Arnold will agree, and all of you, that in view of the fact that this previous question applied to a bill which Senator Tydings specifically sponsored, that we should at this time give him an opportunity to answer the same question. Senator Tydings. (Applause)

THE HONORABLE MILLARD E. TYDINGS: I think Mr. Arnold's position on all of this

matter from the main subject and even the latter subjects has been eminently fair; and I want to say, if I understand his remarks right, I don't believe I am very far in disagreement with his desire to keep alive reasonable and right competition; and I, likewise, agree with him that you can't sit down and make a general law to apply to the whole situation; and that is one of the reasons why I am apathetic about the ability of Congress to exercise too wide a control, because it will depend on the judicial nature of the administrator rather than on the law itself, and that is giving hostages to fortune.

I think, however, that Mr. Arnold's approach to it, while I may not agree with him if I knew the facts in every case, is an attempt to approach it as judicially as humans can.

Now one trouble with control in government is that it is never stable. When the cost of articles go up, then everybody complains about the high cost of living, and Congress does something about it. When the prices of articles go down, prices go down, then the group affected, if it is agriculture for example, immediately wants a law to put the prices up, and Congress accedes to that.

Now, what kind of business can you run where the human nature element is as strong as it is in politics, where the rules are changed every time the two nines go on the diamond? (Laughter) It just can't be done.

Now here is perhaps what might be termed a backward point of view. I am for the anti-trust laws, and I think they should be enforced reasonably, but with a great deal of tolerance of the problems of the average businessman who has to fight quite often on fair competition. And so, therefore, while you are attacking him for throttling competition, it is a pretty good idea to look into the kind of competition which he has got to fight, if you want to arrive at a judicial result.

That was the purpose of the Miller-Tydings Act. It probably has many faults. It probably is creating some evils, perhaps as great as those it sought to remedy. But I looked upon it as an honest attempt to promote honest competition. Maybe it isn't, and if it isn't, in time it will die. It is still on trial, and I only adopted it because, after a good bit of research, I thought it reasonable.

Now, here is another trouble with our problem. I remember very well when NRA was pending before the Senate, a man for whom I have a great deal of respect as a seer of government, came to me and tried his best to persuade me to vote for that Act. I didn't like to venture in the field of prophecy, but I made a few prophesies in defense of my position. Six months after the Act had been declared unconstitutional; he came back and thanked me for my vote.

I remember when they were slaughtering hogs and pigs and so on, on the farms. The farmer was in a tight position. I didn't vote for the AAA Act. The pressure on me was pretty strong, too, and I realized there was a farm problem.

But it seems to me that these two illustrations are only other chapters of failure on the roadway of over-legislation; and if I may leave this thought, which I hope will be constructive, in case I am not asked another question.

One of our troubles today is this: that under the guise of regulation, even to use the softer word, we are setting up an entirely new fourth branch of the government, administrative legislation, if you please. (Applause) We pass some general law like the Wagner Act, which I did not again vote for (Applause) although I wouldn't have anybody assume by that that I don't think labor has a right to bargain collectively through agents of its own choosing, and so on, but I like an act that at least gives the other fellow a drink of water every now and then. (Laughter)

But I want to use that as an illustration of the new tendency in democracy, to take a problem, not to debate it, not to get the facts, not to try to solve it, but to pass a blanket law and hand it over to some fellow who usurps the place of the Senate of the United States and the House of Representatives and he sits there as a czar and you are absolutely powerless.

Now that is a great danger. Congress should make the rules so definitely – of course, it has to have some latitude of administration – but it should make the rules so definitely about every proposition that any man of reasonable intelligence can tell somewhere near where he stands. (Applause) And the tendency has been of late to deal with a mass of subjects under the head not of Congressional legislation but of Administrative legislation.

And so, the fourth great branch of our national government for which the Constitution does not provide is growing by leaps and bounds, and that is causing more confusion and, in my judgment, in its implications and ramifications, is holding back business and keeping more people out of work than all the governmental control for the opposite purpose will put back to work. (Applause and Cheers)

PRESIDENT WENDELL L. WILLKIE: Mr. Ely, the Director of this Club, is now going to ask one of the speakers question.

ROBERT ERSKINE ELY: No, sir, I don't ask any question. In my capacity as the endeavorer to do what – well, what the President thinks he wants, to help him find out, but just as an individual.

Now, Mr. Arnold, I would like to ask you a question and I am afraid may have a little bit of impolite sound. Now, let me say to you in advance that nothing could be further from the intent of that question. To start with, if you will throw a mantle of kindly charity over the form of the question, then, it is this: We think you – that is, a good many of us do – are pretty well all right in this matter. We think you are fair, as the Senator has said. We think your ideas are reasonable. But, there is a doubt in the minds of some of us, and it is this: Are you going to have a free hand? Is your policy going to represent the policy of the Administration – not only today and

tomorrow, but right along, so that we may think of your policy as the permanent policy of the Administration? How about it? (Laughter)

THE HONORABLE THURMAN ARNOLD: The Democratic Party is administering the government of the nation. The Supreme Court is checking up. Now, no group of that character, a Democratic Party composed of conservatives, liberals, and even if we may believe Senator Tydings, of Lefts and Communists – the Supreme Court and Senate, the President, having been reversed by one vote, of course, no great group like that ever moved in a single direction. I will succeed or fail depending on whether I can get the support of the businessman, of the people who produce and distribute goods in this country in the long run, and I hope to get that support in view of the fact that I am very annoying to some of them.

(Cheers and Applause as ex-President Hoover came on the platform)

PRESIDENT WENDELL L. WILLKIE: Mr. Hoover has consented to say a few words to us. (Applause) Mr. Herbert Hoover!

(The audience arose and applauded)

THE HONORABLE HERBERT C. HOOVER: Mr. Willkie, ladies and gentlemen: I don't know what you have been talking about. (Laughter) I assume that in this body you are probably

worrying about the government and business. (Laughter)

I have just been talking to an assemblage of engineers on the “Engineer’s Point of View” on that subject. I pointed out to them that in this country perhaps not more than a generation ago we used to personalize the devil, and as we have gradually abandoned that personalization, we have taken on certain national demons; and we select one in each industry, and a few in the banks, and we find them about, one place and another.

I was talking to the engineers about the position which the power industry occupies as the national demon. My comment was generally to the effect that it is the engineer who cures monopoly, and not the statesmen. (Applause) It was the engineer who cured the monopoly of the canals by building the railroads, and it was the engineer that invented the gas engine and took the railroads down from his high position as a national demon, upon which national elections could be won most any time. And now, the power companies occupy that particularly hot spot. And there is something going on in that, too.

There was a time when the engineers believed there was something like 50 millions of reserve hydroelectric power in this country, and that was a time when he required about four or five pounds of coal to make a kilowatt, and he has returned a very large part of the hydroelectric power back to scenery and, at least, the engineers have freed themselves from the accusation of the scenery lovers of being totally barbaric and destructive.

But, it also enters into government because while the engineers have pretty well abandoned the making of power out of water, the government still keeps it up. (Laughter) And if you will look around over this country today, you will find that the government still keeps it up. (Laughter) And if you will look around over this country today, you will find that the government is practically the only person that is trying to make power out of water, and I have no doubt, however, that in the course of time the statesmen will catch up to the engineer and some other phase of his work will become, at least temporarily, a national demon.

But if, at the moment, you would analyze perhaps all those rises in the monopoly world, and their decline and fall through invention, you would find that somewhere in the decline, or the fall, that the capitalist consolidated his efforts with the socialist and got the government to buy him out. (Laughter)

I won't pursue that any further, because I don't know what you have been discussing, and I might be wholly in-apropos. So, thank you for the courtesy of your reception.

PRESIDENT WENDELL L. WILLKIE: Needless to say, I find myself in violent opposition to the first part of President Hoover's remarks.

Now, the hour is growing late, and I at this time want to express our appreciation to tonight's two speakers. I want to express our appreciation to Mr. Arnold, who, of course, as all of us recognize,

has talked to an audience many of whom disagree with him, but I want to commend his fine sportsmanship and his clear enunciation of what he believes. (Applause)

Likewise, I want to commend Senator Tydings, (Applause), who has spoken so clearly and so emphatically, and with such erudition on the principles that he believes. (Applause)

And at this moment of closing, I want to say this about our Economic Club meetings. We all have strong views. We come here, however, to learn, and on all occasions let us give to the speaker who has opposing views to ours the utmost of courtesy and attention.

Goodnight and I thank you.

End of Meeting