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SPEAK YOUR PIECE:

Antitrust Law Perverted

The worries about the power of Wall Street have their roots in rural America. More than 120 years ago, rural Grangers and Populists were warning about concentrations of business power. Maybe it's time we listened to our rural forebears.

BY C. ROBERT TAYLOR



When Nebraska farmers in the 1880s saw that their economic future was being controlled by large businesses, they didn't occupy Wall Street. They built a new political party. Here is a picture of the Nebraska People's Party convention of 1890, meeting in Columbus, Nebraska.

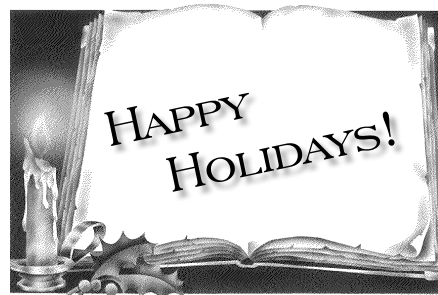
Current socioeconomic issues are not unlike they were in an earlier time in America's history, the late 1800s and early 1900s. The "Farmers Revolt" against the "Robber Barons" led to formation of the Grange. The platform of the Grange was simple:

"We are opposed to such spirit and management of any corporation or en-

terprise as tends to oppress the people and rob them of their just profits. We are not enemies to capital, but we oppose the tyranny of monopolies."

The Granger's declaration of 1874 went further,

"We meet in the midst of a nation brought to the verge of moral, political and material ruin. Corruption dominates the ballot box, the Legislatures, the Congress, and touches even the ermine of the Bench. The people are demoralized ... the newspapers are largely subsidized or muzzled, public opinion silenced, business prostrated, our homes covered with mortgages, labor impoverished, and the land con-



centrating in the hands of the capitalists.

"The urban workmen are denied the right of organization for self-protection; imported pauperized labor beats down their wages ... The fruits of the toil of millions are boldly stolen to build up colossal fortunes, unprecedented in the history of the world, while their possessors despise the republic and endanger liberty ... The land, including all the natural sources of wealth, is the heritage of the people and should not be monopolized for speculative purposes, and alien ownership of land should be prohibited."

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Freedom of Choice at

BY DON STULL AND MICHAEL BROADWAY

Your supermarket is a cornucopia, overflowing with fresh fruits and vegetables from around the world, no matter the season; counters full of meats, poultry, and fish; aisles stacked high with boxes and bags, cans and cartons of every kind of cereal, drink, dessert, and snack a body could want. Cornucopia, indeed. The typical American grocery store is stocked with 50,000 items, more than triple what it was 30 years ago. In 2010 alone, more than 15,000 new foods and beverages came to market in the U.S., but such is the competition for our food dollar that many of these new products will fail. So much to choose from, no wonder we usually come home with stuff that wasn't on our shopping list.

But how much choice do we really have? Just five companies account for almost half of supermarket food sales in the United States. And what about the food those companies offer us? Let's take meat. A meal is not a proper meal without it, at least for 97 out of 100 Americans. Just four companies provide us with 79 percent of our beef, 65 percent of our pork, and 57 percent of our poultry. So, no matter what kind of meat we have for dinner, most likely it comes from the same handful of companies: Tyson, JBS, Cargill, Smithfield. What, you say, you can never decide which ba-

con to bring home: Armour, Eckrich, Farmland, Gwaltney, John Morrell, Smithfield—all owned by Smithfield.

OK, so market power is consolidated in the hands of a few multinational corporations. What does this mean for the food we eat and the people who produce it? Control of our food supply has been wrenched from independent farmers and ranchers in the corporate boardrooms of agribusiness giants. Since 1980, 4 out of 10 farmers

who raise cattle and 9 out of 10 who raise hogs have gone out of business. Under this Darwinian survival of the fittest model, control of most production is now in the hands of large corporations. But farmers still raise cows, and pigs, and chickens, don't they? Well, yes they do, but most of them don't really own

the animals they raise. Virtually all the chickens sold in the United States are grown under production contracts to a handful of companies, who own the birds from egg to supermarket. Tyson Foods, the largest U.S. poultry company, contracts with about 6,000 of what it calls family farmers to raise its chickens. They are expected to grow birds to slaughter weight under strict company guidelines as quickly and as cheaply as possible. If Tyson is not satisfied, it may cancel their contracts with little notice and



the Supermarket: Not

even less recourse, leaving them under a mountain of debt for their otherwise useless chicken houses.

Nine out of 10 hogs are owned directly by or raised under contract to companies like Smithfield or Tyson. Beef is poised to follow in the footsteps of poultry and pork: more than half of the cattle now slaughtered in the United States are owned directly by corporations or raised under contract. And the companies that bring us our burgers, pork chops, and wings are very often one and the same.

Our food system is an hourglass. In one chamber are tens of thousands of farmers and ranchers, but their sands are steadily receding. In the other are hundreds of millions of eaters, whose sands continue to swell. In the narrow middle between growers and eaters sit a handful of giant corporations, what economists call an oligopoly. Those who grow the animals that become our meat are more and more likely to face a monopsony—only one buyer for their animals. Eaters would seem to have unlimited choice as they cruise the supermarket aisles, but those myriad choices are presented to them by a few companies, who use monopolistic practices to expand their product lines and increase their market share. The results: lower prices for farmers and higher prices for eaters. Over the last decade retail meat prices have risen more than 40 percent! But during that same time, gross farm income for small- and medium-sized hog and cattle farmers fell by 32 percent. Seventy-one percent of chicken farmers live below the federal poverty line.

Choice. More and more farmers are going broke for lack of it. President Obama promised to reform American agriculture through vigorous antitrust enforcement. We are still waiting. In the 2008 farm bill, Congress instructed the Department of Agriculture to write regulations to restore fairness and competition in livestock and poultry production, but under pressure from interests that dominate industrial agriculture, it has refused to either approve or fund enforcement of almost all the proposed reforms. Can we expect any better from the 2012 farm bill currently before Congress?

Each of us chooses the food we eat, and those choices help shape prevailing systems of food production, processing, and packaging. Our food choices have economic implications; they have moral ones too. The National Catholic Rural Life Conference has proclaimed an Eaters' Bill of Rights. Each of us has the right to know how our food is grown and processed. We have a right to food that is safe, nutritious, and produced under socially just circumstances, without harming air, water, land—or people. We also have a right to know the country of origin of our food and whether it has been genetically modified. The Conference advocates policies that “uphold the dignity of family farmers,” and opposes the contract-grower system of agricultural production, which makes “serfs of family farmers.”

Do we want a food system built on the illusion of variety, abundance, and choice, while systematically monopolizing and exploiting both those who

provide its raw products and those who purchase the foods made from them? Since the U.S. government has turned a deaf ear to concerns about monopolistic practices of the giant corporations that control our food, what can we do? For one thing, we can look for viable alternatives to the dominant food system. And viable alternatives do exist. A growing number of producers and providers do offer something different. And there are farmers markets, community-supported agriculture and box schemes. Why not give backyard gardens or even backyard chickens a try? Sure, these options may not be as convenient. And they may not be cheap. But they will be fresher, tastier, and safer. And they will come from food systems that are, in the long run, far more sustainable—and just. Isn't that worth a few cents more at the cash register? It's your choice. And your choices have significant consequences for the food security, safety, and quality of all of us.

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Animal Welfare vs. Worker Welfare

BY MICHAEL BROADWAY AND DON STULL

In early 2008 the Humane Society of the United States (HSUS) released a video showing workers at a California slaughterhouse using electric prods on cattle unable to stand on their own (called downers) and ramming them with forklifts to make them stand for inspection. (Federal law requires that animals be able to walk into the slaughterhouse, and downed cattle are banned from human consumption because inability to stand may be a symptom what is commonly called mad cow disease.) In response to public outrage generated by the video, the U.S. Department of Agriculture suspended operations at the plant. A few weeks later the company announced it would “voluntarily” recall 143 million pounds of beef deemed unfit for human consumption, a third of which had gone to the nation’s school lunch program. A year later the company was out of business.

Videos of animal cruelty have become a mainstay of campaigns against so-called factory farms, where animals are raised in close confinement. A visit to PETA’s (People for the Ethical Treatment of Animals) Web site finds a documentary narrated by Alec Baldwin entitled “Meet Your Meat.” The video consists of a series of clips of workers inside factory farms mistreating chickens, turkeys, pigs, and cows, as well as animals living in con-

finied quarters such as gestation and veal crates where they are unable to turn around. The opening sets the tone:

“What you are about to see is beyond your worst nightmares, but for animals raised on modern intensive production farms and killed in slaughterhouses it is a cold inescapable reality. Once you see for yourself the

If public outcry over the plight of meat and poultry workers was loud enough, if pressure were strong enough, companies would hear, and they would respond.

routine cruelty used in raising animals for food you will understand why millions of compassionate people have decided to leave meat off their plate for good. Chickens are probably the most abused animals on the face of the planet. They are crammed into filthy sheds by the tens of thousands, immersed in their own excrement, among the corpses of other birds who have died of heart attacks or stress. Some even die of starvation brought on by becoming crippled from growing so large so fast that their legs cannot withstand their weight which makes them unable to reach food.”

Videos such as these have made

big food processing corporations very nervous; so nervous that they have successfully lobbied state legislatures to implement “ag gag” laws, which criminalize undercover photography or video inside animal farms. Such laws currently exist in five states—Iowa, Kansas, Montana, North Dakota, and Utah—and they are pending in five others. There is little doubt that factory farm videos have successfully swayed public opinion in support of more humane treatment of animals. Veal crates, for example, where young calves are kept in strict confinement, have been banned after voter referendums in Arizona and California. Earlier this year Burger King announced an agreement with the HSUS to switch completely to so-called cage-free eggs by 2017. Last year HSUS entered into an agreement with United Egg Producers, a major industry trade group, to work together to enact federal legislation to ban battery cages for all 280 million laying hens in the United States. In May, McDonald’s announced that by 2022 it will no longer buy pork from producers who use gestation stalls to house their pregnant sows. A few days after the McDonald’s announcement, Safeway, the nation’s second largest supermarket chain, followed suit.

But this is not the first time in American history that social activists

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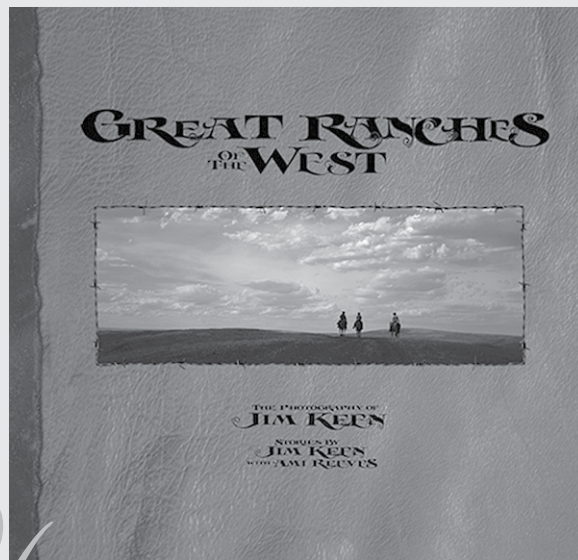
have influenced public opinion about how their food is produced. "I aimed at the public's heart and by accident I hit it in the stomach," lamented Upton Sinclair after the 1906 publication of his book *The Jungle*, which chronicled the appalling working conditions in Chicago packinghouses at the turn of the 20th century. But instead of being incensed at how workers were treated, as Sinclair intended, the book's readers were horrified by its description of filthy packinghouses and tainted meat. Within a few months of the book's publication, President Theodore Roosevelt signed into law the Meat Inspection Act and the Pure Food and Drug Act, which help protect us to this day.

Fast forward to 2004 and Human Rights Watch issues a detailed study entitled *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants*. It reported on interviews with workers in a Nebraska beef plant, a North Carolina hog-slaughtering plant, and an Arkansas chicken-processing plant. Its pages chronicle hazardous working conditions and illegal company tactics to prevent union organizing. It carefully documents how companies deny workers' compensation claims to employees hurt on the job by failing to report injuries and firing those who file claims. This report, unlike *The Jungle*, did not produce any significant legislation. In June 2012, the Food Chain Workers Alliance, a coalition of worker-based organizations whose members plant, harvest, process, pack, transport, prepare, serve, and sell food, issued a report called *The Hands that Feed Us*. It is an all too familiar litany of complaints—from low wages to high injury rates to minimal or no benefits.

Please see **ANIMAL WELFARE** on page 6

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Complaints by workers and unions against packinghouse working conditions have largely fallen on deaf ears. Indeed the federal government has made it harder for these groups to document such complaints. One of the most common work-related injuries in a packing plant is carpal tunnel syndrome, a musculoskeletal disorder caused by repetitive motions that can lead to a crippling of the hand or wrist and the inability to grip or even pick up objects. In 2002, the federal government's Occupational Safety and Health Administration stopped requiring employers to report such injuries. And so, as if by magic, the rates for repeated trauma disorders went from 8.1/100 workers in 2000 to who knows what in 2010? The American Meat Institute, the meatpackers' lobby arm, bragged that given the drop in work-related injuries, work safety was "a non-competitive issue in the meat and poultry industry."

Despite the many detailed exposes of miserable working conditions in

packinghouses and factory farms in books such as Eric Schlosser's *Fast Food Nation* and our own *Slaughterhouse Blues*--the public seems far more concerned about the welfare of farmed animals than the welfare of those who turn them into meat for our tables. In a 2010 national survey by Context Marketing, 69 percent of respondents said they would willingly pay more for "ethically produced" food. When asked what they meant by "ethical food," more than 90 percent identified three main qualities: "protects the environment, meets high quality and safety standards, and treats animals humanely." Working conditions and wages of food processing workers were not among the criteria for "ethical" food!

The meat and poultry industry is responding to public concerns for the welfare of farmed animals. If public outcry over the plight of meat and poultry workers was loud enough, if pressure were strong enough, companies would hear, and they would respond. What is our excuse? Meat and poultry workers are animals too.

Disproportionate political power may be used to influence legislation or subtly influence court interpretation of existing law in favor of the powerful.

Monopoly power can thus be strengthened and further entrenched, leading to monopoly inefficiency and a widening chasm between income and wealth of the powerful few and the rest of society, the people. Populists backed legislation to enact antitrust laws intended to keep a democracy from being turned into a corporatocracy.

In the first substantive decision interpreting the 1890 Sherman Antitrust Act, Supreme Court Justice Peckham wrote:

[I]t is not for the real prosperity of any country that such changes should occur which result in transferring an independent business man . . . into a mere servant or agent of a corporation . . . having no voice in shaping the business policy . . . and bound to obey orders issued by others."

Poultry growers have become precisely what Justice Peckham opined the laws were intended to prevent, servants of corporations. Many other agricultural industries have travelled far down "The Road to Serfdom."

During the past century, the broad goals of antitrust have been stripped away, layer-by-layer. Chicago economist and Federal Judge Richard Posner's view that "the only goal of antitrust law should be to promote efficiency in the economic sense" now dominates case law.

Yet, the word "efficiency" is not to be found in the Sherman and Clayton Acts or the PSA. Not once. The word "fair," which appears in the law numerous times, has been ignored. One wonders how some judges made it through law school and onto the bench with such poor reading skills.

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TAYLOR (continued from page 1)

Wow! Rural Americans are now voicing many of the same concerns. Occupy Wall Street activists have a similar mantra.

The Farmers Revolt and the Grange became the precursor to the People's Party, the Populists. The Populist notion of antitrust took hold in response to the "robber barons" — resulting in the Sherman Antitrust Act in 1890, the Clayton Act in 1914, court-ordered divestiture of the meat-packer cartel in 1920, the Packers & Stockyards Act (PSA) in 1921, and the Capper-Volstead (agricultural cooperative) Act of 1922 that made agricultural cooperatives a limited exception to antitrust so farmers and ranchers could cooperate

to countervail market power.

The Populist notion of antitrust law focused on broad goals emphasizing "free and fair competition." The intent was to protect "the people" from big-business and from fraudulent, unfair business practices.

The Populist need for antitrust laws was based on common sense economics.

Industry tends to become highly concentrated and integrated when giant firms have lower unit production costs than smaller firms, or when giant firms can use predatory market power to gobble up smaller firms.

Concentrated economic power often leads to concentrated, disproportionate political power.





A Populist cartoon from 1894.

The Populist antitrust words “free competition” have been twisted to favor greed and a corporate “free market” dogma. Business dominated by a giant is not “free” of rules and regulations as the giant’s “rules” are imposed on smaller business. An industry ruled by a big gorilla is not a free market for anyone except the big gorilla.

For several decades now, the efficiency argument has been used to allow mergers and acquisitions, resulting in “too big to fail.” Many of these mergers would not have been allowed under the original intent of antitrust.

But the situation is worse.

While antitrust law applies to collusion in the marketplace, the Supreme Court has opined that it does not generally apply to efforts to influence legislation and courts’ interpretation of law. Under Supreme Court opinions collectively known as the Noerr-Pennington doctrine, private entities are immune from liability under the antitrust laws for attempts to influence the passage or enforcement of laws, even if the laws they advocate would have anticompetitive effects.

Furthermore, private entities are immune from antitrust even when

they employ deceptive and unethical tactics to influence legislation. Corporations and individuals are treated equally under Noerr-Pennington. Corporations, individuals and their trade associations have essentially no limits on trying to influence legislation or the courts. Deception and lies are just fine, thank you!

But the situation is worse than worse.

Powerful special interests not only try to influence legislation in their favor, they seek appointment of judges who are politically and ideologically aligned, particularly to appellate courts. A 2004 Business Week magazine cover story titled “The Battle Over the Courts: How

politics, ideology, and special interests are compromising the U.S. justice system” described the situation perfectly:

“When you get right down to it, all of the (judicial) trappings are designed to build faith in the core ideals of the American judiciary: that judges are fair, objective, principled, and nonpartisan. That’s the theory. ... So here’s where things stand: Conservatives blame liberals for the current debauched state of judicial politics, and liberals fault conservatives.

“The truth is that both sides are culpable – and seem to be racing to see who can capture lower ground. So long as the two sides remain locked in partisan warfare and the country’s overall civic culture continues to degenerate into ever more antagonism, there seems little reason to hope that politics will soon loosen its tightening grip on the judiciary.”

Has the dream of an independent judiciary envisioned by our Founding Fathers been hijacked? To paraphrase the Grange, has the tyranny of monopoly touched the ermine of the Bench? Sure seems that way to me.

We have recently witnessed the courts departing from the plain language of the PSA, followed by defeat of

the proposed GIPSA Rules that were intended to better define “fair” markets. The Rules were defeated in part by intentional lies and political power, in my opinion.

French economist Frederic Bastiat observed in 1850 that the “law” might be diverted from its true purpose,

“The law perverted! The law, I say, not only turned from its proper purpose but made to follow an entirely contrary purpose! The law becomes the weapon of every kind of greed! Instead of checking crime, the law itself is guilty of the evils it is supposed to punish!”

In the words of Bastiat, our antitrust law and PSA have been perverted and made to follow an entirely contrary purpose.

In America we have the confluence of compelling political and economic forces as manifested in:

(1) The U.S. Supreme Court in *Citizens United* recently allowed unlimited political contributions by corporations;

(2) The Noerr-Pennington Doctrine that makes private entities legally immune for attempts to influence passage or enforcement of laws, even to the point of permitting outright lies and deception of legislators by corporations and trade associations, and;

(3) Re-interpretation of antitrust laws from broad social objectives to narrow economic efficiency objectives that do not necessarily nurture democratic values.

These forces threaten the very soul of American democracy and the American Dream.

Without corrective legislation reelected by a truly independent judiciary, these legal interpretations will continue to shape the economy, allowing it to become more integrated and concentrated, not just in the United States, but on planet Earth.

C. Robert Taylor is the Alfa Eminent Scholar and professor of agricultural economics at Auburn University. This is adapted from an essay in a book forthcoming from Springer, The Ethics and Economics of Agrifood Competition.





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