

BOTTLENECKS (UNION-MADE INCLUDED)

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MR. ARNOLD is doing an important piece of work and doing it well, probably better than it has ever been done before. Consequently one wonders how he can find time to write a book.¹ One should expect not leisurely scholarship, but an expression of the working creed of a busy man. To be enjoyed, the work should be skimmed rapidly, because the more it is analyzed the more doubts it raises.

The basic ideas are not new. Private monopolies and privately controlled markets are not to be tolerated. The main trouble with the anti-trust laws, as Professor Fetter said years ago, is that they have not been enforced well enough. Mr. Arnold says the way to enforce them is to enlarge the anti-trust staff and then concentrate fire on one related group of industries at a time, the way he is doing: first on the building industry, then on the food industry, etc. According to Mr. Arnold, lack of anti-trust laws produced Hitler, the downfall of France, the original weakness of England, and the inequalities of income in this country which he assumes or believes prevent the full enjoyment of our productive capacity. Whether the enforcement of anti-trust laws will cure baldness and ingrowing toenails is left to the imagination.

There is no concession that other factors contributed to the state of the world's difficulties, nor is there any discussion of such problems as the real cut-throat competition brought about by the tendency of competitive prices to approach variable costs in industries where fixed costs are of overwhelming importance. Nothing is said about the operation of the free competitive system in industries where bankrupt competitors do not go to the wall but merely show up as reorganized concerns with their fixed costs written off, prepared to force a forfeiture of previous investment throughout the industry.

Perhaps the key to the author's method is to be found when he says: "Social institutions respond to pressures, not to logical thinking."² The

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¹ *The Bottlenecks of Business*. By Thurman Arnold. New York: Reynal & Hitchcock, 1940. Pp. ix, 335. \$2.50.

² P. 92.

work is masterly high-pressure salesmanship. It helps to explain how the author, without any obvious help from the international situation, enlarged his staff in a manner rivaled only by the espionage and sabotage sections of the Axis consulates. Fortunately for the country his purpose is more benevolent.

Opinions may differ concerning what constitutes logical thinking. Mr. Arnold employs a series of sharp assertions. One predisposed to his point of view may be lulled into an uncritical acceptance of the assertions, and the cumulative effect of accepting many such statements is to put pressure back of the point of view. But any attempt to prove and to test the assertions one by one is fatal. I, for one, still think he is probably qualitatively right, although quantitatively extravagant in his conclusions, and I refuse to abandon that point of view merely because the author seems to hold it in order to bring such a series of false, questionable and inscrutable assertions to its support.

Perhaps the second touchstone to the work is the manifestly incorrect statement that enforcement of the Sherman Act (before his incumbency) had been used only for private purposes.³ The footnote contains a criticism of "a well-known economist"^{3a} to the effect that this assertion is wrong in fact and bad policy as scarcely courteous to the author's predecessors in office. But the author continues in the note: "I decided to let the paragraph stand because I consider it as accurate as any broad generalization can be." The fact seems to be that Mr. Arnold is temperamentally incapable of making an accurate statement. The work bristles with such words as "always," "never," "everybody" and "nobody." Possibly, for some purposes, it may suffice to say that all Americans are white or that potatoes are nothing but water, for both statements are what those who deal in "broad generalizations" with a fine contempt for hairsplitting would support as ninety per cent correct. If any reasoning is to be based on such statements, however, the only safe course is to brand them for what they are, unquestionably false assertions.

The following is a rather extreme example of what may pass for reasoning in the book.⁴ "In 1920 the American farmer got 50¢ of each dollar spent by the American consumer. He was spending that 50¢ to buy manufactured products. Today he gets only 30¢ of each consumer's dollar. He cannot buy the same proportion of manufactured goods. He has lost forty per cent of his proportionate purchasing power. That loss expressed in

³ P. 164.

^{3a} [Undoubtedly Mr. Arnold.—Ed.]

⁴ P. 18.

dollars is \$1,800,000,000 each year. The manufacturer did not get this money. It has simply disappeared.”

As a country advances from a simple homespun economy into the mechanized age, one would expect the relative importance of the farmer's products to decrease. If the author thinks this process has not been continuing since 1920, he might say so and give his reasons. Perhaps one reason the farmer makes a worse showing now than in 1920 is because the farmer was then fattening on the necessities of a war-devastated Europe. Later, too much economic nationalism throughout the world and the success of the New Deal in keeping our farm prices high enough to deprive our farmer of a large part of the overseas markets otherwise available to him, are potent factors which the author ignores. The reader has by this time guessed the sole reason assigned—lack of enforcement of the Sherman Act. In any event, is it necessary to take Sophomore Economics in order to balk at the assertion that a large sum of “money” “simply disappeared”?

A family man living across the road from Mr. Arnold has been off and on relief for several years. When he finally saved \$50 he squandered it on the down payment on a \$400 used car, because he said he could not get relief if he had cash, but he could get relief if he had a car that was not paid for.⁵ Now, says Mr. Arnold, having a car, gasoline is a necessity for him, and any rise in the price of gasoline will cause him to be just that much more of a burden on the relief rolls.⁶ But do not get the idea that there is any criticism of the New Deal or of the administration of relief implied in this picture. The New Deal is swallowed whole and without salt, down to and including the “Court packing” plan. All kinds of subsidies are accepted as politically inevitable and this assertion is given some color by reference to the rather cowardly Republican platform of 1940, and of course the dismal history of the tariff in this country might as well have been included. “Political facts,” says Mr. Arnold with characteristic assertiveness and with less than his usual vulnerability, “are far more important economic facts than anything any professor thinks up in a classroom.”⁷

Except for its extravagant inaccuracy, the work has much the orientation of the hearings of the Temporary National Economic Committee. The “recession” of late 1937 put the public in the mood for a scape-goat. When it appeared that the New Deal might be cast in that role, the ad-

⁵ P. 21.

⁶ P. 25.

⁷ Pp. 95-96.

ministration adroitly pointed out that there was much to be investigated besides itself, and, with the able assistance of Mr. Arnold among others, staged a pretty good show with the "monopoly investigation."

One gets the idea that Mr. Arnold misleads from a sort of exuberant impatience and not from moral turpitude. For a militant, one-eyed New Dealer he makes a most significant and frank admission that "the bitterness against enforcement of collective bargaining is due in large part to the fact that it was superimposed on a situation where collective bargaining was being used for purposes that could not be justified."⁸ He refers primarily to the sort of gangster rule that has prevented free elections in some unions⁹ and the way unions are frequently used as the means of collecting private graft for racketeers,¹⁰ but he also cites cases of inexcusable jurisdictional disputes¹¹ and unconscionable exactions of tribute, such as wages for unneeded "stand-by" men.¹² And still his chapter on this subject breathes the subserviency to organized labor apparently endemic in the Washington climate. He sets forth a letter to a labor union official in which he wishes "to make it clear that it is only such boycotts, strikes or coercion by labor unions as have no reasonable connection with wages, hours, health, safety, the speed-up system or . . . collective bargaining which will be prosecuted."¹³ Imagine assuring employers that he would prosecute only such contracts, combinations or coercion as have no reasonable connection with profits or market conditions! This Washington climate has been fostered by such distorted emphasis as is represented by many volumes of La Follette committee investigations of infringements of civil liberties and the rights of labor, with a studied official ignorance of the labor conditions against which employers have been struggling. The Norris-La Guardia Act¹⁴ first closed the federal courts to employers and others damaged by intimidating acts by laborers and professional agitators acting in the name of labor. Injunctions could only be obtained against acts of fraud or actual violence and subject to procedural restrictions and delays which left open a wide area for effective intimidation. This was reinforced by a wide definition of a labor dispute so that

⁸ P. 242.

⁹ P. 246.

¹⁰ P. 241.

¹¹ Pp. 242-43. In describing the facts of the Anheuser-Busch situation in St. Louis which led him to institute prosecutions of William Hutcheson and others, the author omits an important fact alleged in his indictments. The brewery's plant and the plant of a neighboring concern were blockaded by a carpenter's union in an attempt to get work belonging to another union under the terms of outstanding contracts with both unions.

¹² P. 251.

¹³ P. 249.

¹⁴ 47 Stat. 70 (1932), 29 U.S.C.A. § 101 (Supp. 1940).

persons with whom neither an employer nor his employees had any dealings or any wish to deal could establish a strike or other "labor dispute" by the mere fact of trying to interfere with the business. This law was passed on the claim that federal judges were unduly employer-minded and that the state injunctions and state criminal law would afford ample opportunity for the administration of justice. In important industrial states, however, "baby Norris-La Guardia acts"¹⁵ soon hobbled the state chancery courts in a like fashion, and tie-ups between corrupt local politicians and the strengthened labor racketeers plus the natural difficulties of proof have rendered the criminal law even more impotent than formerly to afford the employer protection within the law. This has naturally increased the pressure upon the employer to protect himself by self-help. In the meantime, moreover, he is severely squeezed by the staff of the National Labor Relations Board, largely manned by labor partisans who are interested not in fair administration but in "carrying out the policy of the act," which they conceive to be to force outside unionization on all industry without reference to the ignorance or the corruption of the union leadership and without reference to the beneficial operation of particular open shops, or particular company unions. Thus, discharges of union men for whatever cause are commonly found to be discriminatory discharges and the employer frequently signs a closed-shop contract in the hope of reducing the area within which he can be subjected to unjust harrassment. Once having carried appeasement this far, however, he is likely to find himself up against the proposition of having to contend with union leaders who feel pressure to conquer more territory every year in order to justify their jobs.

The bitterness is not caused solely by cases of racketeering, but relates more often to various manifestations of labor's idea that its interests are protected by absolute "rights," which may be exercised regardless of how many innocent people may be hurt. This partisan point of view has recently cropped up in connection with defense contracts. Even adopting

¹⁵ The New York act permits injunctions against fraud, violence and "breach of the peace." N.Y. Civ. Prac. Ann. (Gilbert-Bliss, Supp. 1940) § 876a. The Pennsylvania act comes closer to permitting relief against intimidation by leaving the way open to injunctions against misrepresentation, duress, breach of the peace or threat thereof. Pa. Stat. Ann. (Purdon, Supp. 1940) tit. 43 §§ 206a-206h. The Massachusetts act does not positively bar injunctions against intimidating picketing, but requires proof that officers charged with protecting the plaintiff's property are unable or unwilling to do so. Mass. Ann. Laws (1933) c. 214, § 9; *ibid.* (Supp. 1935) c. 214, § 9a. The big practical difficulty in Massachusetts is that it is frequently hard to establish in court the well-known fact that truckmen are reluctant to go through picket lines because it is generally impracticable to protect them from violence at a distance from the plant.

the presumption more legalistic than practical that an adverse finding of the labor board means that an employer has really committed violations of the National Labor Relations Act, that would seem a poor reason to deprive the country of his contribution to acceleration of the vital defense program. Few sane people would think of eliminating plants because of breaches of the Federal Trade Commission Act or of the income tax laws. All of those laws have sanctions which may be invoked without adding sanctions in derogation of the public interest.

The author apparently would leave the impression that his department can clean up the labor situation if given enough funds, but the New Deal majority on the Supreme Court has thoroughly obstructed him from doing such portion of the job as may have been originally accessible to him. Since the book appeared, the Court has decided that the Norris-La Guardia Act emasculates the Sherman Act as a means of preventing depredations by labor,¹⁶ but Mr. Arnold was confronted with the *Apex* case¹⁷ at the time he wrote. In order to apply the National Labor Relations Act to the extent demanded by labor, the Court, under strong pressure from the "Court-packing" plan, in 1937, overthrew substantially all established limitations upon the concept of what directly and substantially affects interstate commerce so as to come within the commerce clause of the Constitution.¹⁸ The *Apex* case, in 1940, presented the question whether the New Deal majority would take the bitter with the sweet and recognize the extension of the interstate commerce power to reach the excesses of labor. As was then to be anticipated, however, the majority found an opening in minor variations in the language between the Sherman Act and the Labor Act, and decided that Congress did not try to use all its power in the Sherman Act and, as was less a foregone conclusion, the opinion was written by Mr. Justice Stone. Mr. Arnold, however, claims that the *Apex* case vindicated the position of his department by omitting to overrule the well established proposition that the Sherman Act applies to laborers just as it applies to others. In view of his political sense, however, it is doubtful if he takes this victory at its face value. If so, he is the dupe of a very transparent maneuver, for, while the Sherman Act was left applicable to labor on paper, most of the substance was subtracted by the novel doc-

¹⁶ *Milk Wagon Drivers' Union v. Lake Valley Farm Products*, 61 S. Ct. 122 (1940).

¹⁷ *Apex Hosiery Co. v. Leader*, 310 U.S. 469 (1940), discussed at length elsewhere in this issue.

¹⁸ *NLRB v. Friedman-Harry Marks Clothing Co.*, 301 U.S. 58 (1937). Later cases mopped up possible remnants of the former law. *Santa Cruz Fruit Packing Co. v. NLRB*, 303 U.S. 444 (1938); *NLRB v. Fainblatt*, 306 U.S. 601 (1939).

trine that the emphasis of the cases on price control establishes such identity between price control and restraint of trade that the former is indispensable to the latter. This doctrine is of course construed in the light of the rule that concerted action by laborers to control their own prices (wages) is lawful, so they can violate the act only by conspiring to control somebody else's prices. Such conspiracies are naturally not usual in fact and they can be established by evidence only where the unions openly operate as the strong-arm squads for trade associations, or where, as in the *Second Coronado* case,¹⁹ witnesses are unusually free from intimidation. Consequently Mr. Arnold's victory here, while not perhaps Italian in character, can hardly rate above a Dunkirk. A glorious evacuation may leave hope of a resurgence. If labor is given enough rope and hangs itself without hanging the country, the possibility of eventual relief through federal legislation should not seem too Utopian. The refreshing spectacle will then be presented of the "forward-looking" Court fighting the rear guard action.

¹⁹ *Coronado Coal Co. v. United Mine Workers*, 268 U.S. 295 (1925).