

# The Industrial Policy of the Wilson Government

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From a viewpoint of American reform tradition, it is generally recognized that the first few years of the Wilsonian era marked the climax of the Progressive movement, followed by a deviation from it under the conservative mood of World War I. This interpretation is based upon the assumption that the Wilson government was critical of monopolistic enterprises and intended to regulate business against their interests. In due consideration of the fact that Progressives' major object was not to check development of American capitalist economy but to solve various abuses inherent to it through state intervention, however, it was rather natural that the governmental regulation should aim at "rationalizing" the existing economic system by cooperation with monopoly capital. Such an approach to industrial policy necessarily resulted in the establishment of institutionalized connections between political and economic powers. Progressives' regulation of industry being such a conservative one in substance, the pro-business policy under the war system should be regarded as consistent with rather than deviating from the Progressive tradition. Focusing on the legislative process of Wilson's antitrust policy and its development through the war period, in this paper I am to make a brief survey of relations between government and business and examine certain conservative characters of the Progressivism.

## I

The remarkable development of monopolistic enterprises, particularly as a result of the merger movement after 1898, made it an urgent matter to reconsider American antitrust policy by 1910. Far from a simple antimonopoly problem, the new approach to the reality of corporate combinations included a variety of political intentions. Not only small businesses but also monopolistic enterprises themselves were conscious of the necessity of strengthening governmental regulation and insistent about a more effective measure than the Sherman Antitrust Act to attain their own aims. According to a National Civic Federation survey of opinion of business, labor and other organizations on trust regulation in 1911, more than eighty percent of them found the Sherman Act had been unworkable. Yet they considered it indeasible to attempt to return to the old competitive economic society. More than two thirds of them favored amending the Act or creating an interstate commerce commission and opposed repeal of the Act itself.<sup>1</sup>

The Supreme Court decisions on the Standard Oil and the American Tobacco cases in 1911 also strengthened the movement for remoulding administrative methods to regulate industries. Although the Court ordered the dissolution of those companies, its argument fundamentally changed the nature of the Sherman Act by enunciating the famous "rule of reason." Introducing the new concepts of "reasonable contention" and "undue restraint of trade," the Court was in effect usurping a legislative function and acquired the exclusive power to decide whether any business was engaged in "reasonable" or "undue" practices. Consequently, the decisions of the Court had a profound effect not merely upon antimonopoly force but upon big business and government. To the advocates of a strict antimonopoly policy, the decisions meant a flexible interpretation of the antitrust law and a retreat from its original intention, monopolistic industries were concerned with the indefiniteness of the new legal standard and of its application. Administrators and legislators found now that the judiciary held the decisive power to control

the problem. Thus the Supreme Court decisions intensified all these groups' consciousness of the necessity of new governmental action.<sup>2</sup>

As for a concrete method of industrial regulation, the remarkable development of the Interstate Commerce Commission, created in 1887, gave suggestions to the advocates of state intervention who preferred an administrative agency to strict legal restrictions. The function of the Commission had obtained an almost completed form by 1910. The Hepburn Act of 1906 authorized the I. C. C. to prescribe maximum railroad rates and a uniform account system. In addition, the Mann-Elkins Act empowered it to investigate and suspend proposed changes in rates. Consequently, the commission held powers not merely to regulate general practices of railroads but to control rates. As for the Commission's relation to the courts, there developed a remarkable departure from the past when court decisions often nullified the Commission's orders and left it with little important regulatory power. After the passage of the Hepburn Act, however, the courts stopped judging the propriety of Commission orders as to its findings, but confined their decisions to questions of legality. Thus "the courts were no longer to regard themselves as appellate Interstate Commerce Commissions, nor as administrative bodies at all," doing much to strengthen the power and prestige of the I. C. C.<sup>3</sup> Such a development of the Commission's function and the favorable judiciary attitude toward it encouraged proponents of state intervention in industries to cultivate the idea of an administrative commission similar to the I. C. C.

As arguments about governmental regulation grew intense, spokesmen representing monopolistic industries took a positive part in expounding the view that great corporations were necessary products of economic development and that an interstate trade commission should be created to regulate them. Some even insisted on the necessity of governmental price control. They were never opposed to state intervention itself. "Industrial combination has been," J. Kirby, Jr., president of the National Association of Manufacturers declared, "the prime factor in the growth and progress. To destroy or remove it . . . would mean the stoppage

of development.”<sup>4</sup> What was needed, Elbert H. Gary of U. S. Steel admitted, was “regulation adequate in scope and power to deal with these aggregations of capital,” that is, “regulation by the Federal Government.” He suggested that “a corporation commission” should be created which would be authorized not only to regulate trade practices but “to decide questions submitted by the managers of business organizations and regulate prices.” George W. Perkins of the House of Morgan also recognized that the time was ripe for regulation of interstate business and proposed creating “a business court or controlling commission” and appointing a Congressional commission to make a full study of desirable antitrust act.<sup>5</sup> The National Civic Federation presented a plan of the same kind for “an industrial commission . . . similar to the present Interstate Commerce Commission,” not to break down but regulate big business, for “the problem before the country now is to secure the benefits of large aggregations of capital.”<sup>6</sup>

Such an idea as “big business regulated by big government” was gaining popularity even among “progressive” professionals. Besides Herbert Croly, who became an ideologue of the New Nationalism, Walter E. Weyl, an economist and muckraking journalist, considered trusts as representing an advanced stage of economic development and said, “we cannot kill the trusts without taking away our own bread and butter.” It seemed to Simon N. Patten, Bruce Wyman and other social scientists that monopoly would not disappear by any force and that “they should give up the hopeless attempt to destroy by law . . . all aggregations of capital” but instead “adopt the promising program of the regulation.”<sup>7</sup> Arthur J. Eddy, a Chicago lawyer, whose *The New Competition* enjoyed great popularity in the business community, advocated the removal of “all restrictions upon the organization of associations and combinations,” and the creation of “a Federal Commission” to promote cooperation and open price associations. Furthermore, he insisted that “To the small manufacturer this sort of cooperation is of far greater importance than to the large concern, for the small producer will be able to exist only in cooperation with the large.”<sup>8</sup> Eddy’s theory of organiz

ing even small enterprises into associations was in fact to give great impetus to the trade association movement.

Far from attacking industrial consolidations, the Bureau of Corporations, created in 1903, not only suggested in its early years that Congress could "provide a method by which reasonable combination may be permitted," but attempted to be "a central agency of financial and economic information and a practical meetingplace for business interests with the government." Its basic philosophy was that "conference and cooperation between the government and the corporate manager alone" could serve to "adjust continuously the complex and changing relationships between our business sources and the public welfare."<sup>9</sup> Furthermore, admitting that "the Government cannot at the same time both prohibit and regulate corporate combination," the Bureau insisted that in its regulation government permit corporate combination to exist and be recognized in law as an accomplished business fact. Modern industries should necessarily come under permanent national supervision, and the "supervision must be administrative," for no other method, including judicial procedure, had the necessary flexibility and quickness.<sup>10</sup> Thus, the Bureau of Corporations, as a sort of predecessor of the Federal Trade Commission, advocated close connections between government and business and a powerful administrative body, not to break down industrial combinations, but to regulate and serve them. Such a pro-business character of the Bureau implied what function a new governmental commission under consideration would in effect have in its relation to business interests.

Under those circumstances Congress began to take action to work out a new effective method of government's regulation of industry. In 1911, Senator Francis G. Newlands, long an advocate of a Federal administrative organ to supervise industries, introduced a bill proposing the establishment of a trade commission. In subsequent sessions of Congress, he introduced several other bills for the same general purpose. His plan never intended to break down great combinations of capital but just to put them subject to the regulation of a commission which

would make useful recommendations to business.<sup>11</sup> Resolutions were also introduced calling for investigation of the existing law before taking a decisive action on proposed bills. The Senate Interstate Commission held comprehensive hearings throughout 1911 and well into 1912, at which business and other spokesmen made manifest their views on the method of governmental regulation.<sup>12</sup> While recommending no specific legislation, its report in February, 1913, presented a summary of opinions and showed some possibility of choosing policies, most of which were, however, not anti-monopoly in substance but concerned with state intervention to rationalize the existing state of monopolistic economy.<sup>13</sup> It was the job of the Wilson government to realize those proposals in the form of institution and to decide the character of state intervention.

## II

Though Woodrow Wilson rather often expressed his economic views in anachronistic fashion due to his use of moralistic, flowery words and references to old American traditions, it was clear that he had realistic ideas on monopolistic industries and government's functions with them. First of all, Wilson understood that American society had "broken away from the past" and that people were "in the presence of a new organization of society." Economic conditions having changed absolutely from top to bottom, America was "facing the new necessity of fitting a new social organization." This new society was based on big corporations, which, Wilson pointed out, "play the chief part, and most men are servants of corporations."<sup>1</sup>

Recognizing this fact, Wilson did not think of going back to an older society. What people needed was to revise the rules of social life to fit the modern age. He spoke of "some radical changes we must make in our law and practice. Some reconstructions we must push forward" to rationalize the existing system.<sup>2</sup> From such a viewpoint, it would have been impossible for him to intend to break big enterprises into

pieces. In fact, Wilson wrote, "Big business is no doubt to a large extent necessary and natural. The development of business upon a great scale is inevitable and is probably desirable." Of course, Wilson appeared to denounce trusts, distinguishing them from big business as shown by his statement, "I am for big business, and I am against the trusts." Whether or not such a distinction could have any sensible meaning from an economic point of view, the significant fact was that he denounced trusts not because they were "big" but because they grew through "unfair" methods. He mentioned in this respect that "any large corporation built up by the legitimate processes of business, by economy, by efficiency, is natural, and I am not afraid of it, no matter how big it grows."<sup>3</sup>

To cope with concentration of power in industries, Wilson recognized clearly, "Government cannot take its hands off business. Government must regulate business, because that is the foundation of every other relationship, particularly of the political relationship." In his opinion, however, the aim of governmental intervention in business was not to check the growth of gigantic corporations but merely to prevent them from adopting "unfair" methods in economic competition.<sup>4</sup> It meant in effect that, so long as corporations did not resort to "unfair" means, the government would allow them to become so big as to hold in consequence monopolistic power. Thus Wilson might stand against "unfair" trade practices, but could hardly be opposed to the growth of monopolistic power itself in economic sense. Such an approach to big business formed the basic line of the Wilson administration's "anti-monopoly" or "antitrust" legislation.

As for concrete methods to regulate industries, Wilson's own ideas were at first not clear. In fact, he sometimes expressed his suspicion about a plan of creating a federal trade commission. When he asked Louis D. Brandeis in September, 1912, to set forth the actual measures by which "unfair" competition could be effectively checked, however, Brandeis proposed to establish an administrative commission for this purpose, and Wilson agreed to his proposal.<sup>5</sup>

There existed great variance in plans proposed by advocates of industrial regulation, but the creation of a federal commission appeared to be gaining more popularity than any other plan. The idea of a federal trade commission seemed to have two main points of advantage. First, it had received strong support from the business society, including spokesmen of monopolistic enterprises. Businessmen's support of a commission plan rested not only upon their belief that an administrative commission would practice more favorable policies toward the large aggregation of capital than strict legal restrictions, but also upon their expectation that it could afford authoritative advice to themselves with respect to the legality of corporate consolidations or other contemplated undertakings and so would be very advantageous to their interests. Second, the method of governmental regulation by such a commission seemed to give an opportunity for various contending schools of industrial reform to fight out their battle after the agency was created. No matter what opinion might prevail ultimately, the commission would be able to meet it with flexibility.<sup>7</sup> Therefore, the creation of a commission was a convenient measure, for complicated problems could be solved in the process of the actual regulation, but at the same time there was the possibility that the activities of the commission might proceed to a different direction from that which at least some legislators had in mind.

Toward the end of 1913, the Wilson administration began to study various proposals and held preliminary conferences with House and Senate leaders. Although advocates of reform programs still lacked unity with regard to their aims and means, the time was apparently ripe for starting action. As soon as the regular session was convened early December, a number of new bills were introduced. Some of them proposed general revisions of the Sherman Antitrust Act. Others were more limited in scope and specific, providing prison terms for violators of the Act or federal control over railroad securities.<sup>8</sup> The public generally believed that any new antitrust legislation would disturb business interests and would therefore be "progressive." The action of



J.P. Morgan, Jr., and other business leaders on January 2, 1914, served to intensify such a popular preconception. Morgan made an unusual public statement to the effect that he was considering public sentiment and seeking to resign from some of his directorships, followed by the expression of a similar intention on the part of other business leaders. It was hailed as the surrender of trusts with a view to avoiding intensified governmental regulation in advance.<sup>9</sup> Yet their action could be considered to show that they were so powerful as to make voluntary concessions on some aspects of corporate combinations.

Wilson fully understood that the business community resented the insecurity of the existing antitrust law and wanted the government to define its provisions and to create a federal commission to regulate or guide industries. Businessmen on their part were well aware that any measure for governmental intervention would not be designed to break down the modern economic structure. The address Wilson gave on January 20 before a Congressional joint session plainly showed these points. "What we are proposing to do," the President declared, "is not to hamper or interfere with business or in any sense to put it under the ban. The antagonism between business and government is over." As for the necessity of a new legislation, Wilson expressed his understanding of business desires as follows:

The business of the country . . . has suffered because it could not obtain further and more explicit legislative definition of the policy and meaning of the existing antitrust law. Nothing hampers business like uncertainty . . . . And the businessmen desire something more than that the menace of legal process . . . be made explicit and intelligible. They desire the advice, the definite guidance and information which can be supplied by an administrative body, an interstate trade commission.<sup>10</sup>

These two major aims of a new legislation embodied the very demands which the business community had submitted in past years.

Soon after the address, the first politically important bills were introduced by Representative Henry D. Clayton and Senator Newlands to implement Wilson's suggestions. The Newlands bill provided for a commission to supersede the Bureau of Corporations, but the power of

the proposed commission was weak, mainly limited to investigation, because Wilson had made it clear to Congressional leaders that he wanted no dangerous experiment but a safe and sensible agency whose function would be to elicit information. Wilson was thus at first interested in a commission as instrument for minimizing the friction inevitable in governmental regulation of business but not for controlling it.<sup>11</sup> On the other hand, the business community generally wanted a more powerful commission fully authorized to give advice and information to businessmen. A weak commission might be safe but in another sense not useful enough to business interests.<sup>12</sup>

Clayton introduced five tentative bills. In addition to the creation of a commission, they were intended to forbid interlocking directories, to further define the provisions of the Sherman Act, to prohibit cutthroat competition and price discrimination, and to eliminate interlocking stockholdings in railroad industry.<sup>13</sup> Some of the provisions were favorable to business interests such as prohibitions on cutthroat competition and price discrimination, but others were rather troublesome to them, particularly a provision concerning interlocking directories. Anyway it was clear that the government intended to do more than clarify the meaning of the antitrust act. The problem for business interests to solve was how to eliminate unfavorable provisions while consolidating favorable measures.

In the meantime Congressional hearings were held, and business representatives took positive part there to emphasize the necessity of regulatory program and at the same time to clarify the desirable limit of governmental intervention in business practices. As they expressed opposition to some specific aspects of the new legislation, the public might have the misleading impression that state intervention as a whole would be of disadvantage against business interests. On the contrary, it was clearly manifested that American businesses, large or small, needed governmental regulation and machinery for that purpose. R. G. Rhett, chairman of the committee on antitrust legislation of the national Chamber of Commerce, presented to Congressmen the result of the

referendum of the matter conducted by the Chamber, which was composed of 574 business organizations representing 250,000 individual members. According to his report, not merely the Chamber's committee recommended the creation of an interstate trade commission, but about eighty percent of its members favored it.<sup>14</sup> The Chicago Association of Commerce took a step further, presenting its own plan of a powerful federal commission. As a result of numerous conferences with businessmen of every type, the National Civic Federation was also convinced that a fully authorized federal commission was desirable as well as necessary.<sup>15</sup> Though a few local groups appeared to oppose the basic premises of the proposed bills, there was no doubt that the greater part of business circles at virtually all levels supported the creation of a commission, no matter what powers it might have ultimately.

Though business antagonism was somewhat stronger with respect to interlocking directories, it did not mean outright opposition of all business interests. Some key businessmen and business organizations found the proposal obnoxious and expressed their protest. But there was also an indication that a large number of businessmen, including influential figures, were ready to make a concession on this matter in order to satisfy public sentiment and then attain their most basic program of establishing close connections between government and business. The Chamber's committee on trust legislation recommended that "interlocking of directors among competitive business corporations should be prohibited, regardless of their size" on the condition that "elimination of competition among the corporations in question would constitute a violation of the Sherman Act." This recommendation received the absolute majority support of more than ninety percent from business circles.<sup>16</sup>

Even those businessmen who expressed their opposition to this provision must have well understood that in economic sense merely formal prohibition on interlocking directories could not have a decisive influence upon the mechanism for concentration of power in industries, for one or two interlocks on a board would be insufficient for control without

powerful economic leverage supporting them, and that, if such leverage existed, it would be possible to exert control over other corporations without interlocking directorships. Therefore, if it proved politically undesirable or impossible to offer outright opposition to this measure, business interests were ready to accept it after weakening the provision so much as to have no disastrous effect upon the structure of corporate combinations.<sup>17</sup>

In due course of deliberation on the various antitrust proposals, political leaders decided to consolidate those bills into a single measure, though the trade commission bill retained its separate identity. In the middle of March, Representative James H. Convington introduced a new interstate trade commission bill in revised form.<sup>18</sup> It provided for the creation of an independent commission, which was empowered to investigate business activities and to recommend procedures to check violations of the law. But its function was still similar to that of the Bureau of Corporations, mainly limited to investigation and was not powerful enough to control and guide business affairs. Such a plan of a weak commission was most unsatisfactory, not merely to the advocates of strong governmental control over business such as Brandeis, also to those business elements that had long been interested in new legislation. It might be an irony of history that the opinion of ardent anti-business spokesmen was in accord with that of business interests in their insistence on a strong administrative organ. It might be safely said that, while advocates of governmental control were convinced too much of the "public character" of administrative agencies, businessmen were aware of the real function of state intervention, which would be of great advantage to their interests according to circumstances.<sup>19</sup>

The Chamber's committee on antitrust legislation thus turned attention to the bill introduced by Representative Raymond B. Stevens, who had assumed that a federal commission ought to have broad power to direct business practices. The Stevens bill provided for a commission possessed with authorities to issue cease and desist orders where unfair methods of competition were being utilized and to conduct industrial

regulation in the more general terms. In preparing this bill, George Rublee, an attorney and member of the Chamber's trust committee, played an important part. The general concept of a strong trade commission as proposed by the Stevens bill, however, still lacked Wilson's backing and had few supporters in Congress. The House passed the Convington bill by a voice vote on June 5.<sup>20</sup> In order to change the character of the commission plan, thus it appeared necessary first of all to swing the President from his not-too-firm position and to secure his support behind the plan.

With respect to the other provisions of the new legislation, Congress had faced a more difficult and confused situation. First of all, it became apparent that it was impossible to define in statutory language all the possible forms of restraint of trade. Besides, the stringency of regulation envisioned in the proposed bills was impossible of realization.<sup>21</sup> Accordingly, by the middle of March Wilson demanded sweeping changes in the direction of moderation. After a conference between Congressional leaders and the President, Clayton prepared a revised and consolidated bill in accordance with the new understanding about the scope of trust regulation. While outlawing a number of unfair trade practices such as price-cutting, tie-in contracts, interlocking directories, and interlocking stockholding, the Clayton bill differed substantially from his original bills.<sup>22</sup> Its provisions were generally drafted in more moderated and ambiguous terms than before and the bill also lacked the redefinition of the meaning of the Sherman Act. As a result, there remained the strong possibility that, if the administrative commission was not possessed with enough authorities, the actual application of those provisions would be dependent to a great extent upon the judiciary judgment, though both the administration and the business community wanted to avoid such a situation. The Clayton bill was thus designed to practice detailed regulation yet paradoxically without clearly defined or full provisions necessary to achieve the purpose. It was natural that advocates of strong governmental control and business spokesmen should take a critical attitude against the Clayton approach to regulation.

Furthermore, by attempting to specify the provisions of unfair practices, the bill would inevitably leave "open a wide field for the exercise of ingenuity in devising other practices destructive of competition."<sup>23</sup> With one important amendment concerning the exemption of labor and farmer organizations from the antitrust act, however, the House passed it in June, 1914.

Early in June, Rublee, Stevens, and Brandeis met with Wilson to discuss the obscurity of the Clayton bill, pointing to the need for a stronger trade commission to give it substance. Virtually all the critics of the President's program agreed that the wise solution of business regulation would be to abandon the effort to define restraints of trade, to outlaw in general terms unfair trade practices, and to establish a federal trade commission with full power to prevent unfair activities through government's direct supervision of business circles. The business community also supported this idea in the hope that such a commission would approve trade agreements in advance and fulfill the regulatory function as guide and protector of business interests. The comments of those advocates of a powerful commission managed to swing Wilson from his view of a weak but safe agency.<sup>24</sup> He decided to incorporate the heart of the Stevens bill as an amendment to the Convington bill. Wilson's conversion to the strong commission had a decisive effect on the subsequent development of the new legislation for industrial regulation. Senator Newlands responded to Wilson's new position by providing a new Section 5, which authorized the commission to deal with unfair trade practices in general terms with regulatory and quasi-judicial powers.<sup>25</sup>

The reactions of various political groups toward the bill showed plainly the flexible character of the commission or the possibility of its policy being not dependent upon legal provisions but upon actual process of regulation. While both the business community and many "progressive" advocates of governmental control favored the Newlands plan from their own standpoints, political "conservatives" and "radicals" expressed critical views against it. The "conservative" group, of which

the Southerners constituted a major force in Congress, charged that the Newlands bill would propel the government upon a socialistic program of comprehensive regulation through an irresponsible agency endowed with despotic power. On the other hand, "radicals" such as Charles S. Thomas and William E. Borah opposed it because any administrative agency empowered to make its own rules and definitions might become the powerful tool of big business.<sup>26</sup> In any case the core of a strong commission plan was the realization of the integration of political and economic powers, whichever might play a leading part, government or business.

Overcoming criticism from both "conservative" and "radical" groups, the Wilson administration in the end managed to have Congress approve the amended trade commission bill. The Senate passed it early August, and after a long conference the bills of both Houses were reconciled in favor of the Senate. Wilson signed the Act on September 26, 1914. This was in essence a victory for business interests that had long advocated state intervention in industries in the form of an administrative commission.

As President Wilson became convinced that a strong commission was the surest measure to regulate business and prevent unfair practices, the Clayton bill further lost much of its vigor by a series of changes, motivated mainly by organized business and concurred in by the President and his party leaders in the Senate. When the Senate Judiciary Committee submitted its report on the bill, it was hardly recognizable. Almost half the bill had been struck out and Senate amendments added. Virtually every change sought to render the bill less offensive to business, hence less effective as a regulatory measure. Above all the Senate mutilated its key provisions outlawing various unfair practices, interlocking directories and interlocking stockholding by adding qualifying phrases such as "when the effect may be to substantially lessen competition or tend to create a monopoly." Thus the enforcement of those provisions would be to a great degree dependent upon the judgment of administrators in charge and so upon the relationship between politi-

cal and economic powers.<sup>27</sup>

Despite the radicals' attempts to revive some strict prohibitions of the original bill, the Senate passed the seriously weakened bill in early September. In the conference to adjust the House and Senate provisions, ninety-five amendments were made again. Most emasculatory amendments having been approved, the final result was of a great advantage to business interests.<sup>28</sup> Though administration spokesmen argued that the Clayton Act in its final form represented a comprehensive attack on monopolistic big business, continuous concession to business interests in the legislative process with the President's concurrence implied that the restrictive measures of the Act could play just a minor role in governmental regulation on business, while the Federal Trade Commission would become the major machinery for state intervention.

### III

It was proper that the business community as a whole should be pleased with the new state of affairs, though some new prohibitions on business practices might be still troublesome. The prospect under the newly institutionalized governmental regulation was favorable. As President Wilson mentioned, the Federal Trade Commission, as a meeting place of government and business, would adopt a conservative approach to its regulatory policy and would serve as a stabilizing factor in the economy and a protector of business interests against direct public attacks.<sup>1</sup>

The F. T. C. Act was vague and left a great area for free interpretations by commissioners, while the Clayton Act prepared many loopholes for businessmen to promote corporate consolidations. In addition, those provisions attacking unfair practices meant that the government would now encourage businessmen to organize trade associations, to conclude cooperative agreements, and thereby to develop the interests of organized industries. The business community was ready to take positive attitude toward this type of state intervention and to make the



most of it for its own sake.

As for the Commission members, the F. T. C. Act did not exclude businessmen from the governmental body. This was in striking contrast to the case of the Federal Reserve System. As a matter of course, Joseph E. Davies, head of the Bureau of Corporations which was supplanted by the F. T. C., was appointed the first chairman. His assumption of the position was of significance in forming basic lines of the Commission's policy. Maintaining close contact with business lawyers such as George Rublee and Gilbert H. Montague and with business organizations such as the Chicago Association of Commerce, Davies was convinced that the role of government in industrial regulation should be to serve business interests through its guidance and service and that it would be a constructive policy for the Commission to give businessmen legal advice and create predictability for their economic actions, though the law avoided stating whether the Commission could give such advice. Wilson also appointed Edward N. Hurley vice-chairman, who was a manufacturer and the president of the Illinois Manufacturers Association. Other commissioners were W. J. Harris, a Georgia businessman, W. H. Parry, a shipbuilder, and Rublee. Thus the entire Commission was virtually composed of people with business backgrounds or pro-business records.<sup>2</sup>

While the F. T. C. began preparing for operations in way sympathetic to business interests, industrialists responded to it with enthusiasm. From the first it was clear to them that the F. T. C. was "more than a mere adjunct to the anti-trust act." It was in effect "a silent partner in every business."<sup>3</sup> They also understood Wilson's view of industrial regulation that antitrust acts "were not directed against big business but only against unfair business . . . and a Trade Commission has been created with powers of guidance and accommodation which have relieved business men of unfounded fears and set them on the road of hopeful and confident enterprise."<sup>4</sup>

Leading businessmen expressed a view on the F. T. C. similar to Wilson's. Harry A. Wheeler of the Chamber of Commerce, for instance,

said of the new commission, "I am more than glad to commend their conservatism and their evident appreciation of the magnitude of the task committed to them. . . . The F. T. C. has endeavored to observe business conditions and business requirements at close range with a real comprehension of the needs of business."<sup>5</sup>

What is more important, far from being antagonistic toward the F. T. C., the Chamber of Commerce started action to establish a machinery to cooperate with or pressure the governmental body. Immediately after the enactment of an F. T. C. Act, the national Chamber declared for the creation of an Interstate Trade Committee in its referendum. Consequently, the Federal Trade Committee of the Chamber was organized in February, 1915, a little earlier than the F. T. C. itself was organized. President Fahey of the Chamber mentioned, "The members of the National Chamber wish to do everything in their power to assist the F. T. C."<sup>6</sup>

It was expected that this voluntary committee of the Chamber "may come to occupy a relationship toward the F. T. C. not unlike that providing for the Advisory Council under the Federal Reserve Act." In fact, the Chamber's committee had its first conference with the F. T. C. in April, 1915, at Washington. As a result of the meeting, "there was established a relationship between the F. T. C. and the Committee of the Chamber which has increased in cordiality as the months have passed."<sup>7</sup>

Thereafter, the committee met with the F. T. C. as often as opportunity offered or occasion required, kept in close touch with the work of the F. T. C., and attended many of the hearings. Receiving digests of many F. T. C. hearings, the Chamber's committee was fully prepared to become active whenever the F. T. C. gave indication that it desired cooperation or whenever it became evident that the time was ripe for independent action in the interest of general business.<sup>8</sup>

Accordingly, governmental service to business circles in rationalizing trade practices advanced necessarily toward the cooperation between government and business. "The F. T. C. has transformed the government from being an antagonist of business into being a friend of busi-

ness," affirmed Wilson himself. Besides, as long as the government did not aim at controlling thoroughly economic activities of the country, it was proper that industrialists should improve their practices of their own accord under the guidance of government but with its troublesome intervention as little as possible. "Our object and the spirit of our action," the President pointed out, "is to meet business half way in its processes of self-correction and disturb its legitimate course as little as possible."<sup>9</sup> This was also consistent with the business view of the function of state intervention: the government should render as much service to business interests as it could but at the same time should not intrude upon industrial self-government.

In order to make its role of governmental guidance helpful to business interests, the F. T. C. attempted to enlarge the scope of activities from the beginning. Although the law did not provide it with authority to give businessmen legal advice, Chairman Davies was willing to practice it to meet businessmen's expectation. He understood well that "the business world complains that the powers of the F. T. C., which are limited to inquiries simply as to past transactions, would not afford relief to which they are fairly entitled, to wit: definite advice, guidance and information." When a proposed contact or combination was submitted to the F. T. C. by any corporations, Davies was sure, the governmental commission ought to "inform them of its opinion and prevent troubles in future."<sup>10</sup> After consulting with Eddy, Victor Morawitz, and Van Hise, the F. T. C. was able to secure the rationale sufficient to fulfill this function without statutory warrant. Because Section 5 of the F. T. C. Act required the Commission to prevent unfair methods, the F. T. C. would be qualified to file a complaint if it thought any information on a proposed action filed by a company was illegal.<sup>11</sup>

The F. T. C. put this theory in practice. It was natural that business circles should favor such an interpretation of the Commission's function. The President also approved this crucial policy of the F. T. C., when he said, "The F. T. C. was established so that men would have

some place where they could take counsel as to what the law was and what the law permitted." The counsel was the process of "accommodation," not of "punishment," and the government "ought to substitute for the harsh processes of the law, wherever we can, the milder and gentler and more helpful processes of counsel."<sup>12</sup> This idea and action of the F. T. C. marked one big step forward in governmental guidance and service for the sake of business interests.

The F. T. C. also set to lead industrialists toward better business practices. In particular, the promotion of methods of cost accounting was essential to the activities of the Commission itself. As a fundamental basis for obtaining corporation reports in a serviceable form, the F. T. C. "realized the necessity of more satisfactory accounting methods by corporations, particularly in cost accounting." Therefore, it endeavored "to awaken among businessmen a realization of deficiencies in this matter," and considerable assistance in this direction was rendered to a number of industries. In fact, the F. T. C. received frequent demands "from companies and associations in various industries for advice and assistance."<sup>13</sup>

In addition, the Wilson administration considered that the cooperative activities might play an important part in the improvement of economic conditions. According to the F. T. C., one of the chief obstacles to economic development was lack of adequate trade information regarding supply and demand and prices. The collection and publicity of such information by trade associations, thus the F. T. C. concluded, "would extend the knowledge of all producers and consumers regarding conditions of supply and demand and help to prevent abnormal trade fluctuations in supply and prices."<sup>14</sup> From a standpoint of business efficiency, organization of industries seemed desirable, too. Trade associations would provide businessmen with the most effective method in this respect. Thus the F. T. C. pointed out that "one of the most important questions of trade policy at the present time relates to the practices of trade associations." The activities of trade associations were of various characters, but the F. T. C. recognized that "many of them

are of great benefit not only to the branch of trade concerned therein, but also to the public."<sup>15</sup>

Above all, Edward N. Hurley, the second chairman of the F. T. C., regarded trade associations with favor, and trade associations respected the F. T. C. as a friend. It seemed to him that those industrial organizations provided the best means not merely to rationalize business activities but to establish close connections between government and business interests.<sup>16</sup> In this regard President Wilson agreed completely with the F. T. C. Far from taking a critical attitude against the growth of organized industries, he stressed to a commissioner that "trade associations and other similar organizations should be encouraged in every feasible way by the government." In his opinion, it was "a proper and useful government function" to cooperate with industrial organizations and to furnish them "with data and comprehensive information in order that they may more easily accomplish the result that they are organized for."<sup>17</sup>

As clearly manifested by the actual policy-making process, the F. T. C. was a governmental body to promote and serve business interests. Though the reformation of antitrust policy appeared to be the key issue in the discussion on the necessity of new legislation, the Wilson administration substituted in effect governmental guidance and cooperation for trust regulation. The business community understood what it could expect from the F. T. C., and the Commission on its part absorbed and reflected the predominant values of the business community. Thus the F. T. C. embodied the new institutionalized mechanism of the connection between government and business interests, and formed a basis upon which the integration of political and economic powers would be further developed subsequently.

#### IV

On April 6, 1917, the United States entered World War I, and her economy began to switch over on a full scale to the war structure. This shift had far-reaching impact on the industrialists' organization move-

ment. Trade associations, which the F. T. C. had promoted, made a further growth owing to wartime necessity. For the purpose of increasing the production of war materials, the government assumed a positive policy toward the development of organized industry. Among others, the War Industries Board played a most active part in this respect.

Even before the entry into the war, the government gradually realized that the existing system would be far from adequate to produce and transport war materials which the country was supplying the Allies. Congress created the Council of National Defense in 1916 as part of the preparedness program. The Council, composed of six cabinet members and its Advisory Commission, made an inventory of the nation's productive capacity. Representatives of capital and labor took part in the Advisory Commission such as Bernard M. Baruch, a highly successful Wall Street speculator, Daniel Willard of the Baltimore and Ohio Railroad, and Samuel Gompers of the American Federation of Labor.<sup>1</sup> Besides, the Commission evolved its policies through meetings, not only of its own members, but with leaders of industries. Baruch, above all, worked out a system of contracts through "committees of the industries," which was based upon the idea of large-scale organizations of industrialists. From the beginning the government thus intended to ask for positive cooperation of organized industry.<sup>2</sup>

In late March, 1917, the Council of National Defense created the Munitions Standards Board to standardize munitions production. After the war declaration in April, the government renamed it the General Munitions Board and empowered it to supervise the purchase of all munitions for the services. It became obvious, however, that governmental functions would have to go further than munitions, and in July the Council abolished the Board and created the War Industries Board to coordinate all relevant production, allocate materials, and supervise labor-management relations. Representatives of industrial interests participated in this new body in larger numbers. The cordial support of labor was also essential to the increase of war production. To assure it, the Board established a Division of Labor, and Hugh A. Frayne of

the A. F. L. took part in the Division.<sup>3</sup>

The new system did not work well at first because the W. I. B. lacked sufficient authority to achieve its aim. Then President Wilson took final steps towards the completion of the war structure. He named Baruch to be director of the W. I. B. in March, 1918, and drafted a bill that granted him very extensive powers to reorganize the war agencies and to direct the nation's industrial efforts. The bill became the Overman Act in April.<sup>4</sup>

As director of the W. I. B., Baruch made the most of his great power to "rationalize" American industry. Some individual firms had already entered into cooperative activities through trade associations. But Baruch considered it necessary to "rationalize" the whole industrial structure by further organizing industrialists and coordinate various industries into an efficient national production system. For this purpose he consolidated the W. I. B. with influential businessmen.<sup>5</sup>

Under Baruch's guidance, the W. I. B. established industrial committees in every necessary industry in order to make easier the cooperation between the government and industrialists. Moreover, as a basis of these committees, the W. I. B. promoted the voluntary organization of trade associations. During this period, in fact, businessmen established or reestablished trade associations in most major industries such as aluminium, copper, cement, steel, wool, and chemical manufacture. They amounted to nearly 1,000 in number.<sup>6</sup>

It was natural that industrialists on their part should take advantage of the war structure to promote their organization movement. Trade associations owed their remarkable growth not only to the protective policy of the government but also the positive attitude of businessmen.

At its annual convention of May, 1918, the National Association of Manufacturers cleared its support of the W. I. B.'s policy, and urged its members to use every endeavor to cooperate with the Board "in organizing their industries."<sup>7</sup> In addition, the growth of the National Industrial Conference Board was noteworthy. In May, 1916, representatives of a few national industrial associations created the N. I. C. B. under the N.

A. M.'s leadership as a machine for coordinating their activities. In 1917 the members of the N. I. C. B. were still only 17 associations. In the following year, however, it grew considerably to consist of associations representing approximately 50,000 manufacturing concerns. It became one of the driving forces of industrialists' organization movement and constituted a medium through which business and government had close contacts.<sup>8</sup>

The Chamber of Commerce of the United States also paid much attention to the opportunity in the war period. In calling a special convention of businessmen in September, 1917, the Chamber did not confine itself to the membership but extended an invitation to many other associations and individuals. After a lively discussion on the war structure, the convention adopted the following resolution:

We urge all industries not already organized to become so at the earliest possible time; All such industrial organizations should appoint a War Service Committee independent of any governmental committee, such committee to be made up of representative men in the industry.<sup>9</sup>

Steps were immediately taken "to carry out the provisions of this resolution." In order to ascertain the attitude of the Council of National Defense towards the organization of industries, the Chamber addressed a letter to the Council and received a reply which recognized that, for the purpose of furthering the valuable work instituted by the government committees, "it is most desirable that representative committees of the industries be formed by the industries themselves at the earliest possible moment."<sup>10</sup>

Thus industrialists realized that the time was rapidly coming when the government would no longer be able to deal with individual enterprises, "but must deal with industries as a whole and industries must be prepared to respond as such to the needs of the Government." In their opinion, the organization of industries along the lines suggested by the Chamber of Commerce could not possibly be in violation of any antitrust acts because the government itself desired its development.<sup>11</sup>

Beginning in the early fall of 1917, the Chamber of Commerce push-



ed forward the work already under way. Where a national organization existed, the Chamber had it appoint a war service committee with authority to represent it, and where industrialists had not yet organized themselves, the Chamber took steps to secure their organization and the appointment of such a committee. After the establishment of the new War Industries Board, as a matter of course, these activities of the Chamber rose to a higher pitch. Trade associations and their war service committees formed an industrial foundation of the W. I. B.'s operations. In this sense the war structure was a system based upon the industrialists' organizations encouraged by the government's sanction.

Meanwhile the war service committee of the Chamber of Commerce published a notable pamphlet. It emphasized the necessity and advantages of the organization from the standpoint, not merely of an urgent measure for the war, but of rationalization of the economic system. The organization of wartime industries, the Chamber insisted, was particularly useful because it could "arrange promptly for gathering figures as to cost of production, provide organized machinery to collect information, advance rapidly the process of standardization, and eliminate unnecessary sizes, styles and shapes."<sup>12</sup> As a statement to justify industrial organization from such a broad standpoint, the pamphlet had a large circulation and exerted influence upon the guidance of business opinion in this direction.

Thus industrialists considered that those useful functions of industrial organizations should last into the post-war period. In this regard, stressing the significance of organized activities for the future, Harry A. Wheeler, who became a new president of the Chamber, pointed out in August, 1918, that "organization for war service is giving business the foundation for the kind of cooperative effort. The integration of business is in sight."<sup>13</sup> In this way industrialists were thinking of retaining their wartime consequences even after the end of the war. Reflecting such an opinion, Baruch remarked that it was too late to go back; the W. I. B. had taught lessons, although perhaps too many at one time; and American industrialists had learned that "cooperation"

was so beneficial to their industries that they would not throw away the fruit of the war structure.<sup>14</sup>

While the government disorganized the W. I. B. after the war, industrialists intended to secure trade associations as purely private bodies. According to the president of the Chamber of Commerce, many of these associations proved of great value and the government should approve the industrialist's "right to combine." Soon after the armistice, in December, 1918, the Chamber held the last general session of the War Emergency Congress, which adopted resolutions clearly showing business war-to-peace program. Stressing the importance of industrial cooperation, the resolution stated that "the nation should not forget, but rather should capitalize these lessons by adapting effective war practices to peace conditions through permitting reasonable cooperation between units of industry under appropriate federal supervision."<sup>15</sup>

Within administrative circles, there were also a number of people who insisted on the continuation of a favorable policy toward business organization and even on the establishment of a new administrative body similar to the W. I. B. "The new orientation of business men, obtained from their volunteer activity in the W. I. B., and on their several War Service Committees," they asserted, "should be conserved and exploited by some body which transcends the narrow limits of the individual trade institutes, U. S. Chamber of Commerce and National Association of Manufacturers." It seemed to them that businessmen were looking for some guidance or leadership of the administration.<sup>16</sup>

Furthermore, the post-war conditions incident to the period of economic readjustment rendered it imperative that "all obstacles to reasonable cooperation be immediately removed through appropriate legislation." Faced with so many serious problems of foreign and domestic policies, however, the government was not ready to reestablish a new powerful agency like the W. I. B. Thus industrialists directed their eyes to the Federal Trade Commission again as a major administrative body to guide the business community and expected the Commission to devise a proper measure to preserve their cooperative activities.

The F. T. C. might be competent to provide them with sufficient advice, definite guidance and information that business enterprises would require. The Chamber of Commerce declared in its resolution that "the normal importance of the Commission's task is now tremendously increased by the imperative need for whole-hearted and sympathetic cooperation between the government and industry."<sup>17</sup>

Confronting these demands of businessmen, the F. T. C. assumed an affirmative attitude toward cooperative practices in industries. President Wilson also stressed the necessity of cooperative action in the readjustment period.<sup>18</sup> Far from destroying trade associations, the F. T. C. demonstrated its ability of guidance in further promoting their activities. It also devised a new measure in this direction. As the F. T. C. pointed out in its annual report, "a notable outstanding development in 1919 in the Commission's legal work was the institution of the trade practice submittal." The F. T. C. instituted this procedure as an instrument to assist organized activities of industrialists. The Commission employed this measure both on its own initiative and at the request of the industries. Under the Commission's guidance, representatives of an entire industry held meetings and discussed trade practices with government officers. In this way the F. T. C. tried to promote and direct trade association movement.<sup>19</sup>

During the last years of the Wilsonian era, these conferences were rather informal proceedings, and no established machinery existed for handling them. But it was of deep significance that the government inaugurated this method of "regulation" in the post-war period. This action not only demonstrated the government's intention of giving continuous protection to the industrialist's organization movement, but made closer the cooperative relationship between government and business. The Wilson government formed a firm basis of connections between business interests and governmental power which would be further developed by the following Republican governments.<sup>20</sup>

## NOTES

### I

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3. *Ibid.*, pp. 20-22. Robert S. Brookings, founder of the Brookings Institution, and Robert S. Lovett of the Union Pacific Railroad also became the members of the W. I. B.
4. *Ibid.*, p. 23. The Overman Act is printed in *ibid.*, pp. 308-309.
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