Trust-Busting Policies as an Economic Reform in the USA, from 1890 to 1921

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Abstract:

The Progressive Presidents namely T. Roosevelt, H. Taft, and W. Wilson undertook effective reforms of the country's economy particularly the elimination of the monopolies and the trusts. They were animated by the desire to find a reasonable balance between *laissez-faire* capitalism and outright socialism. During the Progressive Era, the USA witnessed a democratic evolution from corrupt and inefficient economic management to a system of reforms that undertook the cleansing and preservation of the socio-economic and political life in the country, especially by bringing down the powerful business combinations and monopolies. There seems to be a wide difference between the policies of the three Presidents and the political groups they represented, but in reality this difference is rather found in the methods they adopted to achieve their objectives than in their principles. Their policies were founded on the principle that the states must not protect only the interests of the businesses but aim for the progress of all citizens.

Keywords: trust-busting – corporations – economic reforms – Progressive Presidents – monopolies - Sherman Act.

الملخص :

شهدت الولايات المتحدة الأمريكية خلال الحقبة التقدمية من سنة 1890 إلي سنة 1920 حملة واسعة لمكافحة الفساد وعدم الكفاءة في إدارة اقتصاد وسياسة البلد .الرؤساء التقدميون روزفلت و تافت و ويلسون قاموا بإصلاحات فعالة لاقتصاد البلاد وبخاصة القضاء على الاحتكار الصناعي الذي ساهمت في إنشائه الشركات الكبرى المعروفة ب: Trust . يبدو أن هناك اختلاف بين سياسات الرؤساء الثلاثة في القضاء على الاحتكار الصناعي، ولكنها في الحقيقة تشترك في الهدف من الاصلاح الاقتصادي وهو أن للدولة واجب حماية مصالح ورفاهية جميع المواطنين . هذا المقال يتطرق إلي مقارنة سياسة كل رئيس للقضاء على الاحتكار الصناعي.

Introduction

Every country has a political economy of its own, suitable to its own geographical position on the globe, and to the character, habits, and institutions to rule its people. In the history of the USA, the last three decades of the 19th century were labelled as the Gilded Age[1] because the country

[1] The name Gilded Age came from the title of Mark Twain and Charles Dudley Warner's book *The Gilded Age: A Tale of Today* (1873). The word gilded is given to something that is not made of gold but covered with it on the outside. This

witnessed unprecedented technological, industrial, and economic progress. Great opportunities to build great fortunes were created during the Reconstruction of the South after the Civil War. Captains of industry also called 'Robber Barons' like Andrew Carnegie, John D. Rockefeller, J. P. Morgan, Cornelius Vanderbilt, and Jay Gould revolutionized business and modernized corporate economy in the form of giant trusts. Although this period enabled the USA to become one of the leading industrial countries, the ordinary people did not have their share of this progress.

The most important success against the trusts and monopolies was the passing of the *Sherman Anti-trust Act* in 1890 by progressive politicians and reformers. This Act prohibited among others industrial monopolies, combinations, and trusts. President Benjamin Harrison signed it into law on July 2, 1890, named after its author Senator John Sherman, who was a Republican Senator of Ohio and the Chairman of the Senate Finance Committee. The Sherman Act was the first Federal statute to limit cartels and monopolies, and it still forms the basis for most antitrust litigations by the United States Federal Government.

The Sherman Act attempted to regulate inter-state commerce by preventing the monopolisation of the markets by big businesses. In its provisions, the Act was intended to protect competition, and to protect the public from the failure of the market. [1] The law was issued against any conduct unfairly tended to destroy competition. In its *Section 1*, the Sherman Act made illegal: "*Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations*." [2]Section 1 was enforced by Section 2 entitled: *Monopolizing Trade a Felony, Penalty*, which stipulates that every person who was convicted of monopolizing or attempted to monopolize trade between the States or with foreign countries would be punished by a fine not exceeding $5 million for corporations and $350,000 for any person, or by imprisonment not exceeding $5 thousand, and imprisonment not exceeding one year, or by both stated punishments under consideration of the court.[3]

However, the Sherman Act failed to specify the definition of the terms such as combination, trust conspiracy and monopoly that were very important to avoid any misinterpretation of the law.[4] In 1895, the Sherman Act became obsolete in the case *United States v. E. C. Knight Company (1895),*[5] in which the court ruled for the E.C. Knight Company that it did not violate the law even though the company controlled about 98% of all sugar refining in the United States. The Court's opinion reasoned that the company's control of sugar manufacture did not constitute a kind of control over inter-state trade.[6]

A. President Roosevelt's Trust-Busting Policy to 1909

Economically, the greatest challenge for the Progressives during the Presidency of Theodore Roosevelt was to control the businesses. Through his 'Big Stick' policy, he attempted to elaborate equitable tariffs, and introduce conservation measures. The trusts and the tariffs were the main fronts of battle that President Roosevelt dedicated his Administration to regulate in a way that would eventually benefit the ordinary American. By 1901, he received the Presidency after the death of McKinley in the middle of industrial disputes that would be fixed by Roosevelt.

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suggests that although this period was characterized by economic growth and prosperity, it was a period of disparity between the rich and the poor and disinterestedness in society in general.

[1] Curtis, Everett N. *Manual of the Sherman Law, a Digest of the Law under the Federal Anti-Trust Acts*. New York: Baker, Voorhis &Co. 1915, p.53

[2] *The Sherman Anti-Trust Act July 2, 1890. Section 1.*Ch. 647, 26 Stat.209, 15 U.S.C. § 1–7

[3] Ibid

[4] Everett N. Curtis. Op. cit, p. 161

[5] *United States v. E. C. Knight Company (1895).* 156 US 1, 15 S. Ct. 249, 39 L. Ed. 325, 1895

[6] Ibid, Section 9

The first action of the President was to direct his Attorney General Knox to use the *Sherman Act of (1890)* in pursuit of monopolistic practices. Since the Sherman Act was not sufficiently enforced, it became urgent to pass additional laws to strengthen the government's authority to regulate business practices and to control giant corporations. As for the tariffs, President Roosevelt maintained the *Dingley Act of 1897*,[1] which had been supported by President McKinley.

President Roosevelt advocated the Eighth Commandment: '*thou shalt not steal*'[2] as regards what he considered as bad trusts. The trusts were wrong as long as they infringed the constitutional rights of the people. His policy was based on his view that the trusts were necessary evil [3] and they had to be checked when they transgressed the provisions of the *Sherman Antitrust Act (1890)*. For Roosevelt, when a trust was found guilty of employing illegal practices, it had to be prosecuted but without asking the court to dismantle it. Instead, a fine and a warning were enough to bring the delinquent back on track. Under various progressive federal and state pieces of legislation, businesses were required to follow equal pricing policies, with no under-the-table deals for favored customers. It was evident that strong regulation was the key to reduce trusts' hegemony over the country's economy, with better wages and job protection for the workers.

In his Annual Message of December 1901, Roosevelt clearly announced that he gave the trust issue the first place in his list of recommendations. He created the Department of Commerce and Labour in which the Bureau of Corporations (BC) was lodged. The BC had the task to collect and publicize information about interstate commerce and industry to facilitate and accelerate antitrust prosecutions.

The BC was empowered by the passing of the *Elkins Act*[4] on February 19, 1903, which barred the the granting of rebates on freight shipments. Republican controlled Congress passed this Act with a House vote of 251 to 10. The main criticism to the *Elkins Act* was that it provided only monetary fines for violations of the law and avoided the imposition of criminal penalties. This fact gave reason to the suspicion that it was enacted by Congress on behalf of some railroad companies to allow them to continue their practice of providing rebates to their customers and realise huge benefits by curtailing other railroad companies.

Based on the information collected by the BC, Roosevelt set his Attorney General Philander Knox to the task of using existing legislation more forcefully against the trusts. The Justice Department initiated dozens of cases against businesses that violated the *Sherman Act (1890).* Among the major trust suits there were those initiated against the Northern Securities Company and the Standard Oil Company.

The first trust suit the Attorney General initiated was against the Northern Securities Company (NSC) in 1902, which had been formed shortly before Roosevelt became President. It was a union or merger of practically the entire railway system of the Northwest, i.e. the Northern Pacific and Great Northern Railroads companies owned respectively by J. Pierpont Morgan and James J. Hill who were undisputed kings of both the financial and railway sectors.

The Attorney General filed a bill in equity against the NSC in the United States Circuit Court at St. Paul, Minnesota on March 10, 1902. The Court rendered a decision in favour of the Government on April 9,[5] which was appealed to the Supreme Court of the United States. The latter, rendered a majority decision that the merger was in violation of the *Sherman Act*. The power of the government to exercise control over combinations since then was permanently established. It should be noted that President Roosevelt was not in favour of dismantling the NSC, but against the merger

[1] *Dingley Act 1897*. ch. 11, 30 Stat. 151

[2] Edward H. Cotton. *The Ideals of Theodore Roosevelt*. New York: D. Appleton and Co. 1923. p. 99

[3] Theodore Roosevelt. *Theodore Roosevelt, an Autobiography*. New York: Charles Scribner's Sons. 1922. p. 424

[4] *The Elkins Act 1903*. 57th Congress, Sess. 2, ch. 708, 32 Stat. 847

[5] *Washington v. Northern Securities Co.* 185 US. 254. (1902)

of the two railway companies that created the trust. The decision in favour of the Government by the St. Paul Circuit Court gave the Attorney General impetus to begin proceedings on May 10, 1902 against the Beef Trust[1]. The Court of the Northern District of Illinois rendered a decision in favour of the Government on May 20, 1903, and it was later affirmed by the Supreme Court of the United States on January 31, 1905.

President Roosevelt continued his progressive programme related to trust-busting when he was elected in 1904. In 1906, Congress passed the *Hepburn Act (1906)*[2] to strengthen the Interstate Commerce Commission of 1887. This coincided with the launching of the most important suit that the Government instigated against the Standard Oil Trust (SOT). The attacks on the SOT of John D. Rockefeller were justified by the writings of Ida Tarbell in a series of articles in *McClure's*. Later these articles were compiled in a book in 1904 entitled *The History of the Standard Oil Company*. Tarbell revealed a devastating account of the ruthless practices of Rockefeller and his subordinates. The SOT was seen as a monopoly because it refined over 84% of the crude oil run through refineries in 1904, and produced more than 86 % of the country's total output of illuminating oil and maintained a similar proportion of its export trade.[3] It transported through pipelines nearly nine-tenths of the crude oil of the old fields of Pennsylvania, and 98 % of the crude of the mid-continent, or Kansas territory oil field, and secured over 88 % of the sales of illuminating oil to retail dealers throughout the country. The SOT obtained in certain large sections as high as 99 % of such sales.[4] It controlled practically similar proportions of the production and the marketing of gasoline and lubricating oil. The SOT also handled a much smaller proportion of the oil, both crude and refined, in the Gulf of Mexico and California fields.

These facts gave the Government the basis on which it built its prosecution of the SOC for violating the *Sherman Antitrust Act (1890*). In this case, Herbert Knox Smith, Commissioner of Corporations, elaborated two reports on May 2, 1906, and on May 20, 1907. While the first report focused on the transportation of petroleum, the second was issued as an analysis of the petroleum industry, most of which related to the Standard Oil Company. These investigations based a fine of $29 million that was imposed on the Standard Oil Company of Indiana.[5]

President Roosevelt did not urge his Attorney General to dismantle the SOT because his antitrust policy emanated from his political skill to please both the Progressives that wanted to keep the monopolies under check, and the businesses by avoiding the dismantling of the trusts. 'Control' was the key word in President T. Roosevelt's policy that characterized his trust-busting policy.

B. President Taft's Trust-Busting Policy and the Dismantling of the Trusts (1909-1913)

The difference in the trust-busting policies of Roosevelt and Taft lied in the way each of them perceived the trust issue. Roosevelt preferred regulating the trusts rather than dismantling them staying in middle course between the Progressive reformers and the Republican conservatives that advocated the 'laissez faire' approach.[6] In his book *American Problems* (1910), he argued that:

[1] The "Beef Trust" was a collaborative group made up of the five largest meatpacking companies, and its base of packinghouses in Chicago's Packingtown area.

[2] *Hepburn Act June 29, 1906.* ch. 3591, 34 Stat. 584. 59th Congress, Sess. 1

[3] Circuit Court of the United States For the Eastern Division of the Eastern District of Missouri. *United States of America Vs. Standard Oil Company and Others.* Brief of the Law on behalf of the defendants of Standard Oil Company and others by John G. Johnson and John G. Milburn, of Counsel. New York. p. 96

[4] Ibid

[5] Henry H. Klein. *Standard Oil or the People, the End of Corporate Control in America*. New York: Published by the Author. 1914. p. 94

[6] "The better distribution of property is desirable, but it is not to be brought about by the anarchic form of Socialism which would destroy all private capital and tend to destroy all private wealth." Theodore Roosevelt. *American Problems*. New York: The Outlook Company. 1910. p. 52

"The better distribution of property is desirable, but it is not to be brought about by the anarchic form of socialism which would destroy all private capital and tend to destroy all private wealth."

President Taft's antitrust measures were more aggressive than those of Roosevelt since he prosecuted more trusts and signed the *Mann-Elkins Act (1910)*,[1] which empowered the Interstate Commerce Committee, and preferred to dismantle the trusts he considered them illegal. He instructed his Attorney General to launch lawsuits against what was identified as harmful business combinations. Among the 44 important lawsuits there were those brought against the American Tobacco Trust (ATT), the Standard Oil Trust (SOT), and the United States Steel Trust (USST).

The American Tobacco Trust was composed of five constituent companies namely W. Duke & Sons, Allen & Ginter, W.S. Kimball & Company, Kinney Tobacco, and Goodwin & Company. The ATT caught the attention of the trust-busters during T. Roosevelt's Presidency. In 1907, it was indicted in violation of the Sherman Act (1890), but President Roosevelt did not sue it with the intention to dissolve it, but rather to control it by delaying the trial to keep a close check on it.[2] In 1908, when the Department of Justice filed suit against the ATT, 65 companies and 29 individuals were named in the suit.

However, under the '*rule of reason*' justification, the Court ruled jointly for the dissolving of the ATT and the Standard Oil Trust in 1911. The Court endorsed the '*rule of reason*' enunciated by William Howard Taft in *Addyston Pipe and Steel Company v. United States*,[3] which he wrote when he had been Chief Judge of the United States Court of Appeals for the Sixth Circuit. The ATT was guilty of breaking the provisions of the Sherman Act because of:

1. the vast field which it covers,
2. the all-embracing character of its activities concerning tobacco and its products,
3. the movement in interstate commerce of the products which the combination or its cooperating forces produce or control might inflict infinite injury upon the public by leading to a stoppage of supply and a great enhancement of prices...
4. the combination, in and of itself, as well as each and all of the elements composing it, whether corporate or individual, whether considered collectively or separately, be decreed to be in restraint of trade and an attempt to monopolise and a monopolisation within the first and second sections of the Anti-Trust Act... [4]

Therefore, the final judgment of the Supreme Court was in favour of dissolving the ATT, which confirmed the judgment of the lower court. It was anticipated that dissolving a giant trust like the ATT was not an easy task that's why the Supreme Court set a period of six months that could be extended by the Lower Court but not exceeding sixty days to dissolve the trust.[5]

After eight months, a plan for the dissolution of the ATT was negotiated. Four firms were created from the American Tobacco Trust's assets: the American Tobacco Company, R. J. Reynolds, Liggett & Myers, and Lorillard. The monopoly became a group of independent producers that could affect the market but would never control it. The main result of the dissolution was an increase in advertising and promotion in the industry as a form of competition.

The next trust to dismantle was the Standard Oil Trust. Under the supervision of President Taft, the US Department of Justice sued the Standard Oil Trust in 1909 under the Sherman Antitrust Act for sustaining a monopoly and restraining interstate commerce. Attorney General George W.

[1] *Mann-Elkins Act June 18, 1910*. ch. 309, 36 Stat. 539

[2] President Roosevelt wrote that the regulation of corporations could be "accomplished by continuous administrative action, and not by necessarily intermittent lawsuits." Quoted by William Henry Harbaugh. *Power and Responsibility, the Life and Times of Theodore Roosevelt*. New York: Farrar, Strauss and Cudahy. 1961. p. 404

[3] *Addyston Pipe and Steel Company v. United States*, 85 F. 271 (6th Cir. 1898)

[4] *United States v. American Tobacco Co*. (1911). 221 U.S. 106. p.187

[5] Ibid

Wickerham on behalf of the government identified four illegal practices that the SOT resorted to in order to control the oil market. These practices were:

1. Secret and semi-secret railroad rates.
2. Discriminations in the open arrangement of rates.
3. Discriminations in classification and rules of shipment.
4. Discriminations in the treatment of private tank cars.

The government alleged that the SOT lowered the prices to hurt competitors often by disguising its illegal actions using bogus supposedly independent companies it controlled. It also restrained and monopolized the pipelines through unfair practices against competing pipeline companies.[1] It contracted with competitors to cut local prices of oil by-products to suppress competition. The SOT was also guilty of espionage of the business of competitors and the payment of rebates on oil.[2]

Therefore, the US Supreme Court upheld the judgment of the Lower Court[3] and declared the SOT to be an 'unreasonable' monopoly under the *Sherman Antitrust Act (1890).* The suit against the SOT started in 1902, but after nearly 9 years of litigation, the Supreme Court could find the Standard Oil Trust in violation of the Sherman Antitrust Act on May 15, 1911. The Standard Oil Trust dissolution decree fixed a period of six months for execution, after which the SOT was dismantled into 33 small companies.[4]

The decision to dissolve the SOT was received with varied appreciations. While the Administration of President Taft considered it a triumph against the monopolies, the businessmen were worried that the '*rule of reason*' doctrine under which the ATT and the SOT were indicted and ordered to dissolve gave the courts much freedom to read the law in a way that would be harmful for the country's businesses. On the other hand, progressive politicians feared that this decision would give the conservatives in Congress the motive to repeal the Sherman Anti-Trust Act (1890) or at least amend it in way that would render it unenforced. These standpoints did not restrain President Taft from prosecuting the trusts since the next target of the Attorney General was the United States Steel Trust (USST) and the International Harvester Company (HIC) that T. Roosevelt had spared from suit.

The US Steel Trust (USST) was founded in 1901 by a group of businessmen headed by Elbert H. Gary and J.P. Morgan who bought Carnegie's steel company and combined it with their holdings in the Federal Steel Company. These two companies became the nucleus of US Steel, which also included the American Steel & Wire Co., the National Tube Company, the American Tin Plate Co., the American Steel Hoop Co., and the American Sheet Steel Co. In its first full year of operation, US Steel produced 67 %[5] of all the steel produced in the United States. It was the largest business enterprise with an authorized capitalization of $1.4 billion.[6] In 1907, the USST bought the competing Tennessee Coal, Iron, and Railroad Company, which further enhanced its domination over the industry.

Based on the facts that the USST monopolized the steel industry through different practices that restrained interstate trade, President Taft's Justice Department, headed by George W. Wickersham, filed a lawsuit against it in 1910. The Justice Department's suit claimed that USST should be dismantled because in its initial formation in 1901, it had violated both *Sections 1* and *2* of the

[1] Rockefeller himself said: "The entire oil business is dependent upon this pipe-line system. Without it every well would shut down, and every foreign market would be closed to us." Ida Tarbell. *The History of the Standard Oil Company*. New York: McClure, Phillips & Co. Vol. 2. 1904. P. 208

[2] Ibid., 274

[3] *Standard Oil Co of New Jersey v. United States*. 221, US 95. 1910. Decided May 15, 1911

[4] *Standard Oil Co of New Jersey v. United States*. Op. cit

[5] William Henry Harbaugh. op. cit., p.315

[6] Arundel Cotter. *The Authentic History of the United States Steel Corporation*. New York: The Moody Magazine and Book Company. 1916. p. 17

Sherman Act of 1890. The complaint also alleged that the acquisition of Tennessee Coal & Iron by the USST in 1907 was illegal.

At the same time, Wickersham filed a suit against International Harvester Corporation (IHC), without regard to the assurances that Roosevelt had given to J.P. Morgan in 1907. The suits against the USST and the IHC were in fact an open war not only against the big businesses, but also against Roosevelt who permitted their creation. As a means to back his claim, Wickersham released a collection of documents detailing Roosevelt's promises not to prosecute the IHC. These documents exposed the relationship that Roosevelt and J.P. Morgan entertained, and questioned Roosevelt's reputation of being a 'Trust-Buster.'

As a response to such accusations, T. Roosevelt condemned President Taft's anti-trust lawsuits because suing the 'good trusts' such as the USST and the HIC was hopeless and even if it were successful, it would deeply harm the evolution of the country's industry.[1] Roosevelt immediately broke off all relations with Taft and published an article in *Outlook* magazine defending his actions. He argued that he and his Commissioner of the Bureau of Corporations did not find anything related to the USST that infringed the law as in the Tobacco Trust and the SOT cases. He added that Taft himself was a member of his Cabinet and attended the debates of the issue and approved the decision taken. He declared in his letter that the aim of his antitrust policy was not to dissolve all trusts but to make them aware that they were not above the law. Those trusts that he prosecuted were 'bad trusts,' but those he did not prosecute or those he delayed their prosecution were in his opinion 'good trusts.'[2]

The trial against the US Steel Trust was a long and strenuous one. In 1920, the Supreme Court finally ruled in its favour deciding that it was not a monopoly and consequently its activities were declared legal. This decision confirmed that corporate behaviour rather than just bigness determined if a company violated the Sherman Act, and thus should be broken up or not.

Contrary to what was expected, President Taft's attitude towards the big businesses brought him more foes than friends. In December 1911, he sent Congress a special message in which he made three 'wise' progressive proposals that should appeal to Wall Street, and should find favour in the political spheres. He proposed that:

1. The Sherman Act was not to be amended.
2. A supplemental law should be enacted "which shall describe and denounce methods of competition which are unfair and badges of the unlawful purpose denounced in the Anti-trust law."
3. The government control of trusts was to be strengthened by federal incorporation and by the creation of a "special bureau of commission" in the Department of Commerce and Labour.

These proposals were not passed by the first regular session of the Sixty-Second (62nd) Congress, which met in December 1911 because it did not sit until the eve of the National Conventions of the major parties for the Presidential Election of 1912. Moreover, Taft himself did not expect that the strong Democratic majority in the House (291 seats for the Democrats and 127 for the Republicans, and 7 seats for the other formations) would allow the passing of the measures that he introduced. As expected, the Democrats amended those patent laws that supported monopoly and hindered the enforcement of the Sherman Act. This event broke the Republican Party into two rival factions; those who supported Taft and those who sided with Theodore Roosevelt.

President Taft adopted a different attitude vis-à-vis the trusts. He saw the problem of monopolies from a jurist view and not from a political one. He considered that any offence of the law by the trusts was punishable by the law. According to Taft, the Court ordered the dismantling of the trusts because they were found guilty of violating the provisions of the Sherman Antitrust Act, which was judicially legitimate. However, for the politicians like T. Roosevelt this action was a political

[1] William Henry Harbaugh. Op. cit., p. 60
[2] Ibid

suicide. President Taft might have thought of realizing a political gain by proving to the Progressive insurgents in his Party like La Follette that he was still a Progressive. In fact, the dismantling of the trusts not only displeased some influential Progressives, but also ruined Taft's reputation within the business world. As stated earlier, dismantling trust was the second issue that deepened the discord within the Republican Party and accentuated opposition to Taft's policy led by Theodore Roosevelt.

C. President Wilson's Antitrust Measures from 1913 to 1921

President Wilson dealt with the regulation of the trusts and labour jointly in the *Clayton Act (1914)*. As for the trusts, he believed that they should be dismantled through court suits if they were found guilty of violating antitrust legislation. He preferred big businesses, but condemned the trusts. Unlike Roosevelt, Wilson did not distinguish between 'good trusts' and 'bad trusts,' but considered any trust by virtue of its large size as bad. He expressed his opposition to the trusts arguing that:

> '*A trust is an arrangement to get rid of competition, and a big business is a business that has survived competition by conquering in the field of intelligence and economy... I am for big business, and I am against the trusts. Any man who can survive by his brains, any man who can put the others out of the business by making the thing cheaper to the consumer at the same time that he is increasing its intrinsic value and quality, I take off my hat to, and I say: "You are the man who can build up the United States, and I wish there were more of you*.[1]

Anti-trust policy was one of the central points of debate in the Presidential Elections of 1912 that each candidate exposed in accordance with the political platform of their respective parties. Wilson elaborated an anti-trust and anti-monopoly policy in his 'New Freedom' program that was different from those of his predecessors just in some details. He signed into law the *Clayton Act in 1914*[2] that was considered as the cornerstone in the regulation of the trusts and monopolies.

The purpose of the *Clayton Act (1914)* was to help clarify the language of the *Sherman Act* (1890), which had left some legal loopholes that allowed large companies to continue constructing monopolies. It was not an easy task because Wilson's predecessors did not venture into the complexities of the legal issues that the anti-trust laws brought. The original anti-trust program of Wilson's Administration was based on the Anti-trust Bill introduced by Representative Henry De Lamar Clayton of Alabama on April 14, 1914, known after being passed as the *Clayton Act (1914).*The novelty in this Act was that it attempted to outlaw all known methods and devices used to strangle competition and achieve monopoly. The final version of the *Clayton Act* was passed in the House of Representatives on June 5, 1914 with a vote of 277 to 54, and passed in the Senate on September 2, 1914, by a vote of 46 to 16. President Wilson signed it into law on October 15, 1914.

Four principles of economic trade and business were set in the *Clayton Act 1914*: price discrimination, exclusive dealings, mergers and acquisitions, management of two or more corporations by one director. It was considered as a felony when the prices were set at a level to lessen competition or intended to create a monopoly in any line of commerce.[3] *Section 3* stipulates that exclusive dealings between a seller and a purchaser under which the seller put a condition on the purchaser not to buy from his competitors was considered as an act punishable by law only when it was proved that such act restrained trade and lessened competition.[4] The third principle in this Act dealt with the abolition of the mergers and acquisitions of corporations that effected and lessened competition.[5] Finally, the fourth principle made it illegal for any person to be a director of

[1] Woodrow Wilson. *The New Freedom*. New York: Doubleday, Page & co. 1913. pp. 50-51
[2] *The Clayton Act, October, 15, 1914.* ch. 38 Stat. 730. Codified at 15 US.C. §§ 12–27, 29 U.S.C. §§ 52–53)
[3] Ibid., Section 2, codified at 15 U.S.C. § 13
[4] Ibid., Section 3, codified at 15 U.S.C. § 14
[5] Ibid., Section 7, codified at 15 U.S.C. § 18

two or more competing corporations, if it was proved that those corporations would violate the anti-trust provisions by merging.[1]

Opposition to the Clayton Bill came from small businessmen, who claimed that the measure provided jail terms for their day-to-day practices, and from legal authorities that argued that it was impossible to legislate against every conceivable restraint of trade. Therefore, Wilson sought the advice of Brandeis, who proposed to take up a measure known as the Stevens Bill. This Bill outlawed all unfair competition and established the Federal Trade Commission (FTC) to investigate alleged unfair trade practices.

The most important provision in this Bill was to authorize the FTC to issue 'cease and desist' orders, which would have the force of court injunctions against unfair competitors. President Wilson agreed on the Stevens Bill and urged the House of Representatives to adopt it on June 12, 1914. He considered the signing of the *Federal Trade Commission Act (FTCA)*[2] on September 26, 1914, and the *Clayton Act* on October 15, 1914, as the climax of the reconstruction of the American political economy.

However, in reading the final texts of the Sherman Act 1890 and the Clayton Act 1914, it appears that they do not differ much to a point to make a distinction between the two. In fact, the Clayton Act was not intended to clarify the Sherman Act but to strengthen it by making corporate officials personally and criminally liable for the practices of their corporations.

Under the FTCA, the Federal Trade Commission (FTC)[3] was created as an independent agency to replace the Bureau of Corporations with the objective to uphold the Clayton Act and to foster consumer protection. It was given the power to investigate companies to look for unfair trade practices under *Section 5* of the FTCA that reads as follows: '*The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce*.'[4] President Wilson did not create the FTC with the intention to breakup big businesses, but to prevent them from eliminating business competition through unfair practices. Therefore, the FTC was empowered to summon any business that would violate the provisions of the anti-trust acts to '*Cease and Desist'* (C&D). The latter was an order or request to halt an activity (cease) and not to take it up again (desist).[5] It could also be used as an emergency measure that took the form of a temporary injunction to prevent irreparable harm. The FTCA provided the President with the right to choose the members of the FTC to serve a seven-year term, but only three of the five members could belong to the same party. President Wilson took advantage of this prerogative when he chose five members to be the FTC's first commissioners namely Democrats Joseph E. Davies as Chairman, Edward N. Hurley, William Harris, and Republicans Will H. Parry, and George Rublee.

During the First World War, President Wilson was obliged to suspend temporarily the provisions of the Clayton Antitrust Act by passing the *Webb-Pomerene Act of 1918*[6] in Congress. This Act exempted certain exporters' associations from certain anti-trust regulations. It was sponsored by Republican Edwin Y. Webb of North Carolina and Democrat Senator Atlee Pomerene of Ohio. The *Webb-Pomerene Act* granted immunity to companies that formed combinations to operate the

[1] Ibid., Section 8, codified at 15 U.S.C. § 19

[2] The FTCA passed the Senate by a vote of 43 to 5 on September 8, 1914, and passed the House on the 10th of the same month without tally of Yeas and Nays.

[3] The FTC is still active today, and is responsible for the United States National Do Not Call Registry, and investigating gasoline price gouging, i.e. to force someone to pay an unfairly high price for something or simply to raise prices unfairly.

[4] *The Federal Trade Commission Act*. 15 U.S.C §§ 41-58. Section 5

[5] *Clayton Act 1914*. op. cit., Section 11

[6] *Webb-Pomerene Act of 1918*. Sess. 2, ch. 50, 40 Stat. 516

export trade of goods, wares, or merchandise that were essential to the War effort. However, this did not apply to anticompetitive conducts that had adverse affects on domestic competitors.

Therefore, associations that sought exemption under the *Webb-Pomerene Act* had to file their articles of agreement and annual reports with the Inter-State Commerce Committee. The exemptions in this Act lasted until the 1920s as the Federal Trade Commission granted stays of investigation for those companies that initially qualified for exemption under its provisions.

Concluding Statement

It is a natural phenomenon in a capitalist system that economic elite emerge seeking to promote its own interests and enjoy greater wealth. The economic elite exploit these advantages politically, using them as leverage to obtain more wealth and influence. The influence of the economic elite on politics creates concentrated political and economic power that results in the spread of corruption, bribery, mismanagement, and the squandering of public funds. It is also a social natural phenomenon that 'reform elite' emerge to face the economic elite and right the wrongs that infringe the citizens' rights.

Confrontation between the reform and economic elites in the USA started during the 1890s. Social and intellectual reformers exposed the abuses of big businesses that caused the deterioration of the political and social situations in the country. Although the efforts of the reformers had great effect in arousing public interest and awareness, they could not bring down the power of the businesses that were associated with corrupt politicians at all levels. Only the Progressives stood efficiently against the economic elite to ensure justice for the American citizens.

The economic measures undertaken by the Progressive Presidents were breakthroughs in the history of the USA since the Federal Government intervened in economic issues that had been considered as purely State affairs. The measures undertaken by the Government during T. Roosevelt's Presidency could be seen as the basis on which the future measures were built because he initiated a particular trust-busting policy based on controlling them rather than seeking their elimination. President Taft, on the other hand, envisaged bringing down the trusts by dismantling them. He attempted to legalize the actions of his predecessor, but this brought him the opposition of both Progressives and Conservatives in his Party. This opposition cost him the Presidential Election of 1912 in favour of The Democrat Woodrow Wilson.

President Woodrow Wilson continued the realization of the progressive policies that his predecessors initiated but from a Democratic standpoint. His vision as regards the trusts was to control their bigness, and in ultimate cases to dismantle them. These progressive economic policies applied between 1901 and 1921 had a great positive effect on American economy characterized by prosperity and development that enabled the country to become the world leader from the 1910s onwards.

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