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WILLIAM NOTZ

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Recommended Citation
WILLIAM NOTZ, RECENT DEVELOPMENTS IN FOREIGN ANTITRUST LEGISLATION, 34 Yale L.J. (1924).
Available at: http://digitalcommons.law.yale.edu/ylj/vol34/iss2/4

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RECENT DEVELOPMENTS IN FOREIGN ANTI-
TRUST LEGISLATION

WILLIAM NOTZ

In the history of post-war legislation the trust or monopoly problem occupies an important place. The number of countries outside of the United States which during the past few years have revised their anti-trust statutes or enacted new ones, has increased so rapidly that a large new body of law has come into existence which offers many points of interest to the student of comparative legislation. The operation of these laws in different parts of the world will be followed with keen interest not only because there is involved one of the most difficult problems concerning the relation of modern states to industry and trade, but by reason of the further fact that the new acts embody certain innovations in anti-trust legislation as well as a number of vital departures from policies observed in the past.

It is quite evident that the new laws reflect a pronounced reaction against the world-wide movement towards monopolistic concentration of trade and industry which set in prior to the world-war, and which received a very powerful impetus during the war and in the post-war period. This almost unprecedented movement has taken the form of permanent combines (capitalistic mergers, amalgamations and fusions), as well as of terminable combines in the form of more loosely knitted associations, agreements and understandings for controlling production, distribution, prices, patents, market-zones, etc. It is significant that the trust problem has become acute in agricultural as well as industrial states, in North and South America, in most of the leading countries of Europe, in South Africa and in Australia.

Whether rightly or wrongly, some of these combines (many of which were organized and given Government support during the war) have been closely associated in the public mind with post-war profiteering schemes and the high cost of living generally. So it came about that in response to a popular demand for remedial legislation, whether in the interest of consumers generally, in the interest of an agrarian population or for other reasons, parliamentary and other official investigations were undertaken.

Then, too, the trust problem here and there, as in England, was made an integral part of a general plan of post-war economic readjustment and reconstruction, while the growing importance of labor parties and socialist influences account in part for the antagonism to capitalistic monopolies elsewhere.

One of the most far-reaching investigations of the trust problem was made in England. In February 1918, the Minister of Reconstruction appointed a special committee for that purpose. It was directed to consider and report what action, if any, might be necessary
to safeguard the public interest in view of the probable extension of 
trade organizations and combinations. The committee submitted a 
report in April 1919, stating that “there was at that time in every 
important branch of industry in the United Kingdom an increasing 
tendency to the formation of trade associations and combinations, hav-
ing for their purpose the restriction of competition and the control of 
prices.”

In its conclusions the committee made the following recommenda-
tions: “(1) that the Board of Trade shall obtain all available sources 
of information relating to trusts and combinations and report annually 
to Parliament; (2) that the Board of Trade shall investigate com-
plaints and if it find that the public interest is adversely affected 
by any monopoly, combination or agreement, it shall refer the matter 
to a tribunal of not less than three nor more than seven members which 
is to be established. This tribunal is to have investigatory powers and 
shall recommend remedial action to the State in case of grievances 
which it may find to be established.”

In August of the same year Parliament passed the Profiteering Act, under which the Board of Trade established a Standing Committee 
on Trusts. A large number of more or less searching inquiries were 
made by sub-committees into various branches of trade and industry 
believed to be dominated by monopolies or quasi-monopolistic com-
bines, and their effect upon prices and profits. The reports published 
were, on the whole, favorable to the industries investigated. It is note-
worthy, however, that practically all the sub-committees urged in their 
reports that the proposals of anti-trust laws made by the departmental 
committee on trusts should be given permanent legislative effect. 
Nevertheless, up to this time no action along these lines has been taken, 
though successive Governments have had the matter under considera-
tion.

Of the Scandinavian states, Norway has taken the most advanced 
steps. Various anti-profiteering regulations have been enacted in that 
country since 1914. A provisional price regulation act of August 
1920 is still in force. Under its terms a central Government board 
(Statens prisdirektorat) has been established for controlling prices. 
This board has published from time to time various data as to capital, 
officers and activities of corporations and combinations operating in 
Norway. In 1916 a committee was appointed by the King to study the 
trust question. It submitted a report in 1921, out of which definite

1 Ministry of Reconstruction, Report of the Committee on Trusts (1919) Cd. 
9236, p. 12.
2 (1919) 9 & 10 Geo. V, c. 66.
3 Lov om prisregulering av 6. August 1920; Norsk Pristidende nr. 129.
4 Justisdepartementet, Instilling angaende forholdsregler til motarbeidelse av 
trust—og kartelimsbruk fra den ved kgl. resolusjon av 29. februar 1916 opnevnte 
trustkommisjon.
plans came for the enactment of permanent anti-trust legislation. On May 30, 1924, the Government submitted to parliament an anti-trust bill which provides for a Government control commission of five members. While this commission is to have wide powers of investigation and shall be required to publish its findings, its functions would be merely advisory.

Also in 1919 a Danish governmental commission on prices and necessaries of life, pursuant to directions of the Danish parliament, prepared an anti-trust bill which, however, was not enacted into law.

Several years earlier, in 1912, a similar committee was established in Sweden. In the course of its inquiries it issued several comprehensive reports, including one on the sugar industry and another on the stock exchange.

In the Dutch parliament the anti-trust movement did not get much beyond the stage of discussion.

In 1910 the Canadian parliament enacted the Combines Investigation Act, the first important anti-trust legislation placed on the statute books of Canada. It was superseded in 1919 by the Combines and Fair Prices Act and the Board of Commerce Act. In 1921 the Privy Council held that the latter two acts were ultra vires of the Dominion parliament. They were repealed on June 13, 1923 by a new act, the Combines Investigation Act, which is now in force.

Although Section 498 of the Criminal Code also relates to conspiracies or combinations in restraint of trade, it has been of little effect in the past, owing to the absence of effective machinery of investigation which would disclose the existence of combines operating to the detriment of the public and which would afford the information whereby criminal proceedings can be made effective. The new Canadian act is intended to remedy various defects which, as experience has shown, were inherent in earlier anti-trust legislation, and is to retain at the same time what had been found to be of value in those acts. For instance, the term "combine" is now given a sufficiently comprehensive definition, so as to include all possibilities under that

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4 Forslag til midlertidig Lov om offentligt Tilsyn med visse Virksomheder.
6 & 10 Edward VII, c. 9.
7 & 10 Geo. V, c. 45.
8 & 10 Geo. V, c. 37.
13 & 14 Geo. V, c. 9.
14 Rev. Sts. of Canada, 1906, c. 146.
head. Moreover the process of instituting proceedings under the act has been greatly simplified, so that among other things no expense is incurred by parties making application to the registrar for an investigation. The act gives the registrar very full powers. He may, if he so desires, proceed on his own initiative.

The act further provides that the Governor in Council may from time to time appoint, as occasion requires, one or more commissioners with full powers under the Inquiries Act\footnote{8 & 9 Geo. V, 1918, c. 12.} to hold investigations, take evidence under oath, inspect books and compel the production of documents. These commissioners are to take the place of the Board of Commerce. Such a board had been provided for under the act of 1919. It was a single court, composed of a definite personnel, and with it virtually rested the decision as to what prosecutions should be commenced. It was a court of record, with powers of investigation, prosecution and judgment, all exercisable by the same body. For various reasons it did not function satisfactorily, but it is believed that under the new system of a registrar, supplemented when necessary by special commissioners, a workable method has been established for dealing effectively with combines.

The new act is directed against combines of consumers, producers or others, operated or likely to operate contrary to the public interest, including (1) mergers, trusts and monopolies, (2) the relation resulting from purchase, lease or other acquisition of any control or interest in the business of any other person, and (3) any actual or tacit agreement with the effect (a) of limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing, (b) preventing, limiting or lessening manufacture or production, (c) fixing a common price or a resale price, or a common rental or common cost of storage or transportation, (d) enhancing the price, rental or cost of an article, rental, storage or transportation, (e) preventing or lessening competition in or substantially controlling within any area, or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply, (f) otherwise restraining or injuring trade or commerce.

The act provides that the Governor in Council may charge a minister with the administration of the act. The Governor in Council is also to appoint a registrar of the Combines Investigation Act, whose duty it is to handle applications for investigating alleged combines and to report thereon to the Minister. The registrar is to make a preliminary inquiry upon application of six persons, on his own initiative or on direction of the minister, with whom final decision rests as to whether or not a further inquiry shall be made. The registrar may require written returns and full disclosure of agreements, and has the power also to investigate the business records of respondents and to
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require witnesses to testify under oath. The powers of the commissioners are not to limit the powers of the registrar.

The minister may employ expert investigators and advisors. The proceedings of the registrar and of the commissioners are to be conducted in public. The minister may request the Minister of Justice to instruct counsel to conduct the investigation before the registrar or a commissioner. Report on the investigation is to be made by the registrar to the minister who has discretionary power as to its publication. If as a result of an investigation the Governor in Council believes that with regard to a certain article a combine detrimental to the public welfare exists, which is facilitated by customs duties, he may admit the particular article free of duty or reduce the duty in the interest of reasonable competition. If the owner or holder of a patent makes use of exclusive rights to unduly limit production or restrict or injure trade, such patent is to be liable to revocation. Whenever in the opinion of the minister an offense has been committed against the act, the minister may bring the facts to the attention of the attorney-general of the province within which the alleged offense has been committed. If warranted action is not taken, the solicitor-general may proceed in the matter. Prosecution is to be commenced only at the instance of the solicitor-general of Canada or of the attorney-general of a province. Violators of the act are subject to punishment by payment of money penalties and imprisonment.

All permanent employees under the act are to be under the Civil Service Act. Regulations for the administration of the act are to be made by the Governor General in Council. Up to the present writing, it is understood no regulations have been made. Section 34 specifically provides that the act shall not apply to combinations of workmen or employees.

Until recently Germany had no special law applicable to trusts, cartels and other forms of combines. However, certain sections of the Penal, the Industrial Codes as well as the Law Against Unfair Competition of 1909 have been applied by the German courts from time to time against monopolistic practices of combines. Twenty years ago the cartel question was ventilated at length in the Reichstag, and an exhaustive investigation of German cartels was made by the German government during 1903-1906. At that time criticism had directed itself particularly against the Steelworks Combine. The purpose of the investigation was to develop a basis for appropriate legislation, but the net results of the enquête were negative.

14 Rev. Sts. of Canada, 1906, c. 104.
15 Strafgesetzbuch für das deutsche Reich, secs. 128, 253 and 302.
16 Gewerbe-Ordnung, secs. 1 and 152.
17 Bürgerliches Gesetzbuch, secs. 134, 138, 823, 826.
18 Gesetz gegen den unlauteren Wettbewerb, Juni 1909; Reichsgesetzblatt, 1909, 499.
During the world war changes of a fundamental nature took place. The government availed itself on a large scale of the network of cartel organizations in its efforts to systematize and centralize production and distribution. Compulsory syndicates were established in several industries, including the coal and potash industries. Following the war, co-operation between the State and the various industrial cartels was intensified even more, partly as a result of socialistic ideas. The cartel movement now reached its greatest expansion, most of the new combines being producers' cartels. Presently, complaints against the price policies of certain producers' cartels began to be voiced on the part of wholesale and retail distributors as well as consumers, and the latter groups, largely as a matter of self-defence, began to form counter organizations. An organized struggle, participated in by various economic groups mentioned, finally prompted the Government to intervene. On November 2, 1923, Chancellor Stresemann, under the terms of the enabling act of October 13, 1923, promulgated the "Degree Against the Abuse of Economic Power." This new decree represents the first cartel law enacted in Germany. In substance it recognizes the legality of cartels and similar combines, but requires that they shall not be prejudicial to economic life in general nor to the public welfare. Furthermore, under the provisions of the decree a cartel court has been established, to which is given exclusive jurisdiction in cartel matters. Thus the whole subject of cartels and trusts has been placed under public legal supervision, subject to the supreme authority of the Minister of Economy. The latter may initiate proceedings, but as a general rule the cartel court is supposed to act in that capacity.

The enactment of this new legislation inaugurates a new era in the history of German combines, the outstanding feature of which consists in the fact that cartel autonomy in matters of organization has been superseded by State control. In an official statement setting forth the motives underlying the new law, the Government emphasizes the need of increasing production and of ridding competition of unproductive elements. The Government states also that conditions due to depreciated currency and its effects on production and sale have resulted in serious evils on the part of organized producers, and that the price of some German products has been forced beyond world-market levels. This situation, it is contended, prompts the Government in its endeavor to re-establish a free market by suppressing artificial restrictions of production and by imbuing business with a sense of responsibility toward the public which has been lost in so many instances. The Government states, also, that it

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19 Ermiichtigungsgesetz, Okt. 1923; Reichsgesetzblatt, Nov. 3, 1923, 943.
20 Reichsgesetzblatt, Nov. 3, 1923, 1067 ff. and 1090; see also Kartell-Rundscha (1923) 220 ff.
did not adopt a policy of total suppression of cartels, because it believes that a policy as radical as that would involve a disregard for the important economic functions which during the present economic crisis seem to rest upon producers' organizations conscious of their responsibility. In the opinion of the Government a complete destruction of cartels would, in the long run, in no wise benefit freedom of market conditions. On the contrary, such action would, during the coming process of transition, be likely to surrender a large number of healthy, medium-sized and small plants to the financial dominance of large concerns.

The decree, which became effective on November 20, 1923, consists of twenty-three articles. It provides that agreements and resolutions involving obligations for dealing with production or sale, the application of trade terms and methods of fixing or enforcing prices shall be in writing. Such agreements are made void if their confirmation requires merely the giving of one's verbal word of honor or a similar solemn pledge, or if they exclude or impede an appeal to the cartel court or are otherwise designed to hamper or nullify the operation of the decree. If an agreement or decision, or a certain method of enforcing it, imperils economic life in general or the public welfare, the Federal Minister of Economy may apply to the cartel court to declare such agreement or decision void, or he may prohibit the carrying into effect of any of its objectionable provisions, or he may direct that any party to it may withdraw. The Minister may require that copies of all agreements or orders for carrying out such agreements be submitted to him, no such measures taking effect until after he has received copies thereof. Economic life in general and the public welfare are considered as being imperiled particularly where production or delivery are restrained in a manner not warranted by sound economic principles, where prices are increased or maintained high, where in the case of price calculations on a stable basis an excessive margin is provided for risks, or where economic freedom is unfairly restrained by obstructions in purchase or sale or by fixing variable prices or terms. The cartel court may order that the agreement or resolution be entirely or partially cancelled, or that the method of carrying it out be vetoed. Any party to such an agreement may withdraw without previous notice where an important reason exists, which is always the case whenever the economic freedom of the party withdrawing is unfairly restrained in respect of production, delivery or price fixing. There are further provisions which confer considerable power on the president of the cartel court. Interested parties, however, have the right to appeal from the president's decision to the cartel court itself.

Article X provides for the establishing of a cartel court. It is to be established in connection with the Federal Economic Court in Ber-
lin, and is to consist of a chairman and four deputy chairmen. The latter must be eligible for the bench. The associate members are appointed by the president of the Federal Economic Court. One associate member is to be a counsellor of the Federal Economic Court. Two associate members are to be appointed with regard to the special economic question at issue, while the fourth is to be an independent expert who is to represent the public as distinct from the economic interests in dispute. The associate members are to be selected from lists submitted by the Federal Minister of Economy.

Article 12 provides that the cartel court is to have exclusive jurisdiction. Its decisions are made final and binding upon courts and arbitration tribunals. The presiding officer may in certain cases render a decision without previous consultation with his associates, but appeal against his decision may be made to the cartel court within three days. Fines and imprisonment are provided for violations of the act. The provisions of the decree do not apply to combines, the formation of which is based on special laws or decrees, such as the coal, potash and similar public combines, nor to business conditions and methods of fixing prices ordered or approved by Federal or provincial authorities. Article 20 provides that the cartel court or its chairman is to give opinions on specific questions submitted to them by the Federal Minister of Economy, and relating to the application of this decree. The new cartel court has already been established and has taken prompt action in a number of cases which have been brought before it. On account of the specialized knowledge of the members of the court, the testimony of special experts has not as yet been required, and the court has been able to give its decisions without undue delay. Owing to the slowness of the ordinary courts, there has been frequent recourse in the past to arbitration tribunals. The latter, it is believed, will in the future function only in cases where public interest is not involved. The decisions of the cartel court are based on such a comprehensive analysis of the methods of organization and policies of combines that to all appearances in course of time a whole legal code will grow up which will be of the greatest service for the future guidance of cartels.

Following the world-war the Union of South Africa, like other states of the British Empire, took necessary legal steps to suppress profiteering. The Profiteering Act, which was placed on the statute books for that purpose, expired in 1922. Section 9 of the act provided for the investigation of trusts and combines. Enquiries made in accordance with that section showed that undesirable rings and combinations among traders did exist in that country. On July 6, 1921, the Government established a Board of Trade and Industries, whose functions related primarily to the customs and excise tariffs. Two years later the powers of the Board were enlarged by the Board of Trade

Sts. of the Union of South Africa, 1920, no. 27.
and Industries Act.\textsuperscript{23} This act was largely based on Section 9 of the Profiteering Act. It provides that the Board shall enquire into and report to the Minister of Mines and Industries upon the nature, extent and effect of agreements, arrangements, combinations, associations and trusts connected with or affecting commerce, finance, manufacture, mining, trade or transport in so far as they tend to the creation of monopolies or to the restraint of trade, and submit to the Minister recommendations as to any action necessary or advisable for preventing such creation of monopolies or restraint of trade. The Board is given wide investigatory powers. It may subpoena witnesses and require the production of records and documents, as well as statistical and other information. Recommendations or reports made by the Board are to be submitted by the Minister to parliament.

The parliament of New Zealand has followed a somewhat changeable policy with regard to anti-monopoly legislation. The Cost of Living Act of 1915,\textsuperscript{24} a wartime measure, was followed in 1919 by the Board of Trade Act.\textsuperscript{25} Under that act a special Board of Trade was to be established in connection with the Department of Industries and Commerce. To this board were given certain investigatory powers concerning monopolies, unfair competition and other practices detrimental to the public welfare. On August 28, 1923, this act was amended,\textsuperscript{28} abolishing the Board of Trade and transferring all its powers and duties to the Minister of Industries and Commerce. As the law now stands, the Minister is authorized to hold such judicial inquiries as he thinks fit, on his own initiative or by direction of the Governor-General, or on the complaint of any person. He is empowered to inquire into any matter whatsoever relative to any industry in New Zealand or which may affect its industries, for the purpose of obtaining information required for the due control, regulation and maintenance of the industries of New Zealand; the prevention or suppression of monopolies, unfair competition and other practices contrary to the public interest; and the proper regulation in the public interest of the prices of goods and the rates of services.

The Governor-General in Council may on the recommendation of the Minister of Industries and Commerce issue regulations for the following purposes: — (a) for the prevention or suppression of methods of competition, trading or business which are considered to be unfair or prejudicial to the industries of New Zealand or to the public welfare; (b) for the prevention or suppression of monopolies and combinations in or in relation to any industry which are considered to be prejudicial to that or any other industry in New Zealand or to the

\textsuperscript{23} Ibid., 1923, no. 28.
\textsuperscript{24} 6 Geo. V, no. 69.
\textsuperscript{25} 10 Geo. V, no. 15.
\textsuperscript{28} 13 & 14 Geo. V, no. 34.
public welfare; (c) for the establishment of fixed or maximum or minimum prices or rates for any classes of goods or services, or otherwise for the regulation or control of such prices or rates; (d) for the prohibition, regulation, or control of differential prices or rates for goods or services or the differential treatment of different persons or classes of persons in respect of goods or services in cases where the existence of such differential prices, rates or treatment is considered prejudicial to any industry in New Zealand or to the public welfare; (e) for the regulation and control of industries in any other manner whatever which is deemed necessary for the maintenance and prosperity of these industries and the economic welfare of New Zealand. All regulations which may be issued are to be laid before parliament. If both houses of parliament pass a resolution of disapproval, such regulation is to cease to be in force. Offenses against such regulations are punishable on summary conviction before a stipendiary magistrate by fine or imprisonment.

Under the amended act the Governor-General in Council may appoint not exceeding five persons as an advisory board to advise the Minister of Industries and Commerce, where the latter may deem it necessary to ask advice. The Minister may also secure experts for any inquiry or investigation. Furthermore, the Minister may delegate upon any member of the advisory board or any officer of the Department of Industries and Commerce powers of judicial inquiry and investigation conferred upon the former Board of Trade.

Argentina is the first of the Latin American countries to enact an anti-trust law. It is largely the result of a parliamentary investigation made in 1919, although anti-trust legislation has been under consideration in that country as far back as 1913. The new law was passed on August 24, 1923. In September, 1923 an Executive Decree was issued for its enforcement. The act itself is comparatively short, consisting of but eight articles. It is to be administered by the Ministry of Agriculture, and the Bureau of Commerce and Industries of that department has direct charge of its enforcement. Any agreement, combination, or fusion of capital, to establish a monopoly of production, transportation or commerce, is made a misdemeanor by the provisions of Article 1. An act constituting a monopoly is defined in Article 2 as one which, without signifying technical or economic progress, increases arbitrarily one's real profits out of all proportion to the capital actually invested, as well as any act impeding or preventing free competition. The following ten acts are specifically enumerated as falling under Article 2:

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27 Camara de Disputados de la Nacion: Informe de la Comision Investigadora de los Trusts, Septiembre, 1919.
28 Ley no. 11210 sobre represion de los trusts. Circular Informativa Mensual, August, 1923, no. 76, 377; Ministerio de Relaciones Exteriores y Culto.
29 No. 11210.
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a. Intentional destruction of products for the purpose of increasing prices;
b. Abandonment of cultivation, shutting down of factories, mines or other productive establishments, when determined by indemnity paid to the owners;
c. Territorial division of markets to eliminate competition, or to raise or fix prices;
d. Corners, withdrawal of products, or agreements not to sell, so as to bring about an increase in the price of articles of prime necessity, a detailed list of which is to be issued in supplementary decrees to the Executive;
e. Agreements to limit production;
f. Deliberate sale of goods or services below the cost of production (except damaged goods or such as are in liquidation) to prevent free competition;
g. Exclusive dealers' agreements;
h. Resale price maintenance;
i. Interlocking directorates tending to monopolize or restrain competition;
j. Any profit by manufacturers or merchants on merchandise supplied to their employees.

Violations of the act are subject to fines and imprisonment of from one to three years. Continued violation results in loss of legal status and cancellation of any concessions or rights granted. Officers of concerns conspiring to violate the act are personally liable. Merchandise and other property involved in a violation of the act is to be confiscated.

On September 27, 1923, the Ministry of Agriculture issued a decree for the enforcement of the new anti-trust law. In this decree five lists of commodities are given which are declared to be of prime necessity. Concerning these commodities all merchants within the Republic are required to report, within three days of receipt of an order to that effect from the Bureau of Commerce and Industries, the quantity of such goods as they have in stock or on order, and the place where they are stored, in order that the Bureau may make such inquiries as are necessary. The five lists include articles of prime necessity for food, clothing, lodging, lighting and heating.

Looked at as a whole and in the light of legal history, the new anti-trust laws outlined above contain a number of interesting features. These are all the more significant by reason of the fact that they were arrived at independently by representative bodies after thorough study and investigation in countries with widely varying economic conditions and interests. The point which probably stands out most is the pronounced modification of the age-old policy of repressive legislation.

**Decretos reglamentando la ley no. 11210 sobre los trusts;** Circular Informativa Mensual, September, 1923, 470.
With the exception of the Latin states, France, Belgium, Italy and Spain, most of the leading countries of the world have begun to revise their anti-trust laws. And in the Latin states mentioned, whatever statutory provisions still exist against monopolistic practices, have become more or less of a dead letter.

Parliamentary debates and official enquêtes undertaken in a dozen or more countries during the past twenty-five years indicate plainly that the method of approach, so generally observed in the past, viz., of indiscriminate prohibition of all private capitalistic monopolies whatsoever, is looked upon more and more as inadequate and unworkable. Experience has shown in one country after another that too rigid statutes and overstrained regulations will sooner or later be disregarded. In practical judicature it has been found that such laws cannot be enforced satisfactorily. What is more important still is the observation that economic forces, so potent socially, will ultimately always find a way of prying asunder barriers obstructive to human progress. In short, it has been recognized quite generally that efforts seeking to solve the modern trust problem with the aid of a statutory “Procrustes bed” proved to be largely futile. The practical deductions drawn from this truth are reflected clearly in the new anti-trust laws. Instead of prohibiting all monopolistic combines, agreements, etc., by a sweeping repressive formula, only such organizations are declared unlawful as are contrary to the public welfare, viz., the laws of Germany, New Zealand, Canada. A similar modification of the terms of the Sherman Anti-trust Act was brought about by the rule of reason theory of the United States Supreme Court. Certain definite types of combines, agreements, etc., considered objectionable have been specifically mentioned, as is done in the Canadian and Argentine laws.

A comparative analysis of these laws shows still another new phase in the history of anti-trust legislation. To all appearances the view is gaining ground that an effective solution of the trust problem is not to be sought in the domain of private law, nor of criminal law, but rather through administrative regulations governing the operation of monopolistic business enterprises. The well-known Austrian jurist, Menzel, suggested such a course as far back as 1894, when the Verein für Sozialpolitik was considering the cartel problem, and the trend of recent legislation has certainly sustained his views in this matter. Then too, the wide experience during the war and subsequently with anti-profiteering laws has given a strong impulse to the change in policy. The two changes mentioned (a modification of existing repressive statutes and a leaning toward administrative law) are to a large extent the result of a closer study of the trust problem and of publicity given to the results of numerous and comprehensive

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8 Act of July 2, 1890 (26 Stat. at L. 209).
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investigations. A mass of statistical and other informative matter has revealed its complex character, its dynamic rather than static nature, and the importance of getting the actual facts which underlie each individual case. These facts, it has been found, are largely of an economic nature. They relate to prices, cost of production, wage conditions, foreign exchange, tariff and patent protection, transportation, marketing methods, etc. In the absence of a clear understanding as to the nature and effect of these forces, the trust problem has been found to encompass numerous imponderabilia. Only by searching analysis of these economic factors will it be possible to reach a fair and well-balanced conclusion as to the effect of a given business enterprise on the public welfare. And it is noteworthy that the criterion of public welfare is specifically mentioned in the Canadian and the German laws.

As a logical consequence of this new conception of the trust problem one finds legislators everywhere giving due recognition to the need of investigation and inquiry. Instead of leaving the enforcement of anti-trust acts automatically to the conventional procedure of public prosecutors and law courts, a special machinery providing for economic diagnosis by expert investigators is established, whose duty it is to find the facts, examine the same and report thereon. In this connection it will be observed that in none of these new laws has the investigatory agency been placed under the jurisdiction of the department of justice. The Canadian Act provides merely that the Governor in Council shall charge "a Minister" with the administration of the act. As the Minister of Labor has thus far answered all interpellations relating to the act, he is presumably charged with its administration. In Argentina it is the Minister of Agriculture, in New Zealand the Minister of Industries and Commerce, in South Africa the Minister of Mines and Industries, and in Germany the cartel court comes under the Ministry of Economics.

The investigatory machinery is of two kinds. In some countries, like the United States and Germany, a permanent inquisitorial agency has been established. In others, notably South Africa and New Zealand, the statutes provide for the appointment ad hoc of temporary agencies for conducting inquiries and reporting thereon to the Government. In the case of Canada there is a combination of these two types, for the new Canadian law provides for the appointment of a permanent registrar who is empowered to make inquiries, and with whom applications for the investigation of alleged combines have to be filed. In addition the Governor in Council may appoint one or more special commissioners for the purpose of making investigations. The new Canadian law specifically provides that expert investigators and advisors may be employed to assist in the investigations, while the new German law stipulates that two of the four associate members of the cartel court shall be appointed with regard to the special economic
question at issue, and a third shall be an independent expert who is to represent the common welfare as distinct from the economic interests in dispute.

It is quite apparent that modern lawmakers, in dealing with the trust problem, regard the acquisition of facts, economic as well as legal, which surround individual monopolistic enterprise, not merely as a preliminary step in prosecution and suppression, but also, as desirable for the sake of publicity. That a making-known of the facts constitutes a very effective means of arresting and correcting the evils of monopoly, of arousing public opinion and quickening the public conscience, is a point strongly emphasized in several of the official reports referred to above. It is recognized widely that publicity places a certain controlling power in the hands of the public. Accordingly, in the laws enacted in response to these reports the importance attached to an enlightened public opinion as a powerful protective agency against profiteering, monopolistic exploitation, unfair competition, and the numerous methods and manifestations of "trusts," manifests itself in the various provisions for bringing the results of inquiries to the attention of the public authorities, as well as of the public at large.

In addition to the broad and general features mentioned, most of the new anti-trust laws contain certain distinctive provisions. The Canadian act, for example, contains a provision for revoking patents which are used unduly to limit production or to restrict or injure trade. In view of the important rôle played by patents in the organization and operation of combines, this novel clause is especially significant. It is more sweeping in its wording than Section 3 of the United States Clayton Act. A distinction is made in the Canadian Act between preliminary investigation and one that is more extended in scope. A preliminary investigation may be initiated by the registrar on his own initiative, on application by six persons or on direction of the minister who administers the act. A more extended inquiry requires the approval of the minister. Under the terms of the Canadian act investigations may also be undertaken in foreign countries, a provision which is similar to Section 6h of the United States Federal Trade Commission Act. Another point of similarity between the Canadian act and the anti-trust legislation of the United States is to be found in the fact that the former expressly exempts trades unions from its jurisdiction, not unlike the well-known Section 6 of the United States Clayton Act.

The Canadian, as well as the Argentinian act, enumerates specific kinds of objectionable combines and agreements. Among the ten monopolistic acts prohibited by the Argentine act is the intentional

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\( (1923) 13 & 14 \text{ Geo. V, c. 9, sec. 24.} \)

\( \text{Act of Oct. 15, 1914 (38 Stat. at L. 730).} \)

\( \text{Act of Sept. 26, 1914 (38 Stat. at L. 717).} \)
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destruction of products for the purpose of increasing prices. In the report on trusts made to the Argentine parliament in 1919 it is stated that the production and commerce in wine was dominated by a combine which had taken advantage of the law of the province of Mendoza, and which was aided by certain national banks. The combine was charged with systematically keeping domestic prices high by destruction of grapes and wine and by exporting at a low price. The practices of this combine probably led to the aforementioned section of the new anti-trust law. The whole matter is interesting in view of similar efforts made in recent years in the United States systematically to restrict the output of certain agricultural products. The Argentinian Act takes special cognizance of practices calculated to raise the price of necessaries of life. In a decree supplementing the Act itself, five lists of such commodities are enumerated. This decree makes it compulsory for merchants to report to the government, whenever called upon to do so, as to the quantities of each such commodity held in stock by them.

Several features of the German Act merit attention. It represents the first instance in the history of anti-trust legislation of the establishment of a special court with exclusive jurisdiction in matters relating to combines. A further feature of that Act is the requirement that all agreements as to prices and such as involve obligations for dealing with production or sale or trade terms, shall be in writing. The Minister of Economy is empowered to require that all agreements of that nature, in order to be effective, shall be filed with his office. Besides predicking the legality of all such agreements upon their being consonant with the public welfare, the German law establishes a further norm for their legality, one that is quite unique in anti-trust legislation. For the Act provides that an agreement "which imperils economic life in general" may be declared void. Here we have for the first time the concept of "economic life in general" made a criterion, side by side with the "public welfare," of the legality of monopolistic agreements or enterprises. This is but another illustration of the tendency, pointed out above, of attributing much greater weight than formerly to the economic phases of the trust problem.

The penalties for violation of the new anti-trust laws vary considerably. Refusal to furnish information called for by an official investigatory agency is punishable with money fines or imprisonment or both. The Canadian Act provides for penalties in such cases as high as five thousand dollars or imprisonment up to two years. Under the terms of the same act individuals or corporations found guilty of having been a party to the formation or operation of a combine become liable to a much more severe penalty. In the case of individuals the penalty is not to exceed ten thousand dollars, whereas with corpora-

*Supra note 27.*
tions it may go as high as twenty-five thousand dollars. Under the German law the cartel court determines the amount of the fine. Violations of the Argentinian law are punishable with imprisonment up to three years. In the Canadian Act officers of corporations who acquiesce in the contravention or non-observance of the anti-combine law become guilty personally and cumulatively. A similar provision is contained in the Argentinian law. So far as known, the Canadian Act is the only one which specifically provides for the admission free of duty or at a reduced rate of duty of articles of commerce concerning which it has been found that a combine exists at the expense of the public. An interesting point in connection with the German Act is the requirement that the cartel court shall render an opinion to the Minister of Economy, whenever requested by the latter to do so, upon questions coming within the scope of the new act.