Milk, Money & Monopoly

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"As far as the politics are concerned—looking into 1972 . . . you're going to have to be strong in rural America . . . these dairymen are organized; they're adamant, they're militant. This particular group, AMPI, which is the American Milk Producers Institute or something, uh, represents about 40,000 people. . . . Mid-American group represents about 40,000. The southeastern group, uh, Diarymen, Incorporated, whatever their name is, represents a lesser number but probably in the range of 20,000 members. They, uh, very frankly, they tap these fellows—I believe it's one-third of one percent of their total sales or $99 a year whichever. . . . Oh, it's a check-off. No question about it. . . . And they, they're massing an enormous amount of money that they're going to put into political activities, very frankly."

Secretary of the Treasury John Connally, transcript of meeting on milk price supports between the President and his economic advisers, March 23, 1971

"Uh, I know, . . . that, uh, you are a group that are politically very conscious. Not in any partisan sense, but that you realize that what happens in Washington, not only affecting your business, but, affecting the economy, or foreign policy and the rest, affects you. And you're willing to do something about it. And, I must say a lot of businessmen and others that I get around this table, they'll yammer and talk a lot but they don't do anything about it. And you do, and I appreciate that. And, I don't have to spell it out."

President Richard M. Nixon, transcript of meeting with milk producer cooperatives, March 23, 1971.

In the 1972 campaign, the political committee of the nation's largest milk producer cooperative, Associated Milk Producers, Inc. (AMPI), contributed over $900,000 to candidates of both parties, more than any other organization except the political arm of the AFL-CIO (*Time*, Dec. 3, 1973, p. 2). On August 1, 1974, AMPI pleaded guilty in U.S. District Court in Washington, D.C., to six counts of conspiracy and illegal campaign contributions totaling over $280,000 which had been distributed illegally over a four-year period to such prominent national figures as Richard Nixon, Hubert Humphrey, Edmund Muskie, and Wilbur Mills.

Other milk producer interest groups were similarly munificent in the 1972 campaign. According to the Senate Watergate Committee's final report, the various dairy producer interests contributed at least $672,000 to Richard Nixon's reelection campaign, $130,000 to Wilbur Mills' Presidential campaign, and over $40,000 to Hubert Humphrey's Presidential campaign. Yet the resulting notoriety did not deter them from playing an active role in the 1974 congressional campaigns. Campaign finance reports of

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milk cooperative political committees show that they donated a total of $239,300 to candidates during 1974. Those receiving significant contributions included Senator Herman Tallmadge (D-Ga.), chairman of the Senate Agriculture Committee, which passes on dairy legislation; Senator Hubert Humphrey (D-Minn.), who had outstanding 1972 Presidential campaign debts; and Representative David R. Bowen (D-Miss.), a senior member of the House Agricultural Committee's Dairy Subcommittee. The total would have been larger except that approximately 30 percent of all contributions by the milk cooperatives were returned or not accepted. This left the milk cooperatives with $2.3 million—as one reporter put it, "the largest hoard of unspent political cash in the nation" (The Cleveland *Plain Dealer,* Feb. 7, 1975, p. 8A).

THE POLITICS OF MILK PRICES

One need not be an incurable cynic to suspect that campaign contributions induce politicians to support policies they would otherwise oppose. On the other hand, if the public good happens to coincide with the best interests of major contributors—well, needless to say, this happy coincidence of interests occurs quite often between the dairy industry and the Federal government.

For example, protectionism, the policy of governmentally imposed restrictions on imports, has long been favored by industries which would be adversely affected by foreign competition. The dairy industry is no exception, although its interest in protectionism goes beyond the usual effect of foreign competition. This is because the production of grade A raw milk in the United States is controlled by a number of regional cartels—associations of competitors formed to limit competition in order to effect monopoly prices. In the raw milk industry, the cartels are formed through the assistance of, and are largely administered by, the U.S. Department of Agriculture (USDA).

There is no free market price for the raw milk produced by members of the milk cartels. Instead, the USDA fixes a minimum price which dairies must pay to milk producers belonging to the cartels. This minimum price is the actual market price of raw milk in 10 of the 25 largest market areas regulated by the USDA. In the other 15 areas, the USDA minimum price is a key element enabling milk producer cooperatives to charge monopoly prices higher than the USDA fixed price. Accordingly, members of the milk cartels are acutely interested in *how* the USDA sets prices.

The common base in the economic formulae used to fix the minimum price is the relatively free market price of unregulated "manufacturing grade milk" (i.e., raw milk, usually Grade B, which is used in processing "hard" products such as butter, cheese, and powdered milk, as opposed to fluid grade raw milk, usually Grade A, which is used to process fluid milk and is regulated by the USDA). This market price, established at some 500 plants in Minnesota and Wisconsin which supply manufacturing grade milk, is known as the Minnesota-Wisconsin price series, or simply the M-W price.

Most dairy *imports* are of the "hard" variety and therefore compete directly with manufactured milk products. If dairy imports were allowed to enter the country freely, they would automatically depress the M-W price, thus lowering the fixed price of raw milk.

WORKING THE POLITICAL MACHINE

On September 21, 1970, the dairy industry succeeded in persuading the Tariff Commission to establish certain import quotas for ice cream and low fat cheeses. On December 16, 1970, a Washington lawyer for AMPI hand-delivered to the White House a letter requesting that President Nixon adopt the Tariff Commission recommendations. The letter baldly stated that AMPI had contributed about $135,000 to Republican candidates in the 1970 election and was now working to set up appropriate channels to contribute $2 million for the President's reelection and for an unspecified "special project." The letter went on to complain that the dairy industry did not understand the President's delay and plaintively noted that "the longest the Democrats ever took to implement a Tariff Commission dairy recommendation was 16 days." (*Statement of Information,* Hearings before the Committee of the Judiciary, House of Representatives, 93d Cong., 2d sess. [1974], Book VI, Part II, p. 271.)

With 30 percent of their contributions returned or not accepted, the milk cooperatives ended up with "the largest hoard of unspent political cash in the nation."

On December 31, 1970, Nixon signed a proclamation lowering import quotas on certain dairy products. Although his action was less favorable than that recommended by the Tariff Commission, AMPI apparently felt its money was well spent, for it noted in a January 5, 1971, press release that:

> The President's December 31 proclamation establishing import quotas for . . . dairy products has been the object of a lot of work by AMPI for many months . . . . President Nixon's decision is a step toward more stability in our market that will be remembered and appreciated by dairy farmers. [*Statement of Information,* p. 271.]

This overt linking of campaign contributions to government decisions on dairy import quotas was merely a prelude. Beginning in early 1971, milk producer cooperatives began intensive lobbying efforts to pass legislation in Congress increasing the USDA milk price support level to a point between 85 and 90 percent of parity. Percentage of parity is the price level at which USDA is authorized to purchase all surplus milk from the market. USDA price supports, as such, should not be confused with the USDA fixed price for fluid grade raw milk. The latter is established by USDA fiat and *must* be paid. The former is the price at which USDA announces it will purchase surplus milk, but no other buyers are compelled to pay the price. Since the USDA usually absorbs surplus milk in the form of manufactured milk products like cheese, butter, and nonfat dry milk, the USDA announcement of price supports effectively sets a floor under the market price of unregulated manufacturing grade milk. As with import quotas, therefore, the milk price support level artificially stimulates the M-W price, and thus the USDA cartel price for fluid grade milk.

As a result of the lobbying begun in 1971, 87 members of Congress wrote or wired the Department of Agriculture in February and March of that year urging an increase in milk price supports to 90 percent of parity. Ten other members recommended an increase to at least 85 percent of parity, while 44 members forwarded constituent requests which sought increases to various levels. During a single week in March, 28 bills sponsored by 118 representatives were introduced in the House, and two bills sponsored by 29 Senators were introduced in the Senate, to increase price supports to at least 85 percent of parity. (*Statement of Information,* p. 22.)

Nevertheless, on March 3, 1971, Secretary of Agriculture Clifford Hardin concluded that an increase in milk price supports—then 79 percent of parity—was not economically justified to insure an adequate supply of milk. The President approved this decision, and announced it officially on March 12, 1971.

POLITICAL QUESTIONS GET POLITICAL ANSWERS

The battle was just beginning. As an AMPI lawyer candidly observed in a March 19, 1971, letter to John Erlichman's assistant for agricultural affairs:

> *This is a political question and requires a political answer* . . . . Dairy industry leadership has been very materially assisting the Nixon administration tangibly and intangibly . . . . Ironically, until March 12, the dairy industry has gotten from this administration substantially what it wanted although, unfortunately, always after a vigorous effort . . . . For political, if no other reasons, parity must again be set at 85% . . . . The President's name, not the Secretary [of Agriculture] is on the ballot. [*Statement of Information,* p. 404; emphasis in original.]

On March 23, 1971, the President, the Secretary of Agriculture, and other White House officials met with AMPI and other milk cooperative representatives. Later that same afternoon, the President met with his top economic advisors to discuss the milk price support level. On March 24, 1971, after a night flight from Washington, AMPI officials met at 4 a.m. in Louisville with officials of Dairymen, Inc., the country's third largest milk producer cooperative. That afternoon a Dairymen, Inc. contribution of $25,000 was flown to Washington and given to several Republican committees to purchase seats for a Republican fundraising dinner that evening. At the dinner, AMPI representatives told Nixon attorney Herbert Kalmbach that the milk producers were reaffirming their $2 million pledge to Nixon's '72 campaign. On March 25, 1971, Secretary of Agriculture Hardin reversed his decision and announced a milk price support level at 85 percent of parity. Thereafter, between March 30 and August 5, 1971, milk cooperatives funneled $250,000 to 100 separate political committees supporting the President's reelection campaign and throughout this period referred to their "commitment" to make contributions to the Nixon campaign. (*Statement of Information,* pp. 38, 42, 43, 628.)

Price support levels, however, must be adjusted and in 1974 the milk cooperatives were back. Just before adjourning on December 20, 1974, the Senate, by an unrecorded voice vote, passed a bill against raising the milk price support to 85 percent of parity. The House passed a similar measure the same night.

Of the $239,300 contributed by milk cooperatives to congressional candidates in 1974, $151,000 went to 62 incumbent members of the House. When the price support increase came to a vote, 35 of the 62 favored it, 7 voted against it, and the other 20 were either absent or voted "present." It was subsequently revealed that almost half of the $151,000 was contributed *after* October 24, 1974, the last filing date for campaign expenditures which would be made public prior to the election. The last-minute contributions were invariably in the amount of $4,995. Since contributors were required to report by telegram donations of $5,000 or more made in the last few days before the election, the milk cooperatives thus avoided public knowledge of their contributions until after the election.

MILKING CONSUMERS

Business interests do not distribute campaign largesse in these amounts without good reason. Milk producer cooperatives are no exception. Milk is big business. Retail dairy sales annually exceed $17 billion. Over 60 percent of this figure is directly attributable to the cost of raw milk ("Milk: Why Is the Price So High?" *Consumer Reports,* Jan. 1974, p. 79).

In 1967, 86 percent of all raw milk producers in the USDA-sponsored milk cartels were members of milk producer cooperatives, a significant figure because the cartels are only part of the problem of monopoly costs in the milk industry. ("Monopoly" is used throughout this article in an economic, not a legal, sense.) Also involved are those cooperatives which, while sheltered within the structure of the cartels, have achieved a tremendous growth in market power.

From 1967 to 1970, over 170 local dairy cooperatives with a combined membership of 70,000 dairy farmers producing over 26 billion pounds of milk annually were combined into four large multimarket regional cooperatives located throughout the central United States. These four regional "super cooperatives" control more than 75 percent of the raw milk supplied to such major fluid milk markets as Chicago, Madison, Cleveland, Toledo, Indianapolis, Louisville, Houston, Dallas, San Antonio, Memphis, Oklahoma City, Omaha, and Minneapolis-St. Paul.

Market power of this magnitude does not lie dormant. It is used—quite effectively. According to figures released by the National Association for Milk Marketing Reform, the super cooperatives charged 10 cents a gallon more for milk in August, 1974, in Ohio, Michigan, and Indiana than the prevailing USDA minimum price in those markets. Economic studies indicate that the milk cartels' minimum price is itself approximately 10 cents a gallon higher than it would be under free market conditions (R. W. Bartlett, "Bringing Federal Order Class I Pricing Up to Date and in Line with Antitrust Regulations," *Illinois Agricultural Economics,* Jan. 1974, p. 6).

> *The dairy interests complained to President Nixon that "the longest the Democrats ever took to implement a Tariff Commission dairy recommendation was 16 days."*

All of this means that government price fixing, combined with monopoly power, has raised the price of a gallon of milk some 20 cents higher than if competitive conditions prevailed. The government's own statistics lend support to this conclusion. Between 1959 and 1972, the wholesale price index increased 24 percent for all goods and 25 percent for all farm products. The increase for raw milk was twice that—49 percent.

MORE REGULATION, MORE POWER

The Federal government, however, is not alone in allowing dairy interests to prosper at the expense of the public. State governments have also entered this area, fixing minimum *retail* prices for fluid milk. These, of course, are *in addition* to the monopoly overcharges for raw milk by (1) the USDA milk cartels and (2) the super cooperatives. A minimum retail price of fluid milk is currently fixed and enforced in 13 states, down from a high of 31 states.

The anticompetitive purpose of these laws is admitted by the industry. According to a spokesman for the Dairy Institute of California:

> Price controls keep a number of smaller businesses alive and help stabilize the market. Without controls, we would see an immediate price war, which would weed out the independents. ["The Propped-Up Price of Milk," *Money,* June 1973, p. 76.]

The anticompetitive effect of these laws is predictable. In a 1972 study of 46 markets with a population of 500,000 or more, the price in 37 competitive markets averaged over 11 cents a gallon less than in the 9 state-controlled markets. Further, retail markup as a percentage of wholesale cost was 20 percent greater in the state-controlled markets. (R. W. Bartlett, "Do Supermarkets Charge Consumers Too Much for Selling Milk," *Dairy Industry News,* March 30, 1973, p. 2.)

Monopoly pricing, however, is not the only effect of retail price regulation. There is a strong tendency to maintain the status quo in other matters. In almost all retail price maintenance states, cost figures are used to adjust wholesale or retail price structures. This produces a strong tendency toward average cost pricing and resistance to changing price structures to reflect lower cost containers or methods of distribution. As a result, prices tend to rise to the highest common denominator, reflecting at least the average costs of all dairies. An efficient dairy, with costs below average, is legally prohibited from gaining a competitive advantage by reducing prices.

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The competitive situation in retail milk marketing has changed drastically during the last 30 years. At the end of World War II, home delivery accounted for 54 percent of milk distribution. By 1969, this had been reduced to 22 percent and is presently less than 20 percent. When dealing with supermarkets, chain dairy stores, delicatessens, and convenience stores, the average dairy finds itself in a far different competitive position than when dealing with a large number of individual home-delivery consumers. In many cases the retail purchaser is larger and has more bargaining power than the dairy. To the extent that a dairy relies on four or five large accounts, the loss of one or two may be fatal to its business. In order to service these larger accounts, concentration among dairies has been increasing.

The only purpose served by retail price maintenance in those 13 states which still have such laws is to resist these long-range trends and to save inefficient dairies which would otherwise be unable to survive in a competitive market.

ORIGINS OF THE SYSTEM

Agricultural cooperatives are composed of individual farmers who join together to fix the price at which they will sell their particular commodities. Typically, milk producers assign title to their milk to the cooperative, which then sells it and returns the proceeds (less dues and administrative fees) to the producers. In essence, the cooperatives are combinations or conspiracies in restraint of trade. Since the Sherman Act of 1890 prohibited such activity, early farmer cooperatives attempted to secure exemptions from it.

Initially they were unsuccessful. When the Sherman Act was pending before Congress, amendments to exempt both labor unions and agricultural cooperatives were defeated. Some farm groups were subsequently successful in securing exemptions from state antitrust laws, but in 1902 the Supreme Court declared such a state statute unconstitutional, holding the exemption for farmers to be unjustifiable class legislation. This obstacle was finally overcome in 1914 with the enactment of the Clayton Antitrust Act, which granted a limited exemption to labor organizations and agricultural cooperatives.

Milk bargaining cooperatives had been tried out in the Chicago market as early as 1887 by the Milk Shippers Central Union of the Northwest. In 1897, the Milk Producers Union in Boston negotiated a "classified pricing" system with 7 wholesalers who controlled 75 percent of the milk supply. Classified pricing was established in Minneapolis-St. Paul in 1918, in Baltimore in 1919, in Philadelphia in 1920, and in New York and Milwaukee in 1921. These systems gradually prevailed in most major markets and extended through the 1920's and early 1930's.

The concept of classified pricing is central to an understanding of the milk cartels as they exist today. The system has two separate aspects: (1) the price the cooperative charged dairies for raw milk and (2) the amount the cooperative returned to the producer members.

First, price was determined by the milk's end use—by whether it was subsequently processed into fluid milk form (a higher price) or into manufactured milk products. Second, regardless of end use, a cooperative would pay each of its producer members at the same rate, based on a weighted average of the prices charged to dairies.

COMPETITIVE PRICING

This dichotomy in the pricing of an otherwise fungible commodity would occur in a free market only when there is a shortage of raw milk for all purposes. Because of its perishable nature, fluid milk cannot be stored for long periods. The demand for fluid milk is fairly constant and relatively inelastic (a change in price does not appreciably affect the quantity demanded). During a shortage, therefore, a fluid milk processor will pay more for raw milk than during normal conditions—he knows he can pass on the price increase. A manufacturing milk processor, on the other hand, faces an elastic demand for his products—changes in their prices affect the quantity demanded. Further, most of his products can be stored for relatively long periods. He thus has no incentive to pay higher prices for raw milk during a shortage, for he cannot pass on the increase to consumers and, unlike a fluid milk processor, he can wait for the price to fall.

Dairy cows fail to appreciate these market nuances. They produce more milk in the spring (the "flush season") than in late fall and early winter (the "short season"). Accordingly, raw milk ordinarily commands a higher price in the short season.

Prior to Federal regulation, this natural production cycle led to intense competition among milk producers to find fluid milk processors to ship to on a year-round basis, thus ensuring higher prices during the short season. The more intense this competition became, however, the lower the short season premium paid by fluid milk processors, and the lower the overall price of raw milk on a year-round basis.

The purpose of classified pricing, as introduced by the early cooperatives, was to eliminate producers' competition for fluid milk outlets and to actually impose a year-round differential to be paid by fluid milk processors. By joining a cooperative which would market all of his milk, a producer would no longer have to compete for a fluid market—whether the co-op sold his milk to a fluid processor or to a manufactured milk processor, he would be reimbursed at the same average rate as any other member.

CLASSIC CARTEL PROBLEMS

Classified pricing, however, had enforcement problems. Dairies which processed fluid milk attempted to find manufactured milk processors who would purchase raw milk at the manufactured milk rate and resell it for fluid use at a lower price than the prevailing cooperative fluid price. Moreover, any individual farmer who dealt directly with a fluid milk dairy in a classified pricing market could usually receive more for his milk than the "blend" or average price paid to cooperative members, yet the dairy would be buying the raw milk for less than the price charged other dairies by the cooperative. The cooperative, because of overproduction, often had a large surplus which it disposed of at the manufacturing rate to cheese plants, thus lowering the blend price paid to its members and accelerating the above trends.

The incentives for both milk producers and dairies to get around the cartel's pricing and the difficulties of enforcement led to the breakdown of classified pricing systems during the depression of the 1930's. Depression conditions led to a drastic decrease in demand and a subsequent drop in prices. In response to this, some farmers increased production in order to maintain their income. More and more dairies turned to independent farmers in order to obtain milk supplies at prices well below those established by cooperatives. Cooperatives, in turn, lost many members as it became difficult to keep their fluid price higher than that for manufactured milk uses. [Reuben A. Kessel, "Economic Effects of Federal Regulation of Milk Markets," *Journal of Law and Economics,* April 1967, pp. 51-78; Eisenstat, Masson, and Roddy, *An Economic Analysis of the Associated Milk Producers, Inc. Monopoly,* unpublished manuscript, 1974, pp. 140-42.]

PROPPING UP THE CARTELS

Faced with the free market's reassertion of competition in the face of private attempts to cartelize the raw milk industry, the Federal government resorted to direct intervention, i.e., the policy of government coercion to direct a market in a manner different from that dictated by supply and demand. First under the Agricultural Adjustment Act of 1933, and subsequently under the Agricultural Marketing Agreement Act of 1937, the Federal government moved to "stabilize" prices in fluid milk markets throughout the country. The government's stated purpose was:

> (1) To remedy a short-run condition of disruptively low milk prices and chronic surpluses, and
>
> (2) To provide a framework for long-run price and income stability for dairy farmers. [Ronald D. Knutson, et al, *Milk Pricing Policy and Procedures,* Part 1, (USDA, 1972), p. 4.]

In practice, what the government created was the framework for establishing local and regional milk cartels. In so doing, it institutionalized the earlier system of classified pricing, thereby solving the enforcement problems which had so plagued the cooperatives in the early years of the depression.

The Agricultural Marketing Agreement Act of 1937 provides that two-thirds of the producers supplying milk to a proposed marketing area (or producers supplying two-thirds of the milk to an area) can vote to put into effect a "Federal Order" in that area. A Federal Order is a set of rules established by local milk producers or their cooperatives (which are permitted to cast a "bloc" vote for all of their members) for the purpose of regulating the sale of milk—including its minimum price—in their marketing area. The rules are then enforced by the Federal government.

Dairies have no control over this process. Indeed, the USDA itself has little control; while it ostensibly drafts the rules, these are subject to a milk producer veto. If proposed regulations are not acceptable to the producers or their cooperative, there will be no Federal Order. Likewise, a simple majority vote of milk producers or, in practice, a single bloc vote by a cooperative can terminate a Federal Order. If the USDA or its market administrators incur the displeasure of the milk cooperatives, instant unemployment for the bureaucrats may be the result. As economists for the Antitrust Division of the Department of Justice have observed:

> [The USDA is not] an independent body carefully weighing the interests of all parties .... The Federal Orders as they are operated appear to be meant to raise producers' incomes generally. [Eisenstat, et al, p. 124.]

Under competitive conditions (except for seasonal variations in supply), raw milk of like grade and quality will tend to sell for the same price in a market, regardless of its end use. Federal Orders are specifically designed to prevent this by making dairies pay more for raw milk used to process fluid milk than for raw milk used in manufactured milk products.

In the short run, given the relatively inelastic demand for fluid milk, total producer receipts can be increased by raising the price of raw milk for fluid processing above the single market price which would otherwise prevail. When the Federal government artificially creates two prices for milk, the blend price received by producers under the Order will exceed the single market price. Thereafter, to the extent that output is increased by Federal Order producers in response to the higher blend price, the quantity of surplus milk (i.e., milk not needed to meet the demand for fluid milk) competing with unregulated milk in manufacturing markets increases, depressing the price of manufactured milk.

By any measure, the raw milk cartels have thrived. By the end of World War II, there were Federal Milk Marketing Orders in 28 fluid milk markets around the country, covering 34.6 percent of all fluid grade raw milk. Another 23.5 percent came under state regulation. By 1969, 104 fluid markets were federally regulated, accounting for 78.2 percent of all fluid grade milk produced in the country. State regulations covered another 19.1 percent. Today, less than three percent of all fluid grade raw milk is free from governmental price fixing.

SUPER COOPERATIVES

The milk industry generally acknowledges that the USDA has achieved the legislative goals established in the Agricultural Marketing Agreement Act of 1937—it has eliminated "disruptively low milk prices" and provided "long run price and income stability for dairy farmers." In other words, it has eliminated competition and effected monopoly pricing.

One might suppose that the milk producer cooperatives, grown safely to maturity within the structure of the cartels, would be content with this arrangement. Before the middle of the 1960's, cooperatives operating in Federal Order areas were, in fact, generally satisfied with their cartels and treated the USDA price as both the maximum and minimum price for their raw milk.

But times were changing for the cooperatives. Because of the inelastic demand for fluid milk, the Federal Order price was not necessarily an outside limit—with market power more could be charged. As early as 1956, for example, Michigan Milk Producers Association (MMPA) had established a premium over the Federal Order price and successfully maintained this "over-order" (monopoly) premium through 1960.

Maintaining a monopoly premium in a single market, however, was not without its problems—e.g., some dairies sought alternate sources of supply outside the area. Widescale cooperative mergers over multimarket areas could solve the problem of achieving and maintaining monopoly premiums. And between 1967 and 1970, over 170 local cooperatives with 70,000 members merged into four large regional "super cooperatives."

The largest of these is Associated Milk Producers, Inc. (AMPI), which was formed in 1969 by consolidation of 14 Chicago area cooperatives and Milk Producers, Inc. (MPI). AMPI controls over 75 percent of the raw milk supplied to Chicago, Madison, Indianapolis, Houston, Dallas, San Antonio, Memphis, and Oklahoma City. The second largest merger, Mid-American Diarymen, Inc., was formed in 1968 from 31 cooperatives in Iowa, Kansas, Missouri, and Illinois. The third largest merger is Dairymen, Inc., which was originally formed from 8 cooperatives and subsequently acquired 16 others. The last to be formed was Milk, Inc., a consolidation of four cooperatives in the Cleveland, Akron, Toledo, and Pittsburgh market areas.

ELIMINATING COMPETITION

Market stability over a wide area, however, must be preceded by market control and there are several strategies by which cooperatives achieved and maintain monopoly power. These techniques include, not necessarily in order of importance, "price alignment," "full supply" contracts, and the "standby pool." The purpose of each is the same—to eliminate alternate sources of supply.

Price alignment, a euphemism for price fixing, is aimed at eliminating price competition between cooperatives in separate markets. It is utilized by the cooperatives because competitive price differentials among various markets, greater than the transportation costs between them, encourage lower-priced milk to move into higher-priced markets. This incentive can be eliminated if the prices in the various markets are "aligned" so that the differences in price are substantially identical to transportation costs. Once cooperatives in various markets (or a single cooperative covering many markets) succeed in this, dairies lose an important alternate source of supply and monopoly power is correspondingly strengthened.

Full supply contracts require a dairy to buy its entire supply of milk from a single cooperative. Such contracts are often put on a take it or leave it basis. Their ultimate effect is to dry up the market to which independent non-cooperative milk producers can ship, hence economic pressure to join the cooperative grows as the number of full supply contracts in a market increases. As the independents in a market, because of their decreased number, lose viability as an alternate supply source, dairies become increasingly dependent on a cooperative for their milk. Dairies who therefore refuse to enter into full supply contracts or pay monopoly prices can find their milk supply shut off literally overnight.

The *standby pool* is a direct result of the competitive problem posed by the large supply of surplus Grade A raw milk in Minnesota and Wisconsin. Since this milk is unregulated and has no readily available market of fluid milk processors, there is substantial incentive to seek out fluid milk markets which will offer more than the manufactured products price paid in Minnesota and Wisconsin. Such a large alternate supply of unregulated Grade A milk effectively places a ceiling on the monopoly premiums (above the USDA price) which can be charged by the regional super cooperatives.

The standby pool is the answer to this problem. It is a "federated cooperative" whose members include the 4 super cooperatives discussed earlier, as well as 15 others. Each member cooperative in the standby pool pays monthly assessments on all the fluid milk it markets in its regional markets. The money thus generated is used by the standby pool to pay Grade A milk producers in Minnesota and Wisconsin *not* to ship their milk into other regions without standby pool authorization. In other words, these Minnesota and Wisconsin producers:

> Are bribed to refrain from spoiling the markets of [standby pool member] cooperatives which have successfully demanded prices higher than the cost of buying and transporting these "surplus" supplies. [Edith Hall Parker, "Monopoly in the Milk Producing Industry: The 'Super Cooperatives'," *Antitrust Law and Economics Review,* Summer 1970, p. 118.]

This effectively eliminates yet another alternate source of supply for dairies faced with paying monopoly premiums on raw milk. Economist Alden Manchester of the USDA's Marketing Economics Division notes:

> The primary objective of the standby pool is to improve the bargaining position of cooperatives in the participating markets. [*Pricing Milk and Dairy Products: Principles, Practices, and Problems,* (U.S. Government Printing Office, 1971), p. 44.]

BEHIND EVERY CARTEL: GOVERNMENT

While these tactics have arguably enabled the super cooperatives to achieve monopoly or near-monopoly positions, even government economists agree this could not have been accomplished without the underlying Federal Order system itself. In a study for the USDA prepared by Manchester, he concludes that "Federal and State orders provide the institutional framework within which a cooperative can bargain successfully for prices higher than those in the orders." The Justice Department's economists have reached a similar conclusion:

> The passive willingness of the USDA to allow cooperatives to dictate Federal Order provisions must be kept in mind [because] this passivity added additional weapons to the cooperatives' arsenal in attempts to monopolize the supply of milk. [Eisenstat, et al, p. 125.]

This passivity becomes all the more important when it is noted that the USDA has authority under the Capper-Volstead Act to take action against agricultural cooperatives whose monopoly power enables them to "unduly enhance" prices. That authority, on the books for over 50 years, has never been exercised.

Today, less than three percent of all fluid grade raw milk is free from governmental price fixing.

The Antitrust Division of the Justice Department, however, has recently shown no similar reluctance. In 1972, the Division recommended bringing criminal antitrust charges against AMPI. Attorney General John Mitchell intervened and, in an unusual step, refused to authorize a criminal case and directed the Division to file a civil case instead. After Mitchell resigned, the Division brought actions against the Mid-American Dairymen and Dairymen super cooperatives also. Private actions have flourished as well. In total, there have been over 20 different antitrust actions, public and private, filed against the 4 super cooperatives discussed previously. As of this writing, several cases have been settled, and the Justice Department and AMPI have entered into a consent decree which has been approved by U.S. District Judge John W. Oliver in Missouri, to whom virtually all of the private cases (the Midwest Milk Monopolization Cases) have been transferred for coordinated pretrial proceedings.

The consent decree with AMPI leaves its market power unchanged and intact, although it does prohibit AMPI from engaging in a variety of predatory and anticompetitive practices which the government alleged was responsible for AMPI achieving and maintaining its various monopoly positions. Critics of the consent decree argue that AMPI should have been dissolved or forced to divest itself of the many processing plants and smaller cooperatives acquired during the years of its growth. The government and its economists respond that such action is not needed to restore competition, that competitive market forces will gradually restructure AMPI once it refrains from engaging in the prohibited activities.

REFORMING THE SYSTEM

The prospects for restoring competition in the milk industry are not encouraging. Monopoly power has flourished throughout the raw milk industry chiefly because the USDA has both permitted and encouraged the acquisition and maintenance of such power. This is not surprising, for the government is usually the source of monopoly power, either directly or indirectly.

Effective reform, therefore, will not come from within the executive branch—witness the Secretary of Agriculture's failure for over 50 years to issue cease and desist orders to any cooperative which "monopolizes or restrains trade . . . to such an extent that the price of an agricultural product is unduly enhanced."

Stricter antitrust enforcement by other departments of the executive branch will at best solve only part of the problem. Even if the present monopoly of milk producer cooperatives is eliminated, the most that will result is a return to the Federal Order price as both the minimum and maximum price of raw milk, as opposed to the legal minimum which it is today. This may be an improvement over the present situation but, as studies show, the present high level of Federal Order prices has consistently produced an excess supply of milk.

Ideally, of course, all government controls on milk prices—both Federal and state—should be eliminated. This is feasible at the state level—witness the 18 states (out of 31) which have seen the wisdom of getting out of the milk business. Such a solution at the Federal level, however, is far too radical to succeed. The USDA has a huge bureaucracy imbued with the bureaucrats' instinct for survival. And, lest you forget, the milk producer cooperatives still control "the largest hoard of unspent political cash in the nation."

Nevertheless, there is a modest step which Congress can take immediately to restore a semblance of competition in the raw milk industry and effectively subject some milk cartels to the discipline of the market: amend the Agricultural Marketing Agreement Act to require the dissolution of all Federal Orders which provide a monopoly premium above the USDA minimum price (Bartlett, "Bringing Federal Order . . .," pp. 10-11).

This reform has a number of advantages:

(1) The amendment would not go so far as to abolish the Federal Order system—10 of the 25 largest Federal Orders had no monopoly premiums in 1972.

(2) There is a certain rough justice in saying, in effect, to the super cooperatives: "Look, you've got a nice cozy government cartel which shelters you from competition—if you want to keep it, abide by its rules and accept its prices or else take your chances in a free unregulated market."

(3) If some of the super cooperatives chose to keep their cartels and end monopoly premiums, at least the price of milk would be reduced to the USDA minimums.

(4) On the other hand, there should be cooperatives willing to take their chance in the market by leaving the cartels. After all, three of these cooperatives are among the *Fortune* 500 largest industrial corporations. If this occurs, market forces should ensure a steady supply of fresh milk at prices lower than those presently prevailing.

(5) The existence and success of free markets for raw milk in areas formerly regulated by USDA could well have a demonstration effect and provide Congress with proof that competition works. This, in turn, might provide the impetus necessary to eliminate all Federal milk price regulation.

Lower milk prices resulting from competition will not necessarily reduce milk producer income. Presently available economic evidence indicates that the super cooperatives are spending an inordinate amount of money to maintain their monopoly positions, money which would otherwise be passed on to their producer members. As the Justice Department economists observed with respect to AMPI:

> On net AMPI failed to raise producer income and in fact its producers on average appear to have suffered from the monopoly rather than being the recipients of monopoly gains . . . . To attain a consumer overcharge of $20,000,000 a monopolist may be willing to use $19,000,000 of resources. When this happens, the consumer overcharge is no longer simply a transfer away from consumers which benefits producers . . . . In the case of the AMPI monopoly, AMPI apparently underestimated the costs of monopolizing milk markets. Their consumer overcharges appear to have in fact not been simple transfers from consumers to producers but rather [dead weight losses] to society as a whole. [Eisenstat, et al, pp. 609, 617, 618.]

Simply stated, if competition is restored by Congress, even to the limited extent suggested here, the operation of free markets should benefit consumers, dairies, and milk producers alike. It might even reduce the general level of political corruption. ®

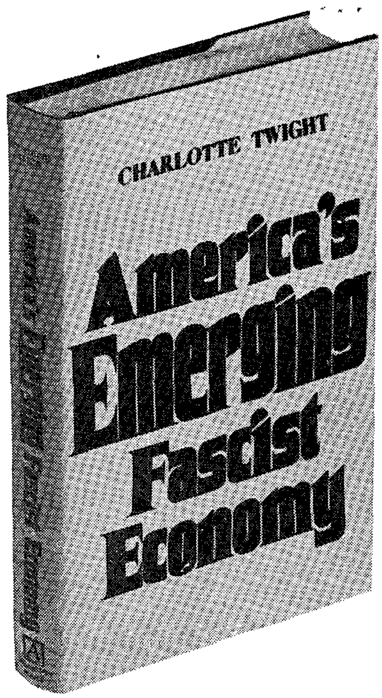
Is America turning fascist?

Is the United States turning fascist? Most Americans are angered by the charge, which in recent years has issued from leftist revolutionaries screaming "Fascist Amerika" at everyone who disagrees with them.

The irony, says this brilliant young writer, is that America *is* developing into a fascist state; but it is these same leftists who are pointing the way.

Realizing that this is a subject usually approached with more emotion than reason, Charlotte Twight first defines fascism. She describes its typical policies on inflation, wage and price controls, government licensing, cartels, production decrees, quantity and quality controls, labor, imports and exports, and national self-sufficiency. She then shows how similar policies are emerging in the United States, citing specific laws by which the government asserts economic powers parallel to fascist models.

Dr. Twight acknowledges that fascism differs from socialism and communism in that it relies, at least nominally, on capitalism. But it is a capitalism with more than a dash of collectivism, a capitalism far removed from traditional American private enterprise. This "capitalism" fast becomes a tool in the hands of the politicians and bureaucrats.



The fruits of fascism, says Dr. Twight, are a drastically reduced standard of living, increased potential for war (the inevitable results of fascism's international economic policies), and, above all, a psychology of individual dependence upon government in all realms of life. She warns that "Government licensing, government contracts, wage and price controls, manipulation of the money supply, rationing—all of these are overt mechanisms creating actual, tangible economic dependence. A more subtle consequence of fascism is to make people psychologically dependent on the government for their economic well-being. As a fascist government increasingly usurps the functions of private enterprise in providing such daily necessities of its citizens as health care, food, housing, energy, and insurance, the individual becomes acutely aware that his survival is dependent upon governmental decisions that he as an individual cannot significantly influence."

SIGNPOSTS ON THE ROAD TO FASCISM

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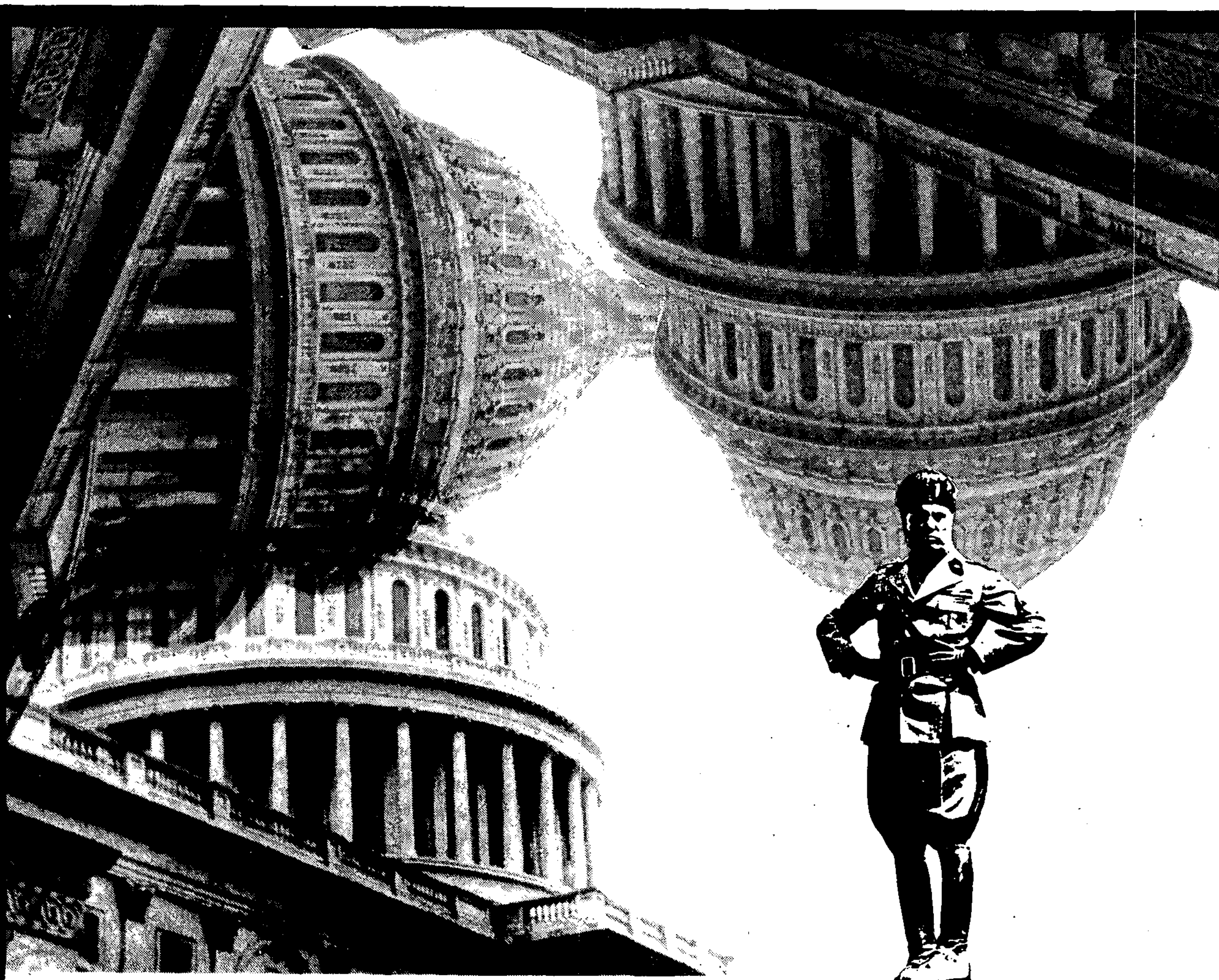

CONGRESS MOVES TOWARD FASCISM

CHARLOTTE TWIGHT

For years it has been explicit in the laws as well as the pronouncements of Federal officials that the U.S. government's goal is the central one of a fascist economy: to manipulate a nominally capitalist economy to accomplish the government's will. This approach dominates the Federal government's omnipresent statutory controls over American finance, commerce, industry, agriculture, and transportation.

A marked acceleration of America's fascist economic policies began during 1973 and 1974 with the passage of legislation that portends increasingly overt subordination of citizens' voluntary choices to the government's will. Vastly expanding the scope of Federal economic surveillance, newly enacted legislation explicitly asserts the government's power to monitor the entire production process and to issue reports specifying the "proper" supply and price of any commodity. Recent legislation also reveals unprecedented government aggressiveness in seizing an active role in the management and operation of traditionally private businesses. This article examines the laws that create this newly swollen governmental

Ms. Twight, who received her J.D. from the University of Washington School of Law, is a Seattle attorney and a lecturer in the School of Business Administration at the University of Washington. She is the author of America's Emerging Fascist Economy *(Arlington House, 1975), from which this article is excerpted.*