Forked-Tongued Washington Government

BY WALTER E. WILLIAMS

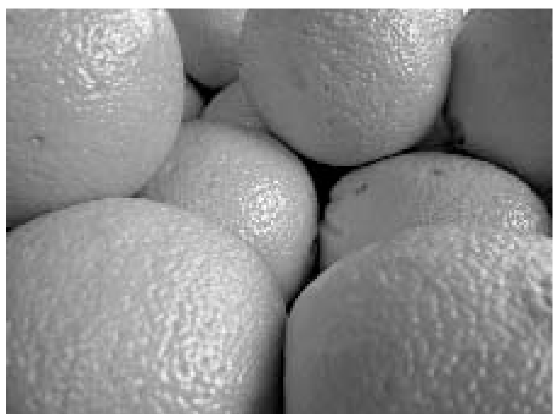
The Sherman Antitrust Act of 1890 was the first federal statute to limit cartels and monopolies and still forms the basis for most antitrust litigation by the Department of Justice.

The Act contains two important provisions. Section 1 outlaws contracts and conspiracies in restraint of trade. Section 2 prohibits monopolization and attempts to monopolize.

Most people have a knee-jerk response to monopoly and collusive agreements and condemn such behavior out of hand. Before making a broad condemnation, we might consider the behavior more generally. The Bible's book of Exodus gives us the Ten Commandments. The first two, and presumably most important, are: "Thou shalt have no other gods before me," and "Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth. Thou shalt not bow down thyself to them, nor serve them: for I the LORD thy God am a jealous God." These two commandments establish God as a monopoly and to reinforce the monopoly, there shall be no God-substitutes. I do not think that many would condemn Christianity on the basis of its monotheism.

Another area of monopoly and collusion is marriage. The marriage license is in fact a collusive monopoly contract between two persons that closes—or at least is supposed to close—further competition.

The monopolistic and collusive characteristics of religion and marriage emerge naturally and benefit society. Therefore, we are faced with the question of what kinds of monopoly and collusion we would wish to restrain. I would venture to suggest that government-coerced and -encouraged monopoly and collusion should be restrained. Moreover, if the Department of Justice were really serious about Sherman antitrust provisions, it would focus on Washington as the main source of collusion in restraint of trade.



Government-backed marketing boards control oranges and other crops.
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One of the most egregious examples of conspiracy and monopoly in the restraint of competition are Private Express Statutes. These are a set of civil and criminal federal laws that outlaw the delivery of first-class mail by all entities other than the U.S. Postal Service. As such they represent government coercion that bans peaceable, voluntary exchange in the delivery of first-class mail. Aside from the well-documented inefficiencies of the Postal Service, the postal monopoly should be condemned on that basis.

The U.S. Department of Agriculture (USDA) establishes fruit and vegetable marketing orders and milk marketing orders with the stated purpose of balancing the products' availability with an adequate return to producers and the needs of consumers. Federal marketing orders are locally administered by committees of producers. Initiated by industry and enforced by the USDA, they bind an entire industry in a geographical area.

For example, there's the Navel Orange Administration, in which growers get together and establish citrus production quotas in California and Arizona. Any citrus

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grower exceeding his market quota by bringing too much to market and threatening to lower prices faces fines and imprisonment. This collusion applies to nearly all commercially produced fruits and vegetables. The effect of market quotas is to generate prices that are higher than they would be without the government-backed collusion.

Mandated maximum quantities and/or minimum prices are surefire indicators of seller collusion in restraint of trade. An example of the latter is minimum wage law. The effect of a minimum wage is discriminating against low-skilled workers. What employer would find it profitable to pay the mandated wage of $7.25 to a worker capable of producing only $4 or $5 an hour?

The minimum wage can be used as a tool of collusion. For some activities low-skilled workers are a substitute for higher-skilled workers. Imagine that 100 yards of fencing could be produced per day either by employing three low-skilled workers at $13 each or one high-skilled worker at $38. A profit-motivated employer would hire the high-skilled worker because it's cheaper. If the high-skilled worker demanded $50 a day, the employer would replace him with the three low-skilled workers. But suppose the high-skilled worker could lobby Congress to enact a $20-a-day minimum wage in the fencing industry. Now using the three low-skilled workers would cost $60. Thus the probability of the high-skilled worker getting $50 would be greater because he has been able to use government to price his competition out of the market.

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The Davis-Bacon Act is a 1931 federal law that mandates that "prevailing wages" be paid on all federally financed or assisted construction projects. As such it is a union-supported super-minimum wage law. Its stated intention—as seen in the 1931 congressional testimony supporting the Act—was to price black workers out of the market. Representative Clayton Allgood of Alabama said, "Reference has been made to a contractor from Alabama who went to New York with bootleg labor. This is a fact. That contractor has cheap colored labor that he transports, and he puts them in cabins, and it is labor of that sort that is in competition with white labor throughout the country. This bill has merit, and with the extensive building program now being entered into, it is very important that we enact this measure."

Representative John J. Cochran of Missouri voiced similar sentiments, saying he had "received numerous complaints in recent months about southern contractors employing low-paid colored mechanics getting work and bringing the employees from the South." AFL President William Green made clear the unions' interests: "Colored labor is being sought to demoralize wage rates [in Tennessee]."

The Davis-Bacon Act remains on the books today. The political rhetoric in support of the Act has changed but its effects have not. It remains an ongoing collusion against lower-skilled, non-union construction workers.

Just about every cabinet-level federal agency enforces some kind of collusive restraint on competition. Without government support, collusion has a tendency to break down primarily because what is in the best interests of an individual colluding member is not necessarily in the best interests of other members. For example, it pays a member to cheat on the agreement by, say, shading his price a bit to get more business. The members who abide by the agreement will find themselves losing business, and before long they will start cheating. The cheating becomes infectious, and the collusion breaks down. But if a federal law fixes the terms of the collusion, then to violate the terms is not simply a violation of a gentlemen's agreement; it's also a violation of the law, with the possibility of fines and imprisonment. In other words, effective collusion needs some kind of enforcement technique. Most often it is the threat of sanctions for noncompliance.

The bottom-line reality is that collusive monopolistic restraints on competition are deemed illegal and hence prosecutable only if the seller does not first secure Washington's permission to rip off his fellow man.