

CHAPTER IV

BUSINESS AS A CONTINUATION OF POLITICS BY OTHER MEANS.

In his proxy fight against the proposed merger of Bethlehem Steel and Youngstown Sheet Tube, Eaton probably first developed his dislike and distrust of a certain breed of lawyer of whom the archetype was John Foster Dulles. The story of Eaton's unrelenting opposition to Dulles is sprinkled throughout this book and will not be dealt with separately.

It may be surmised, however, that the origin of Eaton's anti-^{to go to Dulles}pathy to John Foster Dulles goes back to his titanic battles against Wall Street for control of Republic Steel and to his experience in railroad financing. Dulles was the ultimate "Wall Street lawyer", being a senior partner in the great law firm of Sullivan and Cromwell. Eaton has other reasons for disliking Dulles and had said on one occasion that besides being the evil architect of "brinkmanship" he was a bad lawyer, an equally unforgivable fact. Also as Eaton said in an interview with John Bird (Toronto Daily Star, Feb. 17, 1959) "Dulles cost me a lot of money". Dulles lost the famous "death

sentence" case.

edit The Public Utility Holding Company Act of August 26, 1935 contained the hotly debated "death sentence" against useless non- operating corporations. This act was prompted by the abuse of some holding companies in the utility fields whereby control of a voting stock was retained, while the remainder of the securities were unloaded on the public. By a vertical pyramid of holding companies the percentage of investment by the manipulators could be trifling. It was ^{un}common, through the watering of stock and fictitious charges, for profits to be eaten up by the controllers.

The Public Utility Holding Company Act directed the Securities and Exchange Commission to limit each holding company to a single integrated system, corporate and geographic, and to require fair distribution of voting powers among security owners. Consumers of gas and electricity suffered under artificially created high rates. Many holding company directorates brought suit against the constitutionality of the law as did Eaton.

ne Act of August 26, 1935 This act was one of the most liberal economic reforms of the Roosevelt administration and was designed to protect the public against financial manipulators. Rates came down after integration took place; and, contrary to the widely circulated view of the opponents of the Act of 1935 that the new integration procedures would occasion dumping or forced liquidation of securities, destroying investment values, the opposite took place. "For, once they (the investors) receive the shares of the operating companies in place of the parent-company securities, the persistent discount on the latter disappears and the

aggregate value of what they own is materially improved." (From a report by the S.B.C. to the Sub-Committee on the Study of Monopoly Power, Serial No. 14, Part 2-B, p. 1469, Washington, 1950).

In this case, Eaton's interests were opposed to what was apparently a necessary reform. Eaton had millions at stake and the Act was upheld by a final court of appeal in spite of Dulles' confidence in its defeat.

Eaton's business ventures have brought him into bitter conflict with powerful Wall Street financiers and banking houses. It is interesting to trace the way in which lawyers representing his opponents in these business battles continued to be opposed in both business and politics by Eaton. For a man who continually preaches the necessary separation of business and politics, Eaton practices, in his own way, a curious wedding of the two. This is particularly borne out by his relationship to the lawyers who crossed him.

Eaton has a curious characteristic of once having decided who the "enemy" is, he rarely abandons the contest, although the struggle may take years. Yet, it is never simply a matter of revenge because of the ultimate connection of his campaigns with values and attitudes. It was in his fight with Bethlehem that Eaton first encountered Newton D. Baker, as the opposition lawyer. In 1932, this same Baker was the big hope, or to use that unconscious racist phrase, the "white hope" of a certain section of the Democratic convention. Baker was to be the compromise between F.D.R. and Al Smith. Eaton turned up in Chicago to join forces with James A. Farley and to obtain the nomination of Franklin D. Roosevelt. The critical group

was William A. McAdoo's California delegation and, with Eaton's powers of persuasion, this group came out for Roosevelt.

Then there is the case of Wendell Willkie who might have been a happier man had he not tangled with Cyrus. They had known each other from the early 1920's, since Willkie had been the lawyer-lobbyist for the Ohio Edison Company which provided the service for Eaton's Acadia Farms.

In 1939 the New York financial autocracy thought they had found the ideal candidate to defeat the hated F.D.R. Willkie was to appear as an alternative man of the people. He was then president of ~~a company called Commonwealth Southern Corporation which was a public utility holding company.~~ Eaton discovered that Commonwealth was about to buy 125,000 shares of common stock in its wholly owned Michigan subsidiary, Consumers Power Company, at \$28.25 per share, the book value. This was to enlarge Consumers equity so that it could float a \$28 million bond issue. Willkie had arranged the underwriting with the standard syndicate of New York investment bankers, the alleged "power elite" of finance. This was the classical technique - to avoid any ungentlemanly bidding - and the deal was approved by the SEC (Securities and Exchange Commission) and the Michigan Public Utilities Commission. The underwriters were to make \$500,000, a 'fair' profit. Eaton, who passionately believed in competitive bidding and was opposed to New York's monopoly, offered in writing to pay "substantially in excess of \$28.25 a share" for the Consumers stock. Eaton added a calculated fibe to the effect that Willkie had often complained that the public wasn't buying enough

utility stocks. Now Willkie was in a difficult position - to reject Eaton's offer was to indict his motives, to accept was to lose the alliance of the gentleman bankers of New York City.

Willkie decided on rejection and both sides went to the press to air their arguments. The result was total victory for Eaton. Willkie was forced to drop his deal. But even further, the SEC subsequently promulgated Rule U-50 establishing the principle of competitive bidding for all utility issues under their jurisdiction.

U.C. Willkie decided to take on a somewhat simpler task, that of becoming president.

But Eaton was not ready to relent. He wrote a pamphlet first published in the October 5, 1940 issue of the New York Post. This pamphlet "The Third Term Tradition" was an open support for Roosevelt's third term. All three Cleveland newspapers - the Plain Dealer, News and Press - came out for Willkie. Eaton wrote a public letter to Harold Ickes, Secretary of the Interior, which while unpublished, was much publicized. This letter suggested that Cleveland was badly in need of another newspaper. The three Cleveland papers were properly cautioned since Eaton's is never an idle threat. He could form a newspaper. They then decided Willkie was not such a good Republican candidate after all.

Finally, Willkie's political career died abruptly in the Wisconsin Primaries of 1944. It so happened that Eaton had a lot of friends in this state involved in such things as utilities, iron ore, shipping, etc. Willkie ran sixth in a field of six.

Then there was Robert A. Taft who first obstructed Eaton in

a key fact in the establishment of

the Cincinnati Union Terminal case, ~~which established~~ competitive bidding for the issuance of railroad securities. Taft was a U.S. Senator yet he hadn't relinquished his position as Chairman of the Finance Committee of the Terminal. Taft had told Eaton that his application for the \$12 million Cincinnati Union Terminal bond issue was "preposterous". Eaton finally forced ~~/~~ sealed bidding but his bid lost out to Lehman Brothers. The affair proved to be Taft's greatest error, for he was to come as close as it is possible to come to winning the nomination as the presidential candidate of the Republican Party. The marginal influence against him was mustered by Cyrus Eaton. But this was not the end of the struggle. In 1950, a congressional investigating committee uncovered the fact that Eaton had contributed \$30,000 towards the campaign of ~~/~~ State Auditor Joseph T. Ferguson to help defeat Taft's reelection to the Senate. This contribution was made in the name of John L. Lewis' Non-Partisan League.

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Further, in 1952, the Taft family, which already owned one of Cincinnati's three newspapers, attempted to seize control of the Enquirer, in a probate court sale. Eaton's Portsmouth Steel loaned the \$7,600,000 purchase price to the employees of the Enquirer, enabling them to outbid the Taft family. Eaton's company made \$250,000 in less than four months as a fee for this deal including common stock financing and sale of Enquirer debentures to the public. Now this deal bears analysis. Here again, Eaton appeared to act from a combination of motives - an advanced public and social morality which combined the prevention of a press monopoly and the

delivering of a newspaper to its employees - at the same time he defeats an old enemy - and finally makes a quarter of a million dollars, a lovely blend of public and private motives fulfilling themselves. Furthermore, ^{is questionable whether} the Enquirer wouldn't be in existence today since Taft would have merged it with his other paper.

Eaton's long-standing feud with Wall Street and its lawyers is described eloquently in his testimony before the House of Representatives Special Subcommittee on the Study of Monopoly Power, on Thursday, Nov. 10, 1949. But this testimony does not only concern his antipathy to these elements, it also illustrates his basic philosophy of business and his conception of how capitalism should work if it is to persist as an economic system.

"My name is Cyrus Eaton. My business address is Terminal Tower, Cleveland, Ohio, and my home address is Acadia Farms, Northfield, Ohio.

"For 45 years, I have been actively engaged in industry, farming and banking in Ohio. With each passing day, I have become more firmly convinced that economic progress and free competition are possible only when finance is the servant. Conversely, monopoly thrives and the public interest suffers when finance becomes the master of industry and agriculture.

"At no time in American history has the monopoly problem ever been so pressing as it is today. And there has never been such a concentration of finance in the hands of a few as there is now.

"The 'few', of course, are the 17 New York investment banking houses - First Boston Corporation, Morgan Stanley & Company, Kuhn

Loeb & Company, et al, that are under indictment by the United States Department of Justice for violating the anti-trust laws by conspiring to monopolize the securities business and stifle competition. Masterminding the strategy of the 17 are the top-flight Wall Street law firms, under the leadership of Sullivan and Cromwell. Linked in unholy alliance with the 17 are the Federal Securities and Exchange Commission (SEC) absolute arbiter of the Securities business, and the National Association of Securities Dealers (NASD) quasi-governmental puppet of the money monopoly.

"Let us pass over the modus operandi of the monopolists for the moment, and first examine the appalling effects their machinations have had on the American economy. None but the largest and strongest corporations can readily register securities with the SEC and get them cleared for offering to the general investor. Access to the capital markets has been practically denied to the medium sized and smaller companies.

"As the SEC caters to the 17 indicted New York banking houses and their corporate clients, so does the NASD. It is ironical to recall that the legislation which led to the creation of the SEC and the NASD, and which gave these agencies their present overpowering authority, was passed largely to clip the wings of the Wall Street brook that hatched the economic debacle of 1930. J.P. Morgan, after all, was the real villain of the Pecora investigation. And the Morgan dominated United Corporation was the epitome of the holding companies at their worst.

"How have the SEC and the NASD fallen into the hands of Wall

Street and the huge corporations? To begin with, Arthur H. Dean, a senior partner of Sullivan & Cromwell of No. 48 Wall Street, was one of those who assisted in the drafting of the Securities Act of 1933, the first of the series of bills passed to regulate the capital markets. He and his firm which is reputed to be the largest in the United States, have maintained close relations with the SEC since its creation, and theirs is the dominating influence on the Commission.

"The almost endless procession of lawyers from positions of importance in the SEC to lucrative posts in private practice also helps to account for the Commission's cooperative attitude toward the charmed Wall Street circle. The case of Judge John J. Burns, the SEC's first general counsel, is illustrative. After 3 years in that capacity, he left the Commission to become general counsel of the Morgan's United Corporation. A more recent example is Edmond M. Hanrahan, who has just retired from the chairmanship of the SEC, and is reported to be returning to his old Wall Street law firm of Sullivan, Donovan & Keenahan to capitalize on his relations with the Commission. Under his leadership, the SEC gained the reputation of being especially friendly to Wall Street.

"The S.E.C.'s chief supporters are naturally the Wall Street lawyers who have made a fortune out of their practice before the Commission. The SEC has pointed with pride to the handsome compliments paid it by a task force report on regulatory commissions of the Hoover Commission on Organization of the Executive Branch of the Government. What the SEC has not called attention to is that the

report in question was prepared under the direction of a lawyer from the Wall Street firm of Cravath, Swaine & Moore, counsel for Kuhn, Loeb and countless of the large corporations.

"Faced with the choice of joining the NASD or going out of business, some 2,700 dealers have become members, and are assessed in the neighbourhood of half a million dollars a year to support an association which tells them how to run their business, whether they like it or not. And an overwhelming number of them do not.

"The NASD, with its organization by geographical districts, its elaborate system of committees, might give the surface appearance of being a democratic body, but it most emphatically is not. Wallace Fulton, salaried executive director, who runs the day-to-day business of the NASD from his Washington office, is the handpicked hireling of the 17 indicted Wall Street houses. They also have their direct representatives on the board of governors, and exercise obvious influence over the rest of the governors, coming as they do mainly from securities firms that depend for a livelihood on crumbs of business from the Wall Street table. In the same way, the national and district committees are also controlled from New York.

"The Justice Department complaint in the anti-trust suit against the 17 New York houses outlines the way this group dominates the Nation's corporate financing by dividing the business up among one another and their satellites throughout the Nation. Unbelievable as it may seem, however, the 17 houses even had a hand in determining the form of the suit against themselves.

"Head of the Anti-trust Division of the Department of Justice in

1947, when the suit was filed, was John W. Sonnett, who came to the Government from the Wall Street law firm of Cahill, Gordon, Zachry & Reindel, counsel then as now for investment banking houses and corporations. Sonnett sat on the suit as long as he could and, when finally ordered from above to proceed with it, toned it down as much as he could. A short time later Sonnett returned to his old firm, to participate in the defense of the 17 houses against whom he had filed suit."

Eaton elaborated, "Then, of course, Mr. Chairman, you may not want me to say this, but the lawyers (laughter)....

* Chairman: You are uninhibited; go ahead.

Eaton:play a very important part in this.

Chairman: Well, tell us about that, if you wish.

Eaton: New York has a half a dozen law firms manned by people of great intelligence and great energy, and they like to practice before governmental bodies, and they like to represent big corporations, and they like to supervise the financing of these great corporations, and there is the club that is the real one. Those tremendous law firms - I do not know how many stories of great buildings one of them occupy - are big business in the biggest possible way.

Chairman: Do you care to name names?

Eaton: Yes.

Chairman: Go ahead.

Eaton: I would put Sullivan & Cromwell....

Chairman: Is that the firm Mr. Dulles is connected with?

Eaton: He is the senior partner.

* Congressman Emmanuel Celler of New York

* Keating: They are the attorneys for Lehman Brothers, are they not?

Eaton: There is a great deal of pressure that is exerted, not in a rough way, but just automatically.

Chairman: In other words, a gentle reminder is given here and there, and that is sufficient.

Eaton: Oh, yes, or an invitation of lunch and a friendly discussion of the problem settles it. And there is the terrific working together of all those interests; the combined impact on the American economy is tremendous.

Now you asked me for names, and I gave you one firm. If you would like another, perhaps it should be one headed by a good Democrat: Davis, Polk, Wardwell, Sunderland & Kiendl. Now, that great firm is counsel for Morgan, Stanley; counsel for Harriman, Ripley. There are a number of others that they represent. Davis, Polk is rather strongly dedicated to Morgan, Stanley because of the beautiful business that Morgan, Stanley automatically heads, such as du Pont, General Motors, Standard Oil of New Jersey, United States Steel Corporation, and other fine businesses of that character.

Eaton: Now, as I mentioned in my written statement, one of their young men, Mr. Sonnett, used to be head of the anti-trust Division of the Department of Justice. He was with the CPhill firm originally, before he entered government service in 1941, in the Office of the United States Attorney in New York. He went from there to the Navy Department, during the tenure of the late Mr. Forrestal. (You will recall that Mr. Forrestal left the presidency of Dillon, Read when he joined the Government.) Finally Mr. Sonnett became head of the

* *Confirmation Re: B. Keating of N.Y.C.*

Anti-trust Division, and while he was there he had the unpleasant task of filing this bill against the investment bankers. I think it was a very unpleasant task.

I think he delayed on it until from higher up he was ordered to proceed with it. I think he put it (on the mildest form that it could be put in. Now of course, he is back in the Cahill firm; and while he may not be participating personally, I should think his partners would be seeking his advice as to how to thwart the efforts of the Department of Justice to break up this community of interest.

Keating: Well, there are enough lawyers in the Department of Justice so that there is not any danger of running them out of breath. Did Mr. Sonnett leave the Department and immediately go into this firm that is representing defendants in this action?

Eaton: Yes.

Chairman: Did he come from that firm originally?

Eaton: He came from that firm originally and was associated with Mr. Forrestal in the war effort.

Chairman: And then went back to his firm after he had served -

Eaton: Then he went from there to the Department of Justice.

Keating: You mean he served in the Navy or as a civilian?

Eaton: Oh now, he was a legal advisor to the Navy Department.

Keating: From there he went to the Department of Justice?

Eaton: Yes.

Keating: And from the Justice Department he went into this big New York law firm?

Eaton: He went back to this place where he came from.

Keating: Where he was. And they are now defending some of the companies named in the suit, which he prepared while he was in the Department of Justice?

Eaton: That is right. The result is that you have gotten a closely knit group of underwriters in New York. Now, they have been indicted by the Department of Justice, 17 of them.

Chairman: Name them at this point, will you, Mr. Eaton.

Eaton: Yes. They are: Morgan, Stanley & Company, Kuhn Loeb & Company, Eastman Dillon & Company, Kidder Peabody & Company, Goldman Sachs & Company, Lehman Brothers, Smith Barney & Co., Globe Vorgan & Co., White Weld & Co., Drexel & Co., Partnerships, First Boston Corporation, Dillon Read & Company, Blyth & Company, Harriman Ripley & Company, Stone & Webster Securities Corporation, Harris Hall & Company, Union Securities Corporation. ✓

Eaton: There is a strong hint that there is a very close community of interest between these underwriting houses, their law firms, the big banks, and the insurance companies.

Chairman: It is not only a close hint; it is an actual naming.

Eaton: Yes.

Chairman: And they name the banking outfits which are favored by the insurance companies in effectuating loans which are privately placed, in contradistinction to loans which are publicly offered under the Registration Act and the SEC.

Eaton: There is a very close community of interest. They live in the same community; they attend the same luncheon clubs; they play golf together over the week end; and that leads to a community of

interest that is very clumsy and friendly; and they would not be human if, when an insurance company president is on a bank board, for instance, or on the board of a great corporation, the officers and directors of the interlocking organizations did not work together against the outside world.

Chairman: Before you leave that, I would like to know more about this combination or closely knit together banking group that is not actually doing underwriting through these investment companies. I would like you to tell us more about this combination.

Eaton: There is a gentlemen's understanding among these houses, and it is so close that the Department of Justice claims it is a conspiracy, whereby, if one of them heads a piece of business, the others automatically come in for a given percentage. For instance, if Morgan, Stanley heads the business, Kuhn, Loeb will almost invariably come next with five percent of the business, or some other percentage, right down the line. If Kuhn, Loeb heads the business, Morgan, Stanley is next in line, and the other 15 are almost invariably in on given proportions. For example, look at some issues that are not subject to competitive bidding. Take financing done for du Pont or General Motors or the Standard Oil of New Jersey or the United States Steel Corporation and you will find all 17 of these houses in each one of these issues in about the same proportions.

Now, if that should occur in any other kind of business, the Department of Justice would be on their necks in a second. If an oil company, say Standard Oil of New Jersey, got a big order for gasoline and said, "Fine, we will take in the Texas Company and the Gulf Oil

very much

Company and the Sinclair Company and the Cities Service Company, each one for a given proportion,⁰ or if it was Gulf Oil who got the business and they said, ⁰"We will take all of you other oil companies in, in the same proportion,⁰ there would be such an uproar in the country that it would not be permitted to last five minutes.

But because it is in finance, which is something rather far removed from the average man and something from which Washington feels somewhat removed, it passes without much of a holler.

Chairman: Would you say that these companion investment houses - companion to individual banks - receive a great deal of aid and comfort through financial loans from these particular banks?

Eaton: They get the very hearty support of the big banks for a good many reasons. The bank hopes the company whose securities are being sold will deposit its money with the bank. The bank hopes in the case of a stock issue that it will get the transfer agency, or the registrarship or, if it is a bond issue, the bank wants to act as trustee.

Then Mr. Eaton said, "I just want to sum up, if you will give me one minute: I think the Department of Justice ought to be vigorous in its breaking up of the attempted community of interest among investment bankers in New York. There is, I think the further necessity, that you go into the SEC and its powers and give them a mandate that will permit American business to survive. There is one other institution that I have not mentioned that I wanted to say a word about, and that is one called the NASD; that is the National Association of Securities Dealers. It is the only Government-created monopoly in

the land. Now I am sure it was slipped over on Congress. I was talking to some members of the House Interstate Commerce Committee, and they would not believe me when I said that Congress created it, created an institution that compelled an investment dealer to belong to it and pay toll to it. If he did not, he was put out of business. There is such an organization known as the National Association of Securities Dealers. They make agreements among themselves. Now as soon as you create a governmental agency or concern of that kind, the able Wall Street people, with the smartest lawyers in the world and with all the money in the world, come down and take it over. This NASD has its headquarters in Washington, but the man who runs it is elected in New York, and it is his business to boss the 2,700 security houses that were dragooned into going into it."

Chairman: Would you say that this association of Securities Dealers, under the Maloney Act, aids and abets the combination that is now subject of an anti-trust suit in New York?

Eaton: It is a puppet of that group. They control it, they direct it, they use it to discipline someone they do not like, and to enforce rules that maintain the monopoly.

Chairman: Has the Government got a hand in the operations of this association?

Eaton: No. The SEC can reverse their decisions or review them.

Chairman: Have they ever reversed a decision?

Eaton: Yes, they have, once or twice. The NASD has a prowling crowd of ferrets, going into their competitors' books and seeing who his customers are.

Keating: And the head of it is a man actively engaged in marketing securities?

Eaton: No, the head, the paid head, is a man in Washington named Fulton. The Governors are all fellows who are selling securities.

Keating: And they have the right to go to Rochester, New York and look at the books of some security dealer there, and then discuss it at a board meeting?

Eaton: Sure and discuss his customers and his practices, and if he is not doing just what they like, threaten him with disgrace and expulsion. It is the most un-American institution we have.

Eaton finally summed up his views on the capitalist system:

"May I just say one final word? I would like to see every American a capitalist. I would like to see the farmer have an investment in industry. I would like to see labor have such an investment. I think the greatest enemies of the capitalistic system are, first, Wall Street, the next, these great bureaus here in Washington that are set up to police business. That costs the taxpayer directly \$7.5 billion a year, and costs industry another \$7.5 billion to hire lawyers and experts to appear before them.

"I think the hope of preserving our capitalistic system lies in the farmer and in labor, and when those two groups realize that in the aggregate they are the ones whose means are what make the insurance companies and the banks, and they give intelligent leadership to their people on the side of investment, then I think you can feel that capitalistic system and private enterprise is something that will last. But it will not last long if you get on the one side of

tremendous concentration in New York, and try to offset it just by a tremendous concentration in Washington. They are both wrong."

Here is Cyrus Eaton's credo of capitalism, the view of an enlightened capitalist who is also a realist or perhaps more accurately, a pragmatist. In spite of oneself, business and politics are inevitably mixed. Consistent with his business philosophy are his views on national and international affairs in the social and political realm. Co-existence of capital and labour logically extends to co-existence of Capitalism and Communism. Unreality concerning the enemy within or the enemy without is to be equally castigated.

2. Eaton never
If Eaton can be believed, the bureaucracies of giant business and the apparatus of big government tend to interchange personnel, eventually to merge and to virtually become one Leviathan that inhibits and suppresses the freedom of all but the biggest fish.

Chapter V

Chapter V
This should come ahead of business chapters.

p 89 Fortune is no friend! Why not review K-F article in this light

p. 91 Financial Post cited as source of quote about FBI. Why not quote original source?

Reference to John Barlow: this article not previously mentioned, has been liberally used in preceding chapters. Look up Barlow article, Nation Jan 3, 1959

p 92 Reference to income tax typical of pitfalls of using material written contemporarily. Mention of winning tax case is tossed in usually at end

p 96 Look up Jan 16, 1958 Am + Fin Assoc piece: CE on Foreign Offense & this the original source?