

# **The Sherman Antitrust Act and the Danbury Hatter Case**

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On February 3, 1908, The New York Times reported that the United States Supreme Court had banned boycotts by trade unions. The plaintiff in the case, which became known as the Danbury Hatters' case, was a hat manufacturer, Dietrich Loewe & Co., of Danbury, Connecticut, who had sued Martin Lawlor and over 200 other members of a union, the United Hatters of America, for damages under section 7 of the Sherman Antitrust Act passed by Congress in 1890. The New York Times described the Court's ruling as being

The most damaging blow organized labor has received, and carried to its full import, means that hereafter any union which undertakes a boycott renders every one of its members personally liable for threefold damages to the firm or individual boycotted.<sup>1</sup>

The Court's ruling was a serious setback for organized labor as the boycott was an important and effective weapon used by labor unions to win concessions from employers.

What is remarkable about the Court's ruling was that the Sherman Antitrust Act was found to be applicable to certain activities of labor unions. At first glance, the Court's ruling seems an anomaly. If the definition of a "trust" is "any aggregation of capital in corporate hands, so large as to be an important factor in any branch of industry,"<sup>2</sup> then how could a law that was, according to its title, meant to be anti-*trust* (i.e., against trusts), have any relevance to labor unions? Was the Court's ruling a travesty of justice rendered by a Court that was biased against labor? Did the Court abuse its authority by taking the law into an area for which

the law was not intended? Did the Court arbitrarily stretch an act of Congress that seemingly was intended to outlaw monopolies in order to punish organized labor? Or was the Court's decision consistent with the intent of the antitrust act, even though labor unions were not trusts? Implicit in these questions is a much broader and fundamental issue: Did the United States Supreme Court, under the guise of judicial review, usurp the authority of Congress and thereby upset the balance of power between the legislative and judicial branches of government, by broadening the scope of the Sherman Antitrust Act to include boycotts by labor organizations, although the boycott was not specifically proscribed by Congress in the statute?

Before these questions can be answered, the text of Sherman Antitrust Act must first be discussed. This act, which was signed into law by President Benjamin Harrison on July 2, 1890, consists of eight sections.

Section 1 states that

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

Section 3 states that

Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce ... is hereby illegal.

Section 7 states that

Any person who shall be injured in his business or property by any other person or

corporation, by reason of anything forbidden or declared unlawful by this Act, may sue therefore in any circuit court of the United States ... and shall recovery threefold the damages by him sustained, and the costs of suit, including a reasonable attorney fee.

Section 8 states

That the word "person" or "persons" ... shall be deemed to include corporations and associations existing under or authorized by the laws of any of the Territories, the laws of any state, or the laws of any foreign country.

Section 2, 4, 5 and 6 set forth the punishment for those persons who are deemed guilty of violating the act and establishes the jurisdiction of the federal courts "to prevent and restrain violations of this Act." Nowhere does this act specifically outlaw boycotts, trade union activity or labor organizations, nor are there any other references to labor. Yet terms such as "monopolies," "trust," "trade" and "commerce" are specifically cited in the act, creating the impression that the act targeted certain business practices that had no relevance to trade unions, which are not businesses.<sup>3</sup>

Nevertheless, the United States Supreme Court's ruling was unequivocal, emphatic and unanimous. In the Court's opinion, which was delivered by the Chief Justice, Melville W. Fuller, a boycott was found to be a "combination in restraint of commerce," illegal under the Sherman Antitrust Act, and therefore the defendants were liable for threefold damages under section 7 of the act. Fuller cited the first, second, and seventh sections of the act and then concluded that

In our opinion, the combination described

**[the boycott against the plaintiff by the defendants] is a combination in restraint of trade or commerce among the several States in the sense in which those words are used in the act ....<sup>4</sup>**

**Fuller explained how the boycott constituted a restrain in trade:**

**The combination charged [fell] within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination impose[d] ....<sup>5</sup>**

**To show that the boycott was not a Constitutionally protected right, and to provide further rationale for why the defendants should be held liable for damages, Fuller quoted Associate Supreme Court Justice Oliver Wendell Holmes, who, according to Fuller, said:**

**When the acts consist of making a combination calculated to cause temporal damage, the power to punish such acts, when done maliciously, cannot be denied .... The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by the law.<sup>6</sup>**

**Thus, to Fuller, the boycott was the same as a “criminal plot,” and as such did not warrant the protection of the Constitution, and that therefore the state had a right and duty to impose sanctions.**

**As a “combination in restraint of trade,” the boycott, according to Court, was subject to the provisions of the Sherman Antitrust Act. The Court determined that**

**Any combination whatever to secure action which essentially obstructs the free flow of commerce between the states, or restricts, in that regard, the**

liberty of a trader to engage in business, is within the inhibition of the anti-trust act of July 2, 1890 against combinations “in restraint of trade or commerce among the several states.”<sup>7</sup>

The Court also rejected the argument that the act did not apply to the defendants because they were not engaged in interstate commerce. In his opinion, Fuller wrote:

Nor can the act in question be held inapplicable because defendants were not themselves engaged in interstate commerce. The act made no distinction between classes. It provided that “every” contract, combination, or conspiracy in restraint of trade was illegal.<sup>8</sup>

Fuller further asserted that Congress had intended to include labor organizations under the provisions of the act.

The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act, and that all of these efforts failed, so that the act remained as we have it before us.<sup>9</sup>

Indeed, it was obvious to Fuller that the act was meant to apply to combinations of laborers.

It is true this statute has not been much expounded by judges, but, as it seems to me, its meaning, as far as it related to the sort of combinations to which it is to apply, is manifest, and that it includes combinations which are composed of laborers acting in the interest of labor.<sup>10</sup>

The Court in particular deplored the tactics employed by the United Hatters and the American Federation of Labor in their boycott of Loewe’s business. To better understand the Court’s ire toward the defendants, and

to shed light on the intensity of the conflict, and how the case finally came before the Supreme Court, a synopsis of the events leading up to the litigation is necessary. During the summer of 1902, United Hatters' president John Moffitt asked Dietrich E. Loewe, owner of a hat factory located in Danbury, Connecticut, to recognize the union and put its label on all its hats. If Loewe refused, Moffitt warned, the union would place his firm on the AF of L boycott list. Loewe was prepared to counter Moffitt's threats. With his friend Charles H. Merritt, another Danbury nonunion hat manufacturer, and Merritt's son Walter Gordon, Loewe had organized the American Anti-Boycott Association and solicited pledges of support totaling \$20,000. So buttressed, Loewe told Moffitt he would not budge. On August 20, 1902, the United Hatters called on Loewe's men to strike. All but ten turned out, union and nonunion alike. The struggle was on.

After several months, Loewe assembled a shop crew and resumed producing hats. Now it was time for the boycott. To legitimate their campaign, the hatters put Loewe on the AF of L list of companies "We Don't Patronize." Then the union began to strike at Loewe's distribution network. After obtaining a list of Loewe's orders, the hatters systematically set out to dissuade retailers and wholesalers from carrying Loewe's hats. Wherever Loewe's hats were sold, an agent of the United Hatters appeared. In Richmond, Virginia, for example, two hatters spent "several weeks" to get the local trade and labor council to put a retailer, T. D. Stokes and Company, on the unfair list.

On the West coast, the San Francisco labor council passed a resolution on July 3, 1903, in response to an appeal by the hatters' union:

Union firms do not usually patronize retail shops who buy from unfair jobbing houses or manufacturers. Under these circumstances, all friends of organized labor, and those desiring the patronage of organized workers, will not buy goods from Triest and Co....

The hatters' tactics hurt Loewe; Loewe lost more than \$33,000 in 1902 and 1903, but would not surrender. Instead he turned to Daniel Davenport, legal consultant to the American Anti-Boycott Association. Davenport developed a legal strategy based on the theory that the Sherman Antitrust Act, which stated that

Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal,

applied to the labor boycott. Davenport introduced another wrinkle: he argued that the individual members of the United Hatters should be held liable for damaging Loewe's business, whether or not they participated in any way in the strike, boycott, or even the decision to boycott. Merritt found 248 hatters who owned homes or had bank accounts. Under a Connecticut statute, Loewe could attach without notice the real and personal property of the men he accused of injuring him. On September 13, 1903, Merritt gave his list to Sheriff Peter Doolan of Fairfield County, who served papers on the town clerk of Danbury and several banks. At the same time, Loewe filed suit in the circuit court for the District of



Connecticut asking for treble damages under the Sherman Act.

Because Loewe's suit struck at the AF of L's organizing strategy, the AF of L helped formulate the legal defense. Counsel for the defense argued in circuit court that the boycott did not come within the scope of the Sherman Act, which was aimed at trusts, not combinations of laborers. Furthermore, they argued,

The character of the combination must be determined by its designs, means, and effect. The design is to unionize the plaintiff's factory.

The district court did not render judgment on the hatters' defense for over three years. On December 7, 1906, District Court Judge James P. Platt rejected Daniel Davenport's novel arguments:

It is not perceived that the Supreme Court has as yet so broadened the interpretation of the Sherman act that it will fit such an order of facts as this complaint presents. What it may do, if the matter comes before it, is, in my judgment, very uncertain.<sup>11</sup>

Davenport filed an appeal taro the circuit court of appeals. The issue before the appeals court had been identified by Judge Platt: did the Sherman Act apply to labor boycotts or not? Let the Supreme Court decide, the appeals court ruled. The case was argued before the Supreme Court on December 4 and 5, 1907, and decided on February 3, 1908.<sup>12</sup>

The Supreme Court obviously agreed with Davenport's argument that the boycott constituted an illegal combination in restraint of trade under the Sherman Act.

In his opinion for the Court, Chief Justice Fuller also sharply

criticized the tactics employed by the defendants in pushing the boycott. In a stinging pronouncement oozing with self-righteous indignation, Fuller charged the United Hatters of North America

... with the intent ... to control the employment of labor in and operation of said factories ... in a manner extremely onerous and distasteful to such owners, and to carry out such scheme, effort, and purpose by restraining and destroying the interstate trade and commerce of such manufacturers by means of intimidation of and threats made to such manufacturers and their customers in their product, and their customers, using therefore all the powerful means at their command as aforesaid, until such time as, from the damage and loss of business resulting therefrom, the said manufacturers should yield to the said demand to unionize their factories.<sup>13</sup>

Fuller also incorporated into his opinion substantial portions of Loewe's complaint, which included the following:

... the defendants ... [intended] ... to cause by means of threats and coercion, and without warning or information to the plaintiffs, the concerted and simultaneous withdrawal of all the makers and finishers of hats then working for them, who were not members of their said combination, the United Hatters of North America. ...<sup>14</sup>

Thus, according to the Supreme Court, the boycott was a concerted scheme by the hatters' union to force the manufacturer, through unlawful means, to accept the unionization of the work force or suffer major economic loss.

Not everyone agreed with the Supreme Court's rationale. Samuel

Gompers, leader of the American Federation of Labor, felt that unions should be exempt for the Sherman Act on the grounds that a labor union was not a trust. In November 1907, Gompers said:

The labor union is not a trust. None of its achievements in behalf of its members – and society at large – can properly be confounded with the pernicious and selfish activities of the illegal trust. A trust, even at its best, is an organization of a few to monopolize the production and control of the distribution of a material product of some kind. The voluntary association of workers for mutual benefit and assistance is essentially different.... There cannot be a trust in something that is not produced.<sup>15</sup>

Richard Olney, the United States Attorney General during the Pullman Strike, felt that the Sherman Act should not be applied against labor. On May 12, 1893, Olney wrote that to employ the act would unfairly place

The whole power of the federal government on one side of a civil controversy, of doubtful merits, between the employers of Labor on one hand and the employed on the other.<sup>16</sup>

Olney was not responsible for introducing the Sherman Act into the Pullman strike. President Theodore Roosevelt disapproved of the Sherman Act because what it did was “forbid all combinations.”<sup>17</sup>

However, the federal courts did not share these concerns. In a series of cases the courts had ruled that the Sherman Act was applicable to labor organizations found to be obstructing interstate commerce. In United States v. Workingmen’s Amalgamated Council, 54 Fed. 994 (C.C.E.D. La. 1893), District Judge Edward C. Billings issued a temporary injunction on

the ground that the strike in this case violated the Sherman Act. While conceding that Congress had been moved to enact the antitrust laws by “the evils of massed capital,” he nevertheless held that, in the course of the debate, “the subject had so broadened in the minds of the legislators” that they had decided to interdict “every contract or combination in the form of trust, or otherwise in restraint of trade or commerce,” whether organized by businessmen or laborers. In order to show that the strike violated the Sherman Act, Billings had to conclude that it was a “combination ... in restraint of trade.”<sup>18</sup> In United States v. Debs, 64 Fed. 724 (C.C.N.D. Ill. 1894), Judge William A. Woods found that the Sherman Act prohibited conspiracies to injure or restrain interstate commerce. In an apparent rhetorical question, Woods asked why the Act should “not be construed to embrace all conspiracies which shall be contrived with intent, or of which the necessary or probable effect shall be, to restrain hinder, interrupt or destroy interstate colmmervice?”<sup>19</sup> In United States v. Elliott, 62 Fed. 801, 803 (C.C.E.D. 1894), Judge Amos M. Thayer issued a preliminary injunction against the officers of a union and used Billings’ decision as authority for his interpretation of the Sherman Act.<sup>20</sup> A few weeks later in Elliott, Judge Philips explained that in the Sherman Act, “the term ‘restraint of commerce’ was used in its ordinary, business understanding and acceptance.” He then proceeded to give a literal definition of “restraint,” and concluded that it justified the injunction.<sup>21</sup> In Thomas v. Cincinnati, N.O. & T.P. Ry., 62 Fed. 803 (C.C.S.D. Ohio 1894), a private suit turning on

whether a strike leader had unlawfully interfered with a receiver appointed by the court to administer the railroad, Judge William Howard Taft held the interference unlawful on several grounds. Although he seemed to regard the Sherman Act violation as the least important of these grounds, he did not hesitate to cite the Workingmen's Council decision in support of his holding or to allude to the fact that a number of judges had followed Billings' decision.<sup>22</sup> In a case involving strikers' activities in California, Re Grand Jury, 62 Fed. 840 (D.C.N.D. Ca. 1894), Judge William W. Morrow ruled that "Any combination or conspiracy on the part of any class of men who by violence and intimidation prevent the passage of railroad trains engaged in interstate commerce" was in violation of the Sherman Act.<sup>23</sup> Morrow also asserted that the Fifth Circuit Court of Appeals had affirmed this view.<sup>24</sup>

And in a case that came before the court in the District of Columbia, Bucks Stove & Range Co., v. American Federation of Labor et al, 35 Wash. Law Rep, 797, Judge Ashley M. Gould of the Supreme Court of the District of Columbia issued, on December 18, 1907, an injunction prohibiting the AF of L from placing the name of a firm on its "We Don't Patronize" list and ruled that the actions of the defendants constituted an illegal conspiracy, as they interfered, without justifiable cause, with the freedom of the plaintiff and customers to buy and sell.<sup>25</sup>

The judiciary's hostility toward the boycott as a trade union weapon may have been due in part to the nature of the boycott itself. In a strike,

workers cut off the supply of labor from an employer, and thus deprive the employer, at least temporarily, of the power to produce. The employer, however, may have little to fear from a strike if the workers are not thoroughly organized and if other workers are available to replace the strikers.<sup>26</sup>

A boycott is entirely different. Unlike a strike, which involves two parties, the employer and the workers, a boycott draws into the dispute third parties who are persuaded to take sides in the struggle. Technically a boycott is

An organized effort to withdraw and induce others to withdraw from social or business relations with another.<sup>27</sup>

A boycott may include coercive measures to gain the cooperation and support of one or more third parties. In a labor dispute a boycott is

A combination of workers who cease all dealings with another, an employer or, at times a fellow worker, and, usually, also induce or coerce third parties to cease such dealings, the purpose being to persuade or force such others to comply with some demand or to punish that [third-party] for non-compliance in the past.<sup>28</sup>

There are different kinds of boycotts, and employers as well as workers engage in boycotts. There are two kinds of employers' boycotts: those waged against other firms or institutions which show too favorable an attitude toward labor, and those directed against who are perceived to be troublesome workers.<sup>29</sup> The latter is also known as a blacklist. An example of the first type of boycott occurred in the Lincoln Farm

Association case. This association was formed for the purpose of securing a Memorial National Park in commemoration of Abraham Lincoln. Samuel Gompers, president of the AF of L, was made one of the members of the Board of Trustees, and the union label was used on the association's printing. Several members of the National Association of Manufacturers were asked to give contributions. The National Foundry Association, the Metal' Trades' Association and the Board of Directors of the NAM thereupon passed a vigorous resolution objecting to the apparent favoritism shown to organized labor, and requested their members to refuse funds until the alleged favoritism ceased. Letters were also sent by John Kirby, Jr., afterwards president of the NAM, and others, to the Memorial Committee, protesting against the label, "the red emblem of anarchy," and stating that he would not only refuse to subscribe as long as the present attitude was maintained, but that he would use all his influence against an unrighteous and infamous proposal." The union label finally disappeared from the letterhead of the Association."<sup>30</sup>

The other type of employer boycott, the blacklist, is

An agreement of employers to refuse employment to certain workmen obnoxious to them, generally on account of their activities in behalf of labor.<sup>31</sup>

There are many cases in which workers are refused employment or are suddenly discharged as a result of the secret use of this weapon.<sup>32</sup> In the garment makers' trade it was asserted that the blacklist was used in very many instances, and that a card index system for tracing "undesirable'

employees was used by one of the employers' associations.<sup>33</sup> An official of one of the railroad unions wrote: "There are thousands of instances of blacklisting, far too numerous to specify."<sup>34</sup>

There are two types of boycotts employed by workers as well, the positive boycott and the boycott proper. The positive boycott generally takes the form of the "unfair" or "We don't Patronize" list. The unfair list is a list of those firms, which, from the standpoint of trade unionists, are unfair to labor. The list is published for the most part in trade union periodicals under the caption, "Unfair" or "We Don't Patronize," or posted at trade union headquarters. The publication of this list in the papers of one trade often leads through "courtesy" to its publication in other trade journals. It was the AF of L's "Unfair" or "We Don't Patronize" that was decried by the Supreme Court in the Danbury Hatters' case.

The boycott proper includes primary secondary and compound boycotts. A primary boycott is a simple combination of persons to suspend dealings with a party involving no attempt to persuade or coerce third parties to suspend dealings also. Thus, if workers in one industry go on strike against a firm and agree to refuse to purchase any product from the firm, without endeavoring to persuade others to do likewise, a primary boycott is the result.

A secondary boycott is a combination of workers to induce or persuade third parties to cease business relations with those against whom there is a grievance. A compound boycott appears when the



workers use coercive and intimidating measures, as distinguished from mere persuasive measures in preventing third parties from dealing with the boycotted firms.

Compound boycotts are of two kinds – those involving threats of pecuniary injury to the parties approached, and those involving threats of actual physical force and violence.

The primary, secondary and compound forms of the positive boycott could be directed against a fellow worker or against an employer of labor. If this weapon is employed against another worker it is sometimes called a labor boycott. This form generally appears when a laborer refused to join a labor organization and the member of such an organization endeavor to induce or coerce the employer, through threats of a strike, to discharge the non-unionist unless he allies himself with them. At times efforts are made to prevent storekeepers from selling to such “scabs.”

There are three important points of attack against a boycotted employer in the use of the secondary and compound boycott. An endeavor is often made to boycott the employer through inducing or coercing his employees to quit work for him. One of the weapons employed in carrying out this form is picketing.

Second, the workers often attack the source of supply and try to induce or coerce wholesalers, jobbers, manufacturers or mining companies, as the case may be, to refuse to sell any further supplies to the employer under the ban. The latter method is used most extensively in the

building trades where the products disposed of were not finally sold to the general public, but are used in the construction of buildings.

The third and generally most important method of injury is the inducing or coercing customers to withdraw their patronage from the objectionable firm. The arguments used to obtain the cooperation of those third parties could be merely persuasive or coercive in nature. The employee could be urged simply in the interest of his class to quit his job in order to prevent the employer from winning the dispute. He could be threatened with violence or he could be inconvenienced in the matter of securing a boarding place, or obtaining provisions, on account of the threat of the workers to refuse to patronize those harboring or selling to him.

If the firm boycotted supplies wholesalers and retailers with goods, the latter is approached by boycotters, and are persuaded or coerced, covertly or otherwise, to cease purchasing from the concern under the ban, through fear that they, in turn, will lose the patronage of their friends of labor. There are instances where the boycotters extort money from those dealers for continuing their patronage.<sup>35</sup>

In view of the activities associated with a workers' boycott – coercion, force, punishment, intimidation and extortion – it is not surprising that the courts perceived the boycott as an odious and obnoxious form of economic warfare that had to be banned. Yet the courts refused to ban the employer blacklist. In New York City Street

Railway Co., v. Schaffer (Ohio 1902), the court decided that it was not actionable for railroads to agree not to employ men who had been on strike. In Wabash Railroad Co. v. Young (Indiana 1904), the court ruled that a railroad might inform other railroads that an employee had been a labor agitator. In Boyer v. Western Union Telegraph Company (C.C.E.D., Mo., 1903) the court found an employer could discharge a worker because he was a member of a union. And in Adair v. U.S., 208 U.S. 161, that part of the Erdman law which made it illegal to discharge a worker because of his union affiliations was pronounced unconstitutional by the Supreme Court of the United States.<sup>36</sup>

In the later nineteenth century boycotts were a common occurrence in the United States. From 1885 to 1892 there were 1,352 boycotts in New York State alone.<sup>37</sup> In 1886 there were 50 boycotts in Illinois, 25 by the Knights of Labor and 25 by the AF of L.<sup>38</sup> An especially famous boycott that took place in the late nineteenth century was the Pullman Strike, which disrupted railroad traffic throughout much of the United States.

Boycotts were called by trade unions for a number of reasons. The major reasons were disputes over employment of non-union workers, and demand for higher wages, observance of union rules, reduction of hours, and the maintenance of current wages.<sup>39</sup> Boycotts were exceedingly effective weapons in gaining demands. In 1885, 72 percent of the boycotts actually decided throughout the United States (excluding the boycotts against the Chinese) were declared successful.<sup>40</sup> In New York State during

the period 1885-1892, of 686 cases, 461 or about two-thirds, were said to have succeeded.<sup>41</sup> At the same time, in New York State, of 322 cases where the length of successful boycotts was noted, the largest number, 93, were won in one day or less to one week. Sixty-nine percent of the victories among those whose durations were reported occurred within thirty days. Twelve boycotts took at least one year to produce desired results.<sup>42</sup>

Within the hat making industry labor groups used the boycott in their disputes with employers. Hatters resorted to the boycott during strikes in South Norwalk, Connecticut, from December 1884 to April 1885, and Orange, New Jersey, in 1885. In South Norwalk, 1,500 went out on strike after employers cut their wages from 2 to 45 percent.<sup>44</sup> Within weeks of the beginning of the South Norwalk strike, an unofficial committee of striking hatters began to visit local merchants, demanding that they cease doing business with the owners of the foul factories, and their employees, if they wanted to retain the journeymen's patronage.<sup>45</sup>

As a result of the boycott, the struck manufacturers were treated like pariahs by other merchants in the community who succumbed to the pressure from the striking workers. This had adverse consequences for the targets of the boycott as illustrated in this account reported by

The New York Times:

An interesting story is going the rounds here, telling the experience of one of the firm of Crofut & Knapp in a barber's shop where for years he had been shaved daily. On the day following the strike the manufacturer dropped in as usual. The place was well filled, and a number of men, including employees,

following. "Next!" called the artist of the establishment. Forward stepped the hat maker in his turn. The barber interposed. "We can get along without your custom or your cash," he said. The rich man looked astounded. "That's what we mean, sir; your room is better than your company. Next!" Applause went up from the shop full of onlookers.

The barber's decision to reject the patronage of his long-time customer, who had done nothing to offend the barber and was merely seeking to get a haircut, was motivated not by a belief in the strikers' cause, but by the threat of economic retaliation from the striking workers if the employers were not dropped as customers. The story continues:

It crops out that the barber had been given notice by the strikers that he could take his choice between the trade of a half dozen rich customers or 200 or more strikers. His slate showed him where his advantage was. To-day the richest men in South Norwalk must either use their own razors in an amateur way or else go out of town to get a shave. No barber in South Norwalk can afford the luxury of their trade.

The workers also threatened to withdraw from the congregation of a church whose pastor had incurred the displeasure of the strikers for having been supportive of the struck employers who had contributed about \$10,000 to the church.

The Rev. Mr. Gumbart, as the Pastor of the church, not unnaturally, sees some good points in his liberal members. He has the courage of his convictions, and has made pointed remarks that have won him the displeasure of the workingmen of the city, scores of whom are connected with the Baptist church. The result has been animated discussions with the Pastor's position, and threats of withdrawal from the church are not only rife, but apparently earnest and sincere.<sup>46</sup>

The South Norwalk strike was also marred by violence. During the evening of January 16, 1885, a dynamite explosion occurred in the factory of Crofut & Knapp, the largest manufacturer of hats in the city. The explosion was so powerful that it was heard in Stamford, nine miles away. The strikers claimed that they were not responsible for the blast. But James Knapp “was in a great state of excitement” and complained: “I have had my steps dogged from morning till night by these people and now they have tried to destroy my property. But I don’t care for them. I have become callous.”<sup>47</sup>

In the Orange, New Jersey, strike, the striking workers also organized a boycott. A strike was called after the hat manufacturer F. Berg & Company fired a female employer, Mary Devereux. This firing was seen as an attempt by the company to stifle efforts to organize the workers. The hatters reinforced their strike by calling on their neighbors and friends to ostracize all of those who went to work for Berg. Furthermore, they asked supporters not to shop at stores that continued to do business with Berg and its nonunion employees. The Orange hatters also resorted to physical force to bring some small proprietors into line. On the evening of April 11,

A committee of hatters patrolled in front of various stores that [had] been placed on the hatters’ black list.... A committee which had been placed in front of [some] stores, and some members of which were intoxicated, carried on their work in a most high-handed manner, going so far as to enter the stores of both Walter Vandell and Thomas Jones, and dragging customers out by main force.... Several women, wives of Berg’s hands, complained that they had been followed around by men who had prevented

them from trading in stores by pointing them out to the proprietors.

Leading Orange businessmen launched a counteroffensive. “The prominent businessmen of Orange,” posted circulars throughout Orange asking “Is America a free country?” to announce a public meeting to fight boycotting and “preserve the rights which as American citizens we are justly proud.” On the evening of April 2, a crowd heard speeches proclaiming boycotting to be a form of “czarist” tyranny, and an insult to American independence and freedom. At the end of his address, Captain A. M. Matthews, a coal seller, pleaded with the audience to “see to it that boycotting is not naturalized in this country.”<sup>48</sup> The strikers had directed Matthews not to supply the boycotted employers and he had declared that he would sell to whom he pleased.<sup>49</sup> In a community where more than one-fourth of the city’s adult males were journeymen belonging to the striking unions, at least 40 percent of Orange’s population had a stake in the boycott.<sup>50</sup>

In both the South Norwalk and Orange strike, the boycotts organized by the striking hatters were marked by threats, intimidation, and outright physical violence.

Beginning in 1897, the hatters’ union, the United Hatters of North America, started a campaign to unionize all hat manufacturers. By September 1898, 16 firms were unionized as a result of the use of the boycott. For eleven months a vigorous boycott was waged against Berg and Company in Orange, New Jersey. Berg’s business was reduced from

2,400 dozen hats a week to one of 450 to 500 dozen hats before Berg agreed to a closed shop. In April 1901, Roelof and Company of Philadelphia was boycotted, and it was estimated that Roelof lost \$250,000 during the boycott.<sup>51</sup> In April 1901, Henry H. Roelof sued fifteen individuals who were members of the hatters' union, alleging conspiracy on the part of the defendants in issuing false and defamatory circulars, causing a libel to be printed in their journal, and having agents in a number of States seeking to boycott his goods. According to Roelof's complaint, on one occasion the defendants prevented the plaintiff from making a sale of \$100,000 worth of goods to one customer.<sup>52</sup> By 1902, only 12 of 190 hat manufacturers in the United States remained nonunion.<sup>53</sup> After the campaign against Roelof, the United Hatters selected Dietrich E. Loewe's Danbury hat factory as its next target and what subsequently transpired eventually led to the United States Supreme Court's decision declaring the that boycott constituted an illegal combination in restraint of trade under the Sherman Antitrust Act of 1890.

Did the United States Congress intend that the Sherman Act prohibit boycotts by trade unions? A review of the debate on the bill that took place during the first session of the 51<sup>st</sup> Congress reveals a mixed picture. In the Senate there were repeated calls for legislation to outlaw trusts. John Sherman, Republican from Ohio who introduced the bill "to declare unlawful trusts and combinations in restraint of trade and production,"<sup>54</sup> explained its purpose.



**Now, Mr. President, what is this bill? A remedial statute to enforce by civil process in the courts of the United States the common law against monopolies.<sup>55</sup>**

**For Sherman, the word “combination” meant a corporate monopoly.**

**Sherman said, “In providing a remedy the intention of the combination is immaterial. The intention of a corporation cannot be proven.”<sup>56</sup> Sherman went on to define the goal of a combination:**

**The sole object of a ... combination is to make competition impossible. It can control the market, raise or lower prices, as well as best promote its selfish interests, reduce prices in a particular locality and break down competition and advance prices at will when competition does not exist. Its governing motive is to increase the profits of the parties composing it.<sup>57</sup>**

**Sherman’s comments leave little doubt that his bill was aimed exclusively at monopolistic corporations and their unfair business practices.**

**Other Senators expressed agreement with Sherman on the intended target of the bill. James Z. George, Democrat from Mississippi, said, “These trusts and combinations are great wrongs to the people. They have invaded many of the most important branches of business.”<sup>58</sup> John H. Reagan, Democrat from Texas, asserted that the bill “is limited to business in international and interstate commerce.”<sup>59</sup> David Turpie, Democrat from Indiana, said that “The purpose of the bill of the Senator from Ohio is to nullify civilly the agreements and obligations of the trusts of these fraudulent combinations.”<sup>60</sup> James L. Pugh, Democrat from Alabama, said, “I have no doubt Congress has the power to make such trusts and**

combinations criminal and punishable by fines and imprisonment.”<sup>61</sup>

Henry M. Teller, Democrat from Colorado, said, “The only question seems to be just how the trusts can be controlled.”<sup>62</sup> Orville H. Platt, Republican from Connecticut, said, “The people who are suffering from the unlawful acts of associated corporations are asking relief....”<sup>63</sup> Zebulon D. Vance, Democrat from North Carolina, said, “We are all enemies of these illegal combinations of capital which devour the substance of the people and grind the faces of the poor.”<sup>64</sup> George Gray, Democrat from Delaware, said, “... combinations of capital have been enabled to secure to themselves undue advantages over those who were not possessors of capital in the same degree.”<sup>65</sup>

In the House of Representatives, the debate on the bill was marked by repeated attacks on trusts and calls for action to outlaw trusts. David B. Culberson, Democrat from Texas, was referring to trusts when he said:

The States are powerless unless Congress will take charge of the trade between the States and make unlawful traffic that operates in restraint of trade and which promotes and encourages monopoly. Persons, corporations or associations should be prevented from carrying into the several States products covered by trusts.<sup>66</sup>

Joseph D. Sayers, Democrat from Texas, said that “the purposes of the bill are, first, to suppress trusts....”<sup>67</sup> Ezra B. Taylor, Republican from Ohio, said, “I am opposed to trusts ....”<sup>68</sup> Benton McMillin, Democrat from Tennessee, said “that I think it is the duty of Congress to exert every legitimate power for the prevention of the organization of these trusts which are so detrimental to trade ....”<sup>69</sup> William E. Mason, Republican from Illinois,

said,” We propose now to strike down these ‘trusts’ ....”<sup>70</sup> John T. Hear,

Democrat from Missouri, said, “We [are] ... animated by a desire to secure for our people relief from the most odious despotism of monopoly ....”<sup>71</sup>

John H. Rogers, Democrat from Arkansas, said that “all the States must act on the premises if they would be free from the oppression of trusts.”<sup>72</sup>

George W. Fithian, Democrat from Illinois, made reference to “the evils of trusts.”<sup>73</sup> Elijah M. Morse, Republican from Massachusetts, said that the

purpose of the bill was “to regulate transactions in restraint of trade between citizens of different States.”<sup>74</sup>

The repeated denunciation of trusts during the debate in both the Senate and the House seems to clearly reflect the problem that Congress wished to remedy. However, during the debate concerns were raised that the law could be applied against combinations of workers as well. In the Senate, Frank Hiscock, Republican from New York, said,

Every organization which attempts to take the control of the labor that it puts into the market to advance its price is interdicted by this bill. Sir, I am one of those who believes in labor organizations. I believe the only safety to labor rests in the power to combine against capital and assert its rights and defend itself.<sup>75</sup>

Senator Teller warned that the bill would interfere with organizations which he thought were “absolutely justifiable by the remarkable conditions of things” in the country.<sup>76</sup> Teller was referring to “the organizations of labor [and] the organizations of farmers ....”<sup>77</sup> William M. Stewart, Republican from Nevada, said that [the bill] “would be a particularly oppressive upon

the struggling masses who are making combinations to resist accumulated wealth.”<sup>78</sup> Stewart also said that the bill was “on the wrong basis” and would “cut in the wrong direction if [passed].”<sup>79</sup> John T. Morgan, Democrat from Alabama, said, “There are combinations among our laboring men of various different fraternities continually being made for the purpose of raising the price of labor.”<sup>80</sup> Later on Morgan asked a question that included the phrase, “If we pass a law here to punish men for entering into combination and conspiracy to raise the price of labor....”<sup>81</sup>

To ensure that labor organizations would be exempt from the bill, Senator Sherman introduced an amendment that stated

That this act shall not be construed to apply to any arrangements, agreements, or combinations between laborers mad with the view of lessening the number of hours of labor or increasing their wages ....<sup>82</sup>

The amendment was adopted in the Senate.<sup>83</sup> Senator Gray also introduced a bill that included a proviso that was identical to Sherman’s amendment exempting labor organizations from the act.<sup>84</sup> However, only Sherman’s bill was considered by the Senate.

A succinct explanation for why the bill could be applicable to labor organizations was provided by Senator George F. Edmunds, Republican from Vermont, who said,

The fact is that this matter of capital, as it is called, of business and of labor is an equation, and you cannot disturb one side without disturbing the other.<sup>85</sup>

Expanding on the equation analogy, Edmunds went on to explain,

I say that to provide on one side of that equation that there may be combination and on the other side that there shall not, is contrary to the very inherent principle upon which such business must depend. If we are to have equality, as we ought to have, if the combination on the one side is to be prohibited, the combination on the other side must be prohibited or there will be certain destruction in the end.<sup>86</sup>

By a vote of 31 yes to 21 no, the Senate voted to refer the bill to the Committee on the Judiciary, chaired by Senator Edmunds. The Judiciary Committee subsequently reported the bill out of committee with Sherman's amendment exempting labor organizations missing from the bill. In addition, the term "conspiracies in restraint of trade" was added to the text of the bill. There is no transcript of the discussions that took place during the Judiciary Committee's deliberations of the Sherman bill.<sup>87</sup> But afterwards Edmunds explained the committee's action. According to Edmunds, the committee wanted to "leave it to the courts ... to say how far they could carry it [the bill] or its definitions as applicable to each particular case as it might arise."<sup>88</sup> In the House, Representative David Culberson echoed Edmunds' sentiments regarding the anticipated role of the courts regarding the scope of the bill.

Now, just what contracts, what combinations in the form of trusts, or what conspiracies will be in restraint of trade or commerce mentioned in this bill will not be known until the courts have construed and interpreted this provision.<sup>89</sup>

Later Edmunds reportedly asserted, in a statement that was not authenticated, that Congress had definitely intended to include the

activities of labor unions within the scope of the law.

**It is intended and I think will cover every form of combination that seeks to in any way interfere with or restrain free competition, whether it is capital in the form of trusts, combinations, railroad pools or agreements, or labor through the form of boycotting organizations that say a man shall not earn his bread unless he joins this or that society. Both are wrong; both are crimes, and indictable under the Anti-Trust laws.<sup>90</sup>**

If this statement is accurate, then Edmunds, who “played a very important part in the framing of the bill,”<sup>91</sup> believed that trade unions, when engaged in boycotts, were perpetrating a crime.

On April 8, 1890, the Senate, by a vote of 52 yes to 1 no, passed the anti-trust bill. After conferencing with the Senate, the House, on June 20, 1890, by a vote of 242 yes to 0 no, adopted the conference report and on July 2, 1890 President Harrison signed the bill into law.

In conclusion, although the text of the Sherman Antitrust Act contains no specific references to labor organizations or prohibits any specific labor union practices, and seems to have been intended to outlaw monopolies, not boycotts, nevertheless, the language of the bill that was finally passed by Congress was sufficiently vague to allow for a broad interpretation of the statute’s terminology, thus allowing ample opportunity for the courts to play a key role in determining the scope of the law. Why the law was written in such an ambiguous manner is a matter of speculation. Perhaps the Congress was unwilling to deal directly with the problem of the boycott, not desiring to alienate or confront members of

organized labor who were voters too. Or perhaps the Congress decided to produce a cleverly worded piece of legislation that would essentially “pass the buck” to the courts with the intent of using the judiciary to curb the power of organized labor without giving the appearance that Congress itself was explicitly anti-labor. Whatever the case, the fact is that the courts, and not the Congress, became the instruments through which organized labor was dealt a severe blow. In the Danbury Hatters case, the Supreme Court’s decision banning the secondary boycott as an illegal restraint of trade became a permanent part of American jurisprudence and established a legal precedent that to this day still remains the law of the land.<sup>92</sup>

## SOURCES

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<sup>3</sup> William Letwin, Law and Economic Policy in America – The Evolution of the Sherman Antitrust Act (Random House, New York), 1965, pages 283-285.

<sup>4</sup> Loewe v. Lawlor, 208 U. S. 274 at 292.

<sup>5</sup> Ibid, at 294.

<sup>6</sup> Ibid, at 299.

<sup>7</sup> Ibid, at 274.

<sup>8</sup> Ibid, at 301.

<sup>9</sup> Ibid, at 301.

<sup>10</sup> Ibid, at 302.

<sup>11</sup> Loewe v. Lawlor, 148 Fed. 924 at 925.

<sup>12</sup> David Bensman, The Practice of Solidarity – American Hat Finishers in the Nineteenth Century (University of Illinois Press, Urbana and Chicago), 1985, pages 202-205.

<sup>13</sup> Loewe, op cit (U. S.), at 305.

<sup>14</sup> Ibid, at 306.

<sup>15</sup> Henry W. Laidler, Boycotts and the Labor Struggles – Economic and Legal Aspects (New York, John Lane Company), 1913, page 261.

<sup>16</sup> Letwin, op. cit., page 124.

<sup>17</sup> Ibid, page 245.

<sup>18</sup> Ibid, page 155.

<sup>19</sup> Ibid, pages 157-159.

<sup>20</sup> Ibid, page 160.

<sup>21</sup> Ibid, page 160.

<sup>22</sup> Ibid, page 160.

<sup>23</sup> Re Grand Jury, 62 Fed. 840.

<sup>24</sup> Letwin, op. cit., page 161.

<sup>25</sup> Laidler, op. cit., page 143.

<sup>26</sup> Ibid, page 57.

<sup>27</sup> Ibid, page 27.

<sup>28</sup> Ibid, page 60.

<sup>29</sup> Ibid, pages 35-36.

<sup>30</sup> Ibid, pages 37-38.

<sup>31</sup> Ibid, page 39.

<sup>32</sup> Ibid, page 40.



<sup>33</sup> Ibid, page 43.

<sup>34</sup> Ibid, page 43.

<sup>35</sup> Ibid, pages 62-66.

<sup>36</sup> Ibid, pages 45-46. The New York Times, op. cit., page 5.

<sup>37</sup> Laidler, op. cit., page 85.

<sup>38</sup> Ibid, page 77.

<sup>39</sup> Ibid, page 93.

<sup>40</sup> Ibid, page 75.

<sup>41</sup> Ibid, page 85.

<sup>42</sup> Ibid, pages 92-93.

<sup>43</sup> The New York Times, 12/6/1884, page 1.

<sup>44</sup> The New York Times, 12/7/1884, page 2.

<sup>45</sup> Bensman, op. cit., page 119.

<sup>46</sup> The New York Times, 12/29/1884, page 2.

<sup>47</sup> The New York Times, 1/18/1885, page 5.

<sup>48</sup> Bensman, op. cit., pages 132-134.

<sup>49</sup> The New York Times, 3/29/1885, page 9.

<sup>50</sup> Bensman, op. cit., page 135.

<sup>51</sup> Laidler, op. cit., pages 151-152.

<sup>52</sup> The New York Times, 4/9/1902, page 1.

<sup>53</sup> Bensman, op. cit., page 201.

<sup>54</sup> Congressional Record, 51<sup>st</sup> Congress, 1st Session, pages 96, 2456.

<sup>55</sup> Ibid, page 2461.

<sup>56</sup> Ibid, page 2456.

<sup>57</sup> Ibid, page 2457.

<sup>58</sup> **Ibid, page 1768.**

<sup>59</sup> **Ibid, page 2562.**

<sup>60</sup> **Ibid, page 2577.**

<sup>61</sup> **Ibid, page 2558.**

<sup>62</sup> **Ibid, page 2560.**

<sup>63</sup> **Ibid, page 2607.**

<sup>64</sup> **Ibid, page 2647.**

<sup>65</sup> **Ibid, page 2657.**

<sup>66</sup> **Ibid, page 4091.**

<sup>67</sup> **Ibid, page 4098.**

<sup>68</sup> **Ibid, page 4098.**

<sup>69</sup> **Ibid, page 4099.**

<sup>70</sup> **Ibid, page 4100.**

<sup>71</sup> **Ibid, page 4101.**

<sup>72</sup> **Ibid, page 4102.**

<sup>73</sup> **Ibid, page 4102.**

<sup>74</sup> **Ibid, page 5953.**

<sup>75</sup> **Ibid, page 2468.**

<sup>76</sup> **Ibid, page 2561.**

<sup>77</sup> **Ibid, page 2571.**

<sup>78</sup> **Ibid, page 2565.**

<sup>79</sup> **Ibid, page 2566.**

<sup>80</sup> **Ibid, page 2609.**

<sup>81</sup> **Ibid, page 2609.**

<sup>82</sup> **Ibid, page 2611.**

<sup>83</sup> Ibid, page 2612.

<sup>84</sup> Ibid, page 2657.

<sup>85</sup> Ibid, page 2727.

<sup>86</sup> Ibid, page 2727.

<sup>87</sup> Alpheus T. Mason, Organized Labor and the Law – With Especial Reference to the Sherman and Clayton Acts (Duke University Press, Durham, North Carolina), 1925, pages 126-127.

<sup>88</sup> Ibid, page 128.

<sup>89</sup> Congressional Record, op. cit., page 4089.

<sup>90</sup> Mason, op. cit., page 129.

<sup>91</sup> Ibid, page 128.

<sup>92</sup> [www.answers.com/topic/labor-law](http://www.answers.com/topic/labor-law), “pressure to resolve a contract dispute.”  
[http://en.wikipedia.org/wiki/Taft-Hartley\\_Act](http://en.wikipedia.org/wiki/Taft-Hartley_Act)