

**THE ROBINSON PATMAN ACT REVISITED:  
A REVIEW OF SENATOR ROBINSON'S PAPERS**

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**ABSTRACT**

This paper reviews the reasons for passage of the Robinson-Patman Act. The personal papers of Senator Joseph Taylor Robinson, one of the Act's sponsors were reviewed. This paper draws on Robinson's papers to find evidence that the commonly stated purpose of the Robinson-Patman Act, namely the reduction of non-cost based price discrimination, was not the major motivation behind the Act. Instead, the proposition put forth in this paper is that the Robinson-Patman Act was actually an attempt to stabilize the U.S. economy during the Great Depression through the elimination of price competition in key sectors of the economy.

**INTRODUCTION**

The Robinson-Patman Act is viewed as something of an enigma by most students of marketing. The stated purpose of the legislation was to promote competition and prevent price discrimination. Public policy writings, such as Shepherd and Wilcox (1979), often discuss Robinson-Patman as being motivated by pressure from small grocers to limit the power of chain stores in the food industry. This perspective also appears in some historical articles. For example, a recent review of Senator Joseph Taylor Robinson's role in passage of the act (Weller 1988) takes this same view. These sources support the belief, commonly held at the time, that the chain stores' ability to secure large discounts from food manufacturers and wholesalers, hurt small independent retailers (George 1936, p. 17). This in turn ultimately hurt the consumer.

In spite of this commonly held view, many contemporary marketing scholars seem to agree that the motivation behind the Robinson-Patman Act was actually to limit competition (Stern and Eovaldi 1984). The perspective this paper takes is that the Robinson-Patman Act was designed, not to benefit the interests of the consumer, but to benefit food wholesalers and manufacturers through the elimination of vertical price competition, and thus to limit, rather than promote horizontal competition.

A review of the papers of Senator Joseph Taylor Robinson, housed in the University of Arkansas library was undertaken to investigate this issue. The research discussed in this paper draws heavily on Senator Robinson's papers to provide insight into the motivation behind the Robinson-Patman Act.

**HISTORICAL BACKGROUND**

During the period following the Civil War, U.S. industrial growth increased rapidly. The West was opened to settlement and development. Large corporations such as the Union Pacific Railroad were formed to build a rail network. Other large firms formed in the iron and steel industry. In general, the

nation's emerging corporate giants exercised a considerable economic power. Vertical integration was common and monopolies began to appear. Basic industries such as steel, petroleum and meat packing were affected.

By the late 19th century, there was significant public resentment of the monopoly power exercised by these "Trusts". This sentiment culminated in the Sherman Antitrust Act of 1890. The primary purpose of the Sherman Act was to outlaw monopoly power through collaboration among competitors. Essentially, the Sherman Act makes price fixing (Section 1) and market dominance (Section 2) illegal (Shepherd and Wilcox, 1979, p 84.).

Still, many large U.S. corporations continued to exercise large degrees of market power and engage in acts of collusion. By 1914, the situation had again gained the attention of Congress. Both the Clayton and Federal Trade Commission Acts were enacted to strengthen the government's trust busting efforts. The Clayton act banned price discrimination, exclusive and tying contracts and interlocking corporate directorates. Situations where these practices led to substantial decreases in competition or the creation of monopoly were broadly prohibited. In addition, the Federal Trade Commission Act set up an expert and non-political commission to consider cases of monopoly power and recommend remedies. (Shepherd and Wilcox, 1979, p 84.).

By the 1920s, developments in the grocery industry brought about a call for anti-competitive legislation to protect small grocers and druggists (Weller 1988). In the food business, the new force in the market was the development of the grocery store chains such as the Atlantic and Pacific Tea Company (A&P), Kroger and the Safeway Company. These chains, were able to gain efficiencies over smaller, independent grocers they competed with. Due to their large volumes, the chain stores wielded tremendous buying power that the small, independent retailer could not individually match. In many instances, the chain stores' buying power was translated into large volume discounts, rebates, advertising allowances and brokerage fees.

The chain stores were seen by many small grocers as a severe threat to their livelihood. In 1928, an investigation by the Federal Trade Commission (FTC) was initiated into the alleged problem (Weller 1988). After a lengthy and costly investigation (\$1 million over seven years), the FTC concluded that there was evidence of questionable business practices in the food industry. For example, almost 60 percent of the manufacturers surveyed by the FTC admitted to giving the chain stores some type of non-cost based discount (Weller 1988).

Conditions improved slightly for independent food wholesalers and retailers during the early years of New Deal. As a part of the National Industrial Recovery Act (NIRA) the National Recovery Administration (NRA) was authorized to initiate regulations to dealing with many of the pricing practices of manufacturers. These regulations were instrumental in providing relief to wholesalers from chain store competition (which provided its own wholesale function) through the recognition of the cost differences between retailers and wholesalers. However, following the Supreme Court's rejection of the NRA in the Schechter Poultry case, (Shepherd and Wilcox 1979) the pressure on wholesalers returned (Weller 1988).

In response to the renewed competitive pressure on food manufacturers and wholesalers, H. B. Teegarden, general council of the United States Wholesale Grocers Association, drafted an initial bill that proposed to limit price discrimination and promote competition. This draft bill (Senate No. 3154, H.R. No. 8442), was introduced into the House of Representatives by Representative Wright Patman of Texas on June 11, 1935, and the Senate by Majority Leader, Joseph T. Robinson of Arkansas on June 26. With only minor changes, Teegarden's draft became the Robinson-Patman Act.

## COMPETITIVE CONDITIONS OF THE DAY

H. B. Teegarden's brief (Teegarden 1935a) supporting the Robinson-Patman Bill was intended to provide evidence that grocery chain stores such as the Atlantic and Pacific Tea Company (A&P) were engaging in anti-competitive behavior by forcing manufacturers and wholesalers to provide unfair discounts to the chains. Many marketers today would consider this a reasonable exercise of the buyer's power in the distribution channel. However, in the early 1930s this exercise of power was viewed as unfair to the smaller independent grocers that did not have the power to force suppliers to provide them with like discounts.

Two sections of Teegarden's brief demonstrate why many food manufacturers and wholesalers supported the Robinson-Patman Act. The first section, quoted below, follows a review of similar abuses of buying power in previous federal and state cases. On page 4, Teegarden sets forth the Aims and Limitations of the Bill.

The Patman Bill is more closely narrowed to the evils at which it is aimed than are most of the above (referring to the review of federal and state cases). It does not propose to prohibit an entire business, nor even an entire class of transactions. It only imposes certain limits of security upon the transactions to which it relates, within which limits full latitude remains for all sound economic processes and beyond which limits the evils at which this Bill is aimed are characteristically found.

Those evils may again be summarily stated as the abuse of the large buying power controlled by a few large purchasers to extract from manufacturers and other selling sources, price preferences and discriminatory allowances not justified by any sound economics in the distinctive methods of selling and servicing those customers; allowances which the seller, therefore, cannot afford to grant proportionally to his entire trade, since to do so would reduce his revenues below the reasonable net profit level; discriminations, therefore, which the seller can grant only because they are discriminatory,—that is, only because they are counterbalanced by sales to other customers at higher prices from which the seller can recoup such part of his reasonable net profit as he loses on sales to the preferred customers, and which he must in the long run recoup somewhere to justify his continuance in business, discriminations, in short, which for these very reasons can be granted to a few only at the expense of the remaining customers of the same seller." (Underlining added for emphasis).

It seems clear that Teegarden's primary concern was with sellers being forced to price wholesale merchandise below the level of profitability. To further support his position that the chain stores were exercising undue power in their relationships with sellers, Teegarden reviewed sections of the Federal Trade Commission's Final Report on the Chain Store Investigation. This was submitted as part of his brief to the Patman Committee (Teegarden 1935b). To demonstrate the rapid growth of the grocery chains, Teegarden quoted the following section of the FTC report (Teegarden 1935b, p. 2)

In 1929, there were over 1,500,000 retail stores of all kinds and lines in the United States, with total sales of nearly \$50,000,000,000.

Included in these were 7,000 chain store organizations with over 150,000 stores, or about 10% of the total, and with aggregate sales of over \$10,000,000,000, or about 22% of the total.

In the grocery field 3 chains, namely A&P, Kroger and Safeway, operated in 1930, 25,000 stores with sales of \$1,600,000,000; of which A&P alone operated 15,738 stores with sales of \$1,065,000,000."

To point out the power of the chains to negotiate more favorable terms, Teegarden quotes pages 24-27 of the FTC report.

"There were interviews with 129 manufacturers in the grocery group, 76 of which admitted that preferential treatment in some form was given. Thirty-three of the manufacturers interviewed stated positively that threats and coercion had been used by chain-store companies to obtain preferential treatment ..." (Teegarden 1935b, p 4.)

To support his position, Teegarden points out the mechanics used by the chains to gain this measure of power over the sellers.

'One manufacturer reported that some years ago it made extensive sales to a chain, but that the demands of that chain became so excessive that it was forced to stop selling the chain. The chain in question had built up the volume of its purchases to about 40 per cent of this manufacturer's output, and then it suddenly demanded larger concessions, which the manufacturer was forced to grant or else have its production curtailed to that extent ...' (Teegarden 1935b, p 5.)

According to Teegarden's brief (1935b), the chain stores were using their ability to move large volumes of goods to force price concessions from sellers. Already weakened by the Great Depression, manufacturers and wholesalers were looking for any way in which to protect their profits. Prohibition of non-cost based price discrimination was a step toward this goal. The prohibition of unfair discounts also sounded good to those who wanted to protect the small retailer and the consumer since it appeared to limit monopoly-like actions on the part of the chain stores.

#### MIXED SUPPORT FROM THE FOOD INDUSTRY FOR THE ROBINSON-PATMAN ACT

The view that Robinson-Patman benefitted independent grocers and consumers was not shared by everyone who supposedly stood to benefit by its passage. A dissenting opinion was expressed by Carl W. Dipman, editor of the Progressive Grocer, in an address to the annual convention of the National-American Wholesale Grocers Association on January 20, 1936. Rather than looking to Robinson-Patman for assistance, Dipman supported the idea that the market, and the adaptive behavior of the independent grocer, was a better means of addressing the issue of chain store power. Dipman offered these remarks on the competitive battle underway:

We frequently refer to the period from 1924 to 1929 as the 'Dark Days' for independent grocers. Many retailers and many wholesalers literally had their backs to the wall. But by 1928, the chain store's rush had reached its peak.

In the meantime, the principles of better merchandising had taken hold among independents. They had started building better stores, giving better service, reducing their operating expenses, tightening up on credits and doing better merchandising all along the line. (Dipman 1936, p. 4).

Dipman went on to comment on the argument made by supporters of the proposed legislation:

We have all seen statements printed and widely circulated by well-intentioned friends of independent merchants that have been nothing short of insult to the tens of thousands of up-and-coming independent merchants of this country. In their eagerness to promote anti-chain store legislation, these friends of the independents have painted a sorry picture indeed. They have pictured independents as a dejected, broken-down lot of business derelicts about ready to raid the nearest soup kitchen. In bold oratorical exaggerations, they pictured the situation of independent merchants as hopeless -

asserted that hordes of independents have been swept out of business--and that those few timid souls who are still in business are about to fall before the axe. (Dipman 1936, p. 7).

Further, Dipman noted specific acts of independent grocers that demonstrated their strong competitive response to the chain stores:

Now what are the facts?

In the depression years from 1929 to 1933, the total number of independent food stores declined only 3%, while the number of chain food stores declined 6%. In 1933, 1934 and 1935, the independent food stores of this country cut into the large chain stores' tonnage volume. As a matter of fact, large chain stores right now are in a worse situation than independents, and no less an authority than Julius Klein, former Assistant Secretary of Commerce, said that in his opinion, the days of prosperity for large corporate chains as retailers are numbered. (Dipman 1936, p. 8).

Dipman's remarks suggest the need to provide quality services to meet a wide variety of customer's needs. Addressing the different types of consumer goods and services demanded by consumers in the 1930s, Dipman said:

He (referring to someone analyzing the food business) would probably recognize a wide variation in consumers' wants, and to satisfy them all he would think in terms of large stores and smaller "convenience" stores, credit stores and cash stores. service stores and non-service stores (Dipman 196, p 13)<sup>1</sup>.

Overall, the reader gets a strong sense of an industry coming to terms with the new competitive threat. However, perhaps the most interesting comment Dipman made in his 1936 address, was in regards to the chain stores' abuses of their buying power.

As our wholesalers and retailers became better organized they cut their margins. Then the chains were squeezed. Some therefore went out and demanded more allowances, rebates and discounts. In turn, some cooperatives and voluntaries did the same thing. So today, the chains are still being squeezed, and their tremendous volume is subject to attack. (Dipman 1936, p. 15).

It is reasonable to argue that by 1936, the buying power of the chain stores was largely mitigated by competitive moves on the part of independent wholesalers and retailers in the food industry. The lowering of margins to compete head to head with the chain stores and the development of services designed to compete in the niches the chain stores could not fill, benefitted not only price sensitive consumers, but those seeking new services. In fact, Dipman goes on to document the development of full service independent supermarkets, where a customer could buy not only dry goods and canned foods, but could buy their meat, dairy products and produce as well.

If the actions on the part of independent wholesalers and retailers, had successfully met the competitive threat, then who was Congress trying to protect? Teegarden's briefs (1935a and 1935b), prepared for the Robinson-Patman bill's hearings before Congress, and Dipman's speech to the National-American Wholesale Grocers Association, are at odds with each other. If we believe Dipman,

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<sup>1</sup> Provision of credit was very important to certain customer groups, although, Dipman suggests that credit sales were made to upper income customers more often than to lower income buyers. In addition, it is important to remember that delivery services and/or a convenient location were very important during this era.

the independent grocers had successfully adapted to competition from the chain stores and no longer needed legislative protection. It would thus appear that the groups that stood to benefit most from passage of the legislation were food wholesalers and manufacturers, not the independent retailers. It was clearly in the best interest of the wholesalers and manufacturers to restrict discounts given, not only to the large chain stores but to independent wholesale buying groups representing the independent grocer. This scenario is a plausible explanation of the motivation behind the Robinson-Patman Act since according to Dipman, the independent retail grocer had innovated and niche marketed away much of the competitive advantage of the chain stores.

#### POLITICAL CONDITIONS

Regardless of the true motivation behind the legislation, the Robinson-Patman bill was promoted as a consumer protection act. This can perhaps best be seen in statements made by Robinson and Patman regarding opposition to the bill by many of the groups supposedly protected by this legislation. For example, in a statement printed in Hardware Trade Journal, (April 1936, p. 21) Representative Patman answered unfavorable reports about the legislation that had appeared in the press.

It is said the enactment of this law will cost consumers almost \$750,000,000 a year. The truth is that it will save consumers billions of dollars a year.

'When all independent merchants can receive the same prices from manufacturers that the banker-controlled retailers receive, competition will be preserved and the consumer protected. Prices will be lower instead of higher. Instead of it being a bill to subsidize middlemen, it is a bill to prevent monopoly, protect independent business, promote individualism, restore equality of opportunity, and encourage local ownership and control of business rather than absentee ownership and control.'

Responding to criticism that the bill was a maneuver by the wholesalers and manufacturer's to reduce competition, Patman stated,

'The only interference with business will be to prevent monopoly, protect the consumer, farmers and wage earners; and to put all retail distributors upon the same floor with the same competitive rights.'

Patman's comments suggest that protection for the independent grocer was needed, and that consumers stood to benefit from this protection, in spite of the fact that the Robinson-Patman legislation would not do this. The question then becomes: Did Senator Robinson and Representative Patman know that the purpose of the bill was to protect manufacturers and wholesalers?

In studying the potential motives of the bill's congressional sponsors, it is important to remember that Senator Robinson and Representative Patman were staunch supporters of President Roosevelt's New Deal. This is especially true of Senator Robinson, who as Senate Majority Leader, had aggressively promoted Roosevelt's agenda, often over intense opposition from within the Democratic Party (Weller 1988). For example, a biographical sketch of Senator Robinson, prepared in 1950, stated that Senator Robinson was, "the most influential member of the Senate." In addition, Robinson is discussed as supporting the New Deal legislation even when not in complete sympathy with it.

While he is said not to have been in entire sympathy with some of these acts, his loyalty to his party and to the president made him subordinate his personal views to secure the adoption of the Roosevelt program." (White 1950).

## THE ROBINSON-PATMAN ACT VIEWED AS A JOB PROTECTION MEASURE

By the mid 1930s the economic situation had not improved significantly, in spite of attempts on the part of the Roosevelt administration to improve the situation. The worst unemployment ever seen in the U.S. continued to plague the country. Roosevelt's response to the situation was to stabilize prices and promote economic production via the NIRA legislation (Shepherd and Wilcox 1979, p. 549). The basic idea was that if prices could be stabilized, businesses would return to profitability, hire new workers, increase production and the economy would improve. Price stability was seen as the key link in this chain of events. Following the rejection of the NRA legislation by the Supreme Court, Roosevelt and Democratic leaders in the Congress shifted gears and began work on legislation, such as the Robinson-Patman Bill, designed to institute many of the pricing reforms the NIRA had attempted (Weller 1988).

Further support for the position that the Robinson-Patman Act was really a job protection measure can be seen in a radio address by Patman:

The agitation for all forms of relief for different classes and groups is justified in many cases by an economic system that deprives employment opportunities to those who are able, willing, and anxious to work but cannot find jobs. Many large corporations do not employ anyone over 30 or 35 years of age. Laws are passed in different States restricting the number of people who can engage in certain occupations and professions. Absentee ownership of business reduces employment opportunities and destroys purchasing power of producers and wage earners. If the Government is going to stand idly by and permit old people (and those who are not so old) to be discriminated against and deprived of employment opportunities, it is necessary that the Government go to their aid and rescue in some manner. (Congressional Record, April 18, 1936).

The idea that absentee ownership hurts job creation was a recurring theme of Patman's, as witnessed by his statement in the Hardware Trade Journal. It is evident from Patman's remarks that he considered the absentee ownership of businesses a great evil, that hurt local wage earners and aided the formation of monopoly.

And what of the idea that the Robinson-Patman Bill was a benefit to consumers? Patman's remarks suggest that although the bill was marketed as a benefit to consumers, lower retail prices was clearly not its objective. Further support of this view is contained in this excerpt Patman's speech to the International Association of Sales Executives Inc., on April 3, 1936.

Lowest price to Consumers. Is this slogan a good one? Is it in the interests of the country? Without qualification it is not. If a few mass buyers have the power to reduce prices at will, in their efforts to favor the consumer who is so close to them and to whom they feel so deeply obligated, they are likely to cause the farmer to sell what he produced for a price that is below the cost of production and cause the manufacturer to sell at such a low price that the wage earners in his factory must stand such a wage reduction that their buying power is destroyed. Therefore, the consumers are entitled to the lowest price consistent with a fair price to the one who produces the raw material, a fair wage to the one who converts the raw material into a finished product and a fair profit to those who distribute it. (Patman speech, 1936, reprinted by the Institute for Distribution, Inc.).

## CONCLUSIONS

The evidence presented in this review suggests that the sponsors of the Robinson-Patman Act felt that it was more important to protect farming, manufacturing and wholesaling jobs, than to worry about retail prices. This conclusion is logical given the substantial decline in retail prices during the early

Depression years. In fact, Patman's remarks indicate that creating conditions conducive to the maintenance of prices was more important than maintaining conditions where the market's pricing mechanism functioned efficiently. In this regard, he maintained the position that maintenance of prices was one of the key determinants of business profitability and wage stability. Given the intense nationwide anxiety caused by the Depression, it is not surprising that the New Deal era politicians viewed the creation of legislation to stabilize prices as being a key issue. With the defeat of the NIRA as the primary means of stabilizing prices, wages and corporate profitability, the Robinson-Patman Act became the primary means to that end. As a result, the bill was pushed through the Congress by Senator Robinson and Representative Patman and became law on June 19, 1936, one year and one week after it was introduced.

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