LXXV – The Anti–Wal-Mart Jihad

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By Butler Shaffer

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"Hain't we got all the fools in town on our side? And ain't that a big enough majority in any town?"

~ Mark Twain, Adventures of Huckleberry Finn

Many Americans would find it difficult to make a choice between an all-out victory by American forces in Iraq, and the extinction of Wal-Mart. In some parts of the country, neo-Luddites have descended upon city halls to demand that zoning laws, or other restrictions on property ownership, be employed to prevent Wal-Mart from building stores. The frenzied, irrational dimensions of this campaign were encapsulated by a relative of mine — himself a successful businessman – who said: "Wal-Mart shouldn't be allowed here because nobody wants them!" His remark was reminiscent of Yogi Berra's comment that nobody went to a particular restaurant anymore "because it's too crowded."

If it were true that "nobody wants Wal-Mart" in their community, corporate officials should either be condemned for making a decision that will prove unprofitable to the company, or praised for being able to become a very successful retailer in spite of no one wanting to be their customers! The anti–Wal-Mart campaign reflects the kind of economic illiteracy one finds in a Michael Moore film. I am surprised he hasn't joined in this anti-capitalistic jihad, perhaps with a movie to be titled Bowling for Low Prices!

Wal-Mart has been successful because people want to shop in their stores. If this were not the case, it would take no zoning ordinance to keep them out: customers would either lose interest — or not patronize Wal-Mart in the first place — and the company would fail. For the same reason that drive-in movie theaters, circuses, and barnstorming air shows are no longer the attractions they once were, the failure of a business to adapt to the changing preferences of its customers is a formula for failure.

The Wal-Mart people have remembered an axiom lost on many recent college graduates: remaining in business is dependent upon the long-term profitability of the firm which, in turn, depends upon satisfying customers with an acceptable mix of high quality and low prices. Example: my wife was visiting relatives in a town in the Midwest. She needed to purchase an item and, preferring to deal with small businesses, she went to three or four locally-owned stores looking for it. None of them carried the item. She then drove to the local Wal-Mart store where she was not only able to purchase what she needed, but had a choice in brands of the product. Contrary to popular thinking, Wal-Mart does not drive other retailers out of business: customers do by choosing to patronize a store that does a better job of supplying their wants than do their established competitors.

For purposes of full disclosure, I must tell you that, when I was in law practice, Wal-Mart was one of the firm's major clients. I met Sam Walton, an entrepreneur who took a small-town variety store and turned it into a national success story. He was a modern-day Horatio Alger, one of those people who we like to imagine the "American way of life" is destined to encourage. But having achieved success, the "American way of envy" began to course through the veins of those whose accomplishments were more prosaic.

But resentment at the success of others does not explain the core of the frenzied attacks against Wal-Mart. Explanations for this well-orchestrated campaign are to be found in the economic self-interest motivations of labor unions and Wal-Mart's retail competitors. Wal-Mart has managed to succeed without too much interference from labor unions. Like political systems – which, in America, provide government certified unions with coercive, monopoly status over the workforce — labor unions depend upon creating conflict between "employees" and "employers." To the degree they are successful, unions also generate conflict between "union" and "non-union" workers. By maintaining employment practices that minimize management/employee conflict, Wal-Mart has made it difficult for unions to solicit their employees for membership.

The campaign against Wal-Mart also has roots in the ancient resentment that arises among business competitors. One can see the continuing efforts of business interests to curtail the advantages enjoyed by a more profitable competitor. Nowhere has this tendency been more apparent than in retailing. In my book In Restraint of Trade: The Business Campaign Against Competition, 1918–1938, I devoted much attention to the attempts by retailers to keep competitive practices within parameters that would not pose significant threats to other firms. When voluntary, trade association efforts to create a "cooperative competition" failed, major business interests turned to the state for the coercive enforcement that the marketplace would not provide.

Because of the relative ease and low cost of entry, retailing has long been a highly competitive trade. The cost of a horse, wagon, and merchandise was the only price one had to incur to become a traveling salesman, whose door-to-door competition with established retailers made him the object of restrictive legislation as well as the butt of jokes. Local businessmen were quick to get city councils to enact so-called "Green River ordinances," making it a misdemeanor for a merchant to peddle his goods in residential neighborhoods unless he had first registered with the local police and secured prior approval of the homeowners. In the words of Godfrey Lebhar, writing in 1963, "[t]he history of retailing reveals that every innovation in distribution methods has been opposed by those fearful of its impact on the existing order. Department stores, mail-order houses, house-to-house sellers and, most recently, the supermarkets, each in turn ran into more or less organized opposition."

Undoubtedly the most blatant attempt by local retailers to use state power to destroy competition was found in a 1938 congressional bill, introduced by Congressman Wright Patman. Popularly known as the chain store "death sentence" bill, the proposed legislation made use of John Marshall's classic observation that "[t]he power to tax involves the power to destroy." The bill would have used Congress' taxing powers to legally confiscate chain stores. The tax would have cost a chain $50 per store for a chain of ten stores, to $1,000 per store for chains with over five hundred stores. Such taxes would then have been multiplied by the number of states in which such chains operated! Had the measure become law, the A & P chain, which had earnings of just over $9 million in 1938, would have paid a federal tax of over $471 million! J.C. Penney, with 1938 earnings of over $13 million, would have paid over $63 million under this taxing measure. Woolworth's with over $28 million in earnings, would have paid a tax of $81 million. The combined impact of this tax would have meant that the twenty-four largest chains would have accounted for almost 13% of the federal budget for 1938 while, at the same time, driving most of them out of business!

Trade associations representing independent retailers eagerly lined up to support this measure. Sunday closing laws, fair-trade laws, and anti–price-discrimination laws have also been endorsed by many retailers anxious to use state power to rid themselves of more efficient competitors. Legislation was also proposed, in 1922, by the National Association of Retail Grocers, to limit the number of chain stores that could do business in any community.

As retailing has evolved from downtown business districts to direct selling by manufacturers, then into suburban shopping malls, free-standing stores, mail-order businesses, and now Internet retailing; various retailing interests have endeavored to deprive upstart firms of their competitive advantages not by innovating new methods that would lower prices or increase the quality of their products or services, but by resorting to the powers of the state. One of the keenest observers of the incestuous relationship of business and government, John T. Flynn, stated, in 1928, that "most of the laws that control or hamper business have been passed — surprising as it may seem to those who clamor for u2018less government in business' — at the demand of business itself." A Kansas farmer was more succinct in commenting upon the role business organizations have played in fostering government regulation: "I have heard more socialism preached at meetings of commercial bodies than in socialistic gatherings."

There are others who, having no direct economic interests at stake, still enlist in the crusade against Wal-Mart. I suspect that many of these people have business friends who are unable to maintain the competitive pace and are easily persuaded that Wal-Mart represents an unwholesome threat. I recall, as a youngster, my father lamenting the occasional "gas wars" among service stations, arguing that they were harmful to the public. When I asked him how people — such as himself — were harmed by being able to buy gasoline at lower prices, he dismissed my question with the "you'll understand when you grow up" response for which parents are well known. Upon later reflection, I recalled that one of his close friends owned a service station, and I suspect that he was echoing his friend's complaints.

There is a common ignorance in the world with which those of us who favor free market economic systems must continually contend. It is a point of view that cannot distinguish between legally unrestrained economic behavior in which people voluntarily choose to trade (or not) with one another, and a system in which economic life is regulated, licensed, taxed, or prohibited by the state. Such ignorance finds expression in the unfocused sentiment that "competition" for legally-defined business favors and restraints is just another manifestation of the "marketplace."

The history of government regulation of economic activity is replete with evidence of various interests — be they businesses, labor unions, or consumer groups — resorting to the coercive power of the state to obtain what they cannot obtain through the voluntary choices of others. The anti–Wal-Mart jihad is just the latest chapter in this sordid effort to convert the marketplace into a public utility. That the costs of such endeavors are to be paid by customers who will be "protected" by getting to shop at higher-priced stores, or by employees whose jobs might be eliminated by the demands of higher-priced workers, is of little import to the practitioners of neo-mercantilism.

The self-interest motivations of those who use state power to restrict the free choices of others — and the response rational minds ought to make to these sanctimonious campaigns — was well-illustrated in a report, many years ago, of a traveling photographer who was prosecuted, at the behest of local photographers, for violating a Wisconsin city's "Green River" ordinance. As the local photographers sat in the courtroom to watch justice meted out to this interloper, the judge declared to them: "Here is a man with ambition enough to go out and try to get business. You ask me to fine him for it. You want the law to protect you while you sit around waiting for business to come your way. If I had the power, I would fine every one of you instead."

Now that's a judicial opinion that would be worth reading!

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