PHILANDER C. KNOX—LEGAL ADVISER TO PITTSBURGH BUSINESS[1]

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PHILANDER C. KNOX was born and raised in Brownsville, Pennsylvania. He was named in honor of the eminent Episcopal bishop, Philander Chase. This bishop, founder of colleges and missionary of Christ, uncle and guardian of Salmon P. Chase, was a man greatly admired by the Knox family. The bishop died a few months before the Knox baby was born; so the conjunction of events led to the transference of this rare and beautiful name to the infant.

William Knox, the grandfather, was a native of County Tyrone, Ireland. He was a member of the Church of England but associated himself with the Methodist Society as the followers of Wesley were then called. As a young man he set his face toward the American frontier as a messenger of the Gospel. From his headquarters at Connellsville, Pennsylvania, he rode a frontier mission circuit, planting the seeds of Methodism throughout western Pennsylvania, western Virginia, and eastern Ohio.

David Knox, son of the missionary and father of the statesman, was a respected Brownsville banker of moderate circumstances.

As a child, Philander Chase Knox attended the good school of George Wilkinson on the Brownsville common where his brother, Richard, was the intimate companion of that great soul, John A. Brashear. At the age of fifteen Philander went away to college. At nineteen he received a degree from Mt. Union, the Methodist institution at Alliance, Ohio. While at Mt. Union he distinguished himself in debate and was a

[1]Read at a meeting of the Historical Society of Western Pennsylvania on May 31, 1949, and based upon a more extended account of Philander C. Knox submitted in fulfillment of requirements for a doctor's degree at the University of Pittsburgh. Dr. Dodds is assistant professor of history at Geneva College, Beaver Falls, Pennsylvania.—*Ed.*

leader in one of the two college literary societies. The weekly forums of that society usually attracted a number of the local gentry. One who at times participated in these forums was the prosecuting attorney of Stark County, William McKinley.[2] It was thus that a friendship was formed which later was instrumental in persuading Knox to dedicate his great talents to the service of his country.

At the age of nineteen Knox began to read law in the office of Henry B. Swope; and, following the death of that well-known attorney, he continued his apprenticeship in the office of Attorney David Reed. In 1875, at the age of twenty-one, he was admitted to the bar. Two years later he and James H. Reed, a nephew of the instructor, formed the famous partnership known as the firm of Knox and Reed. This partnership continued until 1901 at which time Knox abandoned the pursuit of wealth and dedicated his life to the service of the nation.

The public service of this great barrister covered the first two decades of the twentieth century. He was called to head the Department of Justice by his friend, Willam McKinley, and continued in that office under Theodore Roosevelt. In this capacity he initiated the "trust-busting" program which secured for Theodore Roosevelt his peculiar popularity.[3] In 1904 Governor Pennypacker appointed the Attorney-General to the United States Senate as the successor of Matthew S. Quay. Knox remained in the Senate until, in response to an invitation from William Howard Taft, he became, on March 4, 1909, the Secretary of State. On March 4, 1913, Secretary Knox and some other Republicans retired to private life; but in 1916, yielding to the call of both his party and his state, he re-entered the United States Senate. His service in the Senate during World War I was characterized by a policy

[2]Philander C. Knox, as quoted by James B. Morrow in the *Los Angeles Times*, October 14, 1906.

[3]The *Outlook*, as quoted in Frederic L. Paxson, *Recent History of the United States*, 345 (New York, 1929).

of consistently strengthening the hands of the war President. At the end of that conflict he became one of the most militant and effective opponents of the Versailles (so-called) Peace Treaty.

In private law practice Knox was successful from the start. Within a short time he became an acknowledged expert in admiralty cases. At that time the marine tonnage of the Pittsburgh district was greater than that of any other port in America.[4] The firm of Knox and Reed quickly built up an enormous practice which consisted chiefly of marine and collision insurance, matters of contract, the legal business of manufacturing concerns and a few small railroads. More than one-half of his professional income, however, was derived from individual clients rather than from corporations. The Pennsylvania *Reports* are full of cases which he argued before the Pennsylvania Supreme Court between 1880 and 1900, and before the Superior Court established in 1895. He was counsel for the Vanderbilts when they obtained control of the Pittsburgh and Lake Erie Railroad. He and ex-President Benjamin Harrison were counsel to the Indianapolis Traction Company when that company forced the city of Indianapolis to continue its franchise. This company was controlled by Pittsburgh capitalists and the suit involved hundreds of thousands of dollars. In a memorable admiralty case he compelled a bridge company to raise by ten feet the famous Roebling steel-cable, suspension bridge which crossed the Monongahela River at Smithfield Street, Pittsburgh. Through the influence of Henry Clay Frick, Knox became counsel to the Carnegie Steel Company.[5] It was, perhaps, his most important client. However, he had no part in the formation of the United States Steel Corporation. He was associated neither with the steel trust nor with the Pennsylvania Railroad either as counsel or in an official capacity.

[4]Henry M. Hoyt, "The Legal Career of Senator Knox," in *Greenbag*, 20:161 (April, 1909).

[5]Knox, as quoted by James B. Morrow in the *Los Angeles Times*, October 14, 1906.

We shall now consider the advice which this great lawyer extended to Pittsburgh business leaders in regard to great national issues in the field of political economy.

Among the most difficult political problems before America at the beginning of this century were those which were related to the growth of large corporations. A baneful concomitant of this phenomenon, and one which deeply and rightfully agitated the public, was the correlated rapid development of the monopolies which were popularly called the "trusts." The hand of monopoly, at that time, held in its cruel grip many items upon which the economy of America depended. These included: anthracite coal, nickel, tin, tin cans, woolen textiles, petroleum, farm tools, tobacco, sugar, paper, leather, cottonseed oil, wheat, and meat.

The Sherman Antitrust Act had been designed to free America from the grip of these combinations. It failed in this objective. The situation grew steadily worse rather than better. This was because the Sherman Act had been imperfectly framed and Congress was not inclined to correct its inadequacies.

Attorney Knox, in an address before the State Bar Association, at Cresson, Pennsylvania, on June 30, 1897, warned of the dangers which threatened America unless Congress should take measures to correct the inadequacies in the Sherman Act.[6] He stated that "the most odious form of commercial or industrial enterprise is a monopoly," and that monopolies are "contrary to the spirit of free government." He then specified the inadequacies in the Sherman Act. This law had made outlaw all combinations in restraint of trade; but, as Knox demonstrated, the phrase "in restraint of trade" cannot be legally defined. Many contracts, he pointed out, are in restraint of trade and yet, notwithstanding the Sherman Act, are upheld in the courts. He cited, as an example,

[6]Knox, address, "The Law of Labor and Trade," in Knox Manuscripts, Library of Congress.

the sale of a business with its goodwill. The main feature of such a contract is a covenant on the part of the vendor not to engage in competition with the vendee. The prime consideration of the covenant, therefore, is the restraint which it imposed upon trade. Another weakness in the Sherman Act was that it failed to differentiate between combinations which are baneful and those which are beneficial. This observation was as sage as it was unpopular. The combination of concentrations of capital is not of itself either good or bad. The virtue or the vice of the combination depends upon a number of factors. As Knox pointed out: "There never was a time when the business of the Country was so concentrated . . . The public has never been so well and cheaply served." How then should the Sherman Act be changed and in what way could the problem of the trusts be properly solved? Knox affirmed that the answer consisted in the elimination of unreasonable combinations and in the restraining of all corporations from practices which were counter to the general welfare.

This address of Knox's, in 1897, indicates that his antitrust sentiments were in no sense an echo of the views of Theodore Roosevelt. The origin of the antitrust crusade was accurately and nobly set forth by Roosevelt himself when he testified: "The aspirations which I had half formulated . . . but to which I could not myself give shape were exactly those in which you [Mr. Knox] most earnestly believed; and you had thought them all out and were able to give them shape in speech and in action."[7]

It is worthy of notice also that the doctrine expressed by Knox at Cresson, to the effect that the legality of combinations should be determined by their reasonableness, was exactly the doctrine upon which the floating opinion of the Supreme Court finally came to rest.

On October 14, 1902, Knox returned to the theme of

[7]Roosevelt to Knox, November 10, 1904, in Theodore Roosevelt Manuscripts, Library of Congress.

government regulation and control of the great corporations in an address which he delivered before the Pittsburgh Chamber of Commerce.[8] The subject on this occasion was "The Commerce Clause of the Constitution and the Trusts." The importance of this speech was, of course, immediately recognized. Three years later the *Philadelphia Press* affirmed that this speech "has been a textbook and guide ever since in matters of anti-trust legislation and litigation." In 1920 the *Nation,* appraising this same speech from the vantage point of eighteen years, observed objectively: "Mr. Knox's Pittsburgh speech of 1902 ushered in a new era in the relation of the government and the large corporations."[9]

The Pittsburgh Chamber of Commerce was, in fact, on this occasion privileged to hear the opening barrage in the memorable battle against the trusts. With a frankness and directness which were characteristic of him, Knox surveyed the problems which the newly developing corporations were placing before the nation. To his influential audience he stated that great corporations are instrumentalities of modern commercial activity: "Their number and size appalls no healthy American . . . If their greatness and their prosperity are not the result of the defiance of natural rights or the recorded will of the people, there is no just cause of complaint." He then proceeded to show that the promoters of these great combinations had not been either wholly innocent or patriotic. "That there are evils and abuses in trust promotions, organizations, methods, management, and effects, none questions except those who profited by these evils." The evils to which he referred were overcapitalization, discrimination in prices in order to destroy competiton, insufficient personal responsibility of officers and directors for corporate management, and a lack of appreciation on the part of management for their relation to the "people for whose benefit

[8]Knox, address, "The Commerce Clause of the Constitution and the Trusts," in Knox Manuscripts, Library of Congress.

[9]*Philadelphia Press,* November 3, 1905; *Nation,* 110:2864 (May 22, 1920).

they are permitted to exist." To eliminate these evils Knox counseled that the Sherman Act should be supplemented, for "if the Sherman Act exhausts the power of Congress over monopolies, the American people find themselves hopelessly impotent."

At the time this speech was delivered many of the leaders of the American Bar, as well as Theodore Roosevelt, believed that the Federal Government lacked the constitutional power necessary for an effective regulation of the national corporations. They had been led to this conviction by the decision of the Supreme Court in the notorious Knight case. That was the decision in which the sugar trust triumphed over the United States Government. Knox did not share the pessimism of the other great lawyers of the country. He pointed out that the law already subjected to Federal control "the movement of explosives . . . impure literature . . . diseased cattle, convicts and contract labor . . . . Who shall set limits now to the competence of Congress to regulate commerce?"

This great address was the prologue to the historic assault which Attorney-General Knox soon launched against the trusts. This assault had both a legal and a legislative aspect. The legal attack had four phases. First, he brought suit against fourteen railroads which had entered into illegal arrangements with preferred grain shippers with the object of establishing a monopoly in grain. Second, he brought suit against the southern railroads because they had formed a "pool" with respect to cotton shippers. Third, he destroyed the beef trust which had raised the price of meat throughout the nation. Fourth, he dissolved the Northern Securities Company. This was a giant holding company formed with the object of overcapitalizing its assets. The special significance of these legal actions lay in the fact that they were of four types and were launched successfully against four types of trusts.

The legislative program which Knox sponsored was even

more important than these victories in the courts. Largely because of his leadership three antitrust acts were directed through the 57th Congress. The first of these was the Elkins Act which made the granting of railroad rebates illegal.[10] The second was the Nelson Amendment which established a Bureau of Corporations within the Department of Commerce and granted to that bureau the power to investigate the practices and methods of business organizations.[11] The third was the Knox Act which provided for the expedition of antitrust suits by granting, among other things, an appeal in antitrust cases directly to the Supreme Court from the court of first instance.[12] Thus Knox placed in operation the program for trust control which he had outlined and advocated in his speech before the Pittsburgh Chamber of Commerce.

In 1905 another great issue was before the American Congress. It was the proposal that the power of establishing railroad freight rates be transferred from the railroad companies to a commission of the Federal Government. One might correctly surmise that this bill, with its undermining of the power of free enterprise and its enhancing of the power of the federal state, was not enacted into law without a contest worthy of the issue. President Roosevelt gave his powerful support to the advocates of this sweeping proposal. There were at that time about $13,000,000,000 of railroad securities outstanding; and there were hundreds of thousands of investors, small and great, who were apprehensive lest government control of railroad rates adversely affect these securities. Quite understandably, therefore, many investors and business men were not in full agreement with the President on this issue. It seemed to them like a proposal to proscribe and confiscate capital without due process of law.

Knox opened the famous senatorial debate on this great

[10] 32 *U. S. Statutes* 847, the Elkins-Mann Act, February 19, 1903.
[11] 32 *U. S. Statutes* 825, Sec. 6, the Nelson Amendment, February 14, 1903.
[12] 32 *U. S. Statutes* 823, the Knox Act, February 11, 1903.

question with a speech which he delivered in the Schenley Hotel in Pittsburgh. On November 3, 1905, when Senator Knox thus publicly analyzed it, the railroad-rate bill was still in the Senate committee to which it had been referred. His select audience on this occasion were three hundred dinner guests of Carnegie Institute who had come to participate in the Founder's Day exercises of that institution.

The railroad-rate bill was finally enacted. It was, according to Charles A. Beard, the most important law written by Congress during the Roosevelt administration.[13] The Senate sponsor of the bill, Jonathan P. Dolliver of Iowa, remarked in the Senate that the framers of the measure had been guided very largely by the speech which Knox had delivered in Pittsburgh on November 3rd.

In the Schenley Hotel address, Knox advised his influential audience that the day of government regulation of railroad freight and passenger rates was at hand. He added, moreover, that such regulation was now desirable. The fact that the government must exercise this power became almost self-evident, he declared, from the time that railroads began "through various devices to concentrate this taxing power in the hands of a few men." Now, he asserted, it was the "duty" of Congress to prevent injustice and imposition by the carriers.

Senator Knox forcibly and certainly in good time pointed out that there was one feature of the Hepburn railroad-rate bill which must be corrected. It concerned the right of the railroads to due process of law. The Hepburn bill, it is true, made an allusion to the right of the railroads to appeal for a court review of any rate schedule which the government might establish. However, it made no provision for such an appeal and, as no commission executing a law of Congress may be sued without the consent of Congress, the bill, in effect, denied to the railroads the right to due process of law.

[13]Charles A. Beard, *Contemporary American History*, 271 (New York, 1914).

Senator Knox fearlessly intimated that unless this feature of the administration measure were corrected, the bill would be unconstitutional. In spite of this warning, Theodore Roosevelt, who had considerably less respect for the courts than did Senator Knox, at first tenaciously opposed any clarification, in the bill, of the rights of the railroads to obtain a court review. After seventy days of acrimonious debate the Senate finally amended the Hepburn measure along substantially the lines which Senator Knox had suggested in his Schenley Hotel address. Joseph B. Bishop, friend and biographer of the President, states that the Senate amendments did not materially change the character of the bill.[14] If this be so, then it seems somewhat tragic that the President did not heed the counsel which Senator Knox had extended. He would thereby, it appears, have averted the defeat which he sustained on this issue at the hands of the Senate. But if, on the other hand, as Senator Knox believed, the Senate had by its action changed an unconstitutional measure into one which would stand in the courts, then the issue was worthy of the contest.

Our special interest, in this connection, in the Schenley Hotel address, stems not from the pointed advice which it contained for the Roosevelt administration, but from the advice which it contained for the audience to which it was addressed. This counsel was summarized in one sentence: "The time has come when Congress must exercise more fully its powers in respect to railroad rates."

On numerous occasions Knox returned to Pittsburgh to counsel with his friends, the leaders of Pittsburgh business. At such times, as on the occasions to which we have already alluded, he proved himself to be, as Henry C. Frick once said of him, "an independent adviser" who did not "trim his advice to suit the desires of his client."[15]

[14]Joseph B. Bishop, *Theodore Roosevelt and His Time*, 2:2 (New York, 1920).

[15]Frick to William McKinley, December 16, 1896, in McKinley Manuscripts, Library of Congress.