

The FORUM Forum

The Forum serves as a vehicle for the free expression of views and comments on the contents of the journal. Each issue will carry selected critiques of the articles published, in the hope that they will stimulate further discussion in these columns of the subjects involved. Readers are urged to submit contributions, which should be typed in double-space and addressed to The Fletcher Forum, The Fletcher School of Law and Diplomacy, Medford, M A 02155.

David Kennedy: On the Cartel Bogie

Since the oil embargo, economic and political policy makers have been tilting at cartel windmills. Simple supply and demand analysis has given way to a conspiracy theory of commodity trade, fueled by an increasing and uneasy awareness of the urgency of developing country demands. Only after the cartel-no-cartel debate has worked its way through the literature will attention be redirected towards an assessment of the structural and cultural forces contributing to the market disruptions which brought commodity cartels so sharply into the limelight. Commodity market problems are certainly tied to the broader politics of development; a we-them perspective is as tempting as it is deceptive. At issue, however, is not merely a power struggle manifest in attempts at cartel formation between opposed camps of producers and consumers or developing and developed, but a broader world economic management inadequacy which must be viewed in a cultural as well as a structural context.

Peter Johnson, in gripping the phosphate rock market with a cartel handle, follows the familiar pattern. After striking the proverbial parallel between phosphate rock and oil, Johnson is forced to dilute Mikdashi's definition of cartel until the word refers simply to actions to promote a unified price above the equilibrium level. His parenthetical remark that even the paradigmatic oil "cartel" marshalls no market allocation or policing powers weakens the thrust of his entire discussion. In fact, OPEC depends upon the oil industry to allocate the burdens of cooperation and upon Saudi Arabia for Arab solidarity. While conspiracy theory might well explain the Moroccan induced phosphate rock price rise of early 1974, Ockham's razor directs that we look first to conditions of tight supply in the 1973-74 fertilizer market. To conclude

from a market price rise which failed to outlast the era of tight supply that major phosphate rock exporters, under the leadership of Morocco, had successfully acted in a cartel-like fashion is to depart from necessary causation.

Indeed, Johnson retreats from this argument and concludes that a phosphate cartel is unlikely in the short term and only vaguely possible thereafter. Ignoring the political and economic impact of rising costs on food and fertilizer exported from developed to developing markets, Johnson roots his perspective in a cartel mentality without firmly outlining the theoretical or practical prerequisites to any "cartel-like" action. He sidesteps the underlying issue by arguing that if supply, demand, and market conditions become favorable then "cartel-like" action may be successful.

Much current commodity literature has traced this route: facts suggestive of OPEC (price hikes, concentrated production, agreements or expressed producer interests) are spun into a description which fails to support the label "cartel." Assessments based strictly on resource control and price elasticities have identified a variety of potentially cartellable primary commodities. As more factors are considered, however, the field narrows to phosphates, bauxite, and chromite. Johnson admits that even "cartel-like" action in phosphates is possible only in the long range. Although producer instigated price hikes may be in store for the other two commodities, the long-range prospects for a cartel are also poor. Scanning the variables of resource availability and concentration, price, market structure, producer motivation, elasticities of supply and demand, bargaining power, and political unity for a wide range of commodities indicates that successful cartels are unlikely.

Even if cartels did become common, the resulting economic upheaval would not be cataclysmic. American participation or acquiescence is a prerequisite to most primary commodity arrangements. As a primary commodity exporter, the United States would stand to gain from certain price increases. Often, as in the tea market, it has been the developed world lobbying through the IMF and motivated to stabilize prices and exchange markets as well as to protect aid investments, which has advocated most vociferously producer discipline and agreement. The benefits of cartel formation would not accrue only to the developing world. Furthermore, potential gains would not solve all developmental problems nor would they be evenly distributed among the developing nations. The costs and benefits of cartel formation depend, moreover, on the utility of such unmeasurables as cultural solidarity or pride, heightened awareness of commodity problems, and the social impact of changed consumption patterns.

It is frightening that opinion within the developed world reacts so

violently to the thought of commodity cartels. Although this fear has increased awareness of commodity issues as it has been fed by such an awareness, a knee-jerk opposition to cartels risks channeling policy solutions away from precisely those necessary producer agreements which can only loosely be labeled "cartel-like" (e.g., copper, tin, tea or sugar).

Thinking about commodity market problems needs to be reoriented from a paranoia of shared power to concern for the economic management triad of conservation, market system stabilization, and resource transfer/wealth redistribution. Surely the utility and necessity of each has been challenged, however they lie at the base of the dispute over cartelization. Whether explained as charity, rectification, or extortion, resource transfers will be unavoidable in coming decades. The foundation for such transfers should not be built upon the power paranoia or economic calculations which characterize the cartel debate. Indeed, commodity agreements could be a useful tool in structuring the price system to affect these transfers.

The proposed integrated commodity program of the United Nations Conference on Trade and Development suggests means of implementing new commodity policy. For example, commodity agreements to stabilize markets and manage future resource allocation could be coupled with increased developed country management of aggregate demand to stabilize earnings. Compensatory financing schemes could cushion shocks due to instability and provide for wealth redistribution. Progress in international economic policy depends on abandoning the confrontational framework epitomized by ranking commodities according to the likelihood of their cartelization in favor of a more functional, cooperative mood. Cooperation presumes a willingness to abandon pure power instincts for a more ecumenical perspective. Change is unattainable if our consciousness depends upon the cartel bogie.

Shadrack Gutto: On Soviet Dissidents

Lea Sellers' topic, *Soviet Dissidents and the Western World*, (*Forum*, Fall '76), warranted an incisive in-depth analysis that the author did not provide. Ms. Sellers treated the issue in a newspaper-propagandistic style with insufficient identification and treatment of the underlying parameters of the issue. The article starts off by assuming, wrongly, that the "dissident movement" is a "democratic cause." Such an argument is simplistic, since dissidence did not start in 1917 in Russia; the phenomenon is a deep-seated demonstration of consciousness that cuts through the West and the East alike. America has her dissidents too, both inside and outside the system. Furthermore, there is an im-

PLICIT—and naive—equation of “West” with democracy. Democracy is a concept that has increasingly acquired different meanings and should always be operationally defined. Perhaps a reading of Macpherson’s *The Real World of Democracy* would have aided the author in comprehending the dimensions of the concept more fully.

We are told that it would have been an infringement of international law for a country to demand political concessions in exchange for economic benefits (p. 84). For lack of judicial authority to support this misleading assertion, Article 2(7) of the U.N. Charter is provided as the precedent. This is a sloppy understanding of the international legal order and a poor reading of the plain words in the instrument. If Secretary Kissinger and his government did not adopt a tough policy towards the Soviet Union it was clearly not for the reasons which the author cited.

Dissidence is treated superficially, not historically, by Ms. Sellers. She has left out the central issue of the conflict between the ruling classes, who are becoming more and more authoritarian everywhere, and the people. Socialist revolution, if it is not to become a mere bourgeois revolution, must be eclectic and continuous. The Soviet authorities are abandoning this necessary characteristic of a true socialist process. This could be the major cause of dissidence in that system and not the attraction of undescribed democracy. Indeed, dissidence in its pejorative sense could also be caused by potential capitalists, who abound in the USSR. It must be understood that just as there are many socialists in capitalist America, so are there capitalists in the Soviet Union. Such people may or may not be dissidents in an ameliorative sense.

David Silverstein: On Limits to Growth

The article entitled “A Survey of Limits to Growth: Is Mankind Really at the Turning Point?” by Farrokh Jhabvala appearing in the Fall ’76 issue of the *Forum* raises interesting and important questions. While I am basically in agreement with Professor Jhabvala that technology alone will not solve the critical problems of growth, I disagree with his simplistic basis for reaching this conclusion. Nor were the aspects of this problem which I wish to address discussed by Masihur Rahman in his comments on the article in the *Forum* Forum.

In summary, Professor Jhabvala argues the Meadows-Club of Rome proposition that technology alone will not prevent depletion of our so-called “non-renewable” resources for the following reasons:

First, it is by no means clear that technology can be devised to solve any and all problems which might arise.

Second, even if such technology could eventually be devised, there

might not be adequate time in which to head off the impending disaster.

Third, even if such technology could be devised in time, there are economic and social obstacles which might prevent either its development or its implementation.

These issues were the subject of a lively debate at a conference entitled "Planning for the Future" at the 1976 annual meeting of the American Association for the Advancement of Science (AAAS). Representing the "technologist" school was Dr. William Brown, a colleague of Herman Kahn, director of the Hudson Institute. Dr. Brown convincingly rebutted neo-Malthusian arguments such as those of the Club of Rome by noting that "doomsday" predictions are by no means new and that they have been consistently thwarted by man's ingenuity and increasing mastery over his environment.

Why, then, do I still profess agreement with Professor Jhabvala? Part of the answer is best explained by quoting Harvard sociology professor Daniel Bell, a participant at the AAAS Conference mentioned above. First, criticizing the neo-Malthusians for failing to understand economics and technology, he leveled a devastating attack against the technologists for failing to understand sociology. The real problem, observed Professor Bell, is a demographic one — the growing concentration of populations in the less-developed parts of the world — which technology cannot solve.

There is a second important flaw in the technologists' arguments. In addition to an inadequate understanding of sociology, they lack an appreciation of the significance of recent trends in industrial property law. The technologists' solution to growth problems depends on increasing economic incentives to stimulate development of technology necessary to overcome the problems. This solution in turn depends on the existence of a healthy and effective system for the protection of industrial property. Without such a system to insure that an innovator will reap the just rewards of his discoveries, the economic incentive to innovation is absent and the technologist's fragile house of cards collapses.

Recent trends both in the United States and abroad with regard to the protection of industrial property have been ominous. Beginning approximately 40 years ago in the United States and coinciding roughly with Thurman Arnold's tenure as head of the Antitrust Division of the Department of Justice, the federal courts, under the needling of the Department of Justice, launched an attack on the holders of U.S. patent rights. The attack has been diverse, unrelenting and has yet to reach its apex. During the last decade, an average of four out of every five U.S. patents litigated in the federal courts were ultimately declared invalid.

The rights of patentees to exploit their inventions have been increasingly narrowly circumscribed by the Justice Department's and the courts' construction of the antitrust laws. During the last five or six years, the Justice Department has successfully pressed for legislation which provides for compulsory licensing of U.S. patents in certain key areas such as energy-related technology.

In a recent address entitled "Oil, Cartels, War and Patentable Inventions," Professor Irving Kayton, Director of the Patent Law Program at the George Washington University Law School, related a parable about Rumpelstiltskin. He noted that the desperate queen in the story at least had the wisdom to initially offer Rumpelstiltskin the necessary reward to coax from him the secret of spinning straw into gold before eventually tricking him out of his due. By enacting compulsory licensing provisions in key technology areas, argues Kayton, Congress is taking away the carrot before it has even brought out the hare. Philip Sperber, lawyer and author, in a recent article entitled "The Quickest Way to Energy Independence" has raised the same key questions.

The international picture is even bleaker. The developing countries have begun to react (and perhaps over-react) to what they consider as years of exploitation by the more developed, technologically advanced countries. As a result, the so-called "Group of 77" has been pressing for a restrictive international technology licensing code; individual blocs of these countries, for example the Andean Community, have already enacted such laws. Moreover, these same countries have also been pressing for revision of the nearly 100 year old Paris Convention on Industrial Property. Their goal is to abandon the fundamental principle of "national" treatment and substitute preferential treatment for citizens of the less developed countries.

At the same time that the rewards available to successful inventors are being chipped away, the costs of developing and patenting new technology are skyrocketing. The result of these two forces will certainly be to reduce the pace of innovation, at least in some areas. The long-term impact of this effect, however, will be greatly magnified because of the well-known interdependence of technologies. Thus, a slower rate of innovation in a technology as important as energy is certain to be reflected throughout the spectrum of technologies.

Therefore, Professor Jhabvala may in fact be correct in his belief that technology will not be able to respond in time to the demands of growth. While the demographic problem cannot easily be remedied given the prevailing state of international politics, the technology problem is susceptible to solution. A thorough reassessment of domestic and international systems for protecting industrial property is called for.

