Proceedings *of the* National Conference

ON

Trusts and Combinations

Under the Auspices of

The National Civic Federation

Chicago, October 22-25, 1907

NEW YORK
NATIONAL CIVIC FEDERATION
1908

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CHAIRMAN: Marcus M. Marks, New York.

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CHAIRMAN: Seth Low, New York.

INTRODUCTION.

In the year 1899, in the month of September, the Civic Federation of Chicago called together in that city a notable gathering for the purpose of discussing the Trust question. The speakers were numerous and the published volume of the proceedings constitutes a singularly full and complete symposium of the then current opinion on the subject. So diverse are the views therein expressed that it seems hardly probable that any respectable fraction of opinion was unrepresented. But the keynote of that conference was diversity. The Committee on Resolutions of the conference made an earnest effort to find some common ground upon which all could stand, and failed to do so. It appeared that the subject was, after all, too new, too vaguely understood for men to be of one mind in regard to it.

But what could not be accomplished in 1899 might be possible in 1907. It appeared to the leaders of the National Civic Federation not improbable that a new conference might lead to some definite pronouncement of opinion.

Much had transpired since 1899 to keep the Trust question constantly before the people. The flood of newspaper and magazine discussion had augmented rather than diminished. Both State and Federal governments in a series of legislative and administrative measures, had occupied themselves more largely with the problems of combinations and allied questions, such as those pertaining to railroads. Stimulated by executive interest the courts had rendered a series of important decisions declaratory of the scope of existing law. The inquiries of the United States Industrial Commission had for the first time disseminated widely, and with the seal of official approval, a vast mass of information regarding trusts and combinations. The creation of a new Department of Commerce and Labor, and

especially the establishment of the Bureau of Corporations, gave a renewed impetus to the investigation of trusts and monopolies, and resulted in a number of voluminous and comprehensive reports, which have attracted widespread interest. The legal proceedings against some of the important trusts and the evidence brought out in the trials have been to many a revelation in regard to modern commercial methods. These are only a few of the events which in recent years have kept the trust question in the forefront of public interest, and which have been contributing toward the formation of a definite public opinion.

In planning a national conference upon this subject the National Civic Federation sought to afford an opportunity for such public opinion to crystallize in definite form. The plan met with a cordial and instantaneous response. Leaders of opinion in all walks of life gave the project their hearty endorsement. A few characteristic passages from letters expressing approval of the plan are here given:

LYMAN ABBOTT, *Editor of "The Outlook":*

"I am very glad that the National Civic Federation is calling such a conference. It seems to me fundamentally true that the interests of the railroads, the shippers and the general public are essentially one, and that it is of the utmost importance that men representing all three classes should get together, compare views and endeavor to come to some agreement as to the general principles by which those common interests can be best served. I think what we most need on the subject is just what the call indicates this meeting will endeavor to secure—light, not heat. What we need to understand, and what only experience can teach us, is the relation between competition and combination—the one the centrifugal, the other the centripetal force of society. He who believes only in combination will logically be led to socialism; he who believes only in competition will logically be led to nihilism. Neither of these results can possibly furnish the solution of the problems which now confront us. We must learn how to secure the advantages of combination without destroying the individual; to maintain brotherhood in practical forms without sinking, obscuring or belittling personality."

RICHARD WATSON GILDER, *Editor of "The Century":*

"There is a sign over a shoemaker's shop in the village where I go in summer which has this inscription above it in large letters: 'CALL IN AND TALK IT OVER.' I am glad the Civic Federation has put that sign up over its shop precisely at this time, and that the subject of talk is to be the burning question of the day—the question of the Trust. So many of the Federation's talks have proved no less useful than timely that I am sure this new talk will help to bring calmness and coolness to the public mind, and Heaven knows it needs them!"

PETER S. GROSSCUP, *Judge U. S. Circuit Court, Chicago:*

"The corporations of this country have grown up as developments of our business life, without much reference to their relations to the people as institutions of, and for, the people. It is time that they be looked into as institutions of, and for, the people. The Sherman Act was passed before the regulation of interstate carriers was seriously attempted or foreseen. Now that 'regulation' has come it is time to inquire how far the old 'prohibitions' should remain. The whole matter—corporate reconstruction and a restudy of the anti-trust act—should be gone over carefully with a view to bringing some kind of order out of the disorder that now prevails!"

N. J. BACHELDER, *Grand Master of the National Grange:*

"I do not know of any meeting more opportune or more needed at this time than the one called by the National Civic Federation at Chicago, October 22-25, to discuss combinations and trusts. The confusion in the public mind to-day is very great on many of the phases of the problem. It certainly is time for serious people to discuss the subject when President Roosevelt and the law officers of the government, whose duty it is to enforce the Sherman Anti-Trust Act, openly state that the business of the country to-day cannot be done without violating the law."

RIGHT REV. HENRY C. POTTER:

"I am profundly thankful to hear of the proposed conference for the purpose of considering the relations of trusts to the public welfare and interest. There is no subject concerning which a wider ignorance, or more curious misapprehension, exists in the public mind, and it is greatly to be desired that, in bringing the whole subject of the administration of corporations into the light, we may be assisted by the best intelligence of the land."

JOHN S. MILLER, *Peck, Miller & Starr, Attorneys, Chicago:*

"If the Sherman Act is to remain upon the statute books it should be amended, if it is to be a beneficent act, and not one hostile and injurious to the industries and prosperity of the country. It should be made specific and definite, so that the men who are conducting the commerce of the country may know from the act itself, or at least have some means of learning with certainty, what acts or conduct is forbidden by the law and made criminal, and what is not. The present law lacks this definiteness. It does not discriminate, in its terms, between that which is good and that which is evil. It furnishes no rule for the guidance of merchants in the conduct of their business. I think the idea of holding a national conference to discuss this subject and to try and come to an agreement on some general principles will be very valuable."

HAMILTON HOLT, *Editor of "The Independent":*

"There is no more pressing problem before the business people than what to do with the trusts. If recent developments demonstrate anything, they demonstrate that under modern methods of production and distribution the *laissez faire* policy carried out to its logical conclusion means economic monopoly, business corruption, swollen fortunes and social discontent. The trust question, therefore, at the present moment is a question of how far the American people are prepared to go in the way of regulation, for surely, if regulation fails, the alternative is government ownership. In my opinion, our chief trouble arises from the fact that we have not developed our trust ethics as fast as our trust economics. If the forthcoming trust conference of the National Civic Federation can shed any light on the ethical aspect of the trust movement, it will have rendered a lasting service to the country."

JOHN MITCHELL, *United Mine Workers of America:*

"My judgment is that this conference will prove of the greatest interest, and will be productive of good results, as it will give opportunity for full and free discussion upon a subject that concerns the well-being of all our people."

CHARLES G. DAWES, *President Central Trust Company of Illinois:*

"I regard the calling of this conference by the National Civic Federation at this time as a highly useful piece of work. It is always wise to say, 'Come, let us reason together.' The in-

dustrial problems confronting us to-day in this country demand consideration by the best brains of the nation. The commercial, manufacturing, labor, agricultural and financial interests demand a solution of the great trust and combination problem that will protect all the people. Personally, I believe that combinations are absolutely necessary in conducting the business of the country; but they should be restricted and the rights of the people safeguarded by strict supervision and regulation by the government, State and Federal."

SAMUEL GOMPERS, *President American Federation of Labor:*

"I participated in the Civic Federation conference in 1899, and am sure that its educational value was great. The forthcoming conference, I feel sure, will also be productive of much good to the nation, in that it will allow all sides to meet and freely express their opinion on one of the greatest subjects this country has to deal with to-day."

JOHN M. STAHL, *President Farmers' National Congress:*

"The questions to be discussed at the national conference on trusts and combinations are certainly the most important pressing for solution before our people to-day.

"1. What is the division of powers under the Constitution between the nation and the State?

"2. How should the corporation be constructed and supervised to protect investments of capital on the one hand, and the consumers on the other?

"3. What are combinations in restraint of trade? Are labor organizations that seek to fix the price at which they will sell their labor; employers' organizations that seek to fix the price they will pay for labor; farmers' organizations that seek to fix the price at which they will sell their wheat, their tobacco and their cotton; organizations of buyers that seek to fix the price they will pay for such products; are the innumerable wholesale and retail organizations dealing in all kinds of merchandise that seek to secure what they allege to be fair profits—are all of these organizations, or a part of them only, prohibited by the Sherman Anti-Trust Act? In considering the trust question we should look at it, not from our own particular interest, but from the standpoint of society as a whole."

The matter was taken up with great interest by the Governors of the several States and by the presidents of commercial bodies,

who named delegates in response to the invitation of the National Civic Federation. A significant evidence of this greater interest is found in the larger number of delegations appointed in 1907 than in 1899. The records show the following:

Delegations.	1899.	1907.
Appointed by Governors	33	39
Appointed by national and State organizations	22	33
Appointed by labor organizations	7	14
Appointed by local commercial bodies	33	58
Total	95	144

Furthermore, the attendance of 492 delegates in 1907 might be contrasted with that of 238 delegates at the earlier conference.

The conference of 1907, though larger in numbers, was much more of a unit in sentiment. It developed at an early stage of the discussion that there was no important element antagonizing the trust and combination as such. There were few speakers who failed to dwell upon the advantages which had accrued to the nation from some combinations, and from the spirit of association which, after all, cannot be separated from them. On the other hand, there was no lack of emphasis in dwelling upon the evils which had been disclosed among trusts and combinations.

The resolutions of the conference, adopted by a unanimous vote, reveal these tendencies. They are a call for further examination and more light, but a call for such examination along certain pretty well-defined lines. They should receive the attention of Congress as an expression of the popular will on this pressing question.

COMMITTEE ON ARRANGEMENTS

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J. E. Leavitt.
Benj. F. Spinney.
Wm. H. Treen.
M. V. Bresnahan.

FORTY THOUSAND CLUB OF MADISON, WIS.

Clark Gapin.
B. J. Castle.
Paul Reinsch.
Aug. Rodin.
C. P. Carey.
Rev. F. P. Galpin.

MERCHANTS AND MANUFACTURERS' ASSOCIATION OF MILWAUKEE, WIS.

August H. Vogel.
Patrick Cudahy.
August Uihlein.
I. D. Adler.
Fred M. Prescott.
F. L. Sivyer.
Julius Gugler.
Caleb E. Johnson.
Fred. Hoffman.

COMMERCIAL CLUB OF MUNCIE, IND.

L. A. Clark.
C. M. Kimbrough.
W. A. McNaughton.
T. F. Rose.
A. L. Johnson.
C. B. Fudge.
C. A. Wood.
G. E. Dungan.
R. L. Williamson.
F. D. Haimbaugh.

COMMERCIAL CLUB OF NEW ALBANY, IND.

W. S. McLean.
W. W. Godfrey.
Oscar Barth.
S. W. Newberger.
Morris Laub.

BOARD OF TRADE OF NEWARK, N. J.

W. W. Trimpi.
Harlan E. Snodgrass.
James N. Reilly.

CHAMBER OF COMMERCE OF NEW HAVEN, CONN.

Isaac M. Ullman.
Edw. P. Root.
Geo. S. Barnum.

CHAMBER OF COMMERCE OF NEW YORK.

Seth Low.
Andrew Carnegie.
William J. Schieffelin.
Cornelius Bliss.
August Belmont.
George Harvey.
Herman Ridder.
Clarence H. Mackay.
Isaac N. Seligman.
Frederick D. Underwood.

MERCHANTS' ASSOCIATION OF NEW YORK.

Nathan Bijur.
Walter C. Kerr.
Marcus M. Marks.
Henry R. Towne.
Clarence Whitman.
S. C. Mead.
Frederick B. DeBerard.

COMMERCIAL CLUB OF OMAHA, NEB.

J. L. Kennedy.
Euclid Martin.
H. H. Baldrige.
C. D. Beaton.

CHAMBER OF COMMERCE OF OSHKOSH, WIS.

Geo. M. Paine.

TRADES LEAGUE OF PHILADELPHIA, PA.

Mahlon N. Kline.
Wm. McAleer.
N. B. Kelley.

CHAMBER OF COMMERCE OF PITTSBURG, PA.

James W. Kinnear.
S. W. Cunningham.

CHAMBER OF COMMERCE OF RICHMOND, VA.

A. Caperton Braxton.
Wyndham R. Meredith.

CHAMBER OF COMMERCE OF ROCHESTER, N. Y.

R. A. Sibley.
H. B. Graves.
S. B. Hershey.
L. G. Wetmore.
T. H. McInnerney.

BUSINESS MEN'S CLUB OF SAN ANTONIO, TEX.

John C. Sullivan.
E. J. Altgelt.
Will A. Morris.
S. D. Brice.
Cornelius Horan.

COMMERCIAL CLUB OF ST. LOUIS, MO.

James A. Waterworth.
Charles W. Knapp.
Charles Nagel.

MANUFACTURERS' ASSOCIATION OF ST. LOUIS, MO.

P. M. Hanson.
Eugene McQuillin.
W. H. Watters.
H. H. Jones.
R. D. Lewis.

MERCHANTS' EXCHANGE OF ST. LOUIS, MO.

James A. Waterworth.
R. N. Whitelaw.

WEST END BUSINESS MEN'S ASSOCIATION OF ST. LOUIS, MO.

Charles F. Ziebold.
L. P. Custer.
J. A. Smith, Jr.
J. C. Peers.
W. A. Guenzburger.
E. C. Zausch.

CHAMBER OF COMMERCE OF TOLEDO, OHIO.

A. E. Macomber.

COMMERCIAL CLUB OF TOPEKA, KAN.

John E. Frost.

BOARD OF TRADE OF WILKES-BARRE, PA.

Henry W. Palmer.

BOARD OF TRADE OF WILMINGTON, DEL.

W. W. Lobdell.
John Richardson, Jr.
Anthony Higgins.
Thos. H. Savery.
R. H. Dunham.

BOARD OF TRADE OF WORCESTER, MASS.

J. Russell Marble.
Clarence W. Hobbs.

DELEGATES AT LARGE.

A. M. Barnhart, Chicago.
A. N. Bradford, Rock Falls, Ill.
Gertrude Beeks, New York City.
Dan L. Cease, Cleveland, O.
John S. Crosby, New York City.
E. S. Crosette, Davenport, Ia.
Thos. M. Debevoise, New York City.
Ralph M. Easley, New York City.
Wade H. Ellis, Columbus, O.
Roland P. Falkner, New York City.
Lewis B. Fisher, Galesburg, Ill.
E. Gaidzik, Chicago.
Robert Geddes, Indianapolis, Ind.
Geo. L. Groat, Delaware, O.
Arthur A. Hay, Indianapolis, Ind.
Franklin H. Head, Chicago.
Willard E. Hotchkiss, Evanston, Ill.
S. H. Hughes, St. Louis, Mo.
G. W. Hull, Jerome, Ariz.
C. W. Hunsche, Chicago.
Julian W. Mack, Chicago.
Hobart L. Marvin, Garrett, Ind.
J. M. Mead, Nashville, Tenn.
Robert Mather, New York City.
Henry C. Metcalf, Tufts College, Mass.
Wm. A. R. Mitchell, Chicago.
Avery C. Moore, Coeur d'Alene, Idaho.
A. W. Morrison, St. Louis, Mo.
Adolph Nathan, Chicago.
Geo. P. Naumann, Napierville, Ill.
O. E. Olin, Akron, O.
Frank Parsons, Boston, Mass.
Fred N. Peet, Chicago.
Wm. Penje, Chicago.
John B. Phillips, Boulder, Colo.
F. H. Randall, Iowa City, Ia.
C. H. Salmons, Cleveland, O.
Alvin H. Saunders, Chicago.
James F. Sargent, Chicago.
G. W. Sindlinger, Napierville, Ill.
Herbert Knox Smith, Washington, D. C.
T. Carl Spelling, New York City.
Cloyd D. Sterling, Redfield, S. D.
Chas. E. Stevens, Milwaukee, Wis.
L. B. Steward, Chicago.
Wm. Tarkington, Chicago.
Chas. J. Traxler, Minneapolis, Minn.
Stanley Waterloo, Chicago.
R. M. Wilbur, Chicago.

PROCEEDINGS

First Session October 22, 10 A. M.

The National Conference on Trusts and Combinations held under the auspices of the National Civic Federation was called to order at 10 o'clock A. M., on Tuesday, October 22, 1907, in the Music Hall, Fine Arts Building, Chicago, Illinois, by Dr. Nicholas Murray Butler, President of Columbia University and Chairman of the Industrial Economics Department of the National Civic Federation.

In opening the conference Dr. Butler spoke as follows:

On behalf of the National Civic Federation it is my agreeable duty to extend a cordial greeting to the delegates who have assembled to constitute this conference. These delegates come from every part of our country, and they bear credentials which entitle them to speak for large bodies of opinion. Chambers of Commerce, Boards of Trade, organizations of labor, business and commercial organizations of every type are here represented. We have before us a rare opportunity for the free and fair interchange of views, and for the considerate discussion of some of the questions that are now, and for some time past have been, uppermost in the public mind.

It is a noteworthy characteristic of our nation that large as is the responsibility committed by fundamental law to organs of government, larger still is the responsibility and the opportunity retained by the people themselves. It is in debates and discussions by governmental bodies that policies which public opinion demands are cast into legislative form and enacted into statute law; but it is by bodies such as this, representing the voluntary assembling of hundreds of interested citizens, that public opinion itself is formed.

We are here to try to shed light upon some of the most diffi-

cult economic and political problems of our time. We do not expect to solve them, but it is not too much to hope that we may contribute something toward their solution. These problems cannot be settled, however, to the advantage of the nation as a whole if we attempt to solve them in passion or in partisanship. We must approach them fairly and with open minds, as becomes intelligent citizens of a self-governing nation.

CORPORATIONS BENEFICENT.

One of the most beneficent results of the development of the nineteenth century was the rapid growth of the corporation as an instrument for carrying on industry and commerce. The corporation is primarily a body instituted by authority of the State, which permits and invites the co-operation of numbers of individuals for the accomplishment of a common purpose, toward which, as individuals, they could do little or nothing. The corporation was clearly created by the State for the benefit of the State. It was intended to be a means of accomplishing what would not otherwise be accomplished. It should be, and in the judgment of many may be made to be, a means whereby the savings of persons of small means are combined together into a large capital sum for the purpose of carrying on some phase of industry or commerce to their own individual benefit and to the public advantage.

Experience has shown us, however, that we have not been entirely succesful as yet in adjusting our public administration and our legal theory to the situation which the multiplication and growth of corporations has brought about. Not only has there been, in far too many cases, a sinister alliance between those who have sought governmental privileges for the corporations which they serve and those who, as governmental officers, were in position to influence the granting of such privileges, but corporations themselves, although the creatures of the State, have seemed to be in some ways beyond the power of the State to control, and outside the reach of its authority. Particularly is this true of those most important bodies which are known as public service corporations. It will hardly be denied that the power which called the corporation into existence must, in self-defence and in order to sustain an equitable relation to every citizen, so supervise and control the operations of the public service corporation that the latter shall not infringe either on the powers of the State itself or on the rights and just privileges of any individual citizen.

SIZE OF CORPORATIONS NO MENACE.

My own opinion, which runs counter to that of many others to whom we are bound to listen with respect, is that nothing is necessarily to be feared from a corporation because of its size. The American people have not been afraid of large undertakings, corporate or other. A small corporation may so entwine itself about the operations of government—municipal, county or State—that its very existence is objectionable, small though it be. The character of a corporation does not depend upon its size, but upon the principles and policies which actuate its management. Corporations themselves have no moral qualities; it is corporate officers and managers who are good or bad, honest or dishonest, as the case may be. The problem of creating and developing a public service corporation that truly serves the public is simply the problem, always and everywhere present in our life, of securing for positions of trust and power men who are not only intelligent, but upright; who are not only efficient, but honest. It is not combination and co-operation that are to be feared and antagonized, but only monopoly and discrimination.

DIFFICULTIES OF REFORM.

Problems of grave importance, not only legal but political in the highest sense, arise when we attempt to fix the ways and means by which the government shall control and supervise public service corporations. Our constitutional limitations, our political traditions and past party differences, and the complex structure of our whole governmental system, with its State and national agencies, make the problem of governmental control of corporations an extremely difficult one. There are those who think they see short and easy methods of accomplishing the desired end, but my prediction is that, true to the characteristics of our people, we shall work out a just solution of these involved problems—not at one stroke or by wholly logical processes, but step by step and after many experiments, and that not a few unforeseen difficulties will have to be surmounted or circumvented. Above all else, unless we propose to wreck the whole economic basis on which our prosperity and our happiness rest, we must have a care that we so speak and so act as not to disturb that faith or confidence which civilized man has in his fellows and upon which rests the whole enormous structure of our credit system. Destroy that, and there will not be many public service or other corporations left to regulate for some time to come.

We all know how much feeling, and what just feeling, has been aroused in the United States by corporate mismanagement. It is difficult to speak in language too strong of the usurpations of power and the larcenies of funds which have been committed by corporate officers. But let us not lose our heads. We are face to face with economic conditions that are new, and with economic abuses that, though manifold, have grown up slowly and in the dark. There is ample power in our institutions, in our constitution and our laws to check and to remedy them all. It is the business of this conference to invite and to listen to expressions of opinion as to how that power may best and most wisely be exercised.

DOES THE SHERMAN ACT NEED AMENDMENT?

The attention of every student of this subject is of necessity attracted by the provisions of the important act which has been upon the statute book for seventeen years, known as the Sherman Anti-Trust Law. That law represents the intention which existed at the time of its passage 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," should be made illegal. Violation of the law was made a criminal offence, and a suitable punishment was provided for any person convicted of such violation. This act opened the door to entrance by the national government upon a new field of activity. As it has been construed by the courts, this act is of most far-reaching effect, outrunning indeed the expectations and wishes of those who formulated and supported it. There is now reason to believe that it commits the nation to a policy which is too extreme, to a policy that, in putting an end to certain admitted evils, also puts an end to certain demonstrable benefits. Many of us believe that the act unduly exalts the principle of competition and fails to lay due emphasis upon the public benefits which may follow from properly regulated and supervised co-operation. The distinction between combinations which are reasonable and may well be permitted and those which are unreasonable and must at all hazards be forbidden, is one which ought not to be surrendered or overlooked.

Senator Sherman, of Ohio, whose name the Anti-Trust Act bears, clearly stated, when this bill was under consideration by the Senate, that it did not "announce a new principle of law, but applies old and well-recognized principles of the common law to

the complicated jurisdiction of our State and Federal governments."

It would appear that the view of Senator Sherman has not been entirely justified by events, for the language of his act, as interpreted by the courts, has gone far beyond the point where he thought it stopped. It is a most important question, therefore, whether the time has not come when this act should be amended in order to relieve not corporations, but the people, from limitations upon their business activity which this act imposes, although in reality they are not necessary in the public interest. In other words, cannot the American people secure for themselves the undoubted benefits which come from co-operative activity, as manifested in corporations and by agreements between corporations, without in any way lessening the protection which we must all desire against the evils which have demonstrably followed upon the creation of great corporations and upon agreements between them in restraint of trade? It is not combination itself so much as it is unfair discrimination which should arouse our criticism and our opposition.

In the consideration of these questions and the others which are upon our program, there is presented a wide field for discussion and ample opportunity for the exercise of statesmanship. The American people have shown time and time again that if a great issue, in particular one which involves moral considerations, considerations of essential justice, is clearly presented to them, they will decide it right. It is in full confidence in the American people and the justice of their determinations, when considerately made, that we should endeavor to debate the various questions which this conference has been called to consider.

At the conclusion of his address the Chairman announced that the National Civic Federation, which had called the conference and had arranged for its opening sessions, desired that the conference should from that time on assume the management of its own organization and the conduct of its business, and asked for any suggestions from the conference.

MR. RALPH M. EASLEY: As stated by the Chairman, the conference at this point takes upon itself the direction of its own affairs. While that is true theoretically, it does not wholly discharge the Committee on Arrangements from its obligations. This committee has invited the Governors of the States and the Presi-

dents of various organizations to send delegates, and has requested that papers be prepared. Now, in order to make a bridge by which the work may pass from the National Civic Federation to the conference the Committee on Arrangements last night instructed me to move the appointment of a committee of fifteen on Rules and Order of Business. One of the important things which this committee will report back will be some provision for a Committee on Resolutions. It will probably provide that this most important committee shall, in accordance with the invariable rule at all of our meetings, be constituted by each State selecting its own member. The Committee on Arrangements, after consideration, did not deem it necessary to put the delegates from the several States to the trouble of selecting a member for the first committee on rules and order of business, whose work would be largely technical in mapping out the procedure and program of the conference.

I move, Mr. Chairman, that a Committee of Fifteen, representing various sections of the country, be appointed by the chair to report at the afternoon session upon rules and order of business, recommendations for officers, etc.

Motion seconded and carried.

THE CHAIRMAN: The chair will endeavor to announce the committee before the close of the morning session. What is the further pleasure of the conference?

MR. EASLEY: The Committee on Program, representing the Committee on Arrangements, has provided a tentative program for the first day's session, which has been printed in the papers this morning. As the committee recently ordered by the conference cannot make its report for at least some hours, the Committee on Arrangements recommends that the program printed in the morning papers be followed until such time as the Committee on Rules and Order of Business shall have made its report.

THE CHAIRMAN: Following the recommendation and action of the Committee on Organization, the chair has pleasure in presenting to the conference the Attorney-General of Ohio, Hon.

Wade H. Ellis, who will address you upon the subject, "Present Principles Enunciated by the New Organization of Attorneys-General."

HON. WADE H. ELLIS.

Mr. Chairman—I am here to represent the recently organized association of Attorneys-General. Therefore, I come from one association to another association to discuss the evils of associations.

This conference, like the new organization of Attorneys-General, which you have invited me to represent, indicates by its very existence the necessity and the inevitableness of co-operation in every field of human achievement. We propose a study of combinations, and the first step we take is to combine.

Thus we find two important facts which must be recognized and accepted before any progress can be made in solving the problem of the trusts. The first of these is that honest co-operation is needed to right the wrongs, and, second, that honest co-operation is not one of the wrongs to be righted.

First, then, let us be done with all rivalry between State and Federal jurisdictions. Let us indulge no timid fears about the perpetuity of our dual form of government, and revive no bugaboos of a past generation to fright the souls of the unwary. The trust question cannot be fenced up by State lines. Whether we will it or not, it has become a national cause, and it will have to be decided in a national forum. Prosecuting officers of the counties and the States may here and there secure local or temporary obedience to existing laws—and I would not decry their zeal or suggest the slightest wavering in the performance of their duties—but no general or permanent policy will ever be enforced until the Federal Government vindicates its authority over a subject as broad as its domain.

STATE AND NATION SHOULD CO-OPERATE, NOT CONFLICT.

The effort should be rather to seek one effectual remedy than to emphasize a conflict between many. And here the attitude of the Attorneys-General must not be misunderstood. It is true that their association at St. Louis adopted a memorial to Congress to withdraw from the Federal courts jurisdiction to enjoin the prosecution of actions brought to enforce State laws, thus requiring that all who bring themselves or their business under the operation of such laws, and who invoke the protection of the Federal

Constitution against their enforcement, shall first submit their claims to the State courts, and if the right of immunity is there denied, shall then secure the review guaranteed in the Supreme Court of the United States. But there are no anti-trust laws involved in this proposition. With respect to such laws the Attorneys-General appreciate the greater efficiency of Federal prosecutions and the larger benefits to result therefrom; and while they have not evaded their own obligations under the statutes and public policy of their own States, they have welcomed every opportunity to assist the national authorities in the great work now going on under the inspiration of the highest leadership in the land.

Indeed, even with respect to the control of corporations within the States, experience has shown that the larger the field upon which the contest is waged the greater will be the number who participate in a righteous victory. Thus, where certain railroads in my own State were directed by the Ohio commission to cease discriminations in favor of the coal mines they owned, the operators who were suffering by the injustice rejoiced when the companies disputed the authority of the State as an interference with interstate commerce, for that defense gave the complainants an opportunity to appeal to a higher tribunal for the settlement of the controversy, and the sweeping decision that soon came from the Interstate Commerce Commission benefited not the mine owners of Ohio alone, but established a rule of fair dealing which protects every shipper in the country.

Let us not deny that the union of capital is an essential element of commercial life. Corporations have come to stay in this country. Men will put their money together, and we can never legislate this instinct out of human nature. The concentration of capital results in economic advantages too obvious to be concealed by any statute to the contrary. This of itself is not unlawful to-day, and it would be folly to make it unlawful. Corporations will continue to strive for leadership in the industry to which their energies are devoted. They will continue to construct new lines of railroad, to open new mines, to build new plants, to reach out for business in all directions, to make money and divide it among their stockholders. This of itself is not unlawful, and it would be folly to make it unlawful. There is no instance yet in this country where one man or one corporation, under one name, has secured the complete mastery of any business or pursuit. Whatever the dim future may hold for us, and whatever policy may one

day be adopted for exacting a juster toll from large incomes, or limiting the capacity to perpetuate accumulated fortunes, one thing is certain—there is no menace in our situation to-day that would justify any limitation whatever upon the mere amount of money or property which any individual or any corporation may acquire.

MOST EFFECTIVE COMBINATION IS THAT ORGANIZED THROUGH STOCK OWNERSHIP.

Our troubles have not come from the overwhelming concentration of wealth in the hands of any one man or of any one corporation. Though the possibility of this be admitted, its conception involves the surrender of the chief characteristics of human nature. The capacity of a single individual, or even of a single corporation, seems restrained by a law of its own limitations. But more than this, monopoly seems self-destroying whenever it comes frankly into the open. The very attempt to absorb any trade or traffic under one bold command incites revolt and provokes competition. It is only when monopoly hides that it is secure. Thus the evils of commercial restraint, which now beset us, have not come about by any corporation occupying the whole field of a given industry, but solely by a combination of corporations, under one form or another, maintaining separate organizations, presenting a show of competition and securing that control which no one of them was strong enough to encompass.

First, there was the agreement between competing companies. But in the larger field of trust operations this has been discarded, not only because it encountered the condemnation of the courts, but because it was not effective. Then came at last the present form of combination through the ownership or control of the stock of the allied companies. This is the most effective, the most invidious and the cheapest of all combinations in restraint of trade. It is the most effective, because while agreements—and especially unlawful ones—may easily be broken, a transfer of the stock puts the bargain beyond the power of any conspirator to escape. It is the most invidious because while it conceals all, it fears no exposure. It is the cheapest, because it requires less money to buy a controlling interest in the stock of competing companies than it does to buy their property, and yet the promoters have the use of the investment of all the minority holders in all the corporations brought under their control. In fact, it generally requires no money at all, for the stock in the subsidiary companies

is paid for in the stock of the holding company. And thus a vast industry is brought under the domination of manipulators whose circulating medium would not be a legal tender anywhere except on the stage.

If this combination of separate corporations, through stock ownership, can be destroyed, the chief source of our present troubles, at least, will no longer infect the life of trade. Once require that every corporation shall attend strictly to its own business, in its own name, and we need never fear an unnatural concentration of wealth.

THE STATES THEMSELVES ARE RESPONSIBLE FOR THE DEVELOPMENT OF THE "HOLDING COMPANY."

How did this evil of corporate ownership of the stock of other corporations arise? Who is responsible for it? The States themselves gave birth to the system. It is simply the exercise of a new corporate power, never before existing, and only recently granted by express statutes. It was brought about, of course, by some of the large corporate interests, but the States were persuaded that they were inviting capital by conferring more liberal powers upon corporations than those which existed at common law, and some of the States, without any hope of actual investments, seem to have been actuated solely by a desire to earn incorporation fees. Thus was adopted the modern policy, expressed in the statutes of a number of American States, that corporations organized under the laws of such States shall have power to own the stocks in other corporations. The most conspicuous of those States which have thus departed from the common law—most conspicuous because it offers other inducements for incorporation and because of the great number of modern trusts which have been formed under its statutes—is New Jersey. But New York, Connecticut, Maine, Delaware and one or two other States also authorize one corporation to own the stock of another without regard to the business in which they may be engaged. West Virginia and Minnesota permit this only with the consent of the stockholders of the owning company. Georgia, Indiana and Mississippi expressly forbid it, while nearly all the other States forbid such stock ownership by not granting the necessary power to corporations organized under their laws. Ohio, I regret to say, has compromised on the question by permitting one corporation to hold the stock in "other kindred and non-competing corporations," with a further restriction that such ownership must not violate the anti-trust

statute. What are "kindred" and at the same time "non-competing" corporations, the ownership of whose stock in a holding company will not produce a monopoly of business, has never been judicially determined.

THERE IS NO INHERENT POWER IN ONE CORPORATION TO OWN THE STOCK OF ANOTHER.

These statutes, deliberately enacted by several of the States, are the sole source of the power of one corporation to own the stock of another. There is no such power at common law. The courts have held with practical unanimity, from the earliest time to the present day, that in the absence of an express grant of authority so to do, no corporation has any power to buy, sell, hold or deal in either its own stock or in the stock of any other corporation. (1) In other words, the right to own corporate stock is not a natural or implied incident of corporate power. The reason for this time-honored principle of the common law is most obvious. Corporations are organized for certain specific purposes. Their obligation to their stockholders and to the public is to devote the funds entrusted to their care to the prosecution of the business in which they are engaged. If a corporation can deal in its own stock it can not only repress the value of that stock in order to get it at a good price, it can not only defeat the security of its creditors who rely upon the duty of its stockholders to discharge their obligations to the corporation, but it can destroy the very business in which it was organized to engage. If a corporation can own or deal in the stock of other corporations, it can not only divert the funds under its control from the purposes for which they were contributed, but, most baleful of all, it can destroy all competition in the industry which the charter of the State empowers it to promote. These are the reasons invariably given by

(1) Green-Bryce's Ultra Vires, p. 95; Citizen's State Bank v. Hawkins, 71 Fed. 369; First Nat. Bank v. Nat. Exchange Bank, 92 U. S. 122; People v. Chicago Gas Trust Co., 130 Ill. 268; Cal. Bank v. Kennedy, 167 U. S. 362; De la Vergne Co. v. Germ. Sav. Inst., 175 U. S. 40; Ry. Co. v. Iron Co., 46 O. S. 44; Lanier Lumber Co. v. Rees, 103 Ala. 622; Straus v. Eagle Ins. Co., 5 O. S. 59; Coppin v. Greenlees & Ransom Co., 38 O. S. 275; Franklin Bank v. Com. Bank, 36 O. S. 350; Railroad Co. v. Hinsdale, 45 O. S. 556; Central Ry. Co. v. Collins, 40 Ga. 582; Hood v. Railway Co., 22 Ct. 1; Franklin Co. v. Lewiston Inst., 68 Me. 43; Milbank v. R. R. Co., 64 How. Pract. 20; Pierson v. R. R., 62 N. H. 537; Hazelhurst v. Railroad, 43 Ga. 13; Nassau Co. v. Jones, 95 N. Y. 115; Elkins v. Ry. Co., 36 N. J. Eq. 5; Marble Co. v. Harvey, 92 Tenn. 115; Berry v. Yates, 24 Barb. 199; People v. Pullman Pal. Car Co., 175 Ill. 125.

the courts in support of that wholesome public policy which denies to corporations, as an incident of their express powers, the right to go into the stock-jobbing business. The Supreme Court of the United States, in the case of the First National Bank v. the National Exchange Bank (1), has declared that national banks which are incorporated under Congressional statutes have no power to buy the stocks of other corporations, and the Federal courts have held (2) that one national bank has no power to purchase the stock of another national bank. In the celebrated Chicago Gas Trust case (3) it was held that even where the corporation assumed, by the express terms of its articles, the right to own the stock in another corporation this power could not be exercised because it was not conferred by the legislature of the State. Railroads have repeatedly been held to possess no power, in the absence of statute, to buy or hold or vote the stock of other railroads. (4) So with insurance companies. (5) So also with manufacturing, industrial and trading companies. (6) The New York courts (7) have held that in the absence of a statute one corporation has no power to purchase the stock of another, and may be enjoined by its own stockholders from holding or voting such stock. Yet the legislature of New York has given the power which its courts denied upon grounds of public policy. All these cases have been decided upon the principle that the ownership of stock in another corporation was a diversion of corporate funds, and most of them have expressly declared that such ownership was unlawful because it promotes monopoly. (8)

THE STATES WHICH DENY SUCH OWNERSHIP OF STOCK ARE POWERLESS TO PROTECT THEMSELVES.

What is the result of this recent grant of power by some of the States to the corporations organized under their laws? If New Jersey incorporates a company with all the powers that State confers the company may buy all the stock in all the corporations engaged in the same business in Massachusetts or Illinois, where

(1) 92 U. S. 122.
(2) Cit. State Bank v. Hawkins, 71 Fed. 369.
(3) 130 Ill. 268.
(4) Central R. R. Co. v. Collins, 40 Ga. 582, and cases cited.
(5) Berry v. Yates, 24 Barb. 119.
(6) See cases heretofore cited.
(7) Milbank v. Railroad, 64 How. Pract. 20.
(8) Marble Co. v. Harvey, 92 Tenn. 115, and cases cited.

such purchase of stock is forbidden, and Massachusetts and Illinois will be powerless to protect themselves or their people. The New Jersey companies will not be within their jurisdiction. The ownership of stock by a corporation of one State in a corporation of another State is not "doing business" in the latter State. (1) Of course a State might forbid its corporations from permitting those of other States to own and vote their stock, and Ohio is now insisting that such control is a violation of her laws by the Ohio corporations whose stock is thus owned. But this is a remedy difficult of enforcement, and one that would lead to an unnecessary interference with business relations between the States, as well as produce a hazardous conflict in public policy.

The present situation is intolerable. The corporate charters as now issued by some of the States are no longer mere grants of power to engage in business. They are commissions to destroy business. In the manner in which they are used to exploit industries and stifle competition among the people of unoffending sister States they are more like the ancient letters of "marque and reprisal," which authorized adventurous privateers to prey upon the commerce of the seas.

ALL THE CHIEF COMBINATIONS NOW IN EXISTENCE OPERATE THROUGH STOCK OWNERSHIP.

Passing the matter of railroad combinations, as to which it may be said that through stock ownership the control of all American lines is now concentrated in seven groups of parent properties, we are chiefly concerned with the practical use that has been made of the new corporate power by the largest and strongest of our manufacturing and industrial enterprises.

The United States Steel Corporation, organized under the laws of New Jersey, with a capital stock of $1,100,000,000, owns a majority of the stock of eleven subsidiary companies, most of which themselves own stock in other lesser companies, and controls industries scattered over the entire country under different styles and corporate names. This corporation owns or manages 213 manufacturing and transportation plants and forty-one mines located in eighteen different States; it has more than 1,000 miles of railroad tracks to ore, coke and manufacturing properties, and a lake fleet of 112 vessels. This stock ownership gives it control

(1) Commonwealth v. Standard Oil Co., 10 Pa. St. 119.

of hundreds of millions of capital that is not represented by its own billion dollars of stock. (1)

The Amalgamated Copper Company, incorporated in New Jersey, has no asset whatever except the stocks of other corporations. It owns all the stock of four operating companies and a controlling interest in seven others, and has taken them over by an issue of $155,000,000 of its own stock.

The American Smelting and Refining Company, organized under the laws of New Jersey, controls the business of thirteen corporations, in which it either owns the entire stock or a majority interest. Associated with it are the American Linseed Company, the National Lead Company and the United Lead Company, and they together control twenty-eight concerns and ninety-three affiliated corporations.

The Standard Oil Company, incorporated in New Jersey, with a capital stock of $110,000,000, controls, directs and manages more than seventy corporations through its possession of a majority of their stock. Some of these companies own stock in still other corporations, and all together the combine operates more than 400 separate and distinct properties, thus monopolizing 90 per cent. of the export oil trade and 84 per cent. of the domestic trade. The market value of its capitalization is about $650,000,000, and all this vast property was brought together under one head without the payment of a single dollar of cash, the whole consolidation being effected through the issue of stock in the holding company in payment of stock in the companies that are held.

The United Gas Improvement Company, incorporated in Pennsylvania, own stock in thirty corporations doing the character of business for which it was organized, and in addition to this is interested in numerous street railway properties, including the New York City surface railways. With it is allied the Public Service Corporation of New Jersey and the Rhode Island Securities Company, which last named owns all the stock of the Rhode Island Company, which again has leased for 999 years several of the most important railroad companies doing business in that State. The power of this corporation, through this system of stock ownership, is scarcely calculable, and the value of properties controlled would equal hundreds of millions, although its own capital stock is but $36.000,000.

The American Tobacco Company, organized under the laws of New Jersey, with a capital stock of $40,000,000, practically con-

(1) Moody's Truth About the Trusts, 135 et. seq.

trols the whole market through its ownership of the stock of innumerable other corporations.

The International Harvester Company, incorporated in New Jersey, with a capital stock of $120,000,000, while probably not a holding company, maintains most, if not all, the corporations which it has bought out, and they are operated as if they were distinct and competing concerns.

The American Sugar Refining Company, incorporated in New Jersey, with a common stock of $40,000,000, controls fifty-three other corporations.

The American Telegraph and Telephone Company, incorporated in New York, with a capital stock of $250,000,000, controls, through stock ownership, thirty-five subsidiary corporations.

The Western Union Telegraph Company owns stock in twenty-four other corporations; the Distillers' Security Company owns 90 per cent. of the stocks of the Distilling Company of America, and has acquired ninety-three plants, representing 60 per cent. of the industry; the Philadelphia Rapid Transit Company owns the stock of twelve elevated and street railway companies; the Brooklyn Rapid Transit Company owns the stock of seven others; the Metropolitan Securities Company of New York owns the stock of many traction companies, and the controlling interest in others; the Inter-State Railways of New Jersey own all the stock of the United Power and Transportation Company, which latter company controls the capital and franchises of about forty other projected companies in New Jersey and Pennsylvania; while the International Mercantile Marine Company of New Jersey owns a majority of the shares of many of the most important steamship companies whose vessels cross the Atlantic Ocean.

These are but a few instances of the promotion of combinations through stock ownership. It would be improper to condemn all or any of these gigantic enterprises simply because they have exercised the power expressly given them by the States of their creation. As to some of these corporations, actions are now pending in State or Federal jurisdictions to test the validity of their organization, and it is not intended here to discuss the lawfulness of the acts of any of them.

The one thing important to make clear is that not a single combination here named, nor any other of the larger and more powerful monopolies, could ever have been organized or devel-

oped if their promoters had been without power to effect the concentration of capital through the stock ownership of separate corporations.

CONGRESS CAN AND SHOULD DENY TO INTERSTATE COMMERCE CORPORATIONS THE POWER TO OWN STOCK IN OTHER CORPORATIONS.

Now, if the present combinations which threaten our industrial freedom have been brought about chiefly or largely through the exercise of powers conferred by some of the States upon corporations to own the stock of other corporations, why is not the remedy to be found in returning to the good old common law rule that every corporation must attend to its own business, and its own business alone? And if the chief obstacle to the administration of anti-trust laws by the States has been the lack of jurisdiction over corporations engaged in interstate commerce, but chartered by other States than those whose laws they have violated, why would it not be wise for the Federal Government to deny to interstate corporations the corporate power of buying the stocks of others or permitting their stocks to be owned or voted by others?

Can there be any doubt as to the authority of Congress to enact such general law? Certainly the fourth article of the constitution, which provides that:

> "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States,"

would not forbid Congress to restrict the powers of corporations engaged in interstate commerce; first, because such commerce is not a privilege or immunity *in the State*, but better still because the word "citizen" as here used has been held not to apply to corporations at all. (1)

Congress has been given the express power to "regulate commerce * * * among the several States," and (2) "to make all laws which shall be necessary and proper for carrying into execution"

the powers conferred upon the Government. The power thus

(1) Paul v. Virginia, 8 Wall. 168; Ducat v. Chicago, 10 Wall. 410; Liverpool Ins. Co. v. Massachusetts, 10 Wall. 567; Western Union Tel. Co. v. Mayer, 28 O. S. 521.

(2) Art. 1, Sec. 8, United States Constitution.

conferred upon Congress is absolute and it is exclusive whenever exercised. It has no limitations whatever, except those to be found in the instrument which grants it. It may create corporations itself as instrumentalities for carrying out its powers. It may forbid the States to create such corporations. It may forbid interstate commerce altogether in any instance in which the welfare or safety of the people demand it. Certainly these powers include the right to say upon what terms interstate commerce shall be conducted and to limit the capacity of interstate corporations in any and every respect, and especially in those respects in which their corporate functions are being so exercised as to stifle the very commerce in which they are engaged,

It is wholly unnecessary in support of the proposition that Congress can prevent interstate commerce corporations from dealing in corporate stocks to advocate another and different proposition that Congress can usurp the police powers of the States and regulate the conduct of manufacturing establishments within the States simply because the corporations maintaining them ship their goods beyond the State.

That Congress has general and exclusive control over interstate commerce has never been denied since Gibbons v. Ogden (1) was decided. That the power to regulate interstate commerce

> "includes as well commerce carried on by corporations as commerce carried on by individuals,"

has never been denied since Paul v. Virginia (2) was decided. That Congress has power to create corporations to carry out the powers expressly conferred has never been denied since McCulloch v. Maryland (3) was decided. That Congress has power to absolutely forbid interstate commerce in some instances has never been denied since the lottery cases (4) and the cattle cases (5) were decided.

As Chief Justice Marshall says (6):

> "The power over commerce with foreign nations and among the several States is vested in Congress as abso-

(1) 9 Wheat. 240.
(2) 8 Wall. 168.
(3) 4 Wheat. 316.
(4) 188 U. S. 321.
(5) 187 U. S. 137.
(6) Gibbons v. Ogden, 9 Wheat. 240.

lutely as it would be in a single government having in its constitution the same restrictions in the exercise of the power as are found in the Constitution of the United States."

In the Sugar Refining case (1) the Court says:

"On the other hand, the power of Congress to regulate commerce among the States is also exclusive. The Constitution does not provide that interstate commerce shall be free, but by the grant of this exclusive power to regulate it, it was left free except as Congress might impose restraint;" and where "the law passed by a State in the exercise of its acknowledged powers comes into conflict with that will (of Congress), the Congress and the State cannot occupy the position of equal and opposing sovereignties because the Constitution declares its supremacy and that of the laws passed in pursuance thereof; and that which is not supreme must yield to that which is supreme."

In a striking opinion by one of the judges of the United States Circuit Court (2) this language was used:

"We think the power of Congress is supreme over the whole subject (interstate commerce) unimpeded and unembarrassed by State lines or State laws; that in this matter the country is one, and the work to be accomplished is national; and that State interests, State jealousies and State prejudices do not require to be consulted. In matters of foreign and interstate commerce there are no States."

In the matter of corporate powers to be exercised by companies engaged in interstate commerce the States themselves have recognized the superior jurisdiction of Congress. In a New York case (3) the question turned upon the right of the State to legislate upon the consolidation of railroads forming interstate lines, and the court said:

"The conclusion, therefore, is inevitable that *in the absence of such legislation by Congress* the power exists in the State that legislates upon the subject."

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(1) United States v. E. C. Knight Co., 156 U. S. 1.
(2) Stockton v. B. & O. R. R. Co., 32 Fed. 16.
(3) Bordman v. Lake Shore & Mich. So. Ry. Co., 84 N. Y. 157.

CONGRESS HAS ASSUMED AND EXERCISED THE POWER TO CREATE INTERSTATE CORPORATIONS.

It appears from these decisions that Congress has plenary power over interstate commerce. It may itself create the corporations that engage in such commerce. It may do less than this, and restrict the corporate powers of those created by the States. Let us consider, for a moment, what Congress has actually done in this respect. In 1829 it incorporated the Washington, Alexandria and Georgetown Steam Packet Company; in 1862 it incorporated the Union Pacific Railway Company; in 1864 the Northern Pacific; in 1866 the Atlantic and Pacific; in 1870 the Washington and Boston Steamship Company; in 1871 the Texas and Pacific Railway Company, and in 1890 it incorporated the North River Bridge Company, authorizing the construction of a bridge to New York City across the Hudson River, and regulating commerce in and over such bridge between the States of New York and New Jersey. (1) These are a few only of the interstate companies incorporated by Congress. That Congress has the power to create such corporations has been asserted in its own behalf, and by its own committees. In the report of the House Committee of the Fifty-ninth Congress (2) this statement is made:

> "Corporations are created by the sovereign, whether the sovereign be the United States or a State. In this regard the power of Congress is limited while the power of the State is unlimited. Whenever, under the Constitution, Congress can exercise a power *Congress can create a corporation to carry that power into execution.*"

CONGRESS CAN REGULATE AND SUPERVISE.

Let us see what Congress has actually done in restricting or regulating interstate commerce corporations whose charters have been granted by the States. The Sherman Anti-Trust Act was simply an exercise of this power. Congress found that corporations chartered by the States to engage in interstate commerce were destroying the freedom of that commerce by entering into combinations in restraint of it. So, if Congress should find that corporations chartered by the States to engage in interstate commerce are now monopolizing that commerce

(1) Luxton v. North River Bridge Co., 153 U. S. 525.
(2) Report No. 2491.

by purchasing or controlling the stocks of other corporations also engaged in that commerce, can it not forbid such purchase and control? Does it make any difference that some State has expressly authorized the forbidden thing to be done? Would it have made any difference if some State had expressly authorized the combinations that were outlawed by the Sherman act? The establishment of the National Bureau of Corporations and the investigations which that bureau is authorized to make of all corporations engaged in interstate commerce, is but another instance of the exercise of the power here claimed. The Interstate Commerce Act itself, and particularly the recent adoption by the commission of a uniform system of accounting for all interstate railroad corporations, is only another regulation of the same character. The further amendment of this act by which interstate railroads are forbidden to transport products of their own mines or manufactories and are practically required to dispose of their coal properties by May 1, 1908, is merely an indirect method of controlling their corporate powers. (1).

The need of a more thorough and effective Federal supervision over corporations engaged in interstate commerce is emphasized by thoughtful men on every side. The President has repeatedly voiced this necessity in words which reveal a patriot's vision and solicitude; and the Supreme Court of the United States in several of its more recent decisions has prepared the country for judicial support of legislation which asserts the fullest control of the Federal Government over all the instrumentalities of Federal commerce.

In the Northern Securities case (2) that court discussed the very question of the right of Congress to forbid a State corporation engaged in interstate commerce to own the stock of another such corporation, and while it expressly disclaimed any intention of deciding that question, the language it used is significant:

> "Congress has," says the Court, * * * "a large discretion as to the means to be employed in the exercise of any power granted to it. For the present it is determined to go no further than to protect the freedom of commerce among the States and with foreign States by

(1) Fed. Stat. Supp. 1907, p. 170.
(2) 193 U. S. 197.

declaring illegal all contracts * * * in restriction of such commerce. * * * *How much further it may go we do not say.*"

In a still later case, decided in October, 1905 (1), the Court had under consideration the conduct of an industrial corporation engaged in interstate commerce and in defining the powers of Congress with respect to such corporation, Mr. Justice Brown uses these plain words:

"It is true that the corporation in this case was chartered under the laws of New Jersey, and that it receives its franchise from the Legislature of that State; but such franchises, so far as they involve questions of interstate commerce, must also be exercised in subordination to the power of Congress to regulate such commerce. * * * Being subject to this dual sovereignty, the general Government possesses the same right to see that its own laws are respected as the State would have with respect to the special franchises vested in it by the laws of the State. The powers of the general Government in this particular * * * *are the same as if the corporation had been created by an act of Congress.*"

PRACTICAL ADVANTAGES THAT WOULD FOLLOW THE DENIAL TO INTERSTATE CORPORATIONS OF THE RIGHT TO OWN STOCK IN OTHER CORPORATIONS.

There would be nothing startling or revolutionary in the act, if Congress should pass a general law forbidding all corporations engaged in interstate commerce to own, or to be controlled by, other corporations so engaged. It would be simply an adoption of the common law. It would be merely an extension of the policy already enforced by Congress with respect to all corporations now created under its direct authority. National banks have no power to buy the stocks of other national banks, and corporations chartered by the District of Columbia are expressly forbidden to own the stocks of other corporations.

The practical advantage of the step proposed would seem to appeal with special force to all law officers whose public duties have brought experience in enforcing existing statutes against the more harmful combinations of capital. If corporations engaged in interstate commerce are hereafter forbidden to

(1) Hale v. Henkel, 201 U. S. 43.

deal in corporate stocks the combinations thus formed can be dissolved by a very simple method. A disobedience of the new law by any corporation can be made the basis of an action by the Government to oust the offending company from the right further to do an interstate commerce business, or such other penalties can be imposed as the nature of the case demands. As to existing investments of this character, the same consideration can be given the interests involved as was accorded the railroads in the disposition of their coal properties.

In pursuance of the plan here suggested, no charter need be granted by the National Government, and not even any license to interstate corporations would be required, although this would not be out of harmony with the proposed restriction upon the powers of such corporations. The law itself would simply forbid stock ownership among interstate corporations, and its violation would result in a proceeding by the Federal Department of Justice, similar to the quo warranto actions now authorized in the States, to forfeit the interstate rights of the corporation thus exceeding its powers. It would not be necessary in such proceeding, as it appears to be now under the Sherman act, to show that a monopoly is produced by such stock ownership, or that the purpose of that form of combination was to produce a monopoly. The mere fact of the acquisition by one interstate corporation of the stock of another, with the continued maintenance of the corporations thus controlled, would itself be deemed an interference with the freedom of interstate commerce.

This plan would not invade the appropriate sphere of the States; they would be left free to create all corporations, both for domestic and interstate business, and to endow them with any corporate powers they chose, except that as to interstate companies the charter of the State would be held subject to the superior law of Congress. And if for a violation of that law an interstate corporation were ousted of its right to do an interstate business it could still continue to do a domestic business in the State of its creation or in any other State which was willing to admit it for that purpose and submit to the business conditions which result. But the States whose laws forbid stock ownership by corporations would be protected and interstate commerce would be free from the most impregnable combination which now controls it.

I make no prediction that the policy here suggested would

bring the millennium, or would solve the "problem of the trusts." But it might remove the most obvious of existing evils; and more important than all else, it would make the promoters of every great enterprise conduct it openly under one name. The battle for business would then go on without the use of "concealed weapons," and the natural growth of corporations would not need to be retarded by a resort to governmental restrictions which oppose sound, economic laws.

Surely no business man and no corporation in this country can fairly complain if the only limitation put upon the amount of property that may be acquired, or of wealth that may be amassed, or of trade that may be secured, is that every corporation shall devote itself solely to the management of its own affairs.

THE CHAIRMAN: As the second speaker of the morning, I have the honor to present Mr. William P. Borland, of Kansas City, Missouri, who will speak on "State and Federal Jurisdiction Over Interstate Commerce."

MR. WILLIAM P. BORLAND.

Mr. Chairman—If this conference is to do any good it will be because it offers some practical solution of vexed problems. We are met here to discuss live issues. What do the American people expect of us? To propose remedies. Let me tell you in a few moments of one of these problems and its possible remedy—the problem of how to enforce State statutes, how to check the encroachment of the Federal courts, and how to maintain the confidence of the people in the administration of the law, a subject upon which, at the request of Governor Folk, of Missouri, I had the honor to prepare for him some written opinions during the heat and hurry of the general and special sessions of our legislature.

DEMAND FOR LAW ENFORCEMENT.

We will all agree that at no time in the history of our country, or perhaps in the history of any other country, has there been such a widespread and earnest desire for law enforcement as there is to-day in America. There has hardly been a time in our history—bright though it is with every movement toward freedom, peace and prosperity—when we have not been compelled to tolerate lawlessness in some quarters, among some element of

the people, or in some sections of the country. At first these conditions were supposed to grow out of the demoralization and disorder brought on by the two wars with England; then came the conquest and settlement of the Southwest, with its new problems of lawlessness, and the great domain thrown open after the Mexican War was barely seized and held by our citizens with its accompaniment of Indian wars and Mormon troubles, when the fury of the great sectional strife of 1861 burst upon us, and again the love of peace and order of the American people was strained almost to the breaking point. The boiling cauldron of Civil War threw up the vilest scum of lawless elements that harried the South and the border States for another generation. Meantime, the rapid growth and development of the great West brought into existence the mining camps and the cattle camps, which were magnets to attract and concentrate desperadoes and renegades from every quarter of the civilized world. Nor was the East without its share of blame. A large element, masking under the name of investors and promoters and generally clothing themselves with the sacred disguise of public benefactors, engaged in deliberate schemes of plundering the resources of the West by peaceful means and under the guise of law. Political jobbery, lobbying, bribery, corruption of legislatures, purchased seats in Congress and in the Senate, railroad land grabs, bond steals, franchise juggling, bankruptcy, repudiation and fake receiverships are some of the noxious flowers that bloomed above the stagnant pool of crime and corruption.

A few days before I came to this conference, a little township in the county where I live had a celebration to burn and destroy $67,500 of railroad bonds issued in 1871 for a railroad which was never built, and never even graded, but which bonds were transferred to an alleged innocent holder and held to be valid by the United States Court. Through all the dismal years of the reconstruction when the people of that section were rebuilding their burned farm houses and replanting their desolated fields, through all the severe financial distress following the panic of '73, through the grasshopper invasion and crop failures from '75 to 1880, and through the last great panic in '93 those people have continually struggled against this enormous burden, which was a blanket mortgage from every farm in the township. At last they have paid off every dollar, and you may well imagine the stern joy that entered into their hearts when the bonds went up in flames.

In New York State the recent traction investigation and the insurance scandals of a year ago have startled the people with their disclosures of widespread, deliberate and organized lawlessness. Those financiers seem to have adopted the cynical doctrine of Balzac: "The rich are beyond the jurisdiction of law and of public opinion. The last argument to the world is success. Success is virtue." Free government has been on trial. No wonder the demand for the referendum is growing when bribery is regarded as a conventional crime!

We stand now at an era of universal law enforcement. Every citizen of the United States, in every quarter of the United States, of every rank from top to bottom, is thoroughly devoted to the Union, and thoroughly in favor of the enforcement of just and equal laws; and with some pride we say that this great movement toward law enforcement originated in the great State of Missouri, and has spread from thence both east and west.

All of the great questions which your managing committee has designated as subjects for this conference are bound together with one common tie. That tie is the demand for an equality of privilege for all citizens and in all sections. Special privileges to none is the very essence of a republic, and no laws are wise or wholesome whose necessary tendency is to produce class distinction or special privileges. Government has no right to force any man up, nor force any man down. Aristocracy and anarchy have always gone hand in hand. There never has been a time in history when we have not had examples of this, nor are the object-lessons wanting in the present conditions of European countries. We lay it down as an axiom that there is no anarchy without aristocracy.

CONFLICT OF STATE AND FEDERAL COURTS.

The conflicting jurisdiction of the State and Federal courts, the protective tariff, the anti-trust laws, the regulation of interstate commerce and the control of public utilities in large cities are all phases of the same great question. Let us look at the signs of the times. Ten years ago any criticism of the Federal courts was received by the average citizen, either East or West, with the greatest disgust and indignation. To-day a concerted movement of various interests, political and commercial, is on foot to curtail, or at least to limit and define, the jurisdiction of those courts. Especially is this true among the State officials who represent very closely the prevailing sentiment of their States. Why this change? Are the Federal courts worse to-day

than ten years ago? Are the men who sit in them less capable or less honest? No! If anything, there has been an improvement in the personnel of those courts. The change of feeling, then, comes from some other source. It is the awakening sense of the people that the tendency of the subordinate Federal courts is gradually to encroach upon the rights of the States and the business interests of the country. The Federal courts stand as the embodiment of centralization. There must be a limit beyond which centralization is neither justifiable nor safe. The American people will never surrender the great principle of local self-government. It is an unformed sense of this that fills the mind of the average citizen who unthinkingly casts aspersions upon those courts. This was seen many years ago by some of the clearest thinkers. In 1884 old Governor Curtin, of Pennsylvania, a stalwart Republican, in opposing in Congress the bill to renew the land grant to the Texas Pacific Railroad, said:

"I cannot but think it will be better for this country to be in the hands of small land owners, especially when, as at present, power is so centralized in this Federal city, and when the jurisdiction of the courts of the national government has been so extended that the people scarcely find a settlement of their rights of property and person in the State courts. Why, sir, I can remember when the American citizen no more felt the power of the Federal courts than the air he breathed. When money is centralized in the hands of a few, when a few men dominate and control the business of a country, I tremble, sir, for its liberties, and wonder if monopolists should be allowed to shape its future. The authorized permit of the government by statute, and the arbitrary assumption if enlarged, will, in time, absorb the States and their sovereignty, and the pernicious anti-republican and despotic espionage under which internal revenue is collected may be extended to all departments of the government."

INCREASE OF CORPORATION BUSINESS IN FEDERAL COURTS.

In Missouri, as in many other States, we are wrestling with the problem of enforcing the State laws. The immediate cause of the difficulty is that the local Federal courts enjoin at the instance of some railroad company, and practically without a hearing, the enforcement of State statutes regularly passed. It is a well-known fact that the Federal courts have become almost solely the forum for corporation cases. More than nine-tenths of the business of those courts is in behalf of corporations—al-

most all of them railroad corporations—and all of them, with scarcely an exception, using that forum to the exclusion of the State courts on the ground that they are foreign corporations, and not citizens of the State where they do business. Is this well? Does it add to the dignity or usefulness of the Federal courts? Were they created for this? I have no hesitation in saying that it is a misfortune to the Federal courts themselves, a misfortune to the country, a lasting injury to the State. It is a direct inroad upon the great principle of equality in establishing one of the most pernicious examples of class legislation. In plain English, we have virtually erected a special court for the use of foreign corporations, a species of class legislation in favor of such corporations the most glaring and indefensible. Like all abuses, this has been of gradual growth. It is almost entirely due to the railroads. The Supreme Court of the United States during the splendid period of Judge Marshall did not hold that a corporation was a citizen of the State which created it, within the meaning of the Constitution. It held that a foreign corporation could only sue in the Federal court by virtue of the citizenship of its stockholders. After 1840, when the railroads began their marvelous growth, the court finally crystallized the rule that all of the stockholders of a corporation must be conclusively presumed to be citizens of the State which chartered it; that a corporation was a citizen of the State in which it was incorporated, and, for that reason, could sue in the United States court under the clause of the Constitution extending the judicial power to controversies between citizens of different States. This is an anomaly in constitutional law, as every lawyer well knows. A corporation is not really a citizen in any sense. It is a mere legal fiction. It is not a citizen within the clause of the Constitution, which provides that the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States. The effect of holding it to be a citizen within the meaning of the judicial clause has been to enable any State in the Union to spawn corporations and cast them out to sue in the United States courts and defy the laws of the other States. This practice has finally become so flagrant that every little street corner lunch counter rushes off and gets incorporated under the laws of another State whenever it desires to bring suit in the Federal courts, and the time of the Federal courts is almost exclusively taken up with the business of alleged foreign corporations. It will readily be seen that this destroys the equality of privilege between citizens,

creates class distinctions, and generally demoralizes the proper poise of our dual system of government. But it may be said that each State may protect itself from foreign corporations, may impose such restrictions upon them as it sees fit, or may totally exclude them from its borders. This is true, except as to such as are engaged in interstate commerce. But total exclusion of foreign capital from a State is too drastic a remedy, and one which no State should be driven to adopt. Would it not be better for all concerned that the foreign corporation be compelled to submit to the local courts of the State? This might clarify the atmosphere of the Federal courts, lend dignity and strength to the State courts, and, more than all, remove a feeling of distrust, prejudice and jealousy from the minds of the people. In Missouri we have several railroads which are Missouri corporations. We have several others which are foreign corporations. The foreign corporations have a right to resort to the United States court. The domestic corporations have no such right. It is also within the power of any body of citizens of Missouri to get themselves incorporated under the laws of New Jersey to transact business wholly in Missouri, and by this solemn farce to enroll themselves among the privileged class of "foreign corporations."

SOME MISSOURI EXPERIENCE.

Last winter the Missouri Legislature had under consideration a bill to require all railroad companies doing a local business in the State to incorporate under the laws of Missouri. A statute similar to this is in force in the State of Texas. The bill passed the lower branch of the Missouri Legislature by a large majority, and was before the Senate. The railroads then put up a very strong opposition to the bill on the ground that it would greatly inconvenience them in readjusting their securities, and they begged the Senate to pass instead a bill providing that any railroad which removed a case from a State court to the Federal Court should have its license to do local business in the State revoked, leaving its right to do interstate business unaffected. This latter bill was modeled upon a Kentucky statute in regard to insurance companies, which was sustained by the Supreme Court of the United States in the Prewitt case. Such a law was accordingly passed, and it was no sooner on the statute books than three of the foreign railroad companies, the Chicago, Milwaukee & St. Paul, the Chicago, Rock Island & Pacific, and

the Atchison, Topeka & Santa Fe, rushed to the Federal Court and enjoined its enforcement. Their objections to the law are mainly two: One, that it constitutes class legislation because it does not forbid a non-resident citizen from removing a case to the Federal Court, but does discriminate against a corporation. This objection is not tenable under the constitution, as a foreign corporation cannot enter into local business in the State except upon such terms as the State dictates. The second objection is that it interferes with interstate commerce. In other words, that because a corporation is engaged in interstate commerce, it has a right to do local business also, with or without the permission of the State. It is probable under the present condition of the law that when the case reaches the Supreme Court of the United States, both of these points will be decided against the railroad companies, and the statutes will be sustained. But meanwhile, by virtue of an injunction by an inferior Federal Court, the railroad company is enabled to defy all power of the State to regulate foreign corporations, and will be enjoying several years' profits from its unlawful business, for which no possible redress can be had; in other words, it is always a good speculation for a law-breaker to get somebody enjoined from enforcing the law against him.

SHOULD FEDERAL COURTS DEFEAT LOCAL STATE POLICY?

Missouri is also engaged in a struggle to enforce its laws regulating the rates to be charged by railroad companies. The Supreme Court of the United States has decided that the Federal Government cannot regulate rates on business wholly within a State, yet, when the State undertakes to do so, the foreign corporation immediately enjoins the enforcement of its law on the ground that the local rates are so mingled with the through rates that it is impossible for the State to fix a fair and reasonable local rate without confiscating the property of the railroad. In this case also the railroads are clear gainers by any delay. As this is a government by the people, and by an enlightened people at that, it is impossible that the settled purpose of the people can be defeated in the end. Certainly it cannot be defeated by the interposition of the Federal Courts, as they emanate, though indirectly, from the people. We are all familiar with the picture of the Indian who tried to lasso the locomotive. The enterprise had very little effect on the locomotive, but was

highly disastrous to the Indian. The corporations will be regulated, and reasonable rates will be established.

It may be asked then, what harm will be done beyond a little delay, which may give occasion for more moderate and deliberate action? The answer to this is plain. It is a false principle, wrong in theory and vicious in practice. It falsely assumes that the Legislature of a State, aided by the courts of the State, is engaged in pillage; that the State can be trusted with the lives and fortunes of its own citizens, but is presumed to be in the wrong when a foreign corporation is involved; that its arm must be paralyzed by an outside force.

Another answer is that it makes the Federal Courts the censors of State action in a way that the Constitution never intended, and not with happiest results to the courts, or the State or the public opinion of the community.

But above and beyond all this, it destroys the confidence of the people in the equal administration of the law, by leading them to think that laws are meshes to entangle the mice, while the lions break through. Every lawyer and every thinking man regrets profoundly the prevailing sentiment in regard to the Federal Courts. We cannot expect the correction of this matter to come from the railroads, as the railroads unfortunately have been run for many years upon the principle that everything possible must be gouged out of the public while the opportunity lasts. Every railroad manager seems to adopt as his motto: "After me the deluge," and nowhere in railroad circles have we found any sentiment looking to a just solution of the railroad problems for the future. Temporize, dodge and fight is their policy. It remains for such conferences as this to look at the matter squarely in the face, and try to arrive at a just solution which will preserve the integrity of the Federal Courts, keep them in full operation of their beneficent jurisdiction, and preserve them from becoming exclusively the forum of special interest and drawing upon themselves the disgust and indignation of the general public. A moderate reform at this time may prevent the pendulum swinging too far.

Some writers have thought that this matter could be corrected by a more liberal construction of the XI Amendment, which provides that the judicial power of the United States shall not extend to controversies against a State brought by a citizen or subject of a foreign State. Perhaps the XI Amendment has not been given broad enough scope, but at any rate, the Fed-

eral Courts have decided in many cases that where State officers are threatening to destroy property rights of a foreign corporation under the pretended authority of an unconstitutional State statute, the Federal Courts would enjoin them from so doing, and such a proceeding was not a suit against the State. In the rate cases, therefore, under the present decisions, a State statute may be enjoined in the Federal Court by a writ issued against the officers charged with its enforcement. But the XI Amendment probably forbids a similar injunction under the anti-removal statutes. The anti-removal statute does not profess to attack any rights of property that the foreign corporation may have within the State, but only attempts to do what the State has an undisputed right to do; that is, forbid the further transaction of business within its limits by a foreign corporation.

REMOVE CONSTITUTIONAL QUESTIONS FROM LOWER FEDERAL COURTS.

The true solution of this question is found in the suggestion of the Attorney Generals who recently met in St. Louis: That Congress should, by proper enactment, take away from the inferior Federal Courts the jurisdiction in this class of cases. The effect of this would be to enable the foreign corporation when its rights were attacked, to litigate fully the question in the State Court, and afterwards take the same from the highest court of the State to the Supreme Court of the United States upon any constitutional question involved. Congress has an undoubted right to limit the jurisdiction of the inferior Federal Courts. It need not confide to those courts all of the jurisdiction which the Constitution vests in the Federal Government. It can, for motives of convenience and public policy, leave a portion of that jurisdiction unexercised. Such an act of Congress could never weaken the Federal Government. No man honestly believes that it would. All danger from States' rights has passed away forever. The real danger now is that the constant growth of Federal power may take away all local pride, all local responsibility. Centralization is often mistaken for strength and for patriotism, but it is neither. It is one of the constant foes of free government. Never should we become so dazzled by the sun of centralization as to blot the stars out of our national flag. This is still an "Indissoluble Union of Indestructible States." Let's get back to the Constitution.

THE CHAIRMAN: Gentlemen, the last speaker of the morning session will be Mr. A. T. Ankeny, of Minneapolis, Minn., on the subject, "Does the Power to Regulate Rates in Transportation of Commerce Rest with Congress or the State?"

MR. A. T. ANKENY.

Mr. Chairman and Gentlemen—If you can hold out a few moments for your dinner I will promise to be very brief. The usual rule for a lawyer is to write ten or fifteen minutes of material and then get before the audience and use an hour for talking. I will not do that. I will read absolutely what I have written, for the reason that when I undertake to digress at all I simply use up your time and postpone your dinner.

The question which the honored president stated is not exactly in the proper language, because nobody doubts the power of Congress to regulate commerce as a general rule among the States. The question which I insist upon is a new question—absolutely new to-day before the people of this country. Briefly stated, it is: Does the power to regulate rates in the transportation of commerce rest wholly with Congress, or does any part of that power rest with the legislative bodies of the several States?

The question is to be determined under the clause of the Constitution which reads as follows:

> "The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

While this question is more than sufficiently large for the limits of an ordinary paper, it is believed that by a brief but comprehensive statement of the salient features and the principles which underlie we may be enabled to reach a fairly satisfactory conclusion.

It is, first of all, proper to observe that this is a purely legal question, and in no sense political. Preconceived opinions, therefore—political bias, local surroundings, and even public clamor—should all be put aside in the discussion. Its ultimate determination can rest only with the Supreme Court of the United States. While, therefore, the matter is pending, the National Civic Federation, whose purpose, in any case, is to ascertain the possible truth, may well, at this time, give to the subject a fair, calm and impartial consideration. Even though no better results shall be obtained, such consideration may tend in some degree to allay

any disappointment when that determination by the court shall have been reached.

ORIGIN OF RATE CASES.

In the so-called rate cases we singularly find a complete reversal of former business policies, especially in the railways. For long years in control, the State was everything to them and Congress nothing. The chief disputes arose at home, and no efforts were spared to adjust them with as little friction as possible. To this end the lobby of the railway was a conspicuous though silent part of the legislative body. The companies were often in politics as well as in transportation. They could generally be depended on in a political campaign for a contribution on one side or the other, and sometimes on both. Free passes carried the legislator of influence everywhere, and it was rare thing for even judges on the bench to refuse them. The whole object seemed to be to keep things in statu quo. By degrees the changes came. The people rebelled against excessive charges, rebates and discriminations, as these appeared from time to time. To meet this uprising no political convention longer dared to go before the people without a pledge for relief. No matter how thoroughly divided on other issues, here was a common ground, and all, without any distinction, united in one great battle to break down and crush out the evils. What the powers at Washington were apparently unable or unwilling to do, the State legislatures commenced to do, and, beginning with Ohio, twenty-one States undertook to settle the difficulties by plunging headlong into greater ones. They attempted by legislation to fix the maximum rates for transportation within their respective limits. And now, with injunctions by the railways in the Federal courts and mandamuses in the State courts, the country finds itself in a series of legal contests the like of which has never been known.

POWER OF STATES TO FIX MAXIMUM RATES.

Two grave questions are thus presented:

1. Have the several States the power to make maximum rates within their own limits, or does such power to regulate rates rest wholly with Congress?

2. If the States have such power, are the rates so attempted to be made confiscatory, In other ways, is this taking their property without due process of law?

It is hardly worth while to spend much effort on the latter inquiry. That is largely a question of fact and depending upon the evidence in each case. What may be good in one case may not apply to another. At best, such evidence is a jumble of figures, speculative and problematical, and often incomprehensible by the average man. It is at least highly probable that with the abolition of passes and by confining themselves to legitimate business the railways in the long run may not seriously suffer. The plea is sometimes good as a dilatory plea, but in the magnitude and importance of the cases, greater constitutional questions arise.

As to the commerce clause. More litigation has here appeared and more anxiety has been given to the Supreme Court to reconcile differences than in any other clause of the Constitution. This is so for the reason that here more than elsewhere lies the possible dividing line between the power reserved by the States and those delegated to the Federal government. The difficulty is not so much in establishing the principles upon which each power shall act, as in applying those principles to the infinite variety of facts which arise. The power to regulate commerce undoubtedly rests with Congress. The power to regulate not commerce, but things which may incidentally affect commerce, undoubtedly rests with the several States. Such powers are usually known as the police powers of the State. What, therefore, may be on the one hand a regulation of commerce by Congress, and on the other an exercise of police power by the State, is and always will be the main contention in any given case. Numberless cases have thus been determined by the Supreme Court.

WHAT CONSTITUTES THE POWER TO REGULATE COMMERCE?

Let us therefore closely analyze these two separate powers.

Prior to the adoption of the Constitution, the States, representing the people therein, had the sole and sovereign power over commerce. Numberless conflicts between them thus grew up, especially among those States best enjoying commerce with the foreign nations. New York and Massachusetts had by far the larger share over the more inland States, and they were disposed to hold it. In exchange for the surrender they demanded a no less concession than the abolition of the slave trade. This was finally agreed to, the latter to take effect in twenty years. It is extremely doubtful whether without this compromise the Union could have been formed. The power to regulate commerce was given to Congress with the evident design that there was to be

but one regulating power, and not thirteen such powers. It was only so there could be uniformity of regulation and avoidance of conflicting interests. As Mr. Webster once eloquently said:

"The Constitution was the child of pressing necessity. Unity and identity of commerce was its seminal principle. In matters of trade we were no longer to be European, Virginia, Pennsylvania or Massachusetts men; we were to have but one commerce, and that the commerce of the United States."

Our Supreme Court has time and again given expression to the same declaration. It has said, and repeated with emphasis, that the United States, for many important purposes, are a single nation; that in all commercial regulations we were one and the same people; that commerce among the several States was a unit and subject to national control. Every decision involving the subject from the days of Gibbons v. Ogden has clearly affirmed the principles there laid down by the great Chief Justice Marshall, himself a Virginia lawyer. We then had only as the main instruments of commerce the sailing and steam vessel. Later in the immense development came the railway, and still later may come the airship. But no matter what the means of transportation, the same principles of construction must apply. Commerce has been held to be extended trade or intercourse, and in it is included the purchase, sale and exchange of commodities, as well as the means either of persons or instrumentalities by which it is carried on.

Against this, the powers so reserved by the States in the surrender of the power to regulate commerce, are such as care for the lives, health, morals, education and comforts of the people, and in their ramifications are almost endless. The State in the exercise of its police powers may grant charters to the carrier, may define the period of its duration, the amount of its capital stock, and the amount of its indebtedness. It may provide for an increase of stock and determine where and how it is to be expended. It may require carriers to pay taxes, build and maintain proper stations, regulate the speed of trains in cities and across thoroughfares, fence their tracks, build bridges over highways, and in numberless ways compel them to respect local laws and usages. In short, in the exercise of this police power, the State may do anything except the one thing of regulating commerce. If to make maximum rates for passengers and freights is to regulate commerce, then it is wholly without power. If, on the other hand, to so make rates is only

an exercise of police power, even though such act may incidentally affect commerce, then the acts of the State may be valid.

In the same Gibbons case, Justice Johnson there prophetically said:

"It would be vain to deny the possibility of a clashing and collision between the measures of the two Governments. The line cannot be drawn with sufficient distinctness between the municipal powers of the one and the commercial powers of the other. When such collision does come the question must be decided how far the powers of Congress are adequate to put it down."

That was in 1824, and the collision seems to have now come.

Nearly a century later, in 1905, in the Pabst Brewing case, 198 U. S., the Supreme Court was obliged to say that "the question, whether a given State law is a lawful exercise of the police power is still open and must remain open to this Court."

We are thus justified in terming this a new question.

Sometimes it is said there is a concurrent power in this matter between Congress and the State.

This would be illogical. It would be to subvert a mathematical axiom by surrendering the whole and yet retaining a part.

Sometimes, too, where Congress has failed to act, the State has been deemed properly to act. In 1789, soon after the Constitution was adopted, and Congress found its inability to do certain things, it passed an act to the effect that where such inability appeared the several States might provide for needed regulations until such time as Congress might choose to exercise its power. Thus it was that for a half century, and until the Civil War Congress did not assume its prerogative in the issues of money. It was only a couple of years ago, or more than a century later, that it gave to us the much needed Uniform Naturalization Law. But in all cases where the power of Congress was allowed to lie dormant, the moment it did exercise the power that moment the authority of the State fell away.

We are thus brought directly to the question:

Has Congress properly acted? We here reach a serious point in the controversy.

In 1887 Congress did assume to act by the passage of the Interstate Commerce Act, and the establishment of the Commerce Commission. It acted upon the theory that its power was not to make rates, but to regulate them after they had been

made by the carrier. This was under the principle that even though the carrier was "a public highway" it was still entitled to make charges for the service, with the only limitation that such charges should at all times be reasonable and just. Among other things provided by the Act the carrier was required to file and publish its rates, which were then deemed to be the legal rates. Upon complaint, or even of its own motion, the Commission was empowered to determine violations. It then made its order. The weakness of the Act consisted in the fact that the order could be enforced only in the courts. This occasioned delay and impaired its value. In 1906 Congress made an amendment in and by which an order so made goes into effect within thirty days, and so remains unless modified by the court or the Commission. This amendment has not yet been passed upon by the Supreme Court, but it is likely to be held valid.

The State Legislatures, or at least some of them, have gone beyond this mere power to regulate rates. In the Commodity Act of Minnesota, April 1907, there is provided maximum rates according to distance and classes of commodity. These are fixed absolutely and the carrier is forbidden to charge other rates under penalty of imprisonment. Yet it strangely provides that "it shall not in any manner affect the power or authority of the railroad and warehouse commission, except that no duty shall rest upon the commission to enforce any rates specifically fixed by this or any other statute of this State." The Act further provides that if it be found by the commission that such rates are not reasonable, the commission may fix higher or lower rates. That is, the Act specifically fixes maximum rates, and if they are not high enough then higher ones may be made by the commission, or lower, to suit its discretion. Whether or not the commission did not already have that power must be left to conjecture.

In the passenger rate made by statute a short time before a two-cent maximum rate is fixed with a penalty for violation not exceeding $5,000, and imprisonment not exceeding five years, or both. The railroad and warehouse commission are not charged with its execution. We thus have the commission, already charged with full powers over rates, and yet here ignored in any control.

These statutes are cited, however, only for the purpose of showing that while Congress undertakes to regulate rates a

State assumes to practically fix them. The Supreme Court has defined "to regulate" as meaning "to prescribe the rules by which commerce is to be governed," and that it does not mean to destroy. As late as 1903 Justice Harlan, in the Northern Securities case, gave expression as follows:

"If Congress has the power to fix such rates, and upon that question we express no opinion, it does not choose to exercise its power in that way or to that extent. It has, as all will agree, a large discretion as to the means to be employed in the exercise of any power granted to it. For the present it has determined to go no farther than to protect the freedom of commerce * * * by declaring illegal all contracts, combinations, conspiracies or monopolies, in restraint of such commerce and make it a public offence to violate the rule thus prescribed. How much further it may go we do not now say."

This would seem to be against any claim of power to specifically and in the first instance fix rates.

We now meet in our way the fact that Congress in all its legislation, and the Supreme Court in its decisions, make a difference between commerce, which affects two or more States, and commerce, which affects one State only. In other words, a distinction between interstate commerce and intrastate commerce. Is this a just distinction?

It is not likely that after all these years of acting upon such distinction we can expect any other construction. But it is at least interesting to see upon how slender a thread the construction hangs.

We have seen that commerce is a unit, and that it cannot be divided except as to the three kinds of commerce—with foreign nations, with Indian tribes and among the several States. In the first two the word with, is used, while in the latter we have the word, among. Why this distinction? Evidently in the first two because alien peoples were concerned, although one of them resided in the States, but not as citizens. When it came to ourselves the word among was used. It was commerce in its entirety that was to be regulated by Congress. There were three classes upon which the power was to act—foreign nations, Indian tribes and ourselves. The word between could not have been used, for that implies a relation of only two when there were thirteen several or particular States. On its face, therefore, the word among was used to express that class or kind of commerce which would affect any or all of the several States.

So careful, however, seems to have been the court in the Gibbons case to not encroach upon any supposed rights reserved by the States that in stating the principles involved, although not then necessary, Chief Justice Marshall there gave to the little word among a definition that has produced endless confusion ever since. He says: "The word among means intermingled with. A thing which is among others is intermingled with them." He concludes his argument by saying that "the completely internal commerce of a State then may be considered as reserved for the State itself."

The error, if such it be, consists in adding the term inter. No lexicographer ever gave a definition including this term. The most that is said is that among means mixed or mingled with. But it by no means follows that it must be intermingled with. Taken literally it would be such commerce as is mixed with the several States, and not commerce mixed with foreign nations or Indian tribes. The Century Dictionary defines among as in, in the midst of, in the class or number of, in connection with, etc. The word is Saxon, made up of two other words, on (in) and gemang (crowd or assembly). Commerce among the several States becomes commerce in or in the class of the several States. We also have the old word, Witenagemot, the assembly of wise men, in the days of Wessex, King of Britain.

THE DISTINCTION ONE OF THEORY, NOT OF PRACTICE.

In theory the definition is without good reason. Why should it be interstate commerce between Duluth and Superior, a few miles apart, where two States are concerned, and State commerce between Duluth and Minneapolis, one hundred and fifty miles apart, and only one State concerned? Why is it not commerce in any part of the country? How can it be divided when it has been surrendered?

In practice the distinction has almost wholly been lost. Not fifteen per cent. of the commerce is internal with the State. Some authorities estimate it as low as five per cent. The carrier gets a charter from the State, and soon crosses into another State, and stretches midway across the continent. If a train, so made up, happens to have a car destined to a point within the State, does that particular car lose its identity with the train? It is simply one and all commerce, intermingled and undivided, carried by the same company, pulled by the same

engine, manned by the same crew, and it passes on its journey regardless of State lines. Even though, as in the Minnesota iron mines, the railways operate wholly within the State, yet the commerce they carry is destined for other States, and the commerce begins the moment it starts. This was long ago settled in the Daniel Ball case.

With, therefore, the Interstate Commerce Commission acting under the law of its creation, and assuming to deal only with commerce involving two or more States, the only possible hold it can have upon commerce within the limits of the State is, that where rates are made by the different State authorities such rates necessarily and directly interfere and conflict with rates established by that Commission. Assuming this to be true, and that in the very nature of things there cannot be forty-six separate regulating powers for the commerce of the country, yet it is a somewhat slippery foundation upon which to rest things of such vast moment and magnitude. There would now seem to be a grave necessity for a full reconsideration of the subject. It is a most significant fact that while the distinction has been made in State and interstate commerce, no such distinction appears in the control of the navigable waters, wherever situated. And yet commerce in either case is to be regulated under the same commerce clause of the Constitution. No power there seems to have been allowed "to lie dormant," but on the contrary, Congress annually appropriates money for their improvement, now nearly $20,000,000. Is it, we may pertinently ask, a case of appropriations "following the flag"?

PRECEDENCE OF COMMERCIAL OVER POLICE POWERS.

We are met by the assertion, shall not the Sovereign State (with a big S) control the corporation of its own creation? Most assuredly it should, subject only to the limitation of the power surrendered in the beginning. The question at last comes to this issue: Is the rate-regulating power a police power, or is it a commercial power?

We find a good illustration in a case lately heard in North Carolina. The commission of that State ordered the railway company to restore a station which had been closed by the company. Justice White, United States Circuit Court, upheld the order, and on the sole ground that for the convenience of the people the State in the exercise of its police powers had full control. It was not a commercial power.

If it shall be held by the Supreme Court that in the cases now pending Congress has properly acted, and that the State Legislatures have exceeded their true powers, can it be said that the efforts on their part are without value? By no means. Even if wrong as to the methods pursued, they are right in the objects to be attained. It is not likely that the old rates will ever be restored. Without such action by the States public sentiment could never have been focused. They are a plain notice to Congress and its Commission that if this duty is theirs it must be met with more vigor and more wisdom than has heretofore been shown. That Commission, acting up to its full measure of responsibility, thus comes to be the most important administrative department of the Government, and next only in value to the Supreme Court itself. And it is well to remember the fact that whenever a controversy with either Congress or the Executive has heretofore arisen, public confidence has usually followed the Court. There, at last, is the sheet-anchor of our safety.

If in the crisis through which we are passing there be any who fear an encroachment upon the rights of the States, and a dangerous centralization of power in the Federal Government, to them let me commend the inspiring words of the great Madison—"The Father of the Constitution"—when urging upon his fellow-citizens the adoption of that sacred instrument:

> "The powers proposed to be lodged in the Federal Government are as little formidable to those reserved to the individual States as they are indispensably necessary to accomplish the purposes of the Union; and all those alarms which have been sounded of a meditated and consequent annihilation of the State Governments must, on the most favorable interpretation, be ascribed to the chimerical fears of the authors of them."

The following paper on the "Conflict Between Federal and State Courts," prepared by Mr. David P. Marum, a delegate from Oklahoma, was then read by title:

MR. DAVID P. MARUM.

Mr. Chairman: This question is to-day as unsettled as it was in the year of 1838. For several years prior to the death of Chief Justice Marshall, the question as to whether or not the Supreme Court of the United States had the power to declare void a legislative enactment of a sovereign State, then, as now,

involving the question of sovereignty, puzzled the greatest lawyers that the world had ever produced. The Supreme Court of the United States was hopelessly divided upon the question presented for their consideration in four cases, viz:

Briscoe et al. vs. The Commonwealth Bank, of Kentucky.

Proprietors of Charles River Bridge vs. Proprietors of Warren Bridge.

Pool et al. vs. Lessee of Fleeger et al.

The Mayor, etc., of New York vs. Miln.

The questions involved in the above cases had been pending in the Supreme Court of the United States from 1831 until 1838. At the last term of court over which Chief Justice Marshall presided these cases were continued for the term because the Chief Justice had no assurance that all the members of the court would be present at that term and he wanted the grave questions to be passed upon by the whole bench. This was ostensibly the reason why the cases were continued, but practically, the reason was that the Chief Justice did not have concurring with him upon his views of how the cases should be decided a majority of the bench, as the next term of court, presided over by his successor, shows.

POWER OF UNITED STATES SUPREME COURT DECLARES STATE LAW INVALID.

The contention of the Chief Justice that the Supreme Court had the power to declare a law of a sovereign State invalid, was upheld by the court at that time, but they decided that the questions embraced in the foregoing cases were not in violation of the United States Constitution.

The enactments covered what was supposed to be a violation of a contract, an interference with interstate commerce, the power of the State bank to issue money, or as was claimed, bills of credit which the State itself, under the Constitution was prohibited from issuing.

The fourth question was not so grave, viz: The power of two sovereign States to amicably adjust the dividing line between themselves without appealing to the Supreme Court to settle the controversy.

In unmistakable terms at that time the Supreme Court announced that whenever it was necessary for that court to decide a question as to the validity or invalidity of a State law, they would not hesitate, but would perform their duty. Judge

Baldwin wrote a supplemental concurring opinion in each of the cases, and also a history of the origin and nature of the Constitution, with his views upon the questions involved. Judge Baldwin said what is applicable at this time:

"There is no task more difficult and invidious than to decide who were those eminent and distinguished members of the profession in former times, and who now, or to whose opinion the court of last resort ought to pay judicial deference, and who were and are yet deserving of such distinguished notice. Judges would incur great hazard in making the selection and would form their opinions by very fallible standards if they looked beyond the State law on which the case arises—the provision of the Constitution which applies to it and the purported rules and principles which have been established by the judicial authority.

"It is a risk which I will not incur on any account involving the constitutionality of a State law; for, if the case should be so doubtful that any man's opinions, either way, which are not strictly judiciary and authoritative would turn the scale, I would overlook them and decide, according to the settled rule of this court, that in every case the presumption is that the State law is valid, and whoever alleges the contrary is bound to show and prove it clearly.

"In obedience to this rule, I cannot recognize in any private opinions of any description, by whomsoever or howsoever expressed or promulgated, any authority for rebutting such presumption.

* * * * * * *

"There is no court in any country which is invested with such high powers as this. The Constitution has made it the tribunal of the last resort for the decision of all cases of law or equity arising under it.

"The 25th section of the judiciary act has made it our duty to take cognizance of writs of error in State courts in cases of the most important and delicate nature. They are those only in which the highest court has adjudged a State law to be valid, notwithstanding its alleged repugnance to the Constitution a law or a treaty of the United States.

"When this court reverses the judgment, they overrule both the legislative and judiciary authority of the State without regard to the court or stand, politically or judicially, of individual members of either department. Surely then it is our most

solemn duty not to found our judgment upon the opinion of those who assume to decide on the validity of State law without any official power, sanction or responsibility.

"If we deferred to political authority then the three branches of the legislative power, of the judicial authority the highest is the solemn judgment of the members of that court in which is vested the Supreme Judicial power of the State.

"And there is another still higher consideration which arises from the effect of a final judgment of this court, under the 25th section. It is irreversible. It is capable of no correction or modification, save by an amendment to the Constitution. It must be enforced by the executive power of the Union and the State must submit to the prostration of the law and its consequences, however severe the operation may be. That the case ought to be clear of any reasonable doubt in the minds of the court either as to the law or its application, this proposition is self evident, and there are no cases to which the rule applies with more force than to this which turn on the obligation of contracts.

"If we steadily adhere to it as a fundamental rule that the judgment of a Supreme Court of a State on the validity of its statutes shall stand firm until it is proved to be erroneous, the effect would be most important on constitutional questions and lead to a course of professional and judicial opinion which would soon assign to the now all doubtful parts of the Constitution a different and established meaning."

PRESENT-DAY APPLICATION.

How like to-day are the conditions dreaded by the great judges who, at that time, formed the Supreme Court of the United States. The power claimed by them is to-day conceded to be in that court whether the Constitution was brought into existence by "We, the people of the United States, or by the sovereign States of America, uniting to form one nation."

The Constitution of the United States confers only a limited power upon Congress. The only limit upon the sovereign States is their own constitutions, and that their laws shall not conflict with the Constitution of the United States or entrench upon any of the powers granted to the National Government by the Constitution and the amendments thereto. Such being the case, and having a court with such powers, as is the Supreme Court of the United States, the judges of which from its

very foundation, have ranked as the peers of, if not the superiors of, any like body of men in any part of the world, it seems that this unlimited power granted to the court by the Constitution, has been responded to by the character of the men who have been placed as judges to interpret the Constitution and enforce the laws enacted by Congress.

INFERIOR COURTS SHOULD NOT PASS UPON CONSTITUTIONALITY.

From its inception to the present day it is impossible to point at a single judge the finger of scorn or contumely. They have been without exception great judges and patriotic citizens of their country. Such being the case, the connection between the sovereignty of a State and the sovereignty of a nation being so close, the interfering by the inferior courts with the enforcement of State laws should be prohibited by suitable legislation in Congress granting original jurisdiction to the Supreme Court, upon the question as to the validity or constitutionality of any State law that may be involved in any case pending in any Federal District or Circuit Court. When the Supreme Court speaks, it speaks with authority. When the District or Circuit Court speaks, not having the authority, many of their decisions are a source of irritation to the people at large. This could be avoided by certifying to the Supreme Court the question of law and suspending all action upon the case until the question is answered. Of course, when once answered that law will forever be held valid, or invalid according to the decision of the court.

The same proposition should be enacted and carried out in the inferior courts of the State; none but the Supreme Court to be allowed to pass upon the question as to whether or not the enactment of a State Legislature was valid or invalid.

This recommendation is made by one who has the highest regards for the judiciary of the States, and of the nation, whether the Supreme or the inferior courts. Knowing the functions and danger of our dual form of government, which neither interferes by their authorities with the rights of the other, the dignity of District or Circuit Court judges, either of the United States, or of the State courts, amount to but very little in comparison with the growth, the happiness and the prosperity of eighty millions of people.

ANOMALOUS STATUS OF EMPLOYERS' LIABILITY ACT UNDER RECENT DECISIONS.

We have had, during the past year, many curious illustrations of the workings of great courts of like jurisdiction without competent authority to finally decide the acts, rendering in different circuits of the United States, different decisions upon the laws passed by Congress. The Employers' Liability Bill was enacted by Congress June 11, 1906, and at this time, six District or Circuit Courts of the United States have passed on the constitutionality of this legislative enactment. Four courts have held this law to be constitutional, while two courts of equal jurisdiction, with judges of equal learning and patriotism and knowledge, have held the enactment to be unconstitutional. We thus have the anomaly that might be continued for years, of having, in different sections of the United States an Act of Congress that is constitutional in one jurisdiction and unconstitutional in another. If they cannot speak with authority in the first instance, why speak at all? Why not certify the question to the court that has the authority, and why suspend in some jurisdictions for years an enactment of Congress that may be constitutional when decided by the proper court? Or why continue it in existence for years to have it finally determined when a case reaches the Supreme Court of the United States, that it is unconstitutional? Property rights, liberty, life and happiness of the people of the United States may have, during this long litigation, been destroyed or the reverse. It is best when questions arise, as they are doing every day, to have them settled permanently and with authority at once.

AN OKLAHOMA EXPERIENCE.

Another illustration of the power claimed by the judiciary of the inferior courts which needs only be cited to show its absurdity, happened during the past few weeks in Oklahoma where, under the power that a probate judge has to act in granting writs of injunction in cases pending in the District Court, during the absence of the district judge from the county, 1,500,000 people were prevented by a probate judge who has no more power, practically in criminal or civil matters in his own jurisdiction than has a Justice of the Peace, from holding an election to decide whether or not Oklahoma would be a State or remain a Territory. The action of this probate judge stopped the wheels of the constitutional convention assembled

together by the votes of the people of Oklahoma under authority of an Act of Congress, until such time as the Supreme Court of the Territory of Oklahoma should ascertain, at its next meeting, whether or not even the Supreme Court of the Territory of Oklahoma had any power to interfere with the action of the constitutional convention or power to prevent an election being held to declare whether or not Oklahoma would be a State or Territory; which decision was promptly made by the Supreme Court and the people were permitted to either adopt or reject the Constitution forming a State government as one of the sovereign States of the Union. It is the act of judges, whether State or Federal, who have no power to speak with authority that lead to such conditions in the courts of our Union. It may take an amendment to the Constitution before these questions can be finally settled, but they must be settled or great danger is in front of the people who will form the next generation living in the United States. Prevailing over this land and great nation is a spirit of unrest and dissatisfaction and I might say great interest in the affairs of the nation. For forty years the people of the United States have not paid much attention to decisions of courts or actions of legislative bodies, having had plenty to occupy their minds in reducing to cultivation the large areas that now form many of the Western States, in developing the mineral resources of the Rocky Mountains and other parts, that forty years ago were almost unknown to the people of the United States. That period has passed and the people are now asking, What have we received for forty years of hard labor? If we believe the newspapers, we have a judiciary that will issue the great writs for the benefit of classes.

IS CLASS LEGISLATION PREVALENT?

If we look to the legislative enactments as the newspapers report them, we find that many of our laws have been placed upon the statute book to enable a few men to grasp into their hands the billions of wealth produced by the toiling masses during this period.

The reason for this interest now shown by the people can be accounted for by the growth of education during the latter part of this period. There is not a State west of the Ohio River that does not support educational institutions where every child, if so desired, may obtain an education as complete as can be obtained in the older colleges of this land, without costing one

cent. It will be impossible to keep in harmony with the conditions that exist this educated—I might say pauper, because the majority of graduates from our universities and colleges are paupers in comparison with the sons and daughters of the multi-millionaires—whom the laws and the courts, by their decisions, have allowed to get control of nearly all the wealth of the United States. For these reasons will be seen why the Constitutional Convention, which lately wrote the Constitution of the State of Oklahoma, placed within its ordinances declarations that will prohibit, if not interfered with by higher courts, this continual absorption of the wealth produced by the masses, by a few people that we call monopolies. This is the reason that a cry has gone up from Maine to Oregon in the newspapers owned and controlled by corporate wealth that the provisions of the Oklahoma Constitution are so drastic that the President of the United States should not issue his proclamation declaring Oklahoma a State, notwithstanding that it has 1,500,000 people who are, if I may say it, beyond the average population of any State now in the American Union in intelligence and education. Including the negro and a few blanket Indians in Oklahoma the per cent. of illiteracy will be less than 2 per cent.; a percentage that cannot be claimed for any of the older States. It was farmers who wrote that Constitution, as it was people of but little education that eighteen hundred years ago were selected to promulgate the doctrines of Christianity that now prevail in every part of the world. Included in our convention were a body of men called the twelve apostles (being the minority party). Unlike eleven of their predecessors they did not choose the better way, but wanted to give all power to the legislative branch instead of to the people.

No person, as I understand it, objects to the authority of the Supreme Court of the United States, nor do they object to the authority of the Supreme Court of their own States, as limited by the State Constitutions, to pass upon all these questions that the people are now studying for themselves. It may take Constitutional amendments to place these questions in the Supreme Courts as original subjects of jurisdiction in the different sovereignties, national and State, of which our nation is composed; but better to amend than to have a single conflict arise between the different sovereignties. We of this generation have had enough of that.

Some learned bodies recommend the repeal of the Fourteenth

Amendment as a panacea for the troubles now existing between sovereign States and the judges of inferior Federal courts. The Fourteenth Amendment was not in existence at the time when the great court presided over by Marshal were unable for six years to agree upon what would be the proper decision of that court in passing upon the enactment of a State legislature as to whether it was valid or invalid. That court has settled this question as to their power, but they have not said that this power shall be granted by any enactment of Congress to any courts inferior to them. The people have great confidence and trust in the Supreme Courts of our country. Let us, therefore, try and keep the confidence of our people in that court, whose decisions have met such universal approval. Let us wipe out the conditions that arise by courts of equal jurisdiction giving different decisions upon same subject. Let us tell the probate judge that it is not his power, nor the power of the court that he represents in the absence of the regular judge from his county, to interfere with such questions as to whether or not a sovereign people can submit to a vote a Constitution, or whether the legislature of a sovereign State can enact without Mr. Probate Judge or any inferior power in the State passing upon the validity of any law except the one supreme judicial power, viz., the Supreme Court of the State and nation.

THE CHAIRMAN: The Committee of Fifteen on Rules, Order of Business and Permanent Organization, authorized at an earlier period this morning, are requested to meet immediately in room 200, Stratford Hotel, and the chair is authorized to announce that it has been arranged for the members of the committee to take luncheon together. The committee is constituted as follows:

Frank A. Faxon (Mo.)	R. H. Whitelaw (Mo.)
Theodore Marburg (Md.)	James O'Connell (D. C.)
Mahlon N. Kline (Penna.)	Daniel J. Keefe (Mich.)
D. A. Tompkins (N. C.)	James B. Reynolds (N. Y.)
John F. Crocker (Mass.)	Charles H. Smith (Ill.)
David P. Marum (Okla.)	A. T. Ankeny (Minn.)
George Langford (Oregon.)	Marcus M. Marks (N. Y.)

Jno. W. Tomlinson (Ala.)

THE CHAIRMAN: Without objection the conference will stand adjourned until 2:30 this afternoon. There will be an evening session, beginning at 8:15.

Second Session, October 22, 3 P. M.

The afternoon session of Tuesday, October 22, was called to order by the chairman at 3 o'clock P. M.

THE CHAIRMAN: The chair is requested to announce that the delegates representing associations of manufacturers, jobbers or retailers are requested to meet at the Victoria Hotel at 6 o'clock this evening. Arrangements have been made to serve a dinner at that hour, and it is proposed at this gathering to arrange a program for Thursday, when the representatives of trade organizations will be given a hearing. Those who will attend this gathering at the Victoria are requested to notify Mr. Campbell, of the Committee on Arrangements, who will be found at the place of registration in this hall, to the end that provision may be made for all who may find it possible to attend.

The chair has the pleasure of presenting, as the first speaker of the afternoon, the Hon. John W. Tomlinson, of Birmingham, Ala., whose topic is, "Shall Federal Jurisdiction Be Extended in the Solution of the Trust Problem?"

HON. JOHN W. TOMLINSON.

Mr. Chairman—The answer to the above question will very generally be in the affirmative, but in most instances with qualifications. Those to be regulated will answer yes, provided there is to be regulation, and provided further that Federal shall exclude State authority. There is another class, believing in a centralized government, who will make the same qualifications; and there are those believing in our dual government who have been discouraged on account of complications of conflicting jurisdictions and delays incident thereto, and are inclined for that reason to want one jurisdiction. But the great conservative class in this country, knowing the value of the permanence of their institutions and government, will not favor the extension of Federal to the exclusion of State jurisdiction, but will demand the retention and extension of both jurisdictions, to the end that those to be regulated may be held in the

legitimate channels of legitimate business, and, when engaged in public service, shall be held to a fair return on property invested at a fair valuation.

STATE AND FEDERAL CONTROL BOTH NEEDED.

It will be very generally conceded, I think, that the accumulation of wealth in the few, and its further concentration in gigantic organizations, doing and handling interstate commerce, has brought about conditions which did not exist in the early history of our country—introduced a new power in the land second only to government itself—necessitating efficient government regulation; and I think it can be demonstrated that it will require both national and State authority in dealing with the condition. In fact, I fail to see why those seeking popularity with the people in advocating this needed remedy desire to do away with either. If you have two remedies, is it not common sense to hold on to both, even though one is regarded more efficient than the other? Why proclaim want of power in the States, when Alabama, Georgia, North Carolina, Arkansas, Missouri and Minnesota recently have enacted and enforced laws giving substantial relief?

IS FEDERAL CONTROL EFFECTIVE?

Furthermore, what guaranty have the people that they would have effective Federal regulation? The Federal is not so close to the people as the State Government, and not so easily controlled by them. Could not the regulated more easily control the election in one jurisdiction than in many, and would it not be a great temptation, where millions and millions of dollars are at stake, to resort to corrupt practices? Again, it is said that State authority is delayed and rendered ineffective by injunctions, which is only partly true, as many railroads are obeying the State laws; but those who make this point must know that the same dilatory tactics would be available as to Federal regulation, as Federal courts, then alone having jurisdiction, would become so crowded with litigation as to cause delay equivalent to denial of relief.

It is further argued on behalf of exclusive Federal regulation that these organizations, engaged in doing or handling nation-wide interstate commerce, should not have to comply with the laws of the States in which they do business. Does not the

business man of England, France or Germany have to obey the laws of the different countries in which he trades? Does not the business man of this country, in taking advantage of the worldwide business the nation has made for him, have to obey the laws of the countries where he deals? Does he not, in some instances, sell in foreign countries at a higher price than to his own countrymen? Is it asking too much of him that he shall conform to the local laws of the States of his own country?

FEDERAL INCORPORATION AIMS TO ELIMINATE STATES.

In the solution of these problems under discussion, national incorporation has been suggested, but why the necessity of this? Cannot the national Government license, regulate and inspect, under appropriate laws passed for that purpose, organizations doing or handling interstate commerce as effectually as if they were incorporated under national law? It is evident, therefore, that the only purpose of this step is to eliminate the States. But a national incorporation law which failed to recognize the constitutional rights of the States in the premises would be unconstitutional. However, it has gone out from high authority in this country, in the discussion of this subject, that "sooner or later constructions of the Constitution will be found to vest this power where it will be exercised by the national Government"—"a method," says Mr. Bryce in his American Commonwealth, "discovered by the ingenuity of lawyers to change organic law indirectly when it is known that it cannot be done directly."

And yet, however much the delegates assembled here may differ in other matters, I feel sure that all will concur in this proposition: That in the solution of these problems, as well as in the enforcement of the plan adopted, the law shall be respected; that if our organic law needs to be, it shall be changed as prescribed by law; for if the law is not observed by those in authority, how can it be expected that the people will respect and obey? That the end to be attained is good is no excuse. History is full of examples of where the people have applauded illegal acts, only later on to find like lawlessness visited on themselves.

STATE POWERS SHOULD NOT BE CURTAILED.

Assembled here in this great conference I see presidents of our greatest institutions of learning, of our immense railroads,

of our largest industrial corporations, together with distinguished men from all walks of life, each wishing to honestly present from his standpoint a correct solution of these problems. May I ask you why is there any disposition to eliminate the States? Does it not grow out of a distrust of the people? There is where I think a serious blunder is made in this country. While there are those who have no regard for the property rights of others—who, having no property of their own, would tax to the limit those who have—yet such is not the average man.

May I tell you here to-day—and I hope I shall never have occasion to have a different opinion of mankind—that I believe the average man, though, of course, more or less selfish, is kindly disposed to his fellow man, loves his family, his home and his country, and when called upon to perform the duties of citizen, can be relied on to do what is right. I heard the president of one of our Southern railroads recently in a speech illustrate the benefits of trusting and having the confidence of the people of the States through which his road ran.

Then is it not wisdom not to attempt to eliminate the States? Is it wise even on the part of the great organizations of wealth? The accumulation of money is not everything. The preservation of your form of government is more to be desired. The good will of your fellowman is of greater value. Therefore, let us jealously guard the constitution, the granite-like foundation of our sacred institutions; strengthen, not weaken the States, the embodiment of local self-government, the great pillars upholding the splendid structure of our Federal system; so that our great Government may stand and stand as the centuries pass by, the pride of our own country and the glory of all the world.

THE CHAIRMAN: Gentlemen, as the second speaker of the afternoon, I have the honor of presenting the Hon. William Dudley Foulke, of Indiana, who will speak upon "The Remedies for Monopolies and Their Results."

HON. WILLIAM DUDLEY FOULKE.

Mr. Chairman—I had expected to say something at a later period in this conference, but as it seems that the programme this afternoon is not quite as full as it will be at some later days, I have been called upon now to make up for the shortage of to-day. I was interested in the discussion this morning and agree fully and heartily with the president of this conference in regard to the

necessity of suggesting such remedies as will interfere no more than possible with the prosperity of the country, and, in the main, with all the propositions which he advanced. There was one statement, however, that I could not wholly endorse, and that was the statement that the mere size of a corporation added nothing objectionable. Size, of course, is always a relative question, and it occurred to me while he was speaking, that when the Sugar Trust controlled, as it did at one time control, 98 per cent. of the entire output in that line of business in this country, that there was danger in the mere size of the corporation. Where size gives irresponsible and absolute power in the fixing of prices and the absolute control of business, that alone has in it the element of danger. In regard to the remarks made by the learned Attorney General of Ohio, in his scholarly address, I agree most heartily in the conclusion that a most important step in the doing away with the monopolies of this country would be taken if the Federal Government could at once prescribe that no corporation could own the stock of another corporation. I hope that such a law will be passed, and that it will be enforced, yet, at the same time, that remedy alone would be also ineffectual. The ownership of the stock of one corporation by another has been the means of facilitating these aggregations of capital in the organization of monopoly. By it they can acquire a majority of stock easier than they could acquire the property of a corporation; yet at the same time it would be practically impossible now, by merely depriving one corporation of the power to own stock in another, to take away the power of these great organizations and to destroy their monopolistic tendency. That was attempted in the Northern Securities case, and yet there the stock was divided afterwards among the different corporations in the same proportions in which they held in the general company, and if we were to attempt to do the same thing now we would find either one of two things would follow: Either the property of these different, separate corporations would be sold to the greater body, in consideration of stock in the greater body; or else we would find that in the different corporations the different controlling interests would prevail in exactly the same proportions that they prevail now in the great combination of the whole lot together. So that we cannot break up trusts that way. It will do something. It is valuable, but we cannot break up the trusts

or monopolies, nor can we control them by merely such an effort as that.

FEDERAL COURTS NOT VIOLATING LAW.

I did not at all agree with the gentleman from Missouri in his remarks in regard to the tendencies of the Federal courts. He spoke of the fact that at the present time we are all a great commonwealth, a great republic, demanding the enforcement of the law. I think that is very true. And then he proceeded to criticise the Federal courts because they were violating the laws, or preventing the States from enforcing the laws. We must not forget that the supreme law of this nation is the Constitution of the United States, and the laws passed in pursuance thereof; that the courts of the United States are established for the purpose of enforcing not only the State laws, but pre-eminently the laws of that higher power to which they owe their own existence. There would be quite as great a ground for saying of the State courts, where there is interference of authority, that they were violating their higher duty; that the State Legislatures were violating their duty; that they were violating their national duties—as to accuse the Federal courts of violating the law or preventing the enforcement of the law which they are there to enforce. When the gentleman brought up the simile of the Indian who tried to throw his lasso around the locomotive, it seemed to me that if that simile had a proper reference it would be rather to state that without proper power and authority we were attempting to nullify the acts of the United States Government.

NATIONAL PROBLEMS REQUIRE NATIONAL REMEDIES.

In regard to the management of these great national trusts, born, perhaps, of national necessities, certainly of national exigencies, exercising their power throughout the length and breadth of this land, if they are ever to be shorn of that power, if that power is ever to be regulated by anything mightier than themselves, it will be not by the individual States, which for the last fifteen years, have tried in vain to curb the trusts, but it will be done through the supreme power of the National Government, the only power that is fully capable of dealing with this great question. It is not a question of taking away State rights. Nobody wants to do that. We realize the strength of

the argument suggested by Mr. Bryan, that the State being upon the ground, having knowledge of local affairs, can be much better trusted to manage its local interests and local affairs than the National Government can. We realize, as he represents to us in very strong language, that the men of Maine cannot be trusted to take care of the interests of Texas. We know that, but we say that wherever an interest is really national, wherever it extends throughout the length and breadth of this land under the protection of the National Constitution, the remedy must be national. And we are just as good State rights men who say that as are those that contend that the laws passed by the State Legislature must be enforced whether the supreme rights of the Federal Government are contrary to them or not. In what way shall the harmony of the two be preserved? By saying that all local affairs, all mere police matters shall be relegated to the States, and that all national commerce shall, in pursuance to that clause of the Constitution, which was so clearly expounded this morning, be under the control of the National Government. And yet, I am afraid that my friend from Minnesota went a little too far in saying that what we call intrastate commerce is also under the control of the National Government. Whether Chief Justice Marshall was correct or no in his interpretation, the authority of the Supreme Court of the United States, which has been acquiesced in by so many generations, is not likely to be set aside to-day, and I think we shall still have to recognize the distinction between interstate commerce on the one hand and intrastate commerce on the other. I believe we shall have to acquiesce in it whether we want to or not.

Now the subject upon which I intended to speak to you was not at all in regard to the relative powers of the States and of the National Government. The subject on which I proposed to speak to this conference was the general subject, the remedies for monopolies and their results.

GOVERNMENT POLICY TOWARDS TRUSTS.

In regard to trusts, there are four courses for the government to pursue—to leave them alone, to destroy them, to control them either by legislative regulation, or by actual ownership and operation.

When the trust conference met here in Chicago seven years ago there were advocates of each of the three plans. Mr. Bourke

Cockran was the leader of the *Laissez faire* advocates. He insisted that if all special privileges given either by the government, like the tariff, or by governmental agencies, like the railroad rebates, were removed, and if competition were free, the monopoly or trust which would survive by reason of this competition was a good thing, not to be interfered with or restrained.

The leader of the annihilators of the trust was Mr. Bryan, who held that all monopolies in private hands were bad and should be utterly destroyed.

There was a third party of us who believed that monopolies were partly the result of a natural industrial evolution and partly the result of special privileges, and that whatever their origin, they contained great possibilities for evil, yet that it would be hardly possible and not at all desirable to annihilate them, but that our governments—both Federal and State—might regulate and restrain their injurious practices; that "while we could not stop the Mississippi by a dam, we might conduct it into safer and more convenient channels."

REGULATION IS PRACTICABLE.

At that time, however, even the task of regulation seemed so gigantic that many of us doubted how successfully it could be accomplished. But, by the blessing of a wise Providence, there came to the helm of this great government of ours a fearless and intrepid spirit, with a clear head and an honest purpose, who has already accomplished the important initial steps in this regulation.

At our conference seven years ago there was only one thing upon which we were practically agreed, and that was publicity. We believed that to lay the doings of the trust open to the light of day would of itself afford a remedy for many secret frauds, special favors, rebates, over-capitalization, etc., and that it would clearly reveal the next step to be taken in the reform. And in actual legislation, publicity was the first thing sought, and the Department of Commerce, with its Bureau of Corporations, was established.

Those who had been engaged in frauds upon the public at once realized the danger, and it was natural and logical that telegrams from the younger Rockefeller to various influential members of the Senate, when the bill for this bureau was pending before that body, should have urged them to oppose it. The result shows why the Standard Oil Company did not desire publicity. We know something now about the working of that, as well as cer-

tain other monopolies, and the result shows, at least in part, what further measures are necessary—not only measures for the removal of special privileges, but also certain affirmative regulations, some of which have already been made, while others are now under consideration and will be introduced in coming sessions of Congress.

Meanwhile the impulse given to public sentiment by these revelations and reforms has been felt throughout the entire country and has led, in many of our States, to active legislation against the railroads and the trusts.

The experience of the last seven years would seem to show that the real remedy for the trust is not annihilation or inaction, but wise regulation by the government.

Mr. Bryan likened a monopoly to a despot. "There may be a despot who is better than another despot," he said, "but there is no good despotism. One trust may be less harmful than another, one trust magnate may be less malevolent than another, but there is no good monopoly in private hands." Mr. Bryan's comparison of a despotism to a monopoly is not an inapt one; but if so, there still may be a difference of opinions as to the remedy. Mr. Bryan would annihilate the despot. More conservative reformers would control him by constitutional provisions, which would render him no longer a despot. In beleaguering the stronghold of monopoly we have quite different objects in view. Mr. Bryan would blow it into the air by dynamite—the citadel, the garrison, the town—regardless of the destruction which would follow. We would seek to reduce the stronghold, capture it without unnecessary destruction, and convert its resources, its wealth, its armament to the common welfare. The statement of the proposition is its own argument.

For it must be remembered that the trust, like the despot, is potentially, rather than actually, wicked, and while it is proper that the despot should be restrained, it would not be just that all despots should be annihilated. The fact that he had practically unlimited power did not make Marcus Aurelius a bad man, though the power and tendency of all absolute rulers to become bad is such as to justify mankind in taking from all the possession of their absolute power. So it is with the trusts. The great American commonwealth has entered upon this wiser and safer pathway, and it is to be hoped it will continue therein.

DRIFT TOWARDS MORE GOVERNMENTAL REGULATION.

No one can question the drift toward greater governmental regulation of industrial activities everywhere. The establishment and growth of the Interstate Commerce Commission, the rate bill, the Elkins bill against rebates, the meat inspection bill, the pure-food bill—all these are steps in increasing the control by the Federal government of our great agencies of production and transportation.

The State governments, too, which have been heretofore largely controlled by the railroads and other corporations, are beginning to assert their own actual sovereignty. They are reducing rates, sometimes quite arbitrarily and perhaps unjustly; they are making additional requirements, some reasonable and others unreasonable, for safety and convenience of the public—more brakemen for each train, better crossings, additional connecting and switching facilities, the supplying of more cars, and a hundred other things affecting intimately the management of railroad and other corporate property. The government now largely determines how much the railroad can demand for the transportation of passengers or freight, and generally how it shall conduct its business. The more intimate such control becomes (and it is becoming more and more complete every year), the less there remains to the owner of the jus disponendi, or substantial right of ownership. It is evident that when the right of ownership thus gradually becomes extinct, when *you* own the property and I say what shall be done with it and how much its use or the thing itself shall be worth, we have a condition of unstable equilibrium, and both the railroads and the public will finally unite in a demand that nominal ownership shall be combined with the essential control. In other words, that the government shall finally own and operate the roads.

DIFFICULTIES OF REGULATING RAILWAY RATES.

It is true that under the present system no rates established by the government can be confiscatory—that is, all government rates must allow a reasonable profit for the company—but the situation will be clouded with infinite complexities. The legislature will establish a rate which will allow a reasonable profit in a prosperous year, but the next year may not be prosperous, or additional requirements will be imposed in extra cars that have to be furnished, extra help that has to be employed, and loss will

ensue. It will be all but impossible to say how much of such losses will be due to these legislative requirements and how much to bad management. It will be alleged on the one hand and denied on the other that the business management is inefficient. The two-cent rate in Indiana may do well to-day, but may bring loss and disaster next year. The courts will be constantly invoked to protect railroad property from confiscation and the public from overcharges, until both will be weary of the struggle and will demand that the government shall own and operate the road.

This result will come, however, after many years. The time is not yet. It will come as a phase in the evolution of the transportation business and it is just as premature to insist upon it to-day as it was to insist upon Democratic equality for France during the first French revolution immediately after the overthrow of the old regime. These things follow, in social and industrial life, the course of nature; first the blade, then the ear, and after that the full corn in the ear. Regulation is necessary to-day to do away with the enormous abuses which exist under the system of discriminating rates and secret rebates, building up one community or individual at the expense of others, and leading to monstrous injustice!

GOVERNMENT OWNERSHIP OF RAILROADS THE ULTIMATE OUTCOME.

But regulation will itself lead to injustice, and the final outcome will be government ownership and operation. The acquisition of the roads by the government will also be attended by injustice when it comes to the valuation of the property. The present owners will be pretty sure to receive either too much or too little just as the owners of the property they condemned for railroad purposes very often, perhaps generally, received too high a price or too low a price for their property. But the ownership of railroads by the public is not impracticable. They are owned and operated by the government in Germany, and they are well operated. In some respects the German railroads are not so well managed as our own, but in other respects they are managed far better. Freight rates for long distances are higher, but for short distances and local traffic, they are far lower; while passenger rates on an average are lower than with us, and the average of security is undoubtedly greater. No one can travel long upon German railways without becoming satisfied that the Government management of these vast

agencies of commerce is not an impracticable dream. Justice between the shippers, between man and man, and between one locality and another, has been more perfectly observed than with us. Both communities and individuals may be at the mercy of the government, but it is better to be at the mercy of a representative government than of an irresponsible corporation, whose chief aim is to acquire profits for the officials and stockholders. The German government, however, has reached a point of administrative efficiency a good deal higher than we have attained to-day. There are parties and politics in Germany, but they do not to any great extent influence the administration of the railways. The civil service of Germany is quite beyond political manipulation. That is becoming more and more true in America. We are divorcing our civil service system from politics each year more and more. There used to be a great deal of politics in the Postoffice Department, but there is far less to-day than at any previous period in our history, and the time is not far distant when there will be no politics in our postoffice service. There is still occasional corruption in the public service, but not nearly so much, I think, as in the private corporations engaged in the same general kind of business. The day is undoubtedly coming when the American Government will be just as capable of managing its railroads as the German government is to-day.

The general trend of affairs in Europe is toward governmental ownership. The Italian government recently acquired control over a great portion of the Italian railways. They are still badly managed, but the management is no worse than it was before, and it will grow better in time. The service of the railways is a public service. They acquire their roadbed and their property through governmental agency by the law of eminent domain. The control of the State over them is similar to the control of the State over other highways. It is a public function, and we are bound in time to come to the doctrine that this function must be exercised by the Government through governmental agencies, and not through private corporations, whose private interests are often adverse to those of the public.

GAINS AND LOSSES OF CHANGE TO GOVERNMENT OWNERSHIP.

We must face the fact that in the change from private to public ownership and operation, there is bound to be some loss as well as gain. The railroad at the present time is in part a

monopoly so far as local traffic is concerned, indeed as to all traffic except at competing points, but this competitive traffic has had the most valuable influence in developing new methods of cheapening and increasing the efficiency of railroad service. If the Government assumes the management of railroads this stimulus afforded and required by competition will be greatly lessened. It will not be altogether eliminated, for the competition between the employees of the State railroad, like the competition between the employes of our great trunk lines, will continue, and lead to promotion and greater rewards to those who do their service well over those who perform their duties perfunctorily or badly, but there will be, by no means, the same reason for that strenuous struggle to save every cent in the cost of transportation which now exists where two great systems compete with each other. There will not be the same rapid advance in railroad improvements in the future as there has been in the past under the competitive system. The whole problem is one of balancing the advantages against the disadvantages. On the one side public ownership, justice between the shippers, greater steadiness in rates, more orderly management and greater security; and on the other side greater energy in the development of new methods and improvements. If it were a mere question of how much money could be made by the railroad service of a country the present competitive system would be better than governmental ownership, but if it be a question, as it is, of the orderly administration of society at large, and the maintenance of justice to the entire community, the governmental ownership will possess greater advantages over the private ownership of railroads. So that, while Mr. Bryan's proposition of the State ownership and operation of railroads may still be, and I hope it is, a long way off, yet, in the more or less distant future, it will come by a gradual process of natural evolution, and as it comes the State will become more and more able and competent to administer the trust.

HOW SHALL TRUSTS BE REGULATED?

What further measures of governmental regulation shall be applied to the trusts? As to public service trusts, railroads, waterworks, etc., the power is already, to a great degree, in the hands of the Government or the municipality. The Interstate Commerce Commission and the different railroad commissions

of the States, as well as the present State laws, can protect the public from oppression. But this is not true in respect to industrial corporations like the Standard Oil Company. Even if rebates are prevented, other forms of oppression in the shape of exorbitant and preferential charges, taxing one country, one State, or one section, for the benefit of another, still continue. The freight rates of the railroads may now be uniform, but the Standard can charge a high enough price on lubricating oil to get an enormous rebate, from the roads that handle its traffic, enough to crush all competitors and yet not violate the law. There must be more complete relief than the mere suppression of rebates and other special privileges. What must that relief be? Shall it be Mr. Bryan's annihilation? How shall we annihilate? Shall we dissolve the corporation and leave its original elements to combine again in subtler forms? That was once tried with the Standard Oil—how did it work? You cannot utterly annihilate without forfeiture of the property. Are we prepared to take the pathway of general confiscation with its following of informers and wreckers, its common ruin of the innocent with the guilty, and its destruction of all business prosperity?

While Mr. Bryan proposed in one breath that monopolies should be annihilated, in another he suggested that the law limit the percentage of the total product of the trade which each corporation might control, and he adds "Experience would determine what that proportion would be of experience." This method would be as difficult as to annihilate the entire concern, perhaps more so, since the trust is still to retain enough power to thwart the efforts of the government; and the men interested in the monopoly, their wives, sons, cousins, friends, anybody you like, could soon establish a "competing organization" to produce and control the rest of the output. This remedy will not do.

ACTUAL MONOPOLIES SHOULD BE SO DECLARED AND SUBJECTED TO REGULATION.

What I propose is something more simple. Whenever a corporation is accused of exercising monopolistic powers and injuriously controlling rates, driving competitors out of the market by arbitrary reductions, preferring one set of customers to another, or one section of the community to another, and so far suppressing competition that it can maintain its unjust

rates and discriminations, acting, in other words, oppressively both to rivals and to the community, as the Standard Oil Company is acting to-day, then let a suit be brought in the Federal Court. Let the object of that suit be, not to dissolve the corporation, which is useless, or to annihilate it and confiscate its property, which is ruinous, but let the purpose be two-fold, both to punish the guilty individuals who have committed the acts of oppression, by both fine and imprisonment, and, most important of all, to declare the corporation a monopoly and to subject it for that reason to the same government control as to rates, prices, purchases, sales, reports and general conduct, as railways and other public service corporations are to-day, nay more, to the stricter and more thoroughgoing authority, to which these public service corporations are, as I believe, soon to be subjected. The time has come to amend the Sherman law so as to make the object of that law a far more thoroughgoing government control than at present of the corporations who have acted in restraint of trade.

We do not need to take this remedy as to all corporations. Where competition is free, competition is still the best fixer of prices and regulator of conduct, but where competition is stifled, where we have monopoly, the power to fix arbitrarily the prices of labor and commodities, there that power must be limited by law and by administrative control, just as in the case of the so-called natural monopolies, like street railways, waterworks companies, etc. Indeed the distinction between these natural monopolies and other kinds of monopoly is often extremely shadowy. If a street railway be a natural monopoly so, only in a less degree, is a general railroad line. If a telephone is a natural monopoly because the duplication of the plant is not only an unnecessary expense, but actually lessens the usefulness of the company by dividing up the subscribers, this is true, although in less degree, of nearly every kind of business that is transacted in a city. There is an immense waste when sixty grocery wagons are employed to make the deliveries that might be done by two or three. There is an injury to the consumer when a dozen competing merchants have to reduplicate their advertisements, offering the same class of goods and have to employ the great corps of traveling salesmen to present the respective merits of their wares. The methods of competition everywhere are enormously wasteful, although where it is free there is a great gain in the stimulus which it gives to industrial

activity and the constant improvement of methods of production and distribution. Therefore let it thrive where it is free, and let it be subject to control whenever it becomes a monopoly.

WHAT CONSTITUTES MONOPOLY?

But how will you define a monopoly? You do not need to define it, let the courts do that from actual cases when they arise, in the same way that they define fraud. Courts have refused to make a specific definition of fraud because if they did so some one would find a way to defraud the definition. Let the conduct prohibited be the same conduct as that forbidden by the Sherman act, let it be conduct "in restraint of trade." That has often been passed upon and there is no great difficulty in construing it.

But if you must have a further and more definite description of a monopoly, Mr. Bryan's definition is not a bad one—it is "a corporation which by itself, or in conjunction with others, controls a sufficient proportion of the article produced or handles to enable it approximately (I would say 'substantially'), to determine the terms and conditions of sale or purchase," and I would add, "and which uses such control for the oppression of its competitors, or of the public. But you say, these things will lead to Socialism. Government control will lead more and more to government ownership and operation, and finally we shall have the Government owning and operating all the industries of the country. Undoubtedly they do lead in that direction, but the tendency toward Socialism is caused, not so much by the assumption of Government control, as by the organization and conduct of these immense industries which threaten to monopolize and place in the hands of a few men the bulk of the whole industry of our country. That is the origin of the drift toward Socialism. Government control is putting on the brakes in a train which would be otherwise hastening toward an inevitable collision.

GOVERNMENT OWNERSHIP SHOULD BE POSTPONED.

Government control is wisely putting off the day for government ownership and operation, which would otherwise be very near us, putting it off until a time when the State itself shall be far better equipped and qualified than now to assume the duties which may be found to be inevitable, so that whatever change

may come, will come as a healthful, peaceful and natural evolution rather than as the result of a gigantic struggle of the masses against the arbitrary power and injustice of the few, a struggle which would lay in the dust not merely the prosperity, but the peace and happiness of that which is to-day the most prosperous, the greatest and the happiest nation in the world.

THE CHAIRMAN: As the next speaker the chair has the pleasure of presenting Mr. Theodore Marburg, of Maryland, who will speak on "Governmental Regulation."

MR. THEODORE MARBURG.

Mr. Chairman—This paper is not another Pandora's box of suggestions about how to hurry along the vivisection of corporations in which the Federal and State governments are indulging. It aims rather to weigh the problems yet again, to place an estimate on existing practices and old suggestions, with a view to helping just a little to a clearer perception of values. A problem is never so simple as when it is first approached. Reflection is largely a voyage of discovery—the discovery that the simple is complex. The program of this conference indicates that we are here to aid this process of differentiation. Social institutions may be studied without taking away their life. They manifest themselves in acts, and we are not forced to cut them up to get at an adequate knowledge of them.

The radical treatment of corporations we are witnessing involves injustice—injustice to the captains and grave injustice to the stockholders who have been invited to invest under existing laws. If our conduct has any moral aim—and in which of our acts can we free ourselves from moral obligation?—this becomes very serious, because in its ultimate result the practice of justice has a more far-reaching effect than any economic advantage can possibly have. It affects character, the upbuilding of which is the greatest of all human causes. We are bound to consider not only whether a proposed measure will accomplish an end truly desirable, but whether it accomplishes it at too great a cost; whether in our triumphant march we are not trampling and bruising the higher and more permanent interests of men. "Let justice be done though the heavens fall" is only another way of saying that the practice or failure of justice makes or unmakes a race.

GOVERNMENT ACTION CHECKS IMPROVEMENT OF RAILWAYS.

The new powers given to the Interstate Commerce Commission actually to fix rates, and the reduction of railroad charges by the State legislatures—undoubtedly stimulated by Federal example—are, at this particular time, both inexpedient and immoral—inexpedient because the railroads for some years to come should be left highly profitable with a view to being compelled by law to use profits more largely in betterment of the service; immoral because justice to the private stockholder is being denied. Let our legislators see that where there is a single track to-day a double track be laid, that existing double tracks grow to four, that grade crossings be abolished, cars multiplied, terminal facilities increased, that the penalty of men's stupidity in living in such numbers under the insufferable conditions that prevail in our great cities be somewhat lessened by compelling the railroads to suppress smoke in passing through the cities, and, above all, that the hours of the employes be not too long, so that they may give efficient service and stop the sacrifice of life on railways. To compel the railways to do these things is to compel them to benefit themselves and involves no injustice to the stockholder. The present mad attack on earnings only postpones the day of improvements—improvements which the public need far more than they need a reduction in charges. I do not think we realize yet how serious this step of the Federal and State governments is. The great fall in the value of railway shares in England during the past ten years* is traceable directly to the

*YEARLY DIVIDENDS AND PRICES FEBRUARY 1ST, OF EACH YEAR.

		1898	1899	1900	1901	1902	1903	1904	1905	1906	1907
Caledonian.....	Dividend %..	5	4¾	4	4	4	3⅞	3⅞	4	3⅝	
	Price %.....	160	156	141	130	126	115	104	112	119	102½
Great Eastern..	Dividend %..	3⅝	3⅞	3	3	3⅛	3¼	3¼	3¼	3⅜	
	Price %.....	120¼	122	123	107	105	94½	87½	89	87½	79½
Great Northern.	Dividend %..	2¾	1¾	0	0	¾	1	1	1½	1¾	
	Price %.....	58¼	63½	56¼	45¼	43	42¾	39¼	39	46	44½
Great Western..	Dividend %..	3⅞	5½	4⅝	4¼	5⅜	5⅜	5½	5⅜	5⅜	
	Price %.....	178	167½	167	146½	140	138	137	141	142	130½
Lancashire & Yorkshire.....	Dividend %..	5¼	5¼	4⅜	3¾	4	3⅜	3⅜	3¾	4⅜	
	Price %.....	148½	151½	145	131	113	108	96	108½	109	104½
London, Brighton & South Coast.	Dividend %..	6¾	6½	4¼	3½	4¾	4½	5¼	5¼	5	
	Price %.....	178½	176¾	171	133½	126	128	105½	128½	130	116
London & Northwestern.	Dividend %..	7⅛	7⅛	6¼	5½	6	5⅞	5⅞	6⅛	6⅜	
	Price %.....	204½	203½	197	179	170	168	152	153½	161	153
London & Southwestern..	Dividend %..	6½	6⅛	6⅛	5⅜	6	6	6	6	5¾	
	Price %.....	232	222½	208	190	174	174	155	160	161	153
Midland.....	Dividend %..	3⅜	3⅜	2¾	2¼	2¾	2¾	2½	2⅝	2¾	
	Price %.....	93	93½	81	75½	75	73	68½	68½	69½	66
North Eastern..	Dividend %..	6½	6⅝	6⅜	5¼	5⅜	5½	5⅜	5½	6½	
	Price %.....	179	181¼	175	169½	155½	147	139½	139	145¾	145⅜

power to fix rates placed in the hands of the Board of Trade, a conservative body of practical men in one of the most conservative countries in the world—conservative in the best sense. The English railroads now find themselves confronted with the necessity of making extensive improvements, including the relaying of track, with no visible resources for the undertaking. A solution must be reached, and will no doubt be reached by the Board of Trade easing the thumbscrews, no matter what popular clamor such a course evokes. The consequences of discouraging railroad improvements must be more serious in America than it has been in England, for the reason that England had her mileage and adequate trackage built when this practice of attacking earnings began.

DANGERS OF LOWER CHARGES.

During the past year the most serious attack on railways came from the separate States, but it is the new powers conferred on the Interstate Commerce Commission from which we really have most to fear. The cry of the public is always for lower charges. Let this cry come up from all parts of the country to this small body of men through a series of years and what hope is there that they will succeed in withstanding it? The separate States are likewise setting up commissions with power to fix charges of public service corporations, paralleling the action of certain cities in substituting government by commission for the representative system. It may be urged that the action of the Wisconsin Railroad Commission and the Virginia Corporation Commission has been more conservative than the action of many State legislatures; that the Galveston Commission has saved that city much money, etc. But these bodies are young, and new institutions, because of the interest they excite and the importance of inaugurating them properly always enlist the services of better men than can be induced to serve the cause later on. This was as true of the establishment of Central Park in New York City as of the inauguration of American government in the Philippines.

PUBLIC OPINION MORE POTENT THAN LAW.

Our present tendency to cast about for new devices in government instead of centering our attention upon the betterment of the personnel under existing institutions is regrettable. To deprive ourselves of the advantages of the deliberative assembly,

whether in cities under the Galveston plan, which is spreading, or under government by commission in important fields of State or national jurisdiction, is to ignore the teachings of history. The united thinking of the many, when opinion is informed, is superior to that of individuals. The people as a whole, after a campaign—newspaper or political—are sounder than the legislative assembly, and in the long run the assembly after discussion is sounder than a commission. On the majority of subjects which call for legislation there can be no campaign of education because the subjects are too numerous and the needed action too urgent; therefore the system of representation, which is one of the greatest political institutions men have ever devised. Must we recall anew the reflection, so often made before, that benevolent despotism has its advantages, but who can promise that the despotism once established shall continue benevolent? The governing commission, it is said, is amenable to public opinion and removable at the will of the people. But that is to make it everybody's business to watch and control it, and proverbially what is everybody's business is nobody's business. There is a growing power of the people to choose between contending leaders and conflicting ideas. That choice is best expressed in the long run through the instrumentality of the deliberative assembly, and to fly now in the direction of direct democracy (the referendum), now to its opposite, autocracy, is the play of the child with a ball and rubber string—the rebound is inevitable. The most useful powers to confer on a commission are powers such as the Federal Bureau of Corporation enjoys—powers of investigation, including the power to summon witnesses. If the facts of an abuse are laid bare public opinion is apt to impose a remedy—if not by its own sheer force, then by means of the legislative assembly. Perhaps we can afford the experiment of allowing commissions to regulate the conduct of corporations. My plea is that for the present they be not authorized, either in State or nation, to fix prices. Though the interests of corporations and of the public touch at many points they are not identical, and State interference is therefore justified. But State interference may be stupid and harmful as well as valuable beyond all calculation. Such big results follow the acts of government in a great country—the welfare of so many people is affected—that the process of a gradual unfolding in preference to abrupt and violent change becomes a cardinal principle in politics. We are in danger of becoming an emotional people. It is daily more

apparent that we stand in particular need of self-imposed limitations on our action—and self-imposed laws are the very essence of liberty. When in our calmer moments we set up constitutional limitations, or phrase anew the canons of conduct, including the value of justice, we are throwing out anchors to windward which may save us from disaster.

MORE DESIRABLE TO REGULATE THAN TO RUIN.

Since the first Chicago conference on trusts we have had some years of practical experience and experiment accompanied by academic discussion. The present conference is in a position to consider this data and elicit from it certain governing principles—principles in the light of which present problems may stand out more clearly and future developments, as they arise, may drop more readily into place and reveal their true relations and significance. The value of the corporate form for big enterprises is so fully realized by everybody that it need not be dwelt upon. We may likewise take it as an accepted fact that what is known as the industrial trust has so many advantages from the standpoint of economy of production that it is more desirable to regulate it than to ruin it. Again, we have come to accept the public service corporation as in its nature a monopoly, *i. e.,* operating in a field and under conditions where it is very difficult to establish other than temporary competition.

EVILS OF COMBINATIONS.

Our first step, then, is to get clearly in mind the evils connected with these otherwise useful institutions. The corporate form itself makes possible the evils of dishonest promotion, including over-capitalization, misleading financial statements and dishonest management. The magnitude of the interests that can be assembled in corporate form invites corruption of the Legislatures by reason of the prize at stake. Abuses common alike to the public service corporation and the industrial trust are: discrimination and excessive gains made possible by monopoly. It is the element of monopoly likewise which permits the abuses peculiar to each; to the public service corporation inadequate service and lack of progress, and to the industrial trust unfair methods, inferior quality of product and depressing the price of the raw material.

The evils that characterize the corporate form, over-capitaliza-

tion, etc., may be dealt with by requiring that capitalization be limited to actual value paid in and by publicity. We have examples of the successful operation of such laws.

MAINTAIN INDUSTRIAL "OPEN DOOR."

Discrimination on the part of the railroads, being severely penalized under the present laws, must soon disappear. Its practice by industrial trusts is the principal weapon in their armory of monopoly. If discrimination be suppressed, the remaining abuses of trusts will largely disappear; the abuse of excessive price, unfair methods (such as binding a prospective purchaser to deal only with the trust), inferior quality of product and depressing the price of raw material. Compelling the trusts by law to sell at one price to all comers at the factory door, just as railroads are compelled to serve the public to-day at uniform charges, would effectually stop discrimination. It would re-establish the industrial "open door" through which the potential competitor may enter. Monopoly resting on government favor, such as a patent or franchise, and monopoly intrenched in control of the supply of the raw material, would alone remain to be dealt with. All others could maintain themselves only as "monopolies of excellence." The chief aim of legislation designed to cure the evils of industrial trusts should, therefore, be to maintain the industrial "open door," to safe-guard the potential competitor.

TO OBTAIN BETTER SERVICE.

In inadequate service lies the chief shortcomings of the public service corporation. Improvement in the quality of the service should be the main object of legislation affecting them. The questions of the cost of the service and the public revenue should both be subordinated to it. Included in the topic of inadequate service is the serious question of the partial crippling, or entire stoppage, of the service by strikes. If it be difficult or undesirable to adopt compulsory arbitration as a remedy, we should at least apply to public service corporations compulsory investigation, which has been shown to promote so materially the settlement of disputes.

In seeking from the public service corporation an adequate return for the valuable privileges granted, it is important to avoid any system of taxation which will discourage enterprise.

Among the many plans followed, one which has commended itself for some years to students of public questions, and is followed successfully in connection with such different institutions as the Imperial Bank of Germany and the elevated railways of Boston, is that under which profits above a given rate are divided equally by the public treasury and the corporation taxed. Under this plan ample incentive is left to enterprise, and the effect on the sovereign body is conservative, since it realizes that if the cost of the service be reduced by statute or decree, half the loss will fall on the public treasury.

LIMITS OF GOVERNMENT OPERATION.

When we come to the question of the means by which these ends may be attained, we find them to differ widely, according to the problem presented. If there is lack of progress in the conduct of the telegraph and express service, if inventions are suppressed, if the service is poor and the charge excessive, why not government operation? The machinery is already provided in the existing postoffice system. In country offices the postmaster himself, and in cities a subordinate, becomes the operator. For small packages in both town and country the postman is the expressman, and for more bulky packages the railroads are required to institute a system of collections and deliveries and quick service identical with the present express service. It would not be so difficult to install the telephone with automatic switchboards in the local postoffice.

But the moment we attempt to dispose of other public service corporations in this summary way, we are confronted with an insuperable objection, the objection to adding their army of employes to the existing body of public servants. The economic aspect of the question—the fact that government operation is apt to be more wasteful—is dwarfed in comparison with the political danger of adding 1,300,000 railway employes alone to the Government service. And what about the street railways, with their 140,000 employes? Once transferred, it is likely that these growing services will continue to be operated by the nation or city. Abuses practiced by some other industry—such as the mining of coal—would precipitate a demand for its absorption by the State, and we would be saddled for all time with a swarming bureaucracy who would gradually come to look upon public office as an hereditary right to be handed on to their

children, as in France and Germany to-day. Such a bureaucracy would sap the life of the Republic and constitute a menace to it.

What we require then, in the case of the majority of public service corporations, as well as of industrial trusts, is not absorption by the State, and not direct control of charges, but control of conduct, which embraces the matters of questionable practices and of the quality of the service.

It remains to consider how best to effect this control of conduct.

NATIONAL CONTROL ESSENTIAL.

The separate States have proved themselves inadequate to the task. Improved communication has caused industry and commerce to leap State bounds and to become national. It follows that they can be controlled successfully only by the Federal and not by the State governments. Model incorporation laws in the few States in which they exist only serve to drive corporations elsewhere for a charter, which charter immediately privileges them to operate in every other State, including the home State. It is only by denying permission to do interstate commerce to corporations which fail to conform to definite Federal requirements that the problem can be solved. The respective merits of Federal incorporation and Federal license there remains no time for me to discuss. I may be permitted, however, the single observation that certain advantages seem to lie with the system of Federal license, because it is not certain that a State would be compelled to grant to a corporation holding a Federal charter permission to manufacture within its borders. Under the license plan, corporations would take out State charters subject to much of the control hitherto exercised by the State, but would be estopped from interstate commerce if they failed to obtain a Federal license and to conform to the practices as a condition of which the license is granted.

The following paper, on "Uniform Federal and State Control Over Interstate Matters," presented to the conference by Mr. Charles F. Ziebold, President of the West End Business Men's Association of St. Louis, Mo., was then read by title:

MR. CHARLES F. ZIEBOLD.

Mr. Chairman—Speaking on behalf and in the name of the members of our association, I wish to say that we believe that uniform Federal and State control over interstate matters has

become absolutely necessary and essential to their intelligent, impartial and advantageous regulation. And in order to attain a proper basis for the establishment of such uniformity we must go back to first principles, those underlying, fundamental principles that were called into requisition when our existing dual system of Federal and State government was originally established. And by examining those principles in the light of the racial, domestic, social, commercial and industrial conditions as they exist to-day, we must determine whether such principles are still in harmony with our latter day conditions, and are still the proper basis on which to found the extent and apportionment of power and authority between the United States and the several States, under our dual system of government.

OUR REPUBLIC AT OUTSET A MERE LEAGUE.

These first, or basic principles, on which was builded the Republic, and by which was established the division of power between the United States and the several States, are found in the original Articles of Confederation, adopted by the delegates of the United States of America in Congress assembled on the 15th day of November, 1777. And it is evident that the United States of America, as then established, was intended to be a confederacy only, a mere central body, with certain limited powers conferred upon it by a number of independent sovereignties, and not a union, a central, integral and supreme sovereignty, composed of lesser territorial, political and legislative subdivisions, whose several rights of sovereignty were equal as among themselves, but subordinate as to the central body.

And this distinction was kept alive in the Constitution of the United States subsequently adopted on the 17th day of September, 1787, and in the several amendments thereto adopted thereafter.

That the idea of establishing a Confederacy and not a Union, of forming merely a central body for the purposes of an offensive and defensive alliance between various separate and independent sovereignties, and not a coherent, supreme and permanent central government or sovereignty, is evidenced by the language of Articles 1, 2 and 3 of the Articles of Confederation of 1777, which read:

ARTICLE I.

"The style of this Confederacy shall be 'The United States of America.'

ARTICLE 2.

"Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this Confederation expressly delegated to the United States, in Congress assembled.

ARTICLE 3.

"The said States hereby severally enter into a firm league of friendship with each other for their common defence, the security of their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any part of them, on account of religion, sovereignty, trade or any other pretence whatever."

Could language more clearly express the self-evident fact that the real intention of the Articles of Confederation was merely to form a mutual compact between separate and independent sovereignties or nations, and not to create a new and central sovereignty or nation, composed of the several separate and compacting sovereignties as its subordinates?

In other words, that which was originally created by the Articles of Confederation was, in principle, no more or less than that which will eventually be created if the purposes and objects of the Hague Peace Tribunal should ultimately become realized.

THE SAME IDEA UNDERLIES WORDS OF THE CONSTITUTION.

This theory of the preservation of the component parts of the Confederation as independent and separate sovereignties was adopted because the then Confederating States were originally colonies, organized under charter rights granted by different foreign governments and sovereigns, and enjoying varying rights and powers, according to the provisions of the creating grants. And these colonies, whose peoples differed radically in nationality and political and religious belief, were, therefore, extremely jealous of their various rights of independent sovereignty and intolerant of the possibility of outside interference, by the Confederation, in their internal affairs.

And this original theory has been brought down to us through the flight of years, and forms the basis for the present assertion of the principle of our so-called "State rights."

But the theory alone now remains to us, because the evolution of developing conditions has radically changed the facts on which the theory was based, and we are to-day, not a mere Confederation of independent sovereignties for purposes of offensive

and defensive alliance, but a compact, integral nation, a Constitutional Union, composed of various lesser political subdivisions known as States, whose inhabitants are one people, recognizing one central, supreme legal and constitutional authority, composed of themselves and created by themselves.

Why, then, should there exist this constant jealousy and fear of the people of our several States of themselves as the people of the United States? Why should their own power and authority as a people of the United States over themselves as a people of the several States be regarded in the unfriendly and fearsome spirit of hostility and antagonism usually accorded the attempted encroachments of a foreign nation and power.

THEORIES AND CONDITIONS HAVE DIVERGED.

The unalterable fact is, that the original theory of our dual system of government, and the existing conditions, as developed in the flow of years, have travelled in opposite directions, and our only present alternative is to harmonize the widely divergent theory and conditions by conforming the theory to the existing conditions or causing the existing conditions to meet the original theory. The former alternative would be proper, logical, safe and possible, and the latter is physically and legally impossible; impossible, because we are as much the creatures of environment collectively as a nation as we are separately as individuals, and the environment of our present domestic, social, commercial and industrial conditions is the will and wish of the people (developed by the evolution of changing needs and circumstances), embodied into an unwritten law of daily habit and practice superior to and beyond the mere written law, legislative or constitutional.

And to conform this original theory to the existing conditions would necessitate a radical change in the relation now obtaining between the United States and the several States; a change that would substantially establish the same legislative and constitutional relation between the United States and the several States as now obtains between those States and their respective counties and cities.

NEW CONDITIONS DEMAND A NEW DISTRIBUTION OF AUTHORITY.

We realize that in the eyes of many persons this suggestion will appear as an unpardonable and destructive sacrilege, a ruth-

less and thoughtless attack upon the inspired and infallible wisdom and foresight of our revered forefathers. Nevertheless, the fact remains that they, able and astute as they were, but builded on conditions as they then existed, and could not anticipate conditions as they now exist. They could not know that rapid transit, rural delivery, the telephone, the telegraph and other modern facilities for widespread and convenient transportation and communication would practically resolve all our more general domestic, social, commercial and industrial activities into interstate enterprises, which would require for their legitimate and profitable existence and development uniformity of Federal and State control and regulation.

If we should have national coinage, bankruptcy, naturalization, postal regulation and other like laws, because conditions seemed to render them advisable and expedient, why not national negotiable instrument, receivership and assignment, election, telephone, telegraph, railroad, interstate street railway, marriage and divorce and other like regulation laws, when existing conditions seem to render them similarly advisable and expedient?

That there should be uniformity of Federal and State control over these matters is scarcely debatable, and that the present method of attempted dual regulation is clumsy and inadequate is evidenced by the continual friction, cropping out between State and nation in our courts and elsewhere. Because of which we daily witness the colossal folly of the people of the several States quarrelling and contending with themselves as the people of the United States, as if, as a people of the several States they were one nation, and as a people of the United States a different and hostile nation. True it is that the traffic or activity which is confined to any one State should be under the control of that State; but for the same reason the moment it expands itself into another State it should be, for the sake of uniformity, under the control of the United States.

But under the present system of operating railroads, who can say when their traffic is State and when interstate, without becoming involved in the endless confusion of practical details? Who will say that the idea of a marriage or divorce being legal in one State and illegal in another is not repugnant and intolerable?

Who will say that the old-time characteristic antagonisms and differences of habits and belief of our people, racial, religious,

political, social, commercial and industrial, nurtured by the enforced isolation of those times, have not largely, if not entirely, disappeared in consequence of modern improved conveniences that have practically eliminated distance and annihiliated time? In those days, when conveniences for rapid transit and communication were lacking, when education was less general than now, when news travelled slowly, when newspapers were scarce, and when, because of such isolation, concerted action by the people at large was difficult, and communities were compelled to rely upon themselves more or less, it may have been well for such communities by States to be jealous and fearsome of any outside encroachment of authority or interference. But conditions are radically different to-day, and the inhabitants of the most widely separated sections of our country are now nearer neighbors than were the residents of adjoining States less than fifty years ago. Uniformity of control by nation and State thus becomes the keynote for the solution of the many vexing railroad rate, trust and interstate traffic regulation problems, and the other like problems created by the gradual nationalizing of our social and domestic life and commercial and industrial enterprises.

NATIONAL POWER SHOULD BE COMMENSURATE WITH NATIONAL NEEDS.

To determine the character and degree of this uniformity we should take stock of ourselves as a nation, and broadly fix upon what shall be deemed interstate and what intra-state business and traffic, and then permit nation and State each to be supreme in its own field of activity. Man cannot have two masters in reference to the same subject matter without suffering the palsy of confusion and uncertainty engendered by such an attempted dual control.

And if it is desired to properly apportion our powers of government between nation and State, such apportionment must be founded on the universally accepted rule that the rights of the few are subservient to the rights of the many, or, more definitely stated, that the separate rights of each person are subject to the collective rights of all persons. This rule found its first expression in the so-called social compact, the beginning of all organized government and society.

Thus the State is the supreme authority over the county and city, the county and city over the township and ward, and the

township and ward over the precinct. Power travels down from the larger body to the smaller, not up from the smaller to the larger. Excepting only in the relation between the States and the United States, the States continue to insist upon the reversal of the rule, and contend that in this particular instance power travels up from the smaller to the greater body; that is, up from the State to the nation, and not down from the nation to the State. The logic of events and the necessities of existing conditions now demand the adoption of the general rule as between nation and State, and that the States be placed in substantially the same relation to the United States as our counties and cities now occupy in respect to their several States.

This is revolutionary, but every pronounced departure from the established order of things is revolutionary.

And this will be a revolution of peace, out of which will eventually arise increased harmony, confidence and good will between nation and State.

Nor need there be fear of a centralized monarchy, because there is nothing to fear even from a monarchy, when the people themselves are the monarch.

And now more than ever are the people to be trusted, because now more than ever do they understand their rights and the reason for their being and having government.

CENTRALIZATION NOT TO BE FEARED.

It will only be necessary to lodge a broader and more convenient mastery in the people themselves, instead of in their representatives, legislative and judicial, in order to fortify each of us individually, and each of our lesser political subdivisions, against the much-feared and oft-predicted exactions of an increased centralized power. What the people themselves ordain is what the people want, and is that to which they are entitled. Nor should it be possible for a mere handful of their representatives, legislative or judicial, to thwart their wishes or nullify their action. The unreasonable extent to which the exercise of this delegated power may be abused is exemplified almost daily by the action of our various legislative agents, who foist upon us laws we do not want and deny us laws we do want; and, without voicing any opinion whatever upon the merits or demerits of the question, we may illustrate the ridiculous length to which our judicial one-man power may be carried by referring to the

disposition made some years ago of the income tax law, when one man by a change of mind over night set at naught, upon the ground of unconstitutionality, the will of our eighty-odd millions of people as expressed by themselves by their ballots and by the action of their representatives in Congress.

Whether it would not be wise to curtail the jurisdiction of our courts in respect to the controversies involving merely the question of the constitutionality of a law, and permit its constitutionality or unconstitutionality to be determined, under proper safeguards, by the people themselves, is a matter worthy of our best thought and most serious consideration. As it is, the many make the laws, but the few unmake them.

It is because of these various reflections that the members of our association deemed the time auspicious for a general discussion and consideration of the questions involved in the repeated and irritating controversies now transpiring between nation and State in respect to their relative priority of right and superiority of control over matters interstate, and which controversies have become intensified and complicated by reason of the fact that many things that may not be interstate under the strict letter of the law are none the less interstate by the sheer force of existing circumstances and conditions.

And we believe that the discussion of these questions in an unofficial joint National and State Convention, called by the President of the United States and the Governors of the several States, would compel the widest attention and be productive of the best and speediest results; and we accordingly adopted a resolution to that effect some months ago and forwarded copies of same to the President and all the Governors.

And we venture to hope that one of the practical results of this convention will be the adoption of some substantially similar resolution, and herewith respectfully submit for your consideration the draft of a resolution which we further hope may meet with your approval.

THE CHAIRMAN: The report of the Committee on Rules, Order of Business and Permanent Organization will now be presented by the chairman of the committee, Mr. Frank A. Faxon, of Missouri.

Mr. Faxon thereupon read the report of the Committee on Organization, which follows:

The delegates on the registry list prepared and handed in by the National Civic Federation shall constitute the official list of delegates of the convention.

No proxy shall be accepted.

Delegates shall be entitled to one vote only, even when representing more than one organization, and such vote shall not be considered binding on the organization represented unless formally endorsed by said organization.

All voting shall be viva-voce, or by rising vote, and all resolutions shall be carried only by a two-thirds majority of delegates voting at a regular session of the conference.

It is recommended that a committee of five shall be appointed to take charge of the programme of the convention. Said committee to consist of the following members:

Messrs. Tompkins, Easley, O'Connell, Marks and Reynolds.

A committee of resolutions shall be appointed by the permanent chairman of the convention, to consist of one delegate from each State and Territory, who shall be elected by the delegates from such State or Territory.

Fifteen additional members of the committee on resolutions shall be appointed by the permanent chairman of the conference.

The committee recommends the appointment of the following permanent officers of the conference:

President—Nicholas Murray Butler, New York.

Vice-Presidents—Samuel Gompers, New York; Nahum J. Bachelder, New Hampshire; David R. Forgan, Illinois; C. P. Walbridge, Missouri; D. A. Tompkins, North Carolina; George Langford, Oregon; Brooks Adams, Massachusetts.

Permanent Secretary—James B. Reynolds, New York.

Assistant Secretaries—Henry Wallace, Des Moines, Iowa; Dell Keizer, Topeka, Kansas; Hal H. Smith, Detroit, Mich.

Speakers from the floor shall be limited to five minutes, and shall speak only once on the same subject.

All resolutions shall be submitted in writing, and shall be referred without discussion to the committee on resolutions. A finance committee shall be appointed by the chairman of the conference to raise the necessary funds to cover the expenses of the convention.

Respectfully submitted by the committee on organization,

FRANK A. FAXON, Chairman.

JAMES B. REYNOLDS, Secretary.

THE CHAIRMAN: The report is before the conference for consideration and discussion.

A DELEGATE: I would like to ask one question. The report says that all resolutions shall go to the committee without discussion. Does that also mean that they shall go to the committee without reading before the conference?

MR. FAXON: No. I think the intention was that the committee was to have them read and referred to the committee on resolutions.

Upon motion, the report of the committee was adopted.

THE CHAIRMAN: The report of the committee being adopted, the rules therein provided, and the officers therein named become the rules and officers of this conference. What is the further pleasure of the conference?

A delegate then moved that the meeting adjourn, and the motion was seconded.

MR. SAMUEL GOMPERS: Mr. Chairman, a motion has been made that we adjourn for the afternoon session. It is just about twenty minutes after four, and the thought has occurred to me that some delegates may care to take advantage of the five-minute rule to discuss some matters that they may have in mind. There are quite a number of us who are not expected to read formal papers or to make formal addresses, and more than likely a five minutes' address on the part of some delegates to this conference might be profitable to us all, and I would suggest, without making a motion, that the motion already offered be withdrawn, and that we proceed under the five-minute rule to have some delegates address this conference.

Motion seconded.

THE CHAIRMAN: Does the chair understand that the motion to adjourn is withdrawn? There being no objection, the motion to adjourn is withdrawn and the meeting is in the hands of the conference in accordance with the rules already adopted.

(Mr. Gompers was then called for by a number of delegates.)

MR. GOMPERS: I made that suggestion in the interest of those not down on the list to make formal addresses.

MR. EUGENE E. PRUSSING: Mr. Chairman, a paper this morning dealt with the control of the holding corporations in States in which the minor or subsidiary corporations which they controlled were domiciled, and it was suggested that the holding corporations were beyond the control of the States which objected to their activity, because the mere holding of stock in a local corporation had been decided not to be the doing of business in the State in which that corporation was located. The Gas Trust case was cited in the course of the paper, and I was reminded of how the Gas Trust case came to an end. That does not appear in the Supreme Court of Illinois decision. After the case was returned to the Circuit Court, the case was delayed somewhat in the hearing, and it turned out finally that the Chicago Gas Trust Company's stockholders had transferred all their stock to a Philadelphia Trust Company to act as a holding company. This was before holding companies had become very common, and that company voted the stock, held it in trust, received the dividends, issued its certificates to the stockholders and paid with its checks the moneys it received, and in that way the benefit of the Supreme Court's decision seemed to be lost. We had an active attorney general at that time, and I think he filed a bill—I don't remember the pleadings exactly, but I think he filed a bill to wind up all the gas companies underlying, for the reason that they were contrary to the policy of the State of Illinois, owned by a foreign corporation, with powers not justified by our law; and he moved the court immediately for a temporary injunction preventing the underlying Illinois corporations from paying any dividends to the foreign holding company. That injunction was immediately allowed, and the Chicago Gas Trust case was won. The stockholders immediately authorized their counsel to agree to most anything, and the Chicago Gas Trust Company's stockholders agreed finally to a decree by which that company was dissolved; the underlying companies resumed business, not only in the gas business, but in the Legislature, and there they won their case, but the appeal to the courts was successful. It was made by the Attorney General, or in his name, and it has never been disputed as to its effectiveness. It can be done every day. The Attorney General can go into court at any time, just as the King could go into chancery if

his corporations misbehaved. So that the remedy against the holding company is very simple—simply to enjoin the underlying company from paying dividends to the holding company.

MR. VOGEL (Wisconsin): Mr. Chairman, I do not know whether the Attorney General of Ohio is still present. Reference was made this morning to a kindred, and at the same time a non-competing company. It seems to me there is such a thing. We all know there are a great many industries which produce by-products which are of themselves of very little value, not of sufficient value to create or enable an individual manufacturer to work them into a finished product. This necessitates a separate organization which will handle the by-products, and such organizations exist in a great many different lines of trade. For instance, when the hair is taken off of the hides, and the individual tanner does not have sufficient market to handle the product very successfully, it is handled by other corporations. The stock of this company is held by the various men interested in the trade. I would call that a kindred corporation, and yet not a competitive corporation. If the Attorney General of Ohio is present I would like to hear what he has to say in regard to that?

MR. CHAIRMAN: Is the Attorney General of Ohio in the room?

HON. WADE H. ELLIS: Mr. President, I am not a delegate to the convention, and therefore feel some hesitation about addressing the chair. I was invited here to perform a particular duty, and having performed that I do not know that I have any further legal standing in this body.

THE CHAIRMAN: This is not necessarily competitive, although a kindred duty.

MR. ELLIS: If there is no objection I should be glad to answer the question that has just been put. In Ohio, at the time a recent law was passed imposing certain obligations upon all corporations except public service corporations and a certain method was devised for taxing public service corporations, a sort of subterfuge was inaugurated by which, in return for the corporate acquiescence in those laws, this kindred and non-competing law was passed. It was a sort of dicker on the part of the General Assembly with the corporations that were affected by the new taxing law. I said in my remarks this morning that there had been no judicial determination of what was meant by kindred and non-competing corporations. That statute is

being used constantly in our State to effect—to bring about—combinations that otherwise could not be produced at all. In the case cited there is not any reason that I can think of why a corporation intending to go into the business of manufacturing a by-product should not do so directly, honestly, openly in its own name. A corporation has the incidental right to go into any naturally related business; and the courts have held that where the business it proposes to go into is a related business the corporate power exists in the corporation to pursue that business as incidental to its express powers.

The thing that I have been contending against is this business of corporations not only doing their own business, but buying the stock of other corporations for the purpose of indirectly effecting, under lawful methods, a combination that could not legally be effected if it were not for this device. Now it is true, perhaps, that the State might prevent its own corporations from being controlled, as the gentleman from Chicago has suggested. In the State of Ohio to-day there are four or five subsidiary Standard Oil companies, every dollar of whose stock—or at least the majority of whose stock—is owned by the Standard Oil Company of New Jersey, and I am to-day asserting in the courts of Ohio the proposition that it is in violation of our law that an Ohio corporation permits its stock, not to be owned, because that cannot be prevented, but to be voted and have dividends upon it determined by a foreign corporation. But a moment's reflection shows how, if that were the only remedy of the States, incalculable confusion and conflict would exist all over the country. One corporation would be authorized by an Eastern State to buy stock of all corporations of that character, and it would be denied in the State where it intended to do business. As to the proposition that the corporation is not doing business in the State where it owns stock in another corporation, I cite the gentleman to the case of the Standard Oil Company v. Commonwealth—I think it is in the 112th Pennsylvania, in which the court held directly that the State of Pennsylvania was powerless to prevent a foreign corporation from owning the stock of domestic corporations in the State of Pennsylvania.

Why temporize with this method when, by a simple return to the old common law principle that no corporation shall have the power to own the stock of another corporation, the States will be protected by the Federal Government from the absorp-

tion of their corporations by the corporations of other States which have broken away from the old common law principle? Can anybody complain? The sole limit upon their power, giving them all the right to do all the business they please, to amass all the wealth they may, to make all the money they want to—the only limitation upon their power is that they shall attend strictly to their own business.

THE CHAIRMAN: What is the further pleasure of the conference?

MR. EASLEY: The various delegates from the States are requested to at once elect their members of the committee on resolutions and report them to the secretary of the convention to-night, if possible. The delegates from any State include those appointed by the Governor and other bodies.

Thereupon, on motion, the conference was adjourned until 8:15 o'clock p. m.

Third Session, October 22, 8:15 P M.

The third session of the conference was called to order at 8:15 p. m. by Mr. D. A. Tompkins.

THE CHAIRMAN: It is now more than fifty years since a young man left this country to go to the Orient to establish a business, and he made there for himself and his associates a good name, and gave America a good name also by his fair dealing and liberal thought. I am going to introduce to you to-night a direct descendant of that merchant, and one who preserves the liberality of his thought. Mr. Seth Low will address you upon the subject of "The National Control of Railways."

HON. SETH LOW.

Mr. Chairman—After listening to the very interesting legal discussion this morning, I realize even better than I did when I was writing my paper how presumptuous it is for a man to discuss questions about which he knows so little, and yet public opinion, which is entitled to pass upon these questions, is largely lay opinion, and, therefore, the views of a layman who is simply trying to think straight on a question of national importance may not be without their value.

LESSENED COMMAND OF RAILWAYS OVER CAPITAL.

The railroad situation in the United States at the present time deserves the most earnest consideration. The movement of merchandise has outstripped present facilities, and the railroads would like to enlarge, but they find it difficult to get the necessary money. The public wants the railroads to enlarge, but it will not furnish the money. Ordinarily, the promise of a good return on the investment would secure ample funds. Why is it that, in a time of great commercial activity, the funds are not forthcoming? Doubtless there are many reasons, and one of the most evident is that so much money is needed that it is hard to get enough. But back of all this there lie two influences which certainly have to be reckoned with. The plain man understands that business enterprises and good service are

entitled to fair earnings. What he does not understand is in what respect railroad business so far differs from any other business that those upon the inside can honestly and honorably become multi-millionaires, while those upon the outside so often find themselves the owners of worthless stock. He observes that the directors of savings banks do not become rich in that way. He suspects, therefore, that the many millions of the few have, in many cases, been made at the expense of those for whom these few have been trustees. He thinks that there has been in railroad boards of direction a widespread loss of the sense of trusteeship, and he is more and more coming to demand of railroad directors the same sort of self-abnegation that the law demands of a private trustee as towards his ward. The law allows a trustee reasonable compensation, but it does not allow the personal enrichment of the trustee at the expense of the ward. It is true that railroad directors and railroad stockholders buy and sell upon an open market. But whenever a director buys or sells upon private information obtained by him as a director the question must arise in the domain of conscience, Would his stockholder sell or buy if he had the same information? That, in my judgment, is the sort of feeling that underlies a great deal of the criticism of high finance; the feeling that the investing public—not the inside few, but the outside many—are entitled to the same sort of protection from the law that the law gives as towards trustees for individuals. Hence the demand for Government control on the side of railroad financiering.

RAILROADS ARE AGENTS OF THE PUBLIC.

The same demand for Government control comes, also, from those who use the railroads—that is to say, from the general public. But this demand, I think, and the troubles that confront the railroads because of it, spring largely from different considerations. A radical change is taking place in the public conception of what a railroad is. Up to recent times it has been taken for granted that railroading is a branch of private business. That has been substantially the conception embodied in law, and that has certainly been the conception of those building and operating railroads. But, if that is the correct conception of railroading, what is the objection to rebating? It is a well established characteristic of commercial business that goods can be moved in a wholesale way more cheaply than at retail. If,

then, railroading is a private business, why should it not be all right for the largest shipper to be given the lowest rates? Experience, on the other hand, has made it clear that the railroads, upon whom everybody is dependent, by practicing rebating, make it possible for the favored shipper to drive all competitors out of the market. Hence the belief is becoming general, outside perhaps of railroad and investment circles, that railroads are not to be looked upon as conducting a private business; they are rather to be thought of as private agents conducting a part of the business of the State. In other words, what the public wants in railroad management is the public quality, as distinguished from the business quality. That is to say, it wants equality of treatment for all alike, large shippers and small, instead of the discriminations that are usual and to be expected in private business. The importance of the distinction can be well illustrated by the tariff. An importer who brings into the country $1,000,000 worth of silk goods must pay exactly the same rate of duty as the importer who brings in only $1,000 worth. That equality of treatment indicates the public quality of the tariff. Suppose, on the other hand, that, after the manner of business, the tariff charged the large importers only 40 per cent., and made the little ones pay 60 per cent., is it not clear that the large importers could drive all the little ones out of business? But that is precisely what the railroads have been doing with their rebates; and that is why the public are no longer willing to admit that railroading is a private business. That is why the people demand that the railroads themselves should recognize that they are only private agents doing part of the public business; and that is why the public demand that the law henceforth shall proceed upon this new view of what railroads are.

DOES THIS INVOLVE GOVERNMENT OPERATION?

The demand heard in some quarters that railroads shall belong to the Government, and be operated by the Government, presumably does not spring from any special desire to have the Government do this business directly instead of through private agencies; but it springs principally from the notion that in no other way can railroad service be stamped with the public quality that means absolute equality of treatment of big and little shippers, and big and little places; in a word, that all shall be

treated alike. Personally, I do not believe that public ownership or public operation are either the only ways or the best ways to obtain the desired results. Two things, however, remain to be said: The first is that it rests very largely with railroad directors and managers themselves whether the country is driven into public ownership and operation of the railroads or whether the country can continue to avail of private initiative, private enterprise, and private capital in this department of the public service. The second is, that, if the private management of railroads is to be indefinitely continued, Government regulation both of railroad finances and of railroad service is absolutely essential. It may be taken for granted that the public will insist, unceasingly, on having the public quality, of equal treatment for all, predominate in all the relations of the railroads to the public, as distinguished from the business quality of discrimination on the basis of the volume of business. Government regulation may indeed lead to the non-production of multi-millionaires as a by-product of railroading, but it ought also to mean, to investors, increasingly safe returns.

SHALL STATE OR NATION REGULATE RAILWAYS?

But regulation by law in the United States raises another question. Shall it be regulation by the States or by the United States, or by both? For the most part, this question is argued from the constitutional point of view. It is easy to say that the jurisdiction of the United States is limited to interstate commerce, and the jurisdiction of each State to commerce within itself. But that leaves open the question, what are the limits of interstate commerce? To answer that question one must consider both history and present fact. There are two clauses in the Constitution of the United States, as Judge Amidon recently pointed out, and not one only, that bear upon the subject. The first is the clause forbidding any State to levy duties on imported merchandise; and the second is the clause placing inter-state commerce under the control of the general government. In other words, the framers of the Constitution, having seen how ready each State was, in the days preceding our present Union, to advantage itself by laying burdens upon its neighbors, inserted these two clauses to obviate this danger. They forbade, explicitly, direct attacks by one State on the commerce of another, in the

form of duties; and then, recognizing that what the States could do directly, they could also do indirectly, the whole subject of interstate commerce was placed under the general control, in order to make it impossible for any one State to injure another.

FORCES WHICH FAVOR NATIONAL ACTION.

So much for history. Now for the present fact. As long as strong individuals could get favorable terms for themselves, they were indifferent to the question of freights as that question affects localities. But it may be taken for granted that the end of rebating has introduced the day of strife between localities for what each will call fair treatment. As competing localities are often, if not always, in different States, the appeal of each State to protect its own is likely to become more and more urgent. In the rate bills already passed in different States, there is complete disregard of the effect of the action of one State on the railroad service of any other State. This is a force, therefore, making steadily for Federal control. In other words, it is a modern exhibition of the spirit that originally caused the interstate commerce clause to be placed in the United States Constitution. The railroads themselves, also, have done everything to make Federal control inevitable; for they have shown themselves, if not lawless, at least disposed to select for themselves the law that they propose to obey. They have incorporated in the State that will give them the most favors; and they have pursued their devious way in and out between the State and Federal law with almost the capacity of water for finding the weakest spot. The enquiry now going on in New York into Standard Oil affairs has revealed how skilfully large corporations are advised, so that they can evade an unwelcome requirement of Federal control by taking refuge under State control. When State control pinches, they appeal just as readily to the Federal law. This state of facts tends constantly to the widening of the meaning of the words, "interstate commerce," in the United States Constitution. It seems to me altogether likely that these words will ultimately be given a meaning so wide as to embrace all commerce as to which there is any possibility that action by one State may affect unfavorably any other State. In other words, I think that ultimately one law will govern all railroads bearing interstate relations in substantially all their relations to commerce, whether within the State or without the State. However great the fear of the common people

may be of centralization in government, I think that fear will prove to be less great than their fear of centralization in corporations controlling the highways of commerce, that are so far lawless as to be able to select, largely at their own pleasure, the law that they will observe, whether national or local.

PURPOSES OF GOVERNMENTAL REGULATION.

If it be accepted, as it appears that it must be, that an era of governmental control, either by the States or by the nation, or by both, has set in, it is important to consider what ought to be the characteristics of such control. Clearly the laws regulating railroad corporations ought to have in mind as their object the securing of equal treatment for all citizens; and, in return, they should give the railroads the protection of the Government in the conduct of the business committed to their charge, as agents of the public. Doubtless publicity is one of the essential features of Government control; but publicity ought to be applied not only to the record of what has been done; it may also be made highly useful in passing upon the propriety of important things that are proposed to be done. Already this principle has been resorted to, more or less freely, in many of the Acts relating to the control of railroads; but it will yet be found, I think, that it can be applied more and more freely to questions of policy, as circumstances bring such questions to the front. Mr. Dawes, recently Comptroller of the Currency, has pointed out very forcibly that the Sherman Anti-Trust Act, passed in 1890, as interpreted by the Supreme Court, has worked great hardship to the railroads without being of any advantage to the public. This is because the law undertakes to forbid all combinations in business, without regard to the nature of the combination. In other words, it does not distinguish between combinations having a good object and combinations having a bad object. It seems clear that a law which would permit combinations between railroads, after the terms of the proposed agreement had been submitted to the Interstate Commerce Commission and had been approved by that body, would be making use of the force of publicity in a very helpful way. Agreements that are perfectly understood by the public at the time of making, and that are made with the authority of the public, and that are subject to revision, in case of need, by the same authority, may reasonably be expected to work in the public interest. It is the things that are done in secret, with-

out public knowledge, and often without regard to the public interest, from which the public suffer. In an age like this, when the large unit is demonstrating its economy in everything; when the steamships are larger than ever before; when locomotives are more powerful than ever before; when every sort of combination in mechanics is on a scale greater than ever dreamed of in any previous epoch; it is not only idle to suppose that the industries and transportation systems of the country can be successfully conducted in small units, but it is also manifestly to the disadvantage of the public to try to have them so conducted. The large corporation has demonstrated its efficiency, and its economy, too strongly to leave any room for doubt that in a country like ours, if the people are to be well served, there must be large combinations in the transportation service, as elsewhere. The problem is how to secure the benefit of such combinations, without suffering the evils which they are also capable of developing. The only answer that has been suggested, outside of Government ownership and operation, is Governmental control; and that control ought to be so devised as both to permit and to encourage combinations and joint agreements between railroads whenever these are in the public interest. The two things that are necessary to make such regulation effective are, first of all, a recognition that the railroad service of the country is really a part of the public service, although it is conducted through private agencies; and, secondly, that the object of Governmental control of the private agencies doing this business is not to limit their activities but to make sure that all their activities are conceived, first and last, in the public interest. This is really the democratization of business. It is very greatly to be hoped that legislation along these lines can be had from Congress at an early day.

THE CHAIRMAN: Gentlemen of the Conference, this subject which the conference has under consideration is one so large that it reaches to all points throughout the Union. It is important that we hear the views from different sections of the Union, and moving on from New York to Yankton, S. D., you will hear from a gentleman from the West. I have the honor of introducing Hon. Bartlett Tripp, of Yankton, South Dakota, whose subject is the "Powers of the State and Nation Over Corporations and Trusts."

MR. BARTLETT TRIPP.

Mr. Chairman—You will find that what I am going to say closely follows what the other gentleman has said to you, and in order to prove that he has stolen his paper from me, and not I from him, I am going to read rather than to make an oral argument.

We cannot intelligently discuss the great questions of combinations and trusts involved in the modern legislation of Congress and the States without some knowledge of the powers of government possessed by the State and nation. It is easy to define the powers granted to the national Government, for by the terms of the instrument granting such powers all powers not granted to the general Government are expressly reserved to the States.

The careful engineer confirms the accuracy of his work by retracing his random lines and re-examining the monuments he has erected and the corners he has made, but we can no more retrace the lines of constitutional history than we can retrace the divergent waves produced by a falling body into the waters of the ocean, or the distance or direction of stray messages picked up by a Marconi receiver. Our national Government has grown and expanded in the manner of the ocean wave, or the wireless message, until its random lines have so widened into space that it is difficult to trace them to a primitive point. The Constitution of to-day bears little resemblance to that framed by the convention itself. The Constitution of the convention, the Constitution adopted by our forefathers, at the polls, was a patch-work of compromises, a skeleton of government, which seemed to assume the semblance of national Government by the surrender of the fewest possible sovereign powers on the part of the States. The framers did not seem to seek to found a nation. That word is not contained in the Constitution itself, and by the preamble, where we would naturally look for the aims and purposes of the instrument, the object is declared to be "to form a more perfect union"—a union of independent and sovereign States, and not a sovereign nation. And while this view was not entertained by all the members of the convention, nor by all the people who voted for its adoption, it is true that such view was entertained by many of our ablest lawyers and statesmen, down to the Rebellion, which by the arbitrament of arms has determined for all time that we are a nation and not a confederacy of States.

One does not need to read the proceedings of that stormy

convention, nor the discussions of the campaign which submitted the Constitution to the people for adoption, to learn with what jealousy was guarded every grant of power yielded up by the States to the Federal Government, and the wonder is that out of such a Babel of conflicting interests so strong and elastic a frame work of government could have been evolved. Its strength lay, not in the grants expressly made, but in the prohibitions upon State legislation and the implied powers that have been read into it by the courts.

PAUCITY OF POWER DIRECTLY GRANTED TO NATION.

The eighteen express grants to the Federal Government, outside of those to regulate commerce and establish postoffices and post-roads, contain no enumeration that fixes and determines any great sovereign rights. The Constitution of our country, then, is not found alone in the mere words of the instrument, framed by the convention and adopted by the people, but, like the common law, it must be sought for in the decisions of the courts and the history and traditions of the people. The Constitution is one of evolution. It has grown and expanded with the growth and expansion of the country itself. The framers of that instrument, as it came from their hands, would not recognize it to-day as it has been moulded and fashioned by administrative action and the decisions of the courts. The scanty grants of power expressly given to the general Government have been construed by the necessities of domestic, interstate, and international interests to have a strength and meaning little contemplated or imagined by the men that drafted or adopted them. The one clause that perhaps more than any other has given power and strength to the arm of the nation, known as the Interstate Commerce clause, contained in the single sentence giving to Congress the power "to regulate commerce with foreign nations and among the several States and with the Indian tribes," was not conceived of or believed to contain the latent power that would eventually govern and control the commercial industries and affairs of a great nation.

EARLY INTERPRETATION OF COMMERCE CLAUSE.

The great commercial and industrial power of the nation had not then come into existence, and its present development and necessities could not have been imagined or comprehended by the

framers of a government intended to meet exigencies then existing, or that had existed in the past. In fact, the clause seems to have evoked little or no discussion in the convention, further than as a provision giving power to the Federal Government to settle conflicts between the States and between the Indian tribes. And when Attorney General Edmund Randolph, one of the best lawyers of his time, and one of the ablest members of the convention that framed the Constitution, was asked by President Washington for his opinion as to the meaning of this clause of the Constitution, he replied:

"The power to regulate commerce amounts to little more than * * * to prevent taxes on imports and exports; preference to one port over another by any regulation of commerce or revenue, and duties upon the entering or clearing of vessels of one State in the ports of another."

Opinions of Atty. Gens. Feb. 12, 1791.

And in accordance with this opinion, we find States generally granting exclusive privileges to interstate carriers of freight and passengers. Vermont, in October, 1792, granted to Levi Pease the exclusive right to run a stage line from Springfield, Massachusetts, through Vermont to Dartmouth College, New Hampshire, for a period of twelve years, and statutes of other States of a similar character were of frequent enactment.

DEVELOPMENT OF POWER TO ESTABLISH POST-ROADS.

About this time, 1792, the question arose in Congress upon a motion to allow stage proprietors carrying the mails to be permitted to carry passengers, and a Mr. Milne, Representative from New York, is reported to have made an exhaustive argument in the House of Representatives upholding the rights of the States to pass such exclusive statutes, and the motion was lost; and down to the time of the filing of the opinion of Judge Marshall, in Gibbons vs. Ogden, the exclusive power of the States over navigable waters and international highways within their boundaries seems to have been unchallenged. And notwithstanding the decisions of the Supreme Court of the United States, the State of New York assumed to give to the Erie canal the exclusive power of carrying freight; and down to 1847 the Utica and Schenectady lines of railway, which were subsequently merged into the New York Central, were permitted to carry passengers only, and were prohibited from carrying freight, except in winter months when the canal was closed.

And such exclusive right existed in favor of the old Camden and Amboy Railroad, running between Philadelphia and New York, and was sustained by the New Jersey court (22 N. J. L., 623).

The States also maintained the right of precluding the United States from crossing their boundary lines in the location of post-roads, etc., without consent of the State itself, and we find the State of Maryland, January 10, 1803, granting to Congress the power to repair post-roads within the boundaries of that State, "provided that the grant did not authorize Congress to change the direction of any existing road, nor to open new ones."

What lawyer would now contend that the national Congress has not the right to establish and maintain post-roads in any part of the United States, even against the will of the State itself? The power "to establish postoffices and post-roads" is one of the express grants to the national Government and carries with it the power not only to build, lease or purchase such roads, but to maintain the same. The Supreme Court of the United States sustained the action of Congress in chartering the Central Pacific Railway, and authorizing it to construct its line of road across the State of California, as well as through the Territories. (California vs. Central Pac. Ry., 127 U. S. 1.)

It was under this clause of the Constitution, as well as under the Interstate Commerce clause, that President Cleveland sent United States troops into the State of Illinois to protect the mails and property of citizens against armed mobs over the protest of the Governor and authorities of the State. Who denies his authority so to have done?

The right to regulate commerce between the States, and the right to establish post-roads, carries with it the power to maintain such roads by force, if necessary, against lawless mobs or the will of the State. The proposition would now seem too plain for discussion, that when the State has granted to the national Government powers to establish post-roads and regulate commerce, it granted, necessarily, the power to enter such State whenever necessary for such establishment and regulation, without asking permission so to do.

The right to establish post-roads, which carries with it the power to maintain and regulate the roads so established, is yet an embryonic power of the Government, susceptible of equal, if not greater evolution than that of the Interstate Commerce clause itself. And the two powers combined give to Congress the power

to establish all kinds of post-roads, and the regulation of all interstate commerce that may be transported thereon. Congress may make of any or every railroad in the country, a post-road, and prohibit State interference with the management or control of such roads, except to prescribe mere police regulations, and may regulate by its own statutes, the transportation of passengers and freights, including rates of all interstate commodities carried thereon.

SLOW GROWTH OF THE SOVEREIGN POWER OF THE NATION.

But it is not to the express grants made by the States to the Federal Government that we alone look for the evolution of its national powers, nor to the powers necessarily implied by such express grants, but the greatest and most important powers now exercised by it are those inherent powers that come to it as a nation. The States and the people themselves were slow in recognizing the Federal Government as a nation. Jefferson believed he ought to insist upon a constitutional amendment before signing the treaty that gave us the largest, and in some respects the richest portion of our national domain. He strenuously maintained that the Federal Government had no power, express or implied, that gave it the right to acquisition of territory. In other words, that the Government was a confederacy of sovereign States, and not a nation. The Supreme Court, however, quickly determined that the powers expressly and impliedly granted by the States to the Federal Government were sovereign powers, and that both the State and the nation were sovereign in the exercise of the powers each was permitted under the Constitution to exercise.

From these decisions it followed that all the implied powers of a nation, among which were the right to acquire territory by purchase or conquest belonged to the Federal Government.

As we have already said, the powers belonging to the Federal Government as a nation, have not been rapid in their evolution.

Many of our older and ablest lawyers strenuously maintained that the Federal Government had no right of eminent domain, one of the highest attributes of sovereignty; and as late as 1866, Lot M. Morrill, one of the ablest lawyers that ever held a seat in the Senate of the United States, in a speech before that body, declared: "Nobody has ever contended, and I presume nobody ever will contend that the right of Eminent Domain exists anywhere except in the States."

The reasoning of this able lawyer was along the line so many times followed, that the Federal Government got no powers except those expressly granted or necessarily implied, and as the power of eminent domain was not expressly granted, nor was it a necessary implication from those granted, it did not belong to the Federal Government. He quite overlooked that it might have come from that higher and prolific source of power that came to the Federal Government as a nation, and which was later so held by the Supreme Court in Kohl vs. U. S., 91 U. S., 367.

The power "to coin money" did not give to the Federal Government the power to issue legal tender notes as money, and after several contradictory decisions, the Supreme Court finally rested the right upon the sovereign power of the nation itself.

Hepburn vs. Grisworld, 8 Wall, 602; Legal Tender Cases, 12 Wall, 457; Juillard vs. Greenman, 110 U. S., 421.

MAY THE NATION EXERCISE POLICE POWER?

The police power of the Government was for a long time admittedly vested in the States. Statesmen so declared from their places in our legislative halls, and judges so admitted in their opinions from the bench, and it was emphatically denied that the Federal Government possessed, or could exercise, police powers in any form. The term "police powers," however, has come to have so comprehensive a meaning, and covers such a multitude of evils, that the courts are swinging from their moorings and declaring that police powers, as now understood, may be exercised by the United States in carrying out the powers expressly or impliedly granted to them by the Constitution.

Judge Bradley in Willamette Iron Bridge Company vs. Hatch, 125 U. S. 1, says: "The clause in question cannot be regarded as establishing the police powers of the United States over the rivers of Oregon." * * * But he says, "We do not doubt that Congress, if it saw fit, could thus assume the care of said streams in the interest of foreign and interstate commerce."

And Congress has assumed to exercise this right in requiring cars and trains engaged in interstate commerce, to be supplied with grab irons for its brakemen, and the most approved patterns of modern appliances for the safety and convenience of employes. Such enactments are in the strictest sense, police regulations and what lawyer of to-day, doubts the power of Congress to so enact? It has become a necessity that such laws should be general and uniform in every State of the Union. Railroad com-

panies would be powerless to comply with regulations of such character differing in every State through which its trains must pass. The cars of an interstate commerce train, complying with the police regulations of one State, might be wholly deficient in the requirements of another, and as a result such State legislation, if permitted, might purposely hinder, annoy and delay all interstate commerce at will. It is this rapid development in the business and commerce of our country that has brought about the change of legislation and decisions of the courts.

It was at first questioned, when Congress granted charters to some of our transcontinental railways, whether it had power so to do, and it was finally conceded that such rights might be extended to roads engaged in interstate commerce, but questioned as to its right to grant corporate powers in general.

The State of Mississippi in Williams vs. Caswell, 51 Miss., 822, held that a private corporation in the District of Columbia, chartered by Congress, was a foreign corporation in that State, and must comply with the regulations required of foreign corporations entering the State.

UNLIMITED POWER OF NATION OVER CORPORATIONS DEDUCED FROM ITS SOVEREIGN POWER.

In my judgment no reason exists for the distinction between corporations engaged in interstate commerce and those not so engaged. New Jersey assumes to incorporate organizations from every part of the Union, and to deny them sometimes the right to exercise the powers so granted within the mother State. The right to grant corporate powers is a sovereign one, a franchise that flows from the sovereign will, and such rights are inherent in every sovereign State, and when the Government of the United States is admitted and recognized to be a sovereign one, its right to grant charters and enact laws of incorporation, must be admitted and recognized as well. It has the same power to grant charters and franchises that it has to exercise the right of eminent domain, or to acquire foreign territory. All such powers are sovereign powers and come to it with the formation of a sovereign State. It will not do to say that the nation can grant charters for the exercise of national powers only; that railroads chartered by it can engage in interstate commerce alone, or that banks chartered by it can exercise their powers in administration of Government functions only. All corporations, in theory, are formed primarily for the benefit of the Government, but second-

arily and in fact for the benefit of the corporations themselves. The State grants its charters, theoretically for the benefit of the State and the people, but in results such charters are for the benefit of the corporation, even sometimes to the detriment of the people and the State.

It does not result, however, because in theory these corporations are chartered for the benefit of the State, that they must employ their chartered powers in the service of the State alone. On the contrary, the State, when employing such agencies, is obliged generally to pay an equal, if not higher compensation, than the individual. The chartered powers granted are to serve not the State only, but individuals and persons for the common benefit of all, as well as the corporation itself. And, as we have said, such corporations are sometimes chartered, as in New Jersey, not to serve the State, but persons outside of and beyond the boundary line of the State. Why, then, should corporations chartered by the national Government be limited in the exercise of their powers to those granted by the Constitution? If the Federal Government is a nation exercising sovereign powers, it has the right to create corporations with all the powers that a State corporation can have and exercise.

It is true that the courts in sustaining the incorporation laws of the United States have generally based their decisions upon the ground that such corporations were chartered for the purpose of aiding in or carrying into execution the powers expressly or impliedly granted to the general Government. This reasoning started with Judge Marshall in McCullough vs. Maryland, 4 Wheaton, 316, in sustaining the branch bank of the United States located in that State, but he expressly declares, in that opinion, that it is not necessary that the chartering of the bank be solely for the benefit of the Government in carrying out its granted powers. It is sufficient if, in some degree, it tends so to do, and this view has been adhered to by later decisions following and approving Judge Marshall's opinion.

It is upon this theory that the present national banking act stands unchallenged in the courts. The small country banks are of little or no service to the Federal Government in the administration of its affairs. These banks never see a dollar of Government deposits, and render no more aid to the Federal Government in carrying out the powers granted to it by the States than the banks of the State, nor as much as those of countries foreign to our own. If it be true that it is not the quantity, or

amount, of aid rendered by the corporation to the general Government that determines its right of charter, it would seem that we need not minutely inspect the business of the applicant for national incorporation as to how far the nation would be benefited in granting the same.

It seems to be admitted that corporations may be chartered by the national Government *ad libitum* in aid of interstate commerce. The Supreme Court sustained the charter of the North River Bridge Company, for the construction of the great New York bridge, upon the ground, as in case of the Pacific railroads, that it was in the aid of interstate commerce: Luxton vs. North River Bridge Company, 153 U. S., 525, and in this age of expansion, while almost every industry reaches beyond the State boundary lines, yet corporations in the interest of interstate commerce cover nearly the interests of the business world, except, perhaps, that of banking, brokerage and insurance; and as to the last of these, it is difficult to see why, upon reason and analogy, the Government in the exercise of its powers would not be benefited in an equal if not a higher degree by the incorporation of national brokerage and insurance companies, than by the charter of country banks.

This reasoning brings us to the conclusion that while we contend all kinds of businesses which have become interstate in character may be of sufficient aid to the Government, within the decisions of the Supreme Court, to warrant their incorporation by Congress, yet it would be sufficient and adequate remedy for the present to permit, if not to require, all business organizations engaged in interstate commerce to become chartered by the National Government.

FEDERAL INCORPORATION, IF ENACTED, SHOULD BE COMPULSORY.

A general incorporation law, enacted by Congress, permitting such incorporation, would be eagerly complied with by every such organization doing business under corporation laws of the State. But so desirable an end should not be left to the will of the corporation itself. I would make such incorporation, under national law, compulsory, under pain of suspension of interstate rights; and the grant of such charters should be coupled with the provision and reservation that the Government retain the right not only of examination, but of reasonable regulation as well. It is true that such right of regulation is held to exist in

case of quasi public corporations, and corporations like elevators and ferries, affected with a public interest, but in my judgment, such examination and regulation should be extended to all corporations to whom chartered rights are granted either by the State or nation.

A creature should not be greater than its creator. The corporation which is created for the benefit of the people, in theory, should be such in fact. Something must be done at once to allay the feeling of hostility that has grown up amongst the people against every form of incorporation—stronger now, even, than that which existed in England prior to the enactment of the statutes of mortmain.

Combinations of capital are a modern necessity. The little red shop around the corner has gone out of business forever. We cannot return to ancient methods of production. Combinations of capital are not only furnishing to the people of our own country better goods at lower prices, while the price of labor has been maintained and advanced, but we have in competition with the cheap labor of the Old World spanned their rivers with our bridges, equipped their roads with our cars and engines, and from our mills and workshops sent our mining and farming machinery to almost every part of the known world.

We ourselves and the world have been benefited, not only by the enterprise of our people, but by the combinations of capital, so that while we reform, we must not break down and destroy those great industries through which our prosperity has been derived.

CORPORATIONS SHOULD BE MADE STRICTLY ACCOUNTABLE FOR ACTIONS.

Our people, however, forget these great benefits derived and to be derived from combinations of capital, when they observe the evils that have followed in their train. It cannot be denied that there is just ground for complaint, and they have a right to demand that the attendant evils of combined wealth shall be met with effectual and immediate reform. The means that have brought us wealth and the luxuries of life must not become instruments of oppression and tyranny. These creatures of our generosity must continue our servants, and not become our masters.

We have too long been recreant to the interests of the people

in the liberties and unrestricted powers we have granted by these chartered rights.

The great fortunes of the country have been built up, not by the increase of the increment of values, however rapid their multiplication may have been, but by methods which, perhaps, while they come within no prohibition of existing law, are believed by the people to be immoral and unjust. We have been careful of the interests of the people in safeguarding them against usury, worthless currency and doubtful or unsafe banks of savings and deposit, but it does not seem to have occurred to our wise legislators that where 10 per cent. of the earnings of our people are deposited in our banks, more than five or six times this amount is invested by the wage-earners and common people in the stock and bonds of these corporations that are wholly without examination or regulation on the part of the Government.

Their minority stock is wholly at the mercy of the majority and the great fortunes of the country have been largely accumulated by a system of wreckage, in depressing the values of the stock until the minority, forced to sell, have been robbed of their investment, and the majority in possession and control of the entire property of the corporation, have brought back the stock again to its original value, or above.

The 49 per cent. of the stock is continually at the mercy of the 51 per cent., and if wreckage do not occur, an unequal and unfair division of the profits is much too frequent a result. But the worst invention of modern times is the combination and consolidation of corporate interests into one great and controlling monopoly, which not only breaks down and destroys competition, but deceives and robs its stockholders in its very formation and inception. These great monopolies, seeking to combine all persons and corporations engaged in any line of industry, buy up at prices so tempting as not to be resisted, the plants or works of each competitor, and in the new corporation which is generally promoted by some great financier, whose name gives to it an assurance of success, the dear people are asked to invest and to purchase its stock, at a price so fixed as to pay for not only the purchase price of all the property so combined, but to leave an amount of stock aggregating a large proportion of the entire sum to be divided gratuitously among the promoters and favored few.

The stock is thus at its inception watered to perhaps one-third or one-half of its entire amount, and the investors, who pay full price, are paying perhaps double its value, and the gratuitous stock goes to enhance the fortunes of promoters, already too large. The people do not and cannot know the methods of the corporation in whose stock they invest. The president or directors are to them a guaranty of the dividends for which their investment is made, and they blindly increase the fortunes of modern financiers, and help to form a monopoly that breaks down competition and becomes too radical and oppressive in its demands upon all. These methods, and others that I have not time to mention, are now becoming known, and the intense feeling engendered among the common people must lead to remedy or revolution. The remedy now, which must not only be effectual but immediate, lies along but two lines: Government regulation, or Government ownership. I am not one of those who believe in a paternal Government. I believe, with the founders of the Republic, that governments were instituted to protect the weak against the strong, and if ever that necessity existed it is now. The weak are people who do not belong to organizations or combinations of any kind. We are being injured and oppressed both by capital and labor. The unions of laboring men, which were encouraged as a back-fire to protect against the encroachments and tyranny of capital, have become almost as despotic and tyrannical as capital itself. As lawyers, however, we have learned that when the wrong ceases there is no longer use for the remedy, and we are, therefore, assured that when we have given to labor and laboring men an adequate remedy against the oppression of capital we will be no longer troubled with strikes nor demands of the union.

If we do not hasten such legislation we approach government ownership, or the worse remedy—anarchy and revolution.

Government ownership carried beyond public utilities crosses the border land of Utopia to that of socialism, which is a theme not yet so advanced as to demand discussion here.

GOVERNMENT OPERATION INEFFECTIVE.

Our experiments as already tried in Government ownership do not give hopes of ultimate success. A republican government is not framed along paternal lines. It is not central

enough, or I might better say it is not despotic enough, to deal successfully with these great questions of business and finance, and even the governments of Europe cannot be cited as eminent examples of its success. Passengers are transported on Government roads on the Continent of Europe at rates very little, if any, cheaper than in America, while the accommodations are much inferior to our own, and freight is in a marked degree higher than at home.

In our own country we have never been able to build our public buildings as cheap as could be done by private contract. On the contrary, we have been obliged to pay from one-fourth to one-third more, even where disgraceful and dishonest graft has not increased the price, as often and too frequently is the unfortunate result. Even our municipal ownership of public utilities, in which, if any anywhere, we ought to succeed, has been unsatisfactory and a disappointment to all, and the learned English Mayor who recently visited our country passes judgment upon our city governments, condemning the attempt at municipal ownership under conditions as they now exist.

We must, then, as citizens, appeal to Congress and to the legislatures of our States to give us speedy and immediate remedy against corporate evils as they now exist, by government examination, government regulation and government control.

THE CHAIRMAN: We are now going to hear from a gentleman from one of the original Yankee States. I have the honor to introduce to you now Hon. Nahum J. Bachelder, President of the National Grange, whose home is Concord, N. H., and whose topic is "The Farmers' Interest in Trust Regulation."

HON. NAHUM J. BACHELDER.

Mr. Chairman—As the official head of the National Grange, Patrons of Husbandry, an organization with nearly one million members, I have had ample opportunity for learning the sentiments of the farmers in all sections of the country regarding the policy to be pursued in relation to the great combinations of capital commonly termed "Trusts." I am convinced that an overwhelming majority of the farmers strongly favor the enforcement of legislation intended to prevent these Trusts from becoming oppressive monopolies, and the repeal of any laws that tend to enable these combinations to stifle competition and charge unreasonable prices for their products or services.

As the question of the regulation of the Trusts under existing

laws will be dealt with at length by other members of this Conference, I shall only say in this connection that in my opinion the best interests of the farmers will be furthered by such action as will prevent combinations in restraint of trade, while giving every encouragement to the development of the country's manufacturing, transportation and commercial interests.

THE TARIFF AIDS THE TRUST.

In taking up the question of the additional legislation that may be needed to protect the farmers from the exactions of the Trusts, it is impossible to ignore the question of the relation of our tariff laws to these corporate monopolies. There undoubtedly exists a widespread sentiment among the farmers of the country to the effect that the protective tariff, by restricting competition, makes it possible for the Trusts to exact higher prices for their products. And it is believed that the trade and manufacturing conditions existing at the time of the adoption of the present tariff have been greatly modified since that time by the development and extension of the principle of combination, so as to create immense corporations practically controlling certain lines of industry.

PROTECTION IMPLIES HOME COMPETITION.

The theory on which all the former arguments for a protective tariff system were founded was, that by giving protection to our manufacturing industries, domestic competition would be increased, and that this competition could be safely relied upon to reduce the prices of commodities, or to prevent their being raised above a point that would yield a reasonable profit. The proposition that the encouragement of home industry would greatly increase competitive production, and constantly tend to a lowering of prices, was confidently maintained for many years by all the leading advocates of a protective policy.

Conceding that the protective principle has been definitely accepted for this country, and that this policy will prevail for many years to come, the question now arises as to whether the conditions under which many of the tariff schedules were arranged have not changed, so as to require their readjustment. In so far as the farmers of the country are concerned, they are complying with the conditions under which they are given protection against foreign competing products. The grain growers, the cattle raisers, the cotton planters, and, in short, the entire agricultural classes of

the country, are all producing competitively, and there is no likelihood of any change in these conditions.

COMPETITION ELIMINATED BY COMBINATION.

In the industrial world, however, we have seen during the past twenty years gigantic combinations taking the place of competing manufacturing firms and companies, so that in many important lines of industry goods are practically no longer produced under conditions of free competition. It is claimed that these changed conditions are a natural evolution, corresponding to the development of the corporation or joint stock company from the regime of individual manufacturers, and that the tendency is in the direction of still greater combinations. Whether this be true or not, there is certainly a need for investigation as to the relation of this suppression of competition to tariff laws intended to promote competition.

Statements in regard to the practical effect of the tariff in increasing the cost of many staple articles produced by Trusts have been frequently published in recent years, and it is alleged that in practically all cases where a combination has secured control of an industry, the prices of its products have been fixed largely by the cost of similar foreign products, duty-paid. It is also stated that many Trust products are sold for export at prices materially lower than those charged to domestic consumers. If, as is claimed by defenders of the policy of selling to foreigners at lower prices, goods are often sold for export at less than the cost of production, it would seem that the domestic consumers must be paying more than reasonable prices in order to cover the loss on goods sold abroad. As I understand it, the protective tariff policy is intended to encourage domestic producers by protecting them against foreign competition, and it can hardly be consistent with the purpose of that policy that our people should be taxed, in the form of high prices, in order to benefit foreigners.

DOES TARIFF PERMIT FOREIGN SALES AT LOWER THAN DOMESTIC PRICES?

The basis on which a scientific tariff law is supposed to be adjusted is that the rate of duty on any particular article shall equal the difference between the labor cost of producing such article in this country and the cost of producing the same article

in foreign countries. It is stated that in many cases the present tariff rates on articles produced by Trusts are much higher than is necessary to cover this difference in labor cost, and that material reductions could be made in the duties on such articles, and amply provide for liberal wages compared with wages abroad, enabling wage-earners to maintain a high standard of education and living.

It is manifest that if these criticisms of the existing tariff law to which I have referred are well founded, that there are good reasons for legislation that will correct the evident defects of the present tariff schedules, without injuriously affecting our agricultural or manufacturing industries. It is therefore highly important that all the facts in regard to the operation of the tariff should become known beyond reasonable doubt, and it is evident that these facts can be best secured through a non-partisan Tariff Commission, whose duty it shall be to examine carefully into all phases of the subject, and secure exact information concerning all disputed points. This Commission should include in its membership representatives of the agricultural, labor, manufacturing, transportation and commercial interests. I believe that such a Commission would command the confidence of the people of the country, and that its conclusions, based as they must necessarily be on ascertained facts, reached at the earliest possible date, would effectually solve the much-discussed "tariff question," and remove it permanently from the field of partisan politics.

URGENT NEED OF SCIENTIFIC TARIFF LEGISLATION.

It is often charged that our tariff laws have not been prepared in a scientific manner, that is, with a full knowledge of all the conditions to which the rates of duty are intended to apply. It is true that in considering tariff legislation the Committee on Ways and Means has, to a certain extent, relied on expert assistance, but it is claimed that the recommendations of these experts are too often set aside at the request of some selfish interest. It is reasonable to suppose that a Commission of the character suggested would be of such high standing that its conclusions would be accepted as authoritative, and that through its careful and impartial investigation Congress would be placed in possession of all the essential facts in relation to the tariff, so that future legislation on this subject can be scientific, and consistent with the best interests of the people of the country as a whole.

I move the adoption of the following resolution:

"Resolved, That we recommend to the Congress of the United States the appointment of a permanent non-partisan Tariff Commission, composed of representatives of the agricultural, labor, manufacturing, transportation and commercial interests of the country, whose duty shall be to examine into all phases of the subject and secure exact information concerning all disputed points, and report their findings to Congress at the earliest possible day."

Mr. Chairman, I desire that this resolution be referred to the Committee on Resolutions.

MR. THEODORE MARBURG (Maryland): The gentleman has omitted the professional class. We sometimes get more impartial and quite as good judgment from the men who are not directly interested in these problems as you would get from these special interests which the gentleman has named.

THE CHAIRMAN: Do you wish to make an amendment?

MR. MARBURG: I move to amend the resolution by inserting after the word "commercial" the words "and professional." There might be some others that you might want to add to that list.

THE CHAIRMAN: Do you accept that amendment?

MR. EUGENE E. PRUSSING (Illinois): I would like to inquire whether, under the rules, the resolution will be referred to the committee without debate, because I think there is one class omitted from that resolution, the suggestion of which I would like to make, and that is the class which has been referred to by my friend on the left, the consumers. They were not mentioned. I have been a consumer all my life and represent that class, and I would like to be on that Commission. That has been the trouble with all our Tariff Commissions, the great outside has never been represented.

THE CHAIRMAN: The chair believes that if this resolution is referred to the committee with the suggestion made that it will receive proper attention, and the maker of the motion wishes to dispose of it in that way. If that is satisfactory, the Chair will rule that the resolution will be referred to the Committee on

Resolutions with the suggestion that has been made about the consumers and the professional men.

Before this Conference adjourns, the Secretary has some announcement to make.

SECRETARY REYNOLDS: It is urgently requested that all the State delegations which have not yet selected a representative on the Committee on Resolutions should do so at the earliest possible moment, and when you have selected a delegate, will he please give his full name and the name of the State he represents to myself. The Committee ought to be completed by to-morrow noon at the latest.

On motion, the Conference adjourned until 10 A. M. the following day.

Fourth Session, October 23, 10 A. M.

The Conference was called to order at 10:30 o'clock A. M. by Mr. Brooks Adams.

THE CHAIRMAN: As I received no notice that I must preside to-day until this morning, I have no remarks prepared, as I suppose the chairman should have, but there is one remark which I have to make, and it will be very brief. We have not come here only to discuss. Now, discussion is an extremely good thing. We have had discussion from all points of view, and I suppose we shall have a great many more points of view, but there is one thing that is much better than discussion, and that is concentration—concentration upon a plan. This country has arrived at a point where it is absolutely necessary, in my judgment, that the people should fix upon some definite method of administration, some definite principles with relation to these great Trusts. If we cannot surmount the administrative difficulties as between the public, in its public capacity, and these great Trusts, which are private, there is no doubt in my judgment but that this country must be wrecked. Therefore, the first duty and the care of every citizen is to help crystalize opinion upon some definite plan. Short of that, I do not think that a mere discussion can arrive at very great results.

I would ask the Secretary to read a communication which he has received.

MR. REYNOLDS, Mr. Chairman and Gentlemen, I have a communication from the President of the National Civic Federation, Mr. August Belmont.

23 Nassau Street,
New York, October 21, 1907.

Prof. Nicholas Murray Butler,
Chairman, Industrial Economics Department,
National Civic Federation,
Studebaker Hall, Chicago, Ill.

My Dear Sir—Imperative business considerations which will not permit postponement oblige me to remain in New York. I keenly regret my inability to be in Chicago on Tuesday as one of the Committee of the Chamber of Commerce of my native city, to take part in the deliberations of the conference on Trusts and Combinations, under the auspices of the National Civic Federation.

As President of the Federation it would have been my privilege and an enviable honor to have presided at the opening of an assemblage so representative of the best thought of the United States and whose discussions are sure to be fruitful of immeasurable good to the Nation.

Great as is our country, energetic and thrifty as are our people, bounteous and vast as are our resources and incomparable as is our ability to succeed in the face of drawbacks, we are not proof against the pernicious effect of unwise laws governing trade, whether between individuals or between aggregations of individuals—*i. e.*, the corporations.

If it is necessary for the public good to place restrictions around the method of conducting a corporation's business, the fundamental principles underlying healthy trading should govern the consideration of them. The question should not be approached in a spirit to punish successful accumulation of wealth upon the assumption that wealth in the hands of corporations or of individuals is necessarily dangerous to the public welfare.

The President, in his last message, called for the amendment of the Sherman Act.

Already the agitation has wrought antagonism, arraying some of the people against all of the corporations. Governments, State and National, have hastened to administer remedies to an already much-treated patient. The patient staggers under the conflicting supervision of the doctors, and their quarrels point to disagreement, which in turn threatens our very institutions.

The corporation in the last analysis really means the individual. It is the investor who must suffer in the end, and the depositor as well, for he again is interested through the Trust Companies, the

Banks, and the Savings Institutions, which are investors or loan their funds on the strength of corporate investments.

The ramifications of these vital questions touch the personal welfare of a vast proportion of our population. An intelligent and exhaustive discussion, therefore, as such must be at this Conference, followed by timely recommendations, will be eagerly waited and watched for.

I am not a pessimist, and have abiding faith in the ultimate triumph of the good sense of the people and the intelligent solution of all the vexing questions surrounding our economic growth, but prejudice and cant must be set aside.

The successful corporation and individual are necessary and beneficent factors in the life and progress of a healthy and wealthy nation.

Our citizens should not be egged on to array themselves in classes one against the other, to the peril of weakening the structure of free institutions and of bringing suffering to every home in the land. Although the combatants are strong to-day, we should not be misled, for the conflict will hurt all alike. All are indissolubly linked in a common interest and ownership, and the remedies must be administered from that standpoint, with due regard to sound economic considerations. I remain,

Very truly yours,

AUGUST BELMONT.

THE CHAIRMAN: I have now the honor to introduce to you a gentleman with whose name you are all familiar. He is a gentleman whose reputation stands so high in his department that he needs no introduction from me. Prof. Jenks, of Cornell University will speak on the "Trust Situation."

PROF. JEREMIAH W. JENKS.

Mr. Chairman—The task before me this morning is simply to sum up, as briefly as possible, the progress that has been made during the last few years in the investigation of the questions regarding corporations, and to state even more briefly two or three of the problems of to-day. Of course, I am not taking the responsibility of the opinions expressed, but my aim has been to express the opinions, generally speaking, of all thoughtful men on this subject.

At the time of our first great conference on trusts, eight years ago and more, there was great public excitement on the subject. Many people feared that private competition would be

practically abolished in all lines of industry; legislation was pending in several of the State legislatures, and the feeling of apparent desperation on the part of many persons was so strong that the conference felt the great need was for more light.

AN EPITOME OF PROGRESS.

After that conference, for a period of two or three years, the formation of the great combinations of corporations continued, several of the larger ones, including the United States Steel Corporation, being formed.

Now that tendency seems to have been checked, probably because the lines of industry best adapted for such organizations have been well organized. Since then, also, there have been many restraining acts by different State legislatures; many important decisions in State and Federal courts have been made; there has been time for much commercial experience. This, then, is the time to take account of the work that has already been accomplished by legislative and judicial action and by business experience. This conference should be able to make a positive and exact statement of legislation still needed.

1. Without attempting to review all the recommendations made then, or all of the lessons which have been learned since that time, some of the most important may be briefly considered.

RAILROAD DISCRIMINATION.

(a) The investigations of the United States Industrial Commission, of the United States Bureau of Corporations, and the decisions of several courts, have established beyond question the fact that railroad discriminations of various kinds have been a source of very large profits to most of the important combinations, and have doubtless been a leading feature in building up their strength, even when they have not been a direct cause of their organization. Even before this fact had been fully established, laws had been passed in several States and by Congress forbidding such discriminations and imposing a severe penalty. The administration of these laws has of late been fairly efficient, and within the last two or three years especially there is reason to believe that this evil has been at any rate very greatly lessened. Even without further legislative action in that direction, it seems certain that time and experience in administration will

enable these laws to be progressively more efficient as the knowledge of conditions increases.

(b) Besides the direct intervention of the courts, the Interstate Commerce Commission can now, under the legislation of the last Congress, prescribe the method of bookkeeping for the railroads, and can thus with much more certainty detect and make public any abuse contrary to law. This power will doubtless be exercised so as to greatly assist the executive, the courts and the public, to say nothing of the consciences of railroad auditors and treasurers.

INFLUENCE OF THE TARIFF.

(c) The protective tariff was then declared by some to be the "mother" of all Trusts; by others to have little effect in creating or in favoring the development or prosperity of the combinations. While this question is still more or less debatable, it may be stated positively that investigations have already shown that, while the protective tariff cannot be said to be directly the cause of the industrial combinations, it has, doubtless, in many instances, protected some of them from fierce foreign competition, and has thus aided them decidedly in controlling the market and in increasing prices. On the other hand, it may be stated with equal positiveness that other combinations have received practically no aid from this source, and yet, without such aid, have been able to hold their own against the competition of rivals. There still remains a very important work to be done in the way of investigation of the relation between the protective tariff and the industrial combinations, but in my personal judgment conservative, remedial legislation in the way of modification of the present tariff laws will prove to be very desirable.

EFFECTS OF ELIMINATING COMPETITION.

2. The industrial combinations, it has been proved, have many times checked competition very decidedly. They have driven weak rivals to the wall, and even without the aid of tariff or railroad discriminations have attained a monopoly to so great an extent as to give them for the time being, within considerable limits, control of the market and the power to fix prices. On the other hand, experience has shown that when they have used this power arbitrarily they have not stifled competition. New rivals have continually sprung up to plague them, and the efforts

to abuse their power have been costly to a serious degree. The result of this experience is that many of the stronger, more conservative and more successful of the great combinations are no longer reckless in their attempts to fix prices. Indeed, unless managers of the corporations are expecting to reap a quick harvest on the Stock Exchange and then to sacrifice the interest of their stockholders, these reckless attempts to control the market prices of products have been practically abandoned. The experience of the last ten years seems to show that combinations will continue, but that usually they will not overthrow competition, and that the field for their arbitrary action in fixing prices is strictly limited.

THE PROBLEM OF CAPITALIZATION.

3. Long before the time of the last conference, overcapitalization had been generally recognized as one of the great evils of corporate organization, an evil much exaggerated in the formation of many of the great industrial combinations. This evil, too, has in part been cured simply by business experience. Investors have become more cautious on account of their poor investments; the bankers and underwriters, from their difficulties in floating so large amounts of "undigested securities"; but legislation also has played its good part in lessening this evil. It seems now to be generally recognized that effective means can be found of restricting capitalization within reasonable bounds. In some of the late court decisions, also, especially in the State of New Jersey, promoters have been held rigidly responsible for misrepresentation in connection with the organization of corporations, and when it has become clear that some persons, acting merely as "dummy directors," have overloaded the capitalization with worthless securities, the real culprits have been held personally responsible. Doubtless such decisions, even under present legislation, if they are steadily followed up in different States and in Federal courts, will largely do away with the evil.

There still remains, however, to be settled finally the sound principles of just capitalization. Shall the basis of capitalization be a reasonable valuation of tangible property, or shall it be considered just and legal to capitalize also a reasonable earning power or a good reputation under the name of good will? But we must adequately forbid the capitalization of mere monopo-

listic power. Whatever the final decision may be as to the best basis of capitalization, no one questions that publicity in connection with promotion and the organization of corporations is the best general remedy for the evils of overcapitalization.

PRICE POLICY OF COMBINATIONS.

4. Much also has been learned regarding the effects of the giant corporations upon various phases of business.

(a) The investigations of the Industrial Commission and of the Bureau of Corporations seem to have made it clear that very many of the claims of the great corporations that they have lowered prices on account of the savings which they have been able to effect are not true. While it may be granted that they have often had the power to lower prices, in many instances they have also had the power to raise them, and especially during the times of most active trust organization, say from 1897 to 1902, the result of the organization of a great combination was in many instances to increase rather than to lower prices. It is true that in many instances it was claimed that the competition beforehand was so keen that all the members of the combination were losing money, and that the increase in price was merely enough to offset losses. Doubtless certain instances of this kind may be found, but when combinations have paid dividends of 40 per cent or 50 per cent, or even when they have paid dividends of only 5 per cent and 6 per cent on stock, three-quarters of which at least was water, and have increased prices, there seems no reason to question that they have been exercising unjust monopolistic power. On the other hand—let us be just—there can be no doubt that the combinations at times have tended to steady prices, and that in times of exceptional demand, when under the ordinary competitive system prices would have increased to an unusual degree, the great combination holding a dominant position in the market has insisted upon keeping prices steady and, under the circumstances, reasonably low. On the whole, the most conservative of these great organizations are showing more inclination to be conservative in the use of power, and to hold prices steady. Here again it has been found repeatedly that whenever, either through governmental action or through a policy deliberately adopted by the corporation itself, there has been full publicity regarding the affairs of the

corporation, prices have been kept much more certainly within reasonable limits.

There still remains the question of the price offered to foreign purchasers as compared with those at home. The principle has now been generally recognized by all careful thinkers on the subject, as the result of much discussion, that at times a small surplus stock or a stock which has remained on hand until there is danger of it becoming unsalable may, without disadvantage to any one, be unloaded at low rates abroad, just as we have clearing sales in all our great business houses from time to time. While some of the corporation managers are ready to defend the practice of regularly selling abroad at lower prices than at home, on the ground that this is the only way to get the foreign market, and that the sale of these extra goods produces a steadier home demand for labor at good wages, this point would not be generally conceded. In fact, it seems probable that this policy could not be carried out without the influence of a tariff unduly protective.

COMBINATIONS AND LABOR UNIONS NOT HOSTILE.

(b) The fear which the laboring classes, especially as represented by the great trades unions, formerly felt regarding the great corporations seems largely to have passed. They now realize, as the result of experience, that their unions are strong enough to cope on fairly even terms with the stronger combinations, and more and more it seems to be the settled policy on the part of both unions and combinations to make trade agreements and settle their disputes on terms of equality. Certain governmental investigations seem to show that the result of the combinations has not been on the whole to lower wages. It seems probable that the wage earners of the higher classes and those with the lowest wages have both increased relatively in number, while those with low average wages seem on the whole to have lessened their number. The trade unions, however, seem steadily to be becoming capable of fighting successfully the cause of the wage earners, even against the greater combinations. On the other hand, from the point of view of the public, the danger of a combination between the corporation on the one hand and the laborers on the other seems not to be lessening, but rather to be on the increase. The corporations can, of

course, increase wages if they can make the public pay for this increase in higher prices.

(c) The fear that all industry will be so dominated by the Trusts that the ambitious individual with small capital will have no opportunity of directing business, and that therefore personal initiative in the business community will be greatly weakened, seems likewise to have passed. It has been recognized that even in the great corporations there is plenty of opportunity, as heads of departments, to develop original views, which will be well paid for. Of still greater consequence is the recognition of the undoubted fact that the lines of industry which are adapted for combinations on a great scale are, relatively speaking, only a minor percentage of the total industrial interests of the country.

5. The experience of the last eight years has thrown much light on the question of remedies for the evils of the Trusts. Many experiments have been made, and there seems now a reasonable basis for some fairly well established general conditions.

SUPREMACY OF LAW VINDICATED.

(a) In the first place, the supremacy of law has been clearly established. Formerly many seemed to question whether the corporation would not so dominate our governments that no restrictive laws would be effective. Fortunately, in both State and Nation, men have been found who themselves possessed the dominating quality to a remarkable degree, and who to strength of will have joined integrity of character. It may be that some of our laws have been unwise, though, too, some of them have been wise, but in either event the dominating power of government over corporation has been clearly established. Men no longer fear the corporations. Now, therefore, their good and evil qualities may be discussed on their merits, and men need no longer in fear strike out blindly to destroy all agreements for joint action regardless of whether such agreements are good or evil.

DESTRUCTIVE LAWS HARMFUL.

(b) We have had many laws merely destructive in their nature. Experience shows, first, that these laws have not been generally and impartially enforced. Had they been so enforced in some instances practically every trade unionist, every member of a

grocers' association, even every clerk or salesman who agreed to devote his business energies solely to the interests of his employer during the period of contract, would now be occupying a felon's cell. Usually such laws have been ignored in small places, and in reference to smaller combinations, and have been enforced only against some of the larger, although quite possibly in some instances at least, against some of the more grasping and unscrupulous of the combinations. But even when these laws have been enforced they have at times led to higher prices for the consumers and in other instances, although effective in form, they have been non-effective in fact. Though the corporations have nominally been dissolved, practically their members have worked together as efficiently as before. It may indeed be said that this exaggerated attack upon agreements of all kinds, reasonable and unreasonable, has been one factor, perhaps the most prominent factor, in driving together into a rigid, single organization establishments that without this pressure of an unwise law would have remained in great part competitive, although acting under agreements in certain particulars. People who complain most loudly against the concentration of our railways and the growth of our giant corporations have largely to thank the baleful influence of destructive legislation.

EFFICACY OF REGULATION ESTABLISHED.

(c) The situation is far different as regards our regulative legislation. First, in both State and Nation, we have secured in many instances a goodly degree of publicity regarding the work of corporations and this publicity has had a most decided effect in the direction of control. No sooner had the Bureau of Corporations exposed the unjust discriminations in rates in connection with the transportation of petroleum, than the unjust rates throughout large sections of the country were immediately changed. Even where there was no reason for believing them technically illegal, it was sufficient that they appeared unjust. Likewise the investigations of our Public Utilities Commissions are having a similar effect on both capitalization and rates and much more in the same direction is still to be expected. We have just begun this form of control, of our public service corporations. There can be little question that an extension of this system will prove still more fruitful.

But we shall yet go further; under our new laws, the Interstate Commerce Commission is showing clearly the conditions of the railroads, and is studying with far better opportunities the whole question of the cost of traffic and the reasonableness of rates. With the power which it now possesses of prescribing methods of bookkeeping and of constant supervision of the work of the roads, there need be no fear that should occasion arise, the power which the commission has of fixing rates will be unjustly exercised. The presumption is that with the public in possession of the facts, presented in such a way that everyone may judge of the reasonableness of the railways' actions, these actions will probably be reasonable with little direct exercise of power on the part of the commission. The great manufacturing corporations are unfortunately not yet under so rigid control. The power, however, now exists of securing information and only a short time will be needed to give the public the facts regarding them. Is it not time that we go further and bring these great corporations under control similar to that exercised over the railways, prescribing in certain instances where their work is clearly interstate in its nature, a Federal supervision which shall extend to methods of accounting and publicity in all matters of general public interest? This control may be secured either by a Federal incorporation or by a Federal license system, or by other means which may be devised. The essential point is that the Government, and so far as seems wise, the public, shall know just what is done and shall have the power to control. And with this knowledge and control should there not likewise be joined as in the case of the railways, greater liberty of action so long as that action is reasonable? Surely, now the people have learned their power, so that they need not, themselves unreasonable, forbid reasonable action on the part of either railroads or corporations, but, holding in their hands the full power to check all unreasonable acts, give to corporations the right to make agreements which are reasonable and in the interests of the public.

MR. F. A. DERTHICK (Ohio): Mr. Chairman, I was a member of the Committee on Rules, Order of Business and Organization, and I do not remember that there was any time fixed when resolutions would be in order regarding certain extraord-

inary conditions in the State of Ohio and in certain cities in relation to the subject that has just been so ably presented. I came here with a resolution to introduce upon this particular problem, and if it is in order, inasmuch as it has been presented in various ways by various gentlemen here, I would be glad to read a brief resolution, so that it may go into the hands of the Committee on Resolutions.

THE CHAIRMAN: Very well, sir, if you will read your resolution as briefly as possible.

MR. DERTHICK: It is brief. I should be glad to have these resolutions which I will read referred to the Committee on Resolutions, and I submit with them an extract from a law recently enacted in Wisconsin. The resolutions are as follows:

Resolved, That all industrial corporations contemplating a business extending beyond the limits of any one State should obtain their charter of incorporation from the general government, as having the control of interstate commerce; that this charter should strictly define the business to be undertaken, the safeguards of the community, the power and the responsibility of stockholders, the publicity of procedure and the form and manner of taxation.

2. That industrial corporations established by a State should have no legal footing beyond the State.

3. That the conditions of production, so far as affected by law, should be made as equal and as uniform as possible in reference to taxation, transportation, patents and the redress of injuries.

4. That all direct interference under the plea of competition of one man or corporation with the business of another man or corporation should be criminal.

5. That the peaceful combination of workmen to settle the conditions and the rewards of labor should be carefully protected.

Extract from "Public Utility Law" of Wisconsin, approved July 9, 1907:

Section 1797-9. The commission shall prescribe the forms of all books, accounts, papers and records required to be kept, and every public utility is required to keep and render its books, ac-

counts and papers and records accurately and faithfully in the manner and form prescribed by the commission, and to comply with all directions of the commission relating to such books, accounts, papers and records.

Section 1797-10. The commission shall cause to be prepared suitable blanks for carrying out the purposes of this act, and shall, when necessary, furnish such blanks to each public utility.

Section 1797-11. No public utility shall keep any other books, accounts, papers or records of the business transacted than those prescribed or approved by the commission.

Section 1797m-12a. Each public utility shall have an office in one of the towns, villages or cities in this State in which its property or some part thereof is located, and shall keep in said office all such books, accounts, papers and records as shall be required by the commission to be kept within the State. No books, accounts, papers or records required by the commission to be kept within the State shall be at any time removed from the State except upon such conditions as may be prescribed by the commission.

Section 1797m-13. The accounts shall be closed annually on the 30th day of June, and a balance sheet of that date promptly taken therefrom on or before the 1st day of August following; such balance sheet, together with such other information as the commission shall prescribe, verified by an officer of the public utility, shall be filed with the commission.

Section 1797m-14. 1. The commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission.

2. The agents, accountants or examiners employed by the commission shall have authority, under the direction of the commission, to inspect and examine any and all books, accounts, papers, records and memoranda kept by such public utilities.

THE CHAIRMAN: After the close of the papers this morning an opportunity will be given to offer resolutions. I wish to state that the resolutions which are offered are referred, under the rules, to the committee without discussion.

I have now the pleasure of introducing to the meeting a gentleman whose name you are probably very familiar with, but whose practical experience in finance cannot fail to be of very great interest to everybody who is at all interested in these questions, which are, after all, great financial questions. I now have the pleasure of introducing to you Mr. Isaac N. Seligman, whose topic is "The Trust Problem."

MR. ISAAC N. SELIGMAN.

Mr. Chairman—I wish, first of all, to correct a possible error. I have been accosted this morning by two or three gentlemen and one lady as "Professor Seligman." I am not Professor Seligman. The professor is my brother, Professor of Economics at Columbia University, and he is probably better versed than I am on economic questions. At the same time, I am probably, as my friend, Mr. Low, said, a by-product of the economic forces as a banker. However, I have at considerable personal inconvenience and sacrifice, I think, come from New York, where the financial horizon is not very clear, as I felt it my duty and pleasure also to attend a conference of this kind. I think it is the duty of all busy men throughout the country to give up a certain amount of time, thought and reflection to labors of this kind, inasmuch as it is impossible otherwise to shape legislative action in a proper way unless we give a great deal of time and thought to it.

The purpose of this conference is the consideration of the trust and combination problem, and especially of the subject of State and Federal regulation. A full and free discussion of the questions bearing on this problem is timely. I am hopeful that the discussion will shed light on many of the vexed questions and will contribute to a better understanding of the subject. If it does not result in a full accord of views, as is scarcely to be expected, it may at all events tend to the putting forward of some useful and constructive recommendations.

REASONS FOR GROWTH OF COMBINATIONS.

It will be well to recall the underlying economic reasons for the formation of modern combinations, and for the sudden and rapid launching of the so-called trusts toward the close of the last century. Before the formation of the trusts attempts had been made to combine the larger manufacturing and industrial

plants by means of agreements, taking the form of pools, and sometimes accompanied by a single selling agency. This form of combination was, however, found to work unsatisfactorily by reason of the uncertain character of the agreements, internal jealousies, and other causes. Moreover, the working arrangement was cumbersome and not productive of much advantage to the participants of the pools. A new and more permanent device was then suggested and brought into existence; namely, permanent pools or trusts. The trusts were expected to realize the benefit of pools without any of the attendant unsatisfactory conditions.

The many failures of industrial concerns in 1893, the fall in values, the heavy reduction in prices of securities of the strong companies, the prevailing lack of confidence and general depression, all tended to prevent the formation and launching of new companies or new business enterprises. In 1897 a gradual improvement began, and the industrial revival gathered strength in the following years. New companies were organized, and the fever of speculation became rampant and contagious. The organizer or promoter entered the field, and it was not difficult for him to form combinations of such companies as had already well established business connections. The public were in the humor to take these securities, and thus a new and lucrative channel was opened to the flotation of new companies. This now occurred on a large scale.

In the meantime the technical trusts had been declared obnoxious to the law, and in order to avoid the difficulties connected with trusts a new method of the so-called holding companies was devised, under which form most of the modern trusts have incorporated. The legal position of the holding company was impregnable from the outset, and in default of special statutory provisions directed against it has remained so ever since.

ADVANTAGES OF COMBINATIONS.

The economic reasons for combining constituent companies into one corporation are fairly well understood. They may be summed up as a reduction in the cost of management, a better geographical adjustment of the separate plants, a more effective, and, therefore, a less expensive system of marketing the goods, and, above all, an avoidance of ruinous or cut-throat competition.

That serious competition in many of the trades had frequently prevented profits, and in many cases forced firms to the wall, is unquestionably true. The advocates of combination stated that such competition might become a serious commercial evil, and that the cheapening of the article was frequently made at the expense of quality, the public receiving substantially no benefit, and thus losing the chief advantage of competition.

Moreover, it is undoubtedly true that the public is frequently benefited by a system of uniform prices which can be more effectively maintained by large corporations as compared to the constantly fluctuating and uncertain prices continually modified by the competition of many smaller concerns. This advantage is most clearly evinced by the history of the United States Steel Corporation, which in the midst of highly prosperous times has yielded but little to the temptation of raising prices, and which has thereby undoubtedly contributed to the maintenance of a stable price level.

I do not, of course, wish to imply that competition in general is not wholesome, and that it does not act as a natural corrective; but we have come to learn that in many cases competition is not necessarily advantageous. This is indubitably the fact in the case of the so-called public service corporations, for all now realize that competing gas plants, water works, street railways, electric light companies and telephones would not only be a source of the greatest annoyance to the inhabitants of our larger cities owing to the continual interference with the streets, but that they would be well-nigh intolerable. The inconvenience resulting from a double system of telephones is not far to seek, nor is the general transfer system which has proven such a boon to the patrons of the street railway to be expected from separate competing companies. In the case of railways also we are beginning to realize that the evils of the rebate system have been largely due to competition between railways, and that large groups of lines are frequently able to give better and more equal service to the community than a mass of small competing lines. This has been the history of the development of railways in every country of the world, and reliance upon competition as the solution of the railway problem has long been abandoned by the European countries. The same reasons which make for greater stability of rates, where the cut-throat competition of many smaller concerns is absent, apply to a certain extent also to the general industrial concerns.

At all events, even if competition continues to persist, competition between the larger aggregations of capital is apt to be without those attendant disadvantages which are so characteristic of cut-throat competition, and which often sacrifice industrial profits without giving to the public the advantage of good quality.

It is now believed by a great majority of the public that as the independent producer disappears and is replaced by the large combinations the stimulus to progress and to creative ingenuity is weakened. It must, however, not be forgotten that, as business men of experience have frequently pointed out, ability and industry are more clearly recognized and fairly dealt with in large corporations than in smaller concerns; that family connections, friendship and chance enter less largely as controlling factors in the conduct of the trust, and that the opportunity for promotion to those who are really worthy is on the whole better.

Whatever be the relative advantages and disadvantages of combination, however, we cannot shut our eyes to the fact that they are an inevitable development; that they are in keeping with the greater complexity of modern industry and with the increased utilization of modern capital. Industrial combinations as such have come to stay.

PUBLIC HOSTILITY TO TRUSTS AND COMBINATIONS.

There can be no doubt that of late the attitude of the general public and of the press has been decidedly hostile to combinations and trusts. Without speaking of the early movement against railway combinations, the first comprehensive Anti-Trust Legislation was enacted in 1890 by the Fifty-first Congress. A number of States had before that time passed various inhibitory laws, but, as Senator Sherman pointed out in speaking on his bill in 1890, the States were unable to deal with larger combinations, which not only affected our commerce with foreign nations, but also influenced trade and transportation among several States. The Sherman Anti-Trust law declared illegal any combination in restraint of interstate or international trade. To the extent to which this law declared illegal any combination in unreasonable restraint of trade, it was only the enactment into law of what had for years been the common law rule; that is to say, any combination in unreasonable restraint of trade

was always deemed to be against public policy, and, therefore, illegal. The decision of the Supreme Court of the United States in the Trans-Missouri rate case, however, declared that the proper interpretation of the Sherman law was that it prohibited not only combinations in unreasonable restraint, but also combinations in reasonable restraint of trade. This means that no two firms or corporations in the same line of business could legally combine, whereas, under the old rule only combinations which by their magnitude tended to eliminate all competition from the field were illegal. This interpretation of the Sherman law, Chairman Knapp, of the Interstate Commerce Commission, has recently, in a public statement, declared to render it one of the most mischievous pieces of legislation enacted in this country. In the case of railways it was sought to prevent agreements which the court itself held to be advantageous to the community, and which the Interstate Commerce Commission has declared to be absolutely indispensable for the convenience of the public. We are now beginning to realize that the Sherman law was too drastic a piece of legislation. It is only of recent years that a serious attempt has been made to apply the Sherman act in all its rigor to industrial combinations as well. I believe this to be as great a mistake as was the effort to apply it to the traffic agreements among the railways. Laws should indeed, as a rule, be faithfully executed, but it must not be forgotten that frequently the extremity of the law is extremity of injustice.

That there are evils or dangers connected with the trusts is undeniable, but the way to remedy them is to seek by appropriate legislation to cure the evils while maintaining the benefits. To seek to abolish trusts as such is visionary; to seek to cure some of the evils of trusts is perfectly reasonable. It is worthy of note that in no other country of the world is there any such statute as the Sherman law. Trusts are found in many of the European countries, notably in Germany, Austria and England, and, while there is considerable legislation affecting them, no government has made the visionary attempt to declare utterly illegal a movement which they recognize as inevitable.

THE EVILS OF TRUSTS.

The tariff has frequently been called the Mother of Trusts, and it has been maintained that the abolition of the tariff is the most effectual weapon against the evils of the trust. While it is

undoubtedly true in my opinion that some of the trusts are partially dependent upon the tariff, it must not be forgotten that the trust movement is world-wide in character; that it is found in countries with a high tariff, like the United States in countries with a moderate tariff, like Germany, and in countries with no protective tariff at all, as in England. The causes that produce trusts are of a broader and deeper character, and cannot be ascribed simply to the tariff. A revision of the tariff would contribute only in an exceedingly slight degree to the solution of the trust problem.

It is for this reason, as well as for the fact that there is no immediate likelihood of any change in the tariff being made at present, that in my opinion a discussion of the tariff can be eliminated, while I personally believe that the time has come for a fair and intelligent revision of the tariff, the country should use the utmost circumspection in departing from a system which, on the whole, has contributed so signally to the up-building of its prosperity. The tariff question is a problem by itself on which much might be said; but the trust problem is a separate one and ought, in my opinion, to be kept apart from the tariff.

NATIONAL LEGISLATION.

We arrive now at what is probably the most important question under discussion, namely, as to whether there should be a national incorporation of the holding companies known as trusts. It appears to me beyond any reasonable doubt that a national regulation of our corporations is desirable and even essential. It is desirable in the interests of the corporations themselves. It is difficult to conceive of the possibility of establishing any uniform intelligent regulation of corporations, if every State is permitted to pass its own laws. It is well known that in some States extended privileges are offered to incorporators of companies; while in others great difficulty is encountered.

Perhaps the most stringent and satisfactory law that has been passed by any State is the Massachusetts Business Corporation law in 1893, providing for publicity and for the general control and supervision by the State government. Considering, on the other hand, the lax laws of New Jersey, Delaware, West Virginia and other States, by which these States grant corporations privileges and rights at variance with those of each other's laws, the conclusion is forced upon us that

effective and lasting remedies can be enforced only by the National Government. It has been truly said, "As commerce becomes wide in its range, so must legislation proceed from a source of authority equally great and comprehensive." With the ever growing magnitude of our modern, commercial and industrial processes, the inactivity of the central government would leave some States to attempt a regulation for which they are eminently unfitted, because of the interstate character of the operations. I firmly believe that the granting of a Federal franchise or license to engage in interstate commerce would tend fully to protect such companies as remained within the law and would defend them from harassment by forty-five separate legislatures.

PUBLICITY.

The question now arises as to what should be the character of this national legislation and the conditions accompanying the Federal franchise. I have always advocated publicity in the conduct of affairs of trusts or combinations. Publicity appears to me to be one of the chief and permanent antidotes. There is no reason why the same policy which is already applied to savings banks and trust companies by the States, and to national banks and railroad companies by the Federal Government should not be adopted. This would apply especially to the filing and publication of regular statements under fixed rules and at stated periods.

The chief objection to the above plan is the unwillingness of those who manage our large concerns to give the public the intimate details of their business. They claim that the only result would be the giving away of the secrets of the business, and thus the inviting of unnecessary or useless competition. This may, indeed, be true in certain instances, but I cannot help believing that it must be possible to devise a form of report which would be so framed as to give to the public all that it ought to know and yet at the same time not to reveal any strictly business secrets. The extent to which a corporation should be required to expose its affairs to the scrutiny of the public need not necessarily be a very detailed one. Periodical statements of capitalization and net earnings, a condensed balance sheet, a statement of orders on hand, and possibly a few other items, would probably furnish all the information

needed for an intelligent judgment of its affairs. What has been done voluntarily by the United States Steel Corporation might be taken, perhaps, as an example of what ought to be made obligatory on all trusts. Their established policy of giving monthly, quarterly and annual statements to the public, authenticated by chartered accountants, has strongly appealed to the judgment and confidence of the public, and has done much to give the corporation its deservedly high reputation. What the United States Steel Corporation can do in the midst of all the competition to which it is exposed by other large companies, industries of a different kind could, no doubt, do as well. I do not presume to make any suggestion as to the exact nature of the publicity to be required, but, in my opinion, if the affairs of our industrial corporations were subjected to scrutiny and examination as is now the case with the National banks, there is every likelihood that even if it proved at first to be cumbersome in its workings the result would ultimately be as beneficial to the honest corporations as to the public. It has even been suggested that a Federal Comptroller of Corporations should be established in Washington in the Department of Commerce and Labor. This appears to me to be an admirable suggestion.

It is true, and it will, in all probability, remain true, that attempts to impose governmental regulation upon certain kinds of business will always arouse opposition—certainly at the beginning. The attempt to turn the light of publicity on a combination that has been making large profits in the past will always be bitterly opposed by the managers, and even perhaps by the security holders.

But the fact remains that some wisely conducted supervision is advisable, and that the central government is better qualified to enact wise and efficient laws than the several States.

Under a system of reasonable national regulation, I believe that the companies themselves will thrive more successfully, and that the interest of the investor will be more safeguarded.

There remain the further questions:

First: To what corporations should Federal regulation be applicable, and,

Secondly, what additional regulation beyond a reasonable publicity should be attempted.

CHARACTER OF THE CORPORATIONS SUBJECT TO THE LAW.

Although this point has not been considered, so far as I know, I submit the advisability of considering whether the national regulation ought to apply to all corporations of more than a certain size doing interstate business. It goes without saying that the object of Federal regulation is to deal primarily with the trusts or holding companies. The question, however, at once presents itself: What is a trust or holding company? Where are you to draw the line between a small manufacturer with two separate plants, or a small manufacturing corporation into which two still smaller companies have been merged, and this vast aggregation known as the trust. In legal form there is no sharp line; the small business merges into the large business by imperceptible steps. Yet it is manifestly absurd to expect that all the details of the petty concerns be submitted to the public. What gives the public the right to know something of the concerns of the trust is the very magnitude of the operations. Where the reason of the rule falls away, the rule itself ought to disappear. The attempt to apply a Federal law to the multiplicity of small industrial undertakings would result in a hopeless incumbrance upon business. I should, therefore, like to make the suggestion that the Federal law, if enacted, should apply only to those companies of more than a certain size. The criterion might either be the amount of the capital stock or the amount of the gross earnings or transactions. If the former were selected I should think that it would not be unreasonable to say that only those corporations with a capital stock of say, over a million dollars, should be subjected to the law. If the latter were selected I would suggest as the basis gross actual earnings of say at least one-half million dollars, or both criteria might be adopted. This would take in all the so-called trusts and a great many more besides; but that some discrimination ought to be made I am firmly convinced.

FURTHER REGULATIONS.

The question whether anything more than the endeavor to secure publicity ought to be attempted is an interesting one. It is believed that the national administration has been seriously considering a proposition which is certainly novel in its nature —namely, an attempt to prevent a trust from charging at the same time different prices for the same commodity in differ-

ent localities. It is pointed out that this reduction of price, at particular times or places, is a weapon utilized by the trust unfairly to overcome competition, and that the price which is cut for the moment is thereupon put up again after the disappearance of the competitor. It is suggested that the present Sherman act be so amended as to make such proceedings a criminal offense. Such an action does not appeal to my judgment. There are many perfectly legitimate reasons why it may become advisable to reduce prices below the nominal level at certain places. A large concern may desire to reduce an excessive stock of goods in a certain locality by auction sale, at the same time maintaining the price of the commodity at its other manufacturing plants or salesrooms. It would certainly work hardship to many of our large concerns to be forced to reduce prices throughout the line, and yet to prevent them from making local reductions might place them at a great disadvantage. Now, if the fixing of a different price in different places at the same time is sometimes perfectly legitimate, I submit that it is extremely difficult to place on the statute books a workable provision to prevent the use of these measures in order to remove possible competition. It is precisely the same situation which has been created in our courts in the question of speculation. Everyone concedes that certain kinds of speculation are legitimate and serve a useful function in society, and other forms of speculation are illegitimate; yet, it is hopeless to attempt to draw a sharp line between the legitimate and illegitimate forms of speculation. The courts have tried for years to do this, and they have signally failed in the attempt. The same would, in my opinion, be true of the effort to prevent a trust from charging different prices at different places for the same commodity. It is wise to make the guilty suffer, but when it is impossible to distinguish between the innocent and the guilty, it is perhaps still wiser to let the guilty escape than to make the innocent suffer.

Of a similar character is the suggestion that in some way the trusts must be prohibited from selling their goods abroad at lower rates than are charged for the same goods at home. It is sometimes claimed that this is a result of our tariff laws, and that the practice could be destroyed by a change in the tariff. But here again a closer acquaintance with business methods would teach our critics that this is at certain times a general practice of the large exporting firms of all countries

whether they have a protective tariff or not. It is, for instance, a notorious fact that Free Trade England has in past years been able to secure or retain admission for its manufactured goods in foreign markets by precisely this method; and it has frequently happened that the large British industrial concerns have sold goods for export at prices considerably below the domestic price. Yet there was no tariff, and there was no trust. In other words, this is under certain circumstances a perfectly legitimate form of ordinary business enterprise, in order to extend markets and thus to increase materially their prosperity. It is not peculiar to the trust, it is not dependent upon the tariff, and the attempt to prevent this method of doing business which is universally recognized throughout the civilized world would simply be to put American enterprise at a disadvantage. The price to the American consumer would not be lowered a whit; the only result would be that the export trade would be cut off, and that the business and the opportunities for employing labor would be curtailed.

CAPITALIZATION.

There remains one other point, namely, the attitude which the Federal law should take to the question of capitalization. The question of capitalization in the case of the trust is one that primarily affects the investing public. It is only in the case of the public service corporations, like railroads, gas companies, etc., that there could be any question as to a connection between rates and capitalization, although even here I think it is beginning to be understood that the influence of capitalization upon rates is a very slight one indeed. But as our problem is specifically that of the industrial trust I shall not go into the broader question, but take it for granted that the alleged evils of over-capitalization primarily affect the investor.

From this point of view it seems to me that it is a difficult proposition for the Government so to regulate the capitalization of corporations as to be in a position fairly and intelligently to limit or to restrict the issue of bonds or stock. So many intricate phases of the problem will be encountered as to make the attempt hazardous.

As I understand this problem, there are two theories, each of which has a number of advocates. First, capitalization should stand in some definite relation to the actual amount invested

in the enterprise; and, second, capitalization should be based on earning capacity.

The former theory, capitalization according to property invested, is substantially the Massachusetts plan. It seems to me, however, that it has met with very serious objections. The payment in full of capital stock in cash does not necessarily mean assets equal in value to the par value of the shares. Take two corporations in the same line of business, starting with the same capital, in each case fully paid in cash; after a few years one corporation may have frittered away one-half of its capital and yet have outstanding the same par value of shares; while the other may, by prudent management, have added 50 per cent. to its assets. In this case, with the same capital stock outstanding and fully paid in in cash, one company would have a book value of fifty, while the other would have a book value of one hundred and fifty.

Entirely too much, in my opinion, has been made of overcapitalization of industrial enterprises. So far as the control of capitalization is intended to safeguard the investor, I can only record my conviction that the judgment of the market invariably discounts the nominal capitalization of the company. If this capitalization is larger than the facts warrant, the securities sell at a discount; if smaller, they sell at a premium. The actual basis of such market valuation is not the par value, nor yet the actual assets of the company, but it is in every case earning capacity. Furthermore, even if we take capitalization as based on earning capacity the question will at once arise, on what basis shall the combination be allowed to capitalize. Shall it be on a 6 per cent., 10 per cent. or still higher basis? The character of certain business industries differs so radically that even an expert would find it well-nigh hopeless to attempt to arrive at any satisfactory basis for a judgment.

Moreover, some combinations require large working capital, others a small reserve. Some combinations or manufacturing plants require large sums annually for repairs and improvements —while others require small amounts. At the present time we are hearing of the difficulties connected with the enforcement of the uniform accounting provision of the interstate commerce law as applied to railways. Some railways charge more, others less, to depreciation accounts, etc., etc. If there are these great differences within a single industry, like the railway, how much greater—nay, how insuperable—would be the difficulties con-

nected with the attempt to make uniform rules for all classes of business industry.

It is interesting in this connection to remember that two of New York City's eminent lawyers, with a national reputation—Mr. Edward M. Shepard, in an address delivered before the New Hampshire Bar Association, and Mr. Francis Lynde Stetson, in his testimony before the Industrial Commission and elsewhere—have suggested a modification of the corporation law so as to permit a corporation to issue capital stock, each share of which shall represent a proportionate interest in the enterprise without assigning to such share an actual par value. This would remove from such shares the last vestige of the claim that the par value holds out to the public a representation as to the actual assets behind the shares. This would mean that if a company were started with 10,000 shares, each share would be entitled to one ten-thousandth part of any sum distributed in dividends, or to one ten-thousandth part of the assets of the company in liquidation. It would mean that a dividend would be declared on such shares in terms of so many dollars per share instead of in terms of percentage. There are now in this country various unincorporated organizations, which have issued shares in the manner above outlined, such as, for instance, the Massachusetts Gas Companies, which control the gas business in the city of Boston. Any capitalization in this form is, I believe, permitted by the laws of some European countries. This suggestion seems to me one worthy of attention. It may not be entirely free from objections. I am not quite positive as to how far it might interfere with keeping the proper balance sheets of corporations, and it may be that such a system would require for its adoption a considerable change in other legislation, as, for instance, in the tax laws of those States where they still continue to assess corporations on the par value of the capital stock. However this be, and whether this particular method of avoiding the alleged evils of overcapitalization be adopted or not, it appears to me that any hard and fast rule which would limit the issuance of stock and bonds by our corporations would be apt to react injuriously upon our general industrial condition.

We must be careful not to pass any drastic legislation which will hamper the initiative and the enterprise that have made the United States so great. It is indeed probable that the time has come for a somewhat more rigid application of the Euro-

pean methods in the conduct of corporations and the responsibility of directors. But even here it must not be overlooked that every nation has its own business usages and conditions, and that it is sometimes hazardous to attempt to transplant laws or institutions.

EUROPEAN LEGISLATION.

It is worth while, in this connection, to say a few words as to the legal regulation of corporate enterprise in the country which has of late been making the greatest advance in industrial progress, namely, Germany. In Germany the corporations are governed by two working bodies, the Directorium and the Verwaltungsrath, often called Aufsichtsrath. The Directorium consists of the paid managers, while the Verwaltungsrath corresponds to our boards of directors, and has the general examination and supervision, and passes on the acts of the Directorium. Both the Directorium and the Aufsichtsrath are held specially liable for any infractions of the law, as well as responsible for neglect of duties. The Directorium and the Aufsichtsrath both generally share in the profits of the society which is managed by them. The percentage of their profits differs, according to the by-laws of each company. To cite an instance: Of the profits of the year, first of all, say, four per cent. would be distributed to shareholders; of the balance of the profits, say five per cent., would be distributed to the Directorium, and five per cent. to the Aufsichtsrath, and the remaining ninety per cent. again to the shareholders. In important companies, like the large German steamship companies, the iron manufactories, the electric companies, and the important banks, this portion of the profit accruing to the individual members of the Aufsichtsrath is quite a considerable sum. Moreover, the system has this advantage, that first of all, it gives to each member of the board a material interest in the welfare of the company, while with us the material interest of the director is generally a nominal one. On the other hand, the Germans, after having thus distributed to the members of the Directorium and the Aufsichtsrath a liberal sum, hold them absolutely liable for any infraction of the law, or for any lack of diligence in the fulfilment of their duties. It is a common occurrence in Germany that, if a company suffers a loss through such fault of the directors, the directors and the members of the Aufsichtsrath have to make good the entire loss. Not infre-

quently cases have occurred where the directors, in order to make good such losses, were reduced to poverty, while others were imprisoned. The German idea is that, if you want to hold a man liable, you must pay him handsomely, because only then have you the right to demand that he should give his whole attention and energies in return for the compensation that he receives. We, under our present system, do not pay our directors, except by giving them a paltry $10 per meeting, and into the bargain expect a stockholder who does work on the board to give up many privileges and opportunities without compensation, while the stockholder who does *not* work reaps the fruit of the work of the director serving on the board, and, besides, retains every privilege.

It is maintained that this system could not be introduced here, as it would require business men to devote themselves entirely to the affairs of the company, and it is claimed, furthermore, that the German law holds directors unduly responsible for any slight dereliction of duties. It is undoubtedly true that through this enforcement of the law the security holders are safeguarded, although, here also it is claimed that the laws affecting the issue of securities are so rigid as seriously to interfere with the formation of new enterprises.

It is interesting to note, however, that while the German law is far stricter than our law, with reference to the financial management of the corporations and the responsibility of the directors, the laws affecting the industrial combinations or cartels are far less rigid than in this country is the case with the Anti-Trust law. The cartels, or species of pools and selling arrangements, are not interfered with in Germany. In fact, the combinations there have an almost entirely free hand to do as they like, so far as their relations to each other or toward the general public are concerned. Germany realizes the fact that the combinations are an inevitable concomitant of modern industry, and that these large combinations have, on the whole, contributed materially to the increase of German prosperity. Of course, the fact that in Germany the railways are owned by the state governments, and that therefore the whole question of rebates is eliminated, makes their problem of dealing with the trusts far less complicated than is ours. In only one phase of the subject has Germany made any attempt to interfere with the natural development of large combinations, namely, in the department stores. The Prussian law a few years ago attempted

to prevent the crowding out of the smaller dealer by the department stores by imposing special and high taxes upon the latter. This method of dealing with the problem, however, has been a complete failure, as is now recognized by Germany itself. The department stores have been able to evade the law and they have assumed large proportions in all the large cities.

CONCLUSIONS.

We see, then, that the treatment of the trust problem is by no means an easy matter. It is believed by many that the action of our government in its desire to punish the trusts has perhaps exceeded its legitimate functions. I have now in mind the action of Attorney-General Bonaparte in bringing proceedings of a novel character against those combinations charged with the violation of the law, under the provisions of the existing statute. Such proceedings are, in my opinion, exceedingly dangerous, for the lightning is almost always certain to strike the wrong person, namely, the innocent investor, rather than those who have transgressed the law. Whether such proceedings, moreover, can succeed, is exceedingly problematical.

The Anti-Trust policy should not proceed faster than is compatible with public welfare. The investing public have too much interest in such securities and the shock to business interests is too violent. The law should be so modified as to reach only those who have really committed a crime against the well-considered interest of the community as a whole. The attempt vigorously to enforce a law which is based upon erroneous premises is bound not only to fail, but in the meantime to create havoc.

Individually, I have every confidence in the intention of the present Administration to act fairly and reasonably toward corporations. It is apparent that great difficulty is encountered in bringing to justice those who are guilty. Let us, then, amend the law to meet the exigency rather than by any ill-advised action to steep the country in financial chaos or to embark on a policy of general destruction.

There is, in my opinion, more danger to be feared from the ordinary tendencies of the various States than from the present National Administration or any future National Administration. While we may never reach the ideal goal, there is every reason to believe that, under proper safeguards, corporations will be more secure under an effective and reasonable national incor-

poration law than at present under the laws of the various States.

We have seen but lately our Southern friends—firm and unwavering advocates of State rights—beseeching our National Government to save them from the well-nigh confiscatory laws affecting railway rates passed by the States.

It is true there are many public spirited citizens and students of government who deplore what they please to call the incessant encroachments of our National Government on the rights and privileges reserved to the States by the Constitution. But a dispassionate study of history will show us that whenever such controversies have arisen the results have proven that the central government is better able wisely to cope with such interstate problems, and in the end the opposition disappears.

It took nearly a century for the country to realize the necessity of a national circulating medium as opposed to the State currencies before the war; and what has been brought about in the case of the national currency will surely also be effected in the case of national industry.

The problem confronting us is not one of State rights or of academic discussion as to the votaries of Jefferson and of Hamilton. Let us be guided by our experience. Let us remember that our business interests have become national interests, and let us have confidence in the integrity, wisdom and equity of our Government. It appears to me, gentlemen, that we can safely trust the present Administration, and that it is our duty to strengthen its hands; but we should be recreant in our duty if we did not at the same time voice our honest opinion, and seek to direct the action of the Government in the interests of a well-rounded economical progress.

There has been entirely too much hasty legislation affecting this problem. What we need is wise, instead of unwise, legislation; moderate, instead of radical legislation. Let us take one step at a time and then if necessary proceed to the next one.

The establishment of the Bureau of Corporations has done much to point out the present dangers in our system. What is now needed is a modification of the Sherman law, the repeal of its drastic and unreasonable provisions and their replacement by sections providing for a reasonable publicity and for a reasonable regulation of all large corporations doing an interstate business. Many reforms have already been instituted and

we need have no misgivings that an Administration which has accomplished so much will fail in securing still more for the public, without jeopardizing the business interests the maintenance of which is so indispensable to political as well as to economic progress.

THE CHAIRMAN: I have to state, for the benefit of the audience, as the time is somewhat limited, that any portions of papers omitted, on account of shortage of time, at the disposal of the Conference will be printed in the proceedings so that the gentlemen can read them. I was extremely interested in listening to the remarks of Mr. Seligman, because in the theoretical exposition of the subject there is something which appeals to every audience like this, in the experience of men who deal with these subjects every day, who see their practical side and appreciate their practical difficulty; and in that point of view I think our next speaker will be extremely interesting to the audience, for he is a man who deals with the practical side of the legal difficulties of the situation we are in. I have the honor to introduce to you Edgar A. Bancroft, of the Chicago Bar, whose topic is "Destruction or Regulation."

MR. EDGAR A. BANCROFT.

Mr. Chairman—The public is interested in "trusts" because of their effect upon prices. Those are deemed proper prices which result from the free play of supply and demand with the various producers and consumers competing among themselves. The only virtue of free competition is its tendency to produce and maintain these so-called reasonable prices. When consumers sharply compete prices are increased. When producers are competing prices are lowered. The competition in the one case is as important as in the other, although the results are opposite, and those results may be either excessive profits or actual loss. Public opinion and the laws approve these results, though they produce prices too high or too low. But the prices so produced are deemed reasonable prices; and the same prices must be reasonable, even though they are the result of restraint upon competition or of monopoly—the absence of competition—and of a method that is illegal.

Collective bargaining seeks the double advantage of ending

competition between the members of the group, and also of unifying their competing power in the market. On principle, there is no difference between collective bargaining and the centralization of the implements or agencies of production. Every modification or direction of competition is a restraint of trade. Monopoly is a complete control of the particular branch of trade. The evil of each is that it tends toward unreasonable prices and oppressive practices. But these practices and these prices, and not the natural tendency, are the injuries to the public. The difference is fundamental between a tendency and its exercise—between evil impulse and evil action.

Therefore, as to combinations and "trusts," the rational method is to restrain the tendency, forbid its exercise, and punish actions, instead of making the tendency itself a capital offense.

In natural monopolies and public service corporations competition is neither essential, nor usually beneficial, to the public interests. And in every case it is a somewhat crude method of preventing the owners of articles of general necessity from demanding unreasonable prices. But these evils and the abuses of trade power can be much more accurately and directly prevented by defining and prohibiting *them,* than by condemning utterly all corporations and combinations capable of producing them; by penalizing wrong conduct, rather than destroying the capacity for wrongdoing.

Professor Jenks's definition of a "trust" is substantially accurate: "A corporation or a combination of corporations or persons able to fix the price of an article of commerce independently of competitors." This term is applied not only to corporations or combinations which are potential monopolies, but also to agreements which limit or restrain trade. The two are entirely distinct. The first is a "trust" because it has the power to monopolize, whether it acts as a monopoly or not. The second class embraces acts rather than actors—agreements for a united action, though they fall far short of giving control of the market or of prices.

All laws thus far passed in the United States prohibit both classes of trusts, regardless of whether the corporation is guilty of monopolistic conduct or not, and whether the restraint of trade is reasonable or oppressive. Current popular opinion is equally undiscriminating. It condemns the mere capacity for monopolizing. It prohibits reasonable, and even beneficial, restraints upon competition equally with those that are oppressive.

Therefore we should determine at the outset whether a large

corporation or an agreement in restraint of trade is noxious and should be suppressed, even though it in no manner injure or oppress the public. It is not a sufficient answer that this is their natural tendency, and that it usually is followed. Have the large corporations and trade agreements and combinations, and can they have no other effect, and no economic use except to be monopolistic and oppressive? This is the crux of all discussion as to what should be done with the trusts. Has a trust, either of the one class or of the other, any economic value when stripped of its abuses, and is it capable of benefiting as well as of harming the public?

METHODS OF DEALING WITH TRUSTS.

There are three methods of dealing with trusts:

One method—which heretofore has had more popular support than any other—is to destroy them. Its advocates maintain that all large corporations are objects of suspicion, and if they *can* fix the price of any article of commerce in any market, they are *prima facie* illegal, and should be exterminated; and that any contract or arrangement which restricts free and unlimited competition is likewise injurious and should be prohibited. This group treats centralization of resources or of manufacturing or of commercial facilities, as equivalent to monopolizing, whether such centralized organization functions as a monopoly or not. It assumes that the power for extortion will inevitably be exercised, and that the only way to prevent extortion is to destroy the power. It admits no possibility of a great centralization of capital and resources refraining from extortion and oppression, or of being compelled to refrain, or that any mitigation of competitive warfare—even to the extent of agreeing upon rules upon which the war shall be waged, may be beneficial, or even defensible.

The second method is, do nothing. Its supporters point out that more "trusts" have been organized since they were prohibited by the Sherman law and by the statutes of twenty (20) states, than during the entire prior history of our nation, if not of the world; that all lines of skilled labor on railroads, and in the factories and offices, have not only their own organizations, but are federating for the avowed purpose, among others, of raising their wages, reducing the hours of labor and restricting competition between the members; that during the same period employers of labor have formed similar associations and unions for the like purpose of united action instead of competitive action;

that the producers of grain in one section, of tobacco in another, and of cotton in another, have formed similar organizations to increase the prices to be obtained for their respective products; and that all this skilful elimination of competition as the general law of trade has gone steadily forward, not only in the face of these anti-trust laws, but in the face of occasional vigorous prosecutions. They point further to the very great benefits that have resulted to the employes and the agricultural producers and the manufacturers and the merchants from their respective trade associations; the economies in manufacture, and the extensions of trade both at home and abroad, which were impossible to the smaller manufacturing unit. And from all these facts the members of this group have concluded:

First—That combination and association and co-operation among the members of a class, whether of skilled or unskilled laborers, of brokers, commission agents, merchants or manufacturers, or controllers of capital, possess economic advantages which are unmistakable, and which make all attempts to prevent such co-operation entirely futile and unwise; that as the law under the old competitive system permitted the free play of the competitive forces regardless of its wastefulness and the constant destruction of the weak and the wounded, so now, when that system has been largely abandoned, the law should grant equal freedom of action to all the industrial and commercial forces of society in combining and co-operating as their interests may seem to direct, and let the fittest trusts survive. And,

Second—That while the competitive system is in large part supplanted, yet the law of competition has not been obliterated, and must ever be an active restraint upon combinations to prevent he evils of monopoly; that, save alone in the case of natural monopolies, and in the few instances where the "trust" has a substantial monopoly of the raw materials, no monopoly can be long maintained except on the basis of furnishing to the public its products at a price so low that the profits will not tempt others to enter and compete in the same market.

The third method is regulation. Its supporters recognize, what is most obvious, that the irresistible trend of our time is toward combination and centralization of commercial and industrial forces, because of the advantages thereby secured; that by reason of these benefits it is not only idle but harmful to attempt to suppress all combinations as such. But they also recognize that with these benefits there are already very great and very obvious

injuries to the public through the abuses of the new-found powers of combination; and that natural laws will not correct them; that those injuries may become much greater if the abuses—as distinguished from the powers—are not defined, punished and prevented. They also believe that quasi-public corporations like the railroads should be given the amplest power of combination and centralization in the interest of greater efficiency, but that this should be under strict governmental supervision and regulation, so that the larger powers cannot be oppressively employed. Already this has been accomplished in part by the new Federal law giving the Interstate Commerce Commission greater powers in the regulation of railroads, and will be completely accomplished when the Sherman law shall be amended so as not to apply to railroads, and they are given the power to make pooling agreements subject to the approval and supervision of the Interstate Commerce Commission.

Among the supporters of this method are found the great majority of the students of the trust problem. They all agree on the evils of trusts, trade associations and unions, and that they are evils of *conduct* and not of mere *capacity* or origin, and differ only as to the extent and form of governmental regulation.

STATUS OF PRESENT LEGISLATION.

In the present condition of this trust problem in America three facts are noteworthy: *First,* all anti-trust laws thus far passed are aimed directly at the destruction of all corporations possessing the powers of a monopoly, and of all combinations tending, in any manner, to restrain trade, while, at the same time, no prominent political leader, publicist or student advocates or defends this method; *second,* that although twenty States, for more than fourteen years, have had drastic laws against monopolies and all contracts in restraint of trade, their prohibitions have wholly failed to check the tendency of the time toward combination and co-operation; *third,* that although all our leading writers and scholars recommend regulation and not destruction of the trusts, and all legislation elsewhere has been, thus far, along this line, no American State has yet passed a law attempting the regulation of trusts or making any discrimination between reasonable and unreasonable restraints of trade.

Twenty-eight States now absolutely prohibit all corporations with monopolizing power, and all contracts and combinations that in anywise restrain trade or affect prices. Many of them

forbid agreements to *lower prices*. Ten States impose fines only, eleven States add a jail sentence, and six States make all violations punishable by imprisonment for from one to ten years.

Under the present Texas law, if a man sells a gallon of oil as the agent of the Standard Oil Company, he can be imprisoned in the penitentiary not less than two nor more than ten years.

LEGISLATION SHOULD ATTACK EVILS.

At the Trust Conference of 1899 many diverse views were expressed and many remedies suggested, but they did not obscure, as these laws do, the marked distinction between the evils of monopoly and the mere power to inflict them. So far as there was then a consensus of opinion, it was that the evils themselves should be attacked by prohibiting the oppressive conduct and by providing for publicity, so that misconduct might be easily proved.

While Mr. Bryan was inclined to doubt the possibility of a good trust, nevertheless the plan which he so ably presented provided for a Federal license which would prevent the abuses instead of destroying the life of the corporation. He said:

"I do not go so far as some do and say that there shall be no private corporations, but I say this: That a corporation is created by law for the public good, and that it should never be permitted to do a thing that is injurious to the public, and that if any corporation enjoys any privileges to-day which are hurtful to the public those privileges ought to be withdrawn from it. In other words, I am willing that we should first see whether we can preserve the benefits of the corporation and take from it its possibilities for harm."

Judge Howe, the permanent chairman of that conference, concluded his summary of suggested methods with these words:

"In short, we need to frankly recognize the fact that trading and industrial corporations are needed to organize the activities of our country, and that they are not to be scolded or belied, but controlled as we control steam and electricity, which are also dangerous if not carefully managed, but of wonderful usefulness if rightly harnessed to the car of progress."

The Industrial Commission appointed by Congress in 1898, in its preliminary report, said:

"Experience proves that industrial combinations have become fixtures in our business life. Their power for evil should be destroyed and their means for good preserved."

President Roosevelt, in his first message, December 3, 1901, said:

"There is a wide-spread conviction in the minds of the American people that the great corporations known as trusts are, in certain of their features and tendencies, hurtful to the general welfare. * * * It does not rest upon a lack of intelligent appreciation of the necessity of meeting changing and changed conditions of trade with new methods, nor upon ignorance of the fact that COMBINATION OF CAPITAL IN THE EFFORT TO ACCOMPLISH GREAT THINGS IS NECESSARY WHEN THE WORLD'S PROGRESS DEMANDS THAT GREAT THINGS BE DONE. IT IS BASED UPON SINCERE CONVICTION THAT COMBINATION AND CONCENTRATION SHOULD BE, NOT PROHIBITED, BUT SUPERVISED AND, WITHIN REASONABLE LIMITS, CONTROLLED; AND IN MY JUDGMENT THIS CONVICTION IS RIGHT."

In his message, December 2, 1902, he said:

"Corporations, and especially combinations of corporations, should be managed under public regulation. Experience has shown that * * * the necessary supervision cannot be obtained by State action. IT MUST, THEREFORE, BE ACHIEVED BY NATIONAL ACTION. *OUR AIM IS NOT TO DO AWAY WITH CORPORATIONS; ON THE CONTRARY, THESE BIG AGGREGATIONS ARE AN INEVITABLE DEVELOPMENT OF MODERN INDUSTRIALISM, AND THE EFFORT TO DESTROY THEM WOULD BE FUTILE* UNLESS ACCOMPLISHED IN WAYS THAT WOULD WORK THE UTMOST MISCHIEF TO THE ENTIRE BODY POLITIC. We can do nothing of good in the way of regulating and supervising these corporations until we fix clearly in our minds that we are *not attacking the corporations, but endeavoring to do away with any evil in them.* * * * We draw the line against *misconduct*, not against *wealth*."

In his annual message of December 7, 1903, he further said:

"We recognize that this is an era of federation and combination, in which great capitalistic corporations and labor unions have become factors of tremendous importance in all industrial centres. * * * The line as between different corporations, as between different unions, is drawn as it is between different individuals; that is, it is drawn on conduct."

In his message of December 5, 1905, the President said:

"Experience has shown conclusively that it is useless to try to get any adequate regulation and supervision of these great corporations by State action. Such regulation and supervision can only be effectively exercised by a sovereign whose jurisdiction is co-extensive with the field of work of the corporations; that is, by the National Government. * * * It has been a misfortune that the national laws on this subject have hitherto been of a negative or prohibitive rather than an affirmative kind, and still more, that they have sought in part to prohibit what could not be effectively prohibited. * * * It is generally useless to try to prohibit all restraint on competition, whether this restraint be reasonable or unreasonable; and when it is not useless it is generally hurtful. * * * What is needed is not sweeping prohibition of every arrangement, good or bad, which may tend to restrict competition, but such adequate supervision and regulation as will prevent any restriction of competition from being to the detriment of the public, as well as * * * prevent other abuses in no way connected with restriction of competition."

And in his last annual message, December 4, 1906, President Roosevelt said:

"Our effort should be not so much to prevent consolidation as such, but so to supervise and control it as to see that it results in no harm to the people. * * *

"The actual working of our laws has shown that the effort to prohibit all combination, good or bad, is noxious where it is not ineffective. COMBINATION OF CAPITAL, LIKE COMBINATION OF LABOR, IS A NECESSARY ELEMENT OF OUR PRESENT INDUSTRIAL SYSTEM. IT IS NOT POSSIBLE COMPLETELY TO PREVENT IT; AND IF IT WERE POSSIBLE, SUCH COMPLETE PREVENTION WOULD DO DAMAGE TO THE BODY POLITIC."

And, finally, in his speech at the Jamestown Exposition, April 7, 1907, he said:

"This is an era of combination alike in the world of capital and in the world of labor. EACH KIND OF COMBINATION CAN DO GOOD, AND YET EACH, HOWEVER POWERFUL, MUST BE OPPOSED WHEN IT DOES ILL. At the moment the greatest problem before us is how to exercise such control over the business use of vast wealth, individual, but especially corporate, as will insure its not being used against the

interest of the public, while yet permitting such ample legitimate profits as will encourage individual initiative. * * * Said Burke, 'If I cannot reform with equity, I will not reform at all. * * * (There is) a State to preserve as well as a State to reform.' This is the exact spirit in which this country should move to the reform of abuses of corporate wealth. * * * We are unalterably determined to prevent wrongdoing in the future; we have no intention of trying to wreak such an indiscriminate vengeance of wrongs done in the past as would confound the innocent with the guilty. Our purpose is to build up rather than to tear down."

The unanswerable argument against the present policy of destructive legislation is that after a trial of nearly twenty years it has proved utterly futile. More trusts have been organized, more important combinations of resources—mercantile and manufacturing—and more trade associations have been formed, more progress has been made toward co-operation as a substitute for competition, during the past dozen years than during our entire previous history.

As Professor Jenks, the historian of the former conference (and probably the foremost student of the problem), has said:

"A study of these (anti-trust) statutes and of the decisions of our courts of last resort, which have been made under them, will show that they have had comparatively little, practically no, effect as regards the trend of our industrial development."

Upon the radical questions of destruction or regulation nothing can be added to the vigorous and clear language of President Roosevelt already quoted. He has clearly indicated the harm and futility of attempted destruction, and the advantages of regulation. And it must be *Federal* regulation. State statutes are wholly inadequate. They touch only a small part of the field, and they cannot even control that small part when the business is conducted from beyond State lines.

WHAT A NATIONAL LAW SHOULD INCLUDE.

Only a national law can meet present conditions. The power of the Federal Government to regulate and control corporations engaged in interstate commerce is not doubtful. The commerce clause covers these *agencies* of commerce, as well as its *vehicles* —the railroads. Such a law should define and penalize the evils of trusts and combinations, and provide a better method of pub-

licit..y, by which both the past history of an organization and also its p..resent conduct and future purposes may be fully known.

In..stead of having only the penalties of fines and corporate extin..guishment aimed against the organization or agreement, re..gard..less of its acts or results, the law should define the offense in t..erms that exclude mere methods of combining, and should incl..ude all the abuses of corporate centralization—all the evils of re..straining trade, and adequately provide for their correction and prevention. The law should sharply distinguish between incidental and proper trade regulations and agreements, and those which directly do, or are designed to, increase prices, or otherwise injure competitors or the public.

TRUST EVILS CAPABLE OF DEFINITION.

The well-known evils of the trusts are not impossible of definition in a statute any more than in popular discussion. They are over-capitalization, secrecy as to methods for the benefit of the managing officers, bad or fraudulent methods of bookkeeping to hide the real facts, injuries to the consumer by exorbitant prices, and to competitors by unfair methods of competition and unduly low prices in particular localities—injuries to wage earners by arbitrary lockouts, and to the sellers of raw material by controlling the demand. Besides these are the injuries to the public through giving, or seeking to obtain, special privileges or rebates; discriminations against or in favor of certain customers or localities, and interference with the ordinary course of legislation and the enforcement of the laws.

A corporation which does none of these things cannot properly be put under the ban of the law. And the laws that now indiscriminately aim their penalties against all forms of combination and all corporate consolidations, whether they benefit or injure the public, have been, and always will be, dead letters. Their occasional enforcement but illustrates their injustice, and their constant menace to honest business methods, and their constant temptation to blackmail on the part of dishonest officials.

PRINCIPLES OF AUSTRALIAN LEGISLATION.

The recent Australian Industries Preservation Act of 1906 clearly indicates the difference between our method and a rational method of dealing with the trust question. That Act seeks, in specific terms, (1) the repression of monopolies; (2) the

prevention of dumping; that is, the importation of surplus materials from other nations and its sale at such reduced price to demoralize the home market for similar goods.

The act makes plain the distinction between monopolizing and the power to monopolize, and between reasonable and unreasonable restraints of trade. It is obviously framed upon the Sherman Act, but is so changed as to define and condemn only injurious and oppressive combinations and contracts in restraint of trade. There can be no offense where there is no intent to injure the public, or to injure competitors by unfair competition. (1)

Unfair competition is thus defined:

"Unfair competition means competition which is unfair in the circumstances; and in the following cases the competition shall be deemed to be unfair unless the contrary is proved:

"(a) If the defendant is a Commercial Trust. (2)

"(b) If the competition would probably, or does in fact, result in an inadequate remuneration for labor in the Australian industry.

"(c) If the competition would probably, or does in fact, result in creating substantial disorganization in Australian industry or throwing workers out of employment.

"(d) If the defendant, with respect to any goods or services which are the subject of the competition, gives, offers or prom-

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(1) It provides, as to combinations:

"1. Any person who, either as principal or agent, makes or enters into any contract, or is or continues to be a member of or engages in any combination, in relation to trade or commerce with other countries or among the States—

"(a) With intent to restrain trade or commerce *to the detriment of the public;* or

"(b) With intent to destroy or injure by means of unfair competition any Australian industry, the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers and consumers, is guilty of an offense. Penalty, five hundred pounds.

"2. Every contract made or entered into in contravention of this section shall be absolutely illegal and void."

There is precisely the same provision as to "Any foreign corporation, or trading or financial corporation, formed within the Commonwealth."

(2) A "Commercial Trust" is thus defined:

"'Commercial Trust' includes a combination, whether wholly or partly within or beyond Australia, of separate and independent persons (corporate or unincorporate), whose voting power or determinations are controlled or controllable by—

"(a) The creation of a trust as understood in equity, or of a corpora-

licit ses to any person any rebate, refund, discount or reward upon its condition that that person deals, or in consideration of that person having dealt, with the defendant to the exclusion of other extii ersons dealing in similar goods or services.

gard "In determining whether the competition is unfair, regard in t hall be had to the management, the processes, the plant and the incl nachinery employed or adopted in the Australian industry re fected by the competition being reasonably efficient, effective and up to date."

As to monopoly, it provides that any foreign corporation or domestic trading or financial corporation that—

"Monopolizes or attempts to monopolize, or combines or conspires with any person to monopolize, any part of the trade or commerce within the Commonwealth. * * * Penalty, five hundred pounds."

The act provides that the Attorney-General may begin proceedings for an injunction—

"After hearing and determining the merits, and not by way of interlocutory order, the carrying out of any contract made or entered into after the commencement of this act, or any combination which—

"(a) Is in restraint of trade or commerce to the detriment of the public; or

"(b) Is destructive or injurious, by means of unfair competition, to any Australian industry, *the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers and consumers."*

It also provides for an injunction to prevent a repetition of a violation of the act after conviction.

It also contains the entirely novel, but reasonable, provision by which a party to a contract or combination which he believes to be lawful may submit it to the Attorney-General and be guiltless until the Attorney-General informs him that the contract or combination is illegal. (3)

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tion, wherein the trustees or corporation hold the interests, shares or stock of the constituent persons; or

"(b) An agreement; or

"(c) The creation of a board of management or its equivalent; or

"(d) Some similar means; and includes any division, part, constituent person or agent of a 'Commercial Trust.'"

(3) "1. Any person party to a contract or member of a combination, or in any way concerned in carrying out the contract or the objects of the combination may—

By this provision an honest business man is enabled to protect himself against criminal prosecution for actions which he takes in absolute good faith and without any purpose to violate the law or injure the public or his competitors.

DEFECTS OF AMERICAN LEGISLATION.

This act is in striking contrast with the Federal and State laws, under which a very large portion of the honorable business men of the country are liable at any moment to be criminally prosecuted for violating anti-trust laws, merely because such laws denounce, as criminal, acts which are entirely innocent and harmless, and which have no element of wrong-doing in them except as they are made wrongful by the sweeping and indiscrim-

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"(a) Lodge with the Attorney-General a statutory declaration by himself, or in the case of a corporation by some one approved of in that behalf by the Attorney-General, setting forth truly, fully and completely the terms and particulars of the contract, or the purposes, objects and terms of agreement, or constitution of the combination, as the case may be, and an address in Australia to which notices may be sent by the Attorney-General; and

"(b) Publish the statutory declaration in the *Gazette*.

"2. The Attorney-General may at any time send notice to the person above mentioned (hereinafter called the declarant), to the address mentioned in the statutory declaration, that he considers the contract or combination likely to restrain trade or commerce to the detriment of the public, or to destroy or injure an Australian industry by unfair competition.

"3. In any proceeding against the declarant in respect of any offense against Section 4 or Section 5 of this act, alleged to have been committed by him in relation to the contract or combination after the time the statutory declaration has been lodged and published, and before any notice, as aforesaid, has been sent to him by the Attorney-General, it shall be deemed (but as regards the declarant only and not as regards any other persons) that the declarant had no intent to contravene the provisions of the section, if he proves that the statutory declaration contains a full and complete statement of the terms and particulars of the contract, or the purposes, objects and terms of agreement or constitution of the combination, as the case may be, at the date of the statutory declaration and at the date of the alleged offense."

And thereupon the Attorney-General may, at any time, notify such declarant that he considers such contract or combination obnoxious to the provisions of the act, and that, in case of any proceeding against the declarant for violation of the provisions of the act, it shall be deemed that from and after the time of giving and publishing such statutory declaration the declarant had no intent to violate the act, if he proves that such declaration contained a full and true statement of the particulars of the contract or combination.

inate prohibitions of these statutes. Take the familiar case of an individual or a corporation selling out its business and good-will. It is an essential part of such business that the seller should not at once re-engage in the same line of business in the same locality; otherwise the business as a going concern is not sold, and the vendee does not receive the good-will which he pays for. Such contracts have always been legal because always reasonable and necessary, and not against the interests of the public. No person could sell or buy a news route, or milk route, or any line of business which has been established by the personal efforts of the vendor, without an understanding or contract keeping the vendor from continuing in the business which he sells. These laws are not definite, or frank, or reasonable, or fair. Therefore they are enforced only in exceptional cases, and they utterly fail to accomplish their purpose. A general and strict enforcement of them is impossible, and has never been attempted. If their enforcement were attempted in good faith against all persons violating their letter, either juries would disregard the laws, or else the legislatures would promptly repeal them.

This is the only rational solution of the trust problem. It is not destructive, but preservative, and demands, in the language of Professor Clark, "that we do not kill the industrial monsters which threaten and injure us, but tame them and convert them into useful service." When the law compels the trusts to "cease to do evil," they will very quickly "learn to do good;" but they will never surrender their corporate lives at the demand of the law, and their general destruction by the law is impossible.

As Mr. Justice Brown said: (4)

"A corporation is, after all, but an association of individuals under an assumed name and with a distinct legal entity. In organizing itself as a collective body it waives no constitutional immunities appropriate to such body. Its property cannot be taken without compensation. It can only be proceeded against by due process of law, and is protected, under the Fourteenth Amendment, against unlawful discrimination. * * * Corporations are a necessary feature of modern business activity, and their aggregated capital has become the source of nearly all great enterprises."

(4) Hale v. Henkel, 201 U. S. 43, 76.

THE NEXT STEP.

Whether Federal regulation shall take the form of a general incorporation law, or of a voluntary—or compulsory—Federal license, there is not now time to consider. Regulation in that form is, in any event, the second step. The first step is a law that will define and prohibit all the injurious features and methods of trusts, and provide a complete and supervised publicity as to their organization and conduct. Such a law, fully enforced, will accomplish more than has been done by two decades of destructive laws, and may render their further Federal regulation unnecessary. Experience under such a law will furnish the best guide as to the extent and character of the additional Federal control required.

THE CHAIRMAN: A good many years ago I first had the pleasure of meeting Professor Irving Fisher. I was then introduced to him as the youngest professor in his branch in the United States. Notwithstanding his youth, I remember that he read one of the most interesting papers that evening. I have no doubt that Professor Fisher's capacity has not decreased with his years and that we shall have one of the most interesting papers of this meeting from him. I have the honor of introducing to you Professor Irving Fisher, who will speak upon "Over Capitalization."

PROF. IRVING FISHER.

Mr. Chairman—The question of capitalization has been so thoroughly thrashed over that I think there is very little I could add of value, especially for this audience. Most of you must have given the subject quite as much, if not more, attention than myself, and the remarks that have already been made about it this morning by Prof. Jenks and Mr. Seligman, will save me the trouble of making, and you of listening to, a long address. The general public, however, I think, still needs a good education on this problem.

IS OVER-CAPITALIZATION AN ESSENTIAL PROBLEM?

Judging from what is said in the newspapers, the public view tends to go to one of two extremes: Either over-capitalization is responsible for almost all the ills of trusts and combinations, or it is regarded as responsible for almost none of them. On the other

hand, it is said that if trusts were not capitalized to so high a figure they could not charge so high a rate; that the charges are due to the over-capitalization and to the effort to earn a sufficient dividend or interest upon that capitalization. This I hold to be a fundamental error.

It is not because a corporation is capitalized at a certain figure that it is enabled to make certain charges, but because, on the contrary, it is able to make charges, it makes the capitalization. It is not because a railroad is worth, or reputed to be worth, or regarded to be worth, $100,000,000 that it earns $5,000,000 a year, but, on the contrary, because it earns $5,000,000 a year it is capitalized at $100,000,000. There are those, on the other hand, who claim that capitalization is entirely a matter of indifference; so that it is a question purely of bookkeeping; and so it is, but bookkeeping questions have their importance. The function of bookkeeping, as I take it, is to tell the truth in regard to business, and when you say that it makes no difference whether you capitalize at one figure and say your earnings are 10 per cent., or capitalize at double that figure and say your earnings are 5 per cent., I say the statement is very much like saying there is not much harm in lying provided every one knows you are a liar and you state it yourself. The books of a company ought to state not lies, but facts, and the capitalization, as a part, and a necessary part in every sense, is not bookkeeping.

The lies which are told by over capitalization, and sometimes by under-capitalization, are always coupled with other falsifications; for since both sides of a capital account must balance, if you introduce error at one point it must be offset by error at another point, and if the liability side is swollen or padded by watered or over-capitalization, it follows as a necessary consequence that the bookkeeper must contrive to exaggerate the value of the assets on the opposite side. In fact, there is little if any reason for over-capitalization except just such deceit. Thus assets may be exaggerated by giving fancy prices to real estate; by putting in an invention at an arbitrary figure; by taking bad debts; buying up systematically bad debts and entering them at their face instead of their market value.

EXCESSIVE CAPITALIZATION PROMOTES DECEIT.

These and other methods enable a tricky bookkeeper or accountant to exaggerate the asset side, and therefore exaggerate the liability side. The deceit that is practiced

by this over-capitalization is evil if it is actually effected, and we all know that, though in Wall Street nominal capitalization is discounted, the general public is commonly deceived. Those who invest in bonds of a company overestimate the security or margin in the assets of that company on the basis of which those bonds are guaranteed. Those who invest in the stock of the company overestimate the safety of that company from falling into the hands of a receiver, and the general public is deceived as to the real history and nature of the enterprise.

In other words, it seems to me that the question of capitalization is fundamentally a question of deceit, and the reform of capital is a part of the whole program of publicity, and the most important part, and that the proper cure for over-capitalization, as well as all the details of bookkeeping, is to be found in laws of publicity of accounts, with proper regulation as to how they shall be constructed. This we know has been effective in banking and, to a large extent, in insurance; and in spite of the abuses in both of those branches, of which we have heard so much in the last few years, any one familiar with their history knows that a generation ago the abuses were much worse and now, as Professor Jenks has remarked, the Interstate Commerce Commission is about to establish systems of accounting for railroads. So one institution after another is brought under the standardization of accounts, and I believe that in the standardizing of accounts is to be found one of the most effective remedies against trusts.

PUBLICITY AND PROPER ACCOUNTING REQUIRED.

If, then, accounts of trusts were made in such a form that any business man ordinarily versed in business accounts could tell at a glance what they purported to show, the public would have the publicity which they require. How are the accounts to be accurately kept? How is over-capitalization to be avoided? How is a balance sheet to be drawn up to tell the truth? I believe in the principle that Mr. Seligman spoke about: That earning power should be capitalized; and the other principle to which he referred, that the paid-up capital should be the basis of capitalization is, as a matter of fact, merely a variant of the general principle that earning power should be capitalized; for when an enterprise is first launched it stands to reason that the paid-up capital is paid up merely because those who pay it up believe that it is at any rate not more than the capitalized value of future earnings.

If, then, when a company is started the capitalization is fixed at a paid-up capital, together with the value of any additional franchises or stock that is issued for other than cash consideration, we have at that point of time accurate books, and if each succeeding year the books are revised, it ought to be possible to tell at a glance not only what the state of the capital is at that time, but also what the history has been in the meantime. If, to take the case which Mr. Seligman mentioned, there has been a real depreciation in value, this should be accounted for in the following year, either by cutting down the capitalization or by requiring the stockholders to make good by adding paid up capital sufficient to make up the deficit. As to what element should be capitalized, Professor Jenks asked the question whether monopolistic privileges should be capitalized. It seems to me that question is bound up with another; whether monopolistic power should be exercised; if it is exercised, if it is permitted that it is to be exercised, it ought to be capitalized so that the books will tell the public that it is exercised. I know a telephone company which, in order to make its accounts more correct, actually put on the asset side the value of their franchise; not that they had paid anything for the franchise, but that it had a monopoly value entered on their books, frankly, at $25,000. The question whether that power ought to be exercised, or whether the public, who had given $25,000 worth of privilege for nothing, should be entitled to receive it back in lower rates for telephone service, is the question rather than the question whether the $25,000, if effective, should be entered.

If a correct system of bookkeeping, standardized for each kind of enterprise, could be put into operation, that would, of course, not solve the trust problem—it would, of course, do nothing more than regulate the manner in which the trusts should tell their story before the public; but if it was effective in causing them to give a correct instead of an incorrect account of their transactions it would form the basis upon which any true solution of the trust problem must be founded.

THE CHAIRMAN: I shall now vary the order of proceedings slightly, because Professor Parsons has an engagement. I will, therefore, now take the opportunity of introducing Professor Parsons, who will speak on "Trust Philosophy Boiled Down."

PROF. FRANK PARSONS.

Mr. Chairman—Trusts and combines result from the action of the beneficent principles of union and co-operation. Industrial organization is almost as important as civic organization. Men united into tribes, States and nations because they found that a political combination gave them strength for defense, aggression and civic action in general, and they are learning to unite in great industrial organizations because they find that combination in industry means economy and increase of power.

Industrial combination is in itself an economic and social benefit. There are many cases on record in which combination in manufactures has resulted in saving one-half to three-quarters, or even four-fifths of the labor and capital required to yield an equal product under the former competitive conditions.

Competition means economic waste, bad character product, and civic and social damage. The temporary relief to the public in the matter of prices is secured at unreasonable cost. For many years economists have recognized these truths in relation to water supply, gas and electric light and street railway systems, and have declared that such services should be recognized as monopolies and regulated as such. And now this old principle, long ago applied in Great Britain and other countries to these "natural monopolies," is coming to be recognized as equally applicable to monopolies by combination.

IMPRACTICABLE TO DESTROY TRUSTS.

The destruction of trusts and combines is a false aim. In the first place, it is impracticable. Trusts and combines exist in obedience to the law of industrial gravitation which outranks any law that Congress or Legislature can enact. It is impossible by any legislation practicable in a free country to prevent men from acting in harmony if they have the sense and character to do so. We may prevent corporations from holding stock in other corporations, but we cannot prevent individuals from buying stocks or uniting properties by purchase or exchange of interests therein. Combination is so profitable that it continues to exist and multiply even in the forms prohibited by law. The Standard Oil Trust, realizing $490,000,000 of profits in half a dozen years, can well afford to defy the law. All the penalities likely to be imposed are as nothing compared with the profits. Even the $29,000,000 fine, great as it is, will doubtless be far more than covered by the rebates and railroad favors received during the time the ques-

tion of this violation of law and payment of penalty is under litigation, even if the trust does not succeed in finding some weak link in the judicial chain through which it can escape entirely from the payment of the penalty.

UNDESIRABLE TO DESTROY TRUSTS.

In the second place, the destruction of trusts and combines is undesirable, combination being in itself a social and industrial good. It is not combination, but the abuse of the power of combination that ought to be abolished. The real problem is to adopt measures that will secure the fair distribution of the benefits of combination and prevent the absorption of an undue share of those benefits by a few individuals, or any arbitrary or unjust use of the powers of combination for the private purposes of the controlling owners.

When John D., in his Standard Oily statements, intimates that laws against trusts and combines are foolish and unjust, he is talking economic sense. Since industrial combination is one of the principal sources of economy, power and efficient service, to prohibit combination is to prohibit the economy and efficiency that come through combination. To prosecute and fine combination is to prosecute and fine economy and efficiency. Our anti-combine legislation makes economy a crime; progress a misdemeanor, and efficiency a felony.

This is all wrong, and so far, John D. is all right.

But when John D. proceeds to intimate that the men in possession of trusts and combines should be left to manage them according to their own sweet wills, no matter if they make excessive charges, use unfair methods to crush out would-be rivals, selling low at competitive points while selling high at non-competitive points, resorting to rebates or railroad favoritism of other types, and using the power of combination to evade or defy the law, corrupt governments and courts, oppress labor and fleece the public, taking to themselves all the benefits of the economies achieved by combination and adding, perhaps, new plunder by lifting prices above the normal level of the competitive regime that was formerly in vogue—when John D. intimates that combine managers should be left to operate the business as they please, he is talking economic, political and social nonsense.

The law should clearly separate the use from the abuse and should encourage the former and suppress the latter.

METHODS OF DEALING WITH TRUSTS.

Several methods of dealing with trusts and combines have been proposed:

(1.) We may let them alone. That is John D.'s plan, but it is not likely to suit the people of the United States.

(2.) We may prohibit them. The original savage impulse is to destroy whatever seems to injure us. This primitive instinct crops out frequently in civilized man and in the most advanced communities. Even President Roosevelt, who may be supposed to be somewhat civilized, has to go off every now and then to shoot a bear to let the impulse to destruction explode under circumstances likely to reduce the damage to a minimum. Communities manifest the same reversion to the savage type of conduct, and the blind laws against trusts and combines, trying to destroy what is good as well as what is bad, constitute an excellent illustration of the action of this primitive instinct in civilized society. This method cannot succeed and should not succeed.

(3.) We may try to remove the causes of the growth and power of trusts and combines. The plan of removing the protection of the tariff from industries in which large monopolies have developed is of this class, as are also laws against rebates and railroad favoritism; laws forbidding a corporation to hold stock in other corporations, and laws requiring that goods be sold at the same price to all comers at the factory door.

(4.) We may rely upon investigation and publicity. Publicity, no doubt, does have a powerful restraining effect on the conduct of business affairs wherever the managers have not lost all conscience and sensitiveness to the approbation of their fellow men. But in the very worst cases where relief is most imperative, publicity has proved of little or no avail. The public has known for many years the frauds and iniquities of Standard Oil and the Beef combine, and yet those evils have continued in one form or another with practically unabated virulence.

(5.) We may provide for Federal license and incorporation with thorough and continuous supervision by Federal authorities. This is an excellent plan from which much good may be expected. But we cannot hope in this way to prevent excessive charges or the secret use of combine power for anti-public purposes.

(6.) We may enact that prices and wages shall be subject to final adjudication by boards of arbitration representing all three parties in interest, namely, labor, capital and the public. It is not

fair for either party to a sale or contract to fix the terms. In a monopolized industry it is unfair to permit the seller to fix the price, and it would be equally unfair for the public, which is the buyer in this case, to fix the price. The only recourse in harmony with economic and ethical principles is the fixing of prices and wages by decision of impartial tribunals.

(7.) We may adopt a system of graded taxes; putting a high rate of taxation on aggressive, anti-public combines which refuse to open their books to public inspection, or make fair prices, or reasonable capitalization, etc.; and a low rate of taxation on public spirited combines which open their books to public inspection and make fair capitalization, just prices, etc.

The reason that men combine to-day in anti-social forms is that profit lies in that direction. If profit can be severed from anti-social methods and attached to forms of organization and management that are in harmony with the public good while loss is attached to anti-social conduct, men will adopt the superior types of organization and business methods, and trusts and combines will become co-operative and public spirited instead of aggressive and anti-public.

(8.) We may provide that Labor and the Public shall be recognized as partners in monopolistic industry and entitled to elect representatives to act on the board of directors.

(9.) We may resort to temporary public operation of the business of trusts and combines which violate the law. If a corporation cannot pay its debts a receiver may be appointed by the court to manage the business of the company until it is once more on a sound basis. So, if a trust or combine is convicted of breaking the law a public officer might be appointed by the court who should manage the business under supervision of the court, using the profits to pay off and extinguish the watered stock or excess capital, reduce charges to a fair level, see that labor had reasonable wages and just conditions, and bring the whole business into harmony with law and the public good. Then the property could be returned to the company to be managed under careful and persistent supervision with another resort to temporary public management in case of any further serious breach of law.

(10.) We can establish permanent public operation of monopolistic industries, acquiring title by the issue of public bonds or through purchase with funds raised by progressive income and inheritance taxes, or in any one of several other ways that have been frequently urged upon the public. In the case of railroads,

street railways, lighting systems and other natural monopolies where the problem cannot be adequately met by the development of voluntary co-operation, public ownership is the ultimate solution, care being taken in all cases that political conditions shall be made such as to afford a reasonable prospect of successful public operation of these important properties. In commerce, manufactures and agriculture, on the other hand, where the field is open, for the most part, to the growth of voluntary co-operation, legislative co-operation should not be resorted to until every reasonable effort has been made to solve the problem by methods of voluntary action under the direction and encouragement of wise laws. For my own part, I believe that in commerce, manufactures and agriculture, voluntary co-operation will ultimately solve the problem of monopoly, while public ownership will prove to be the ultimate remedy in the case of railroads and other industries involving a large element of either natural or legislative (franchise) monopoly.

THE CHAIRMAN: I have now to introduce Mr. John S. Crosby, the last speaker, whose topic is "Corporations as Such."

MR. JOHN S. CROSBY.

Mr. Chairman—I will get through as quickly as I can. It is now some fifteen years since I first gave thought to this question, and the opinions I formed then have been strengthened every fifteen minutes since that time. While this is academic and abstract, as they say, you must remember that justice is abstract.

It is much the fashion when treating of combinations known as trusts to begin by disclaiming and deprecating any sentiment of opposition to "corporations as such," and yet, but for that same intangible though touchy personality, the corporation per se, there would be no such combinations.

Adverse criticism of corporations is often likened to the sometime hostility of laborers to labor-saving machinery. The comparison would be faulty if only for the reason that corporations have a decidedly different effect upon industrial and social conditions from that produced by machinery. It is, moreover, particularly inapt in view of the fact that while the machine is the legitimate child of labor the corporation is the illegitimate offspring of civil power.

Industrial combinations that can be formed and maintained without special favor of the State do indeed stand upon the same economic footing as labor-saving machines. The restric-

tions which governments in their wisdom have imposed upon unprivileged partnerships and joint-stock associations are as irrational as the antagonism of ignorant laborers to the introduction of machinery.

CO-OPERATION AND CORPORATION DISTINGUISHED.

Co-operation voluntary and unprivileged is simply an exercise of the natural right of contract. It requires neither aid nor permission of the State, and is not properly any more subject to governmental interference or supervision than the simplest form of individual enterprise. Any man has a right to enter into agreement with any number of other men whereby they undertake for a stipulated wage to assist him in the prosecution, for his benefit, of any legitimate business. He and they have no less right to make a different agreement whereby they undertake to carry on the same business for their common benefit. The State has properly no more concern with the latter contract than with the former, its legitimate function in regard to either being merely to provide for peaceful and equitable adjustment of any personal differences arising therefrom, which it does, not especially or primarily for the sake of the parties to the difference, but for the maintenance of a just peace and public order, necessity for which constitutes the primary and only just warrant for the exercise of civil power.

Natural combinations, those formed and maintained without special favor of the State, are subject to the wise limitations of natural law, in regard both to the number of individuals who will combine in one and the same association, and to the length of time they will continue to act together, and, consequently, also in regard to the amount of capital they can command. There is nothing in reason or experience to warrant apprehension that any body of men will by reason of such combination ever become so great or powerful as to monopolize any considerable branch of industry. Any approach that a natural association of individuals may take toward such monopoly will be due to some sort of privilege enjoyed by it rather than to its collective character. Natural competition, that of unprivileged natural persons, is not self-destructive. It has never been destroyed or even restricted except by government.

The tendency at the present time is said to be toward larger combinations, which is doubtless the tendency at all times for

the reason that the more intelligent and trustworthy men become the more readily do they unite and co-operate with one another for the accomplishment of common purposes. This natural and therefore beneficent tendency should not, however, be confounded with the present abnormal drift toward utter displacement of natural associations by artificial combinations made possible by the grant of corporate privilege.

SPECIAL PRIVILEGES OF THE CORPORATION.

The corporation is a political device whereby natural persons who are to co-operate for one purpose or another, are by the favor of the State more or less relieved from the limitations incident to natural association, and the collective body into which they are formed becomes an artificial person clothed with certain attributes and powers not enjoyed by natural persons or associations, being unnatural and peculiar to the State from which they are derived.

The device of incorporation by the State seems to have been originally and for a long time resorted to only for the purpose of clothing individuals with the civil authority and power necessary to the performance by them of some supposedly public service with which they were entrusted for the reason that it did not seem to have been adequately provided for in the ordinary machinery of government. As late as Blackstone's time it was only "for the advantage of the public" that corporate entity was presumed to be created. The courts of our own country have often held that the purpose of incorporation should always be, "The accomplishment of some public good." It is only within the last forty-odd years that corporate privilege has come to be so granted that its recipients are well warranted in saying, "The public be damned." How is this new departure to be accounted for, this abandonment of precedent and principle, this change from the policy of granting privileges to none, to that of handing them out to anybody for the asking?

It may perhaps be contended that, since charters or articles of incorporation are now ostensibly free to all, they are no longer privileges. It is evident, however, that the incorporated company has some advantage over the mere partnership, for otherwise the former would not have become, as it has, the rule and the latter the increasingly rare exception in almost every line of business. It is no less evident that the combinations called trusts, whatever their virtues or vices, could not

be maintained without the cohesive force of corporate privilege. It is generally conceded that whatever special facility they have for wrongdoing is due in some degree at least to the possession of corporate power, and one of the questions deemed pertinent to the deliberations of this Conference in relation to the "trust problem," is, "How should the corporation be constructed?"

It is clear that, if the corporation is of no advantage to any one, it does not matter how it is constructed, and equally clear that it cannot bring substantial advantage to anybody without putting somebody else to corresponding disadvantage, so that the real question, if justice be sought, would seem to be, How shall the corporation be constructed so as not to be of any advantage to anybody?

TRUST QUESTION ONE OF POLITICS MORE THAN ECONOMICS.

The corporation has been called a natural evolution of the partnership, and the trust but a phase or stage in the natural development of business methods, as if there could be anything natural in the handiwork of a State legislature. Corporate power is generated and granted and can be regulated, if at all, only by government, and the whole trust or corporation problem is not so much economic as it is political, requiring for its solution careful examination as to the authority of the State to grant such power. The word "ought" is said to have no place in political economy, but it does not follow that because a question of government involves economic considerations it is any the less ethical. Government itself is never more or less than human conduct, the conduct of man toward man.

The corporations which we are here called upon to consider include such as are quasi-public, having for their double purpose the performance of some public service and the emolument of the private persons entrusted therewith, and also those which are formed wholly for purposes of private gain, and may for distinction be called private corporations.

QUASI-PUBLIC CORPORATIONS.

The theory upon which quasi-public, or so-called public service corporations are created and defended is well stated, in an opinion rendered some forty years ago by the Supreme Court of the United States, as follows:

"The purposes to be attained are generally beyond the ability

of individual enterprise, and can only be accomplished through the aid of associated wealth. This will not be risked unless privileges are given and securities furnished in an act of incorporation. The wants of the public are often so imperative that a duty is imposed on government to provide for them; and as experience has proved that a State should not attempt directly to do this, it is necessary to confer on others the faculty of doing what the sovereign power is unwilling to undertake. The legislature therefore says to public-spirited citizens, 'If you will embark with your time, money and skill, in an enterprise which will accommodate the public necessities, we will grant to you for a limited period, or in perpetuity, privileges that will justify the expenditure of your money, and the employment of your time and skill.' Such a grant is a contract with mutual considerations, and justice and good policy alike require that the protection of the law should be assured to it." (1)

The Court might have added that it is generally those same public-spirited citizens seeking opportunities for exceptionally profitable investment of associated wealth, who first discover and make known the existence of public wants so imperative as to make it the duty of government to provide for them, and who also persuade the legislature that the State should not attempt directly to make such provision.

When and where, it may be asked with all due respect to the Court, has experience ever proved that the State should not attempt directly to do its duty? There is no other way of doing it, and none is ever suggested unless it involves the probability of private gain to somebody. There are duties and functions of the State which it performs directly, and as we know, indifferently enough, yet we hear no suggestion of farming them out to private persons, natural or artificial, for the reason that their performance can hardly be rendered profitable.

SHOULD PUBLIC FUNCTIONS BE ENTRUSTED TO PRIVATE PERSONS?

If there were no public-spirited citizens able and willing to perform these remunerative duties for the State, the latter would evidently be obliged to perform them itself, and directly, or neglect its duty. It may be that if the State did its duty in all respects, there might not be so many citizens who, although

(1) Binghamton Bridge, 3 Wall, 51.

but a part of the State, seem to be wealthier than all the State. Individuals entrusted with the performance of public functions are given a two-fold advantage over their fellow citizens. They not only enjoy the prestige and power that come with the privilege of incorporation, but are enabled profitably to engage in undertakings which nature has placed beyond the ability of natural persons. To open up these artificial opportunities for the investment of private capital gives to those who embrace them an unnatural and unfair advantage over their competitors in the struggle for wealth. Such injustice outweighs any considerations of mere expediency.

But the expediency even of entrusting the performance of public functions to private persons has yet to be shown. Who shall say that, if no longer ago than when that opinion was rendered, government had itself undertaken directly to discharge its duty in this respect, and had meanwhile received the hearty encouragement of all wealthy citizens in such endeavor—who shall say that any imperative public wants would not have been provided for at least as satisfactorily as they now are? Who shall say that direct performance of all such public functions by government through appropriate departments, whether municipal, State or Federal, would have resulted in worse conditions than those which obtain to-day, and are in some measure the occasion of this Conference?

The State has never really tried to do its duty in the premises. We are told that direct performance by government is not so economical as that by corporations. Who gains by the economy? The State does many things that not only bring no pecuniary return at all, but involve expense. It can certainly afford to do other necessary things for whatever it costs to do them right. We are also told that the State could not afford to pay for the services of competent superintendents of the public service. Is it not possible that if corporate monopoly were destroyed there might be some decline in the market value of certain high-class services, not to mention so-called securities? We hear much at present about swollen fortunes, but little as to the cause of the swelling except that it is generally regarded as being somewhat dropsical. If we have a right to maintain government there must be some right way of performing its every function, a way that leads to no injustice, no inequitable disturbance of those natural economic conditions and human relations which constitute the rights of man. The anarchist

has no stronger argument against government than that afforded in its own stupid admission that it has duties which cannot be so well performed by itself as by private persons; and yet we know that the latter could do nothing toward such performance but for that outstretched arm of the State, the corporation. There are reasons enough why the so-called public-service corporation should never have been brought into existence. The State should have shirked no responsibility. It should be as just as it requires the citizen to be. It should enter into no partnership with private persons. The manager of a quasi-public corporation finds it indeed hard to serve his two sets of masters, the public and the stockholders. That is one reason why his services are so high-priced. It is but natural that he should lean to the side that fixes and nominally pays his salary.

The so-called public ownership movement, so far as it contemplates exclusively governmental performance of really public functions, is a movement in the direction of just government, and will gradually do away with any excuse for existence of the quasi-public, or public service corporation.

PRIVATE CORPORATIONS DO NOT FULFILL PUBLIC FUNCTIONS.

It is by no means true, however, that, simply because the business transacted by a corporation has grown to never so gigantic proportions, its conduct is therefore a public function. The establishment and operation of the most insignificant street railway or public-lighting plant is essentially a public function because it cannot be performed without permission and aid granted by the public through its agent, the State. On the other hand, the manufacture and sale, for instance, of petroleum, steel, leather, tobacco, whiskey, and other such necessities, can be conducted without such aid or permission, and might be carried on even in the utter absence of civil government. They are no more public functions than any of the most inconsiderable branches of private industry. Enterprises essentially private have come to assume their present adventitious public character solely because their promoters have been through the grant of corporate privilege clothed with attributes and powers belonging to the public. It is not the business itself but the corporation that is public, notwithstanding it is called a private corporation. If incorporation were indeed necessary to transaction of the business the latter would therefore necessarily be public. It has yet to be shown, however, that incorporation by the State

is ever necessary or even conductive to the proper or normal conduct of any private undertaking, and also yet to be shown by what just warrant or authority government presumes to create the private corporation.

THE CORPORATION THE PRODUCT OF PRIVILEGE.

As already suggested, it may be claimed that the advantages of incorporation are now free to all, and therefore no longer privileges. They are indeed, like straps in the street cars, ostensibly free to all, but nevertheless above the reach of many. They are privileges which cannot in the nature of things be taken advantage of by all. They can be of use only to those who already enjoy some natural advantage over their less successfull fellowmen, for instance, by those having capital to invest. They are beyond the reach of those who have only their labor to depend upon, and tend to widen the normal economic distance between the laborer and the capitalist. It was in the grant of corporate privilege that Lincoln saw being made what he termed "the effort to place capital on an equal footing with if not above labor in the structure of government." Nor, is it the laborer alone who is put to a relative disadvantage. Many possessors of capital are not able or do not care to avail themselves of the privileges of incorporation. They would gladly do business as natural persons, an opportunity of which the State has no right to deprive them as it does by compelling them to compete, if at all with abnormally powerful artificial persons of its own creation. The most that can now be done by the great majority with whatever capital they may have, is to invest it in the stock of corporations controlled by others. They cannot themselves employ their capital, but must risk it in speculating on the ability and honesty of strangers.

Nature produces inequality enough in the common struggle for existence, and it would seem that if there is to be any interference by government, it should be in behalf of the weaker rather than the stronger. On the contrary, however, it is the latter who are authorized and enabled to pose as that artificial person which, inoculated with the virus of privilege, enters the competitive field immune from ordinary vicissitudes, relieved from the infirmities of disease, death and conscience, and sooner or later out-distances its unprivileged competitors by lengths that could never be attained by natural persons one over another.

It is not here necessary to enter into any analysis of the power of corporations or to dwell upon the universal tendency to the abuse of power whatever its source. In a decision by the Supreme Court of Tennessee rendered in 1884 in favor of the defendant in a suit brought by a merchant against a railroad company which had ruined his business by forbidding its employes to trade with him, the Court said:

"Great corporations may do great mischief and wrong; may make and break merchants at will; may crush out competition, limit employment and foster monopolies, and thus greatly injure individuals and the public, but power is inherent in size and strength, numbers and wealth, and the law cannot set bounds to it unless it is exercised unlawfully."

If that be, as it seems, a correct statement of general fact, and a sound conclusion of law, by what just warrant does the State assume to increase "the size and strength, numbers and wealth" of any body of men, as it does by incorporation?

THE DAWN OF COMBINATIONS.

Some of us are old enough to have witnessed the genesis of the trust. It began with the comparatively small corporation which gradually forced the individual and the partnership out of business, thereby destroying whatever of natural competition obtained even in spite of land monopoly. Then followed the only competition that was possible among artificial persons, an artificial or so-called cut-throat competition. To avoid that, resort was had to the combinations known as trusts, the purpose being to do away with all competition. There was some excuse for formation of the trust, for it seemed necessary in order to destroy a competition that was unnatural and itself destructive. There was, however, no semblance of excuse for formation of the corporation. It destroyed a competition that was natural and necessary to industrial liberty. The outcry of the corporation against the trust is heard because it has a vocal strength given to it by the State. The wail of the individual, the natural person, as he fell perhaps before that same corporation, was too faint to be heard. His cause was, however, more just than is that of the corporation, and should now be given its place on the calendar and a speedy, impartial hearing.

Corporations are abnormal creations which government, Frankenstein-like, brings into being the detriment of its own peace and honor. It does this in the discharge of no legitimate function,

but to the destruction of that natural freedom of individual initiative in the employment of labor and capital, which it is a prime duty of the State to maintain.

SECRETARY REYNOLDS: I wish to ask the delegates of certain States to remain after this meeting and select their representatives for the Committee on Resolutions, so that without fail the committee may be named this afternoon. The delegates requested to remain are those from Indiana, Illinois, Missouri, New Jersey and Wisconsin.

A DELEGATE: Mr .Chairman, I would like to move that the roll of States be called at the coming together this afternoon, by the Secretary, and that the delegates from the States name their committeemen, and that the Chairman at that time fix the Committee on Resolutions.

A DELEGATE: I want to move to amend that the fifteen-at-large be named at the same time.

(The mover of the original motion accepted the amendment.)

MR. REYNOLDS: I would like to say that all but four States have already submitted the names of their delegates; so if these States give their names it will not be necessary to go through the formality of calling the list.

A DELEGATE: It seems to me it would be well to have a call of the States.

A DELEGATE: I would like to speak to the motion, I being one of the committee of fifteen to formulate the plans. This matter is all being worked out by the committee. It has been left to the Committee of Five, of which Mr. Reynolds was the Secretary. It will save time if you will let it take its natural course. The delegates from the four States named will name their members on the Committee on Resolutions; then the whole matter will be announced before the Conference for action.

A DELEGATE: I want to ask a question. I want to know whether the committeemen from the States have anything to say in this matter or not.

MR. REYNOLDS: It is the understanding that the dele-

gates should elect their own members. If, upon the reading of the list, any delegate sees fit to question the list he will have the right to do so.

A DELEGATE: Mr. Chairman, if it is likely to take up time, and if it is understood, I will withdraw the motion.

THE CHAIRMAN: You can renew your motion, sir, at a later time.

MR. REYNOLDS: I take it that the delegates appointed by the Governors—

A DELEGATE: I happen to be a delegate here representing a trade organization. I doubt very much whether trade organizations should have a voice in this meeting. I trust they may have—

THE CHAIRMAN: If you wish to make a motion that trade organizations be represented I should be pleased to entertain it. If you choose to put your remarks in the form of a motion, you may do so. The members of this Conference, according to the rules that were adopted yesterday, are those on the list of the National Civic Federation first handed in. It does not matter whether they are appointed by the Governor of the State or by trade organizations or by any other ostensible authority. Those on the original list are all members and are entitled to vote at the Conference to appoint a State Committee.

MR. WADE H. ELLIS: Mr. Chairman, if the matter requires a motion, I would move that in selecting delegates to this committee—

THE CHAIRMAN: It is not necessary to make a motion.

Upon motion, the meting was adjourned until 2:15 P. M.

Fifth Session, October 23, 2 P. M.

The Conference was called to order by Mr. C. P. Walbridge, at 2:45 P. M.

THE CHAIRMAN: The first speaker this afternoon is Assistant Attorney-General Frank B. Kellogg, of Washington, and his topic "The Enforcement of the Sherman Anti-Trust Law."

MR. FRANK B. KELLOGG.

Mr. Chairman—Unfortunately I am not from Washington and I am not an Assistant Attorney-General. I am a private American citizen, and as such if what I say is worth listening to, well and good; but it will not be from the minor official position I happen to hold as Special Assistant Attorney-General.

One of the vital issues before the American people to-day is the question of the proper enforcement of the Sherman Anti-Trust Law. The great majority of the people are demanding this enforcement against combinations of railroads and certain large industrial corporations and combinations of corporations called "Trusts." On the other hand, certain classes of men—principally interested in these enterprises—are denouncing the Government in unmeasured terms for the effort being put forth in this respect. It is said it is being done for political effect. In my opinion this is not true. No political agitators could create such a widespread and deep-seated sentiment. Political agitators drift with the current; they do not create it. No movement gains such momentum without just cause.

CAUSES OF PRESENT PANIC.

Again, we hear it frequently said that the enforcement of the Sherman Act has been one of the causes of our present financial depression. In my opinion nothing is farther from the truth. For ten years we have been through an industrial expansion, an expansion of values, and credits, beyond any period in our history. Vast millions of stocks and securities have been placed on the market, and prices raised to abnormal heights. It is an inevitable law of trade that the time always comes when these prices must shrink. The shrinkage of prices of securities causes a lack of confidence and a shrinkage of credit. This is what we

call "scarcity of money." As a matter of fact it is not a question of money at all, but a question of credit; and the want of credit has in all times of our history come with depression following abnormal expansion. It is fortunate, indeed, for the country that the foundation of our industrial and commercial life is sound and that the people are prosperous. We never have been in a better position to stand the inevitable shrinkage than at the present time. In my opinion, however, no temporary financial stress will turn the deliberate judgment of this people away from these problems, which must be solved.

To-day the Clearing House Committee of the New York banks is demanding the resignation of men faithless to their trust. That is what the President of the United States is doing to men and corporations unfaithful to their public duties. Do you sustain him in this cause? Whether you do or not, the great majority of the American people will, and they are not wrong on any subject for any great length of time.

These movements are not new in the world's history. Man has ever been struggling against the evils of monopoly, and it has always been the case that, whether under the guise of law, or by special privileges or grants, a class of people have absorbed the wealth of a country, or its industries—have denied to their fellow men the equal right to pursue a vocation and earn a livelihood—they have been abolished either by law and peaceful means or by revolutions. I agree with the distinguished Chairman of this meeting that these questions should be considered from the calm level of deliberate, unimpassioned judgment. This is a land of law and order, and of law-abiding people; and there is no reason for hysteria or extravagant denunciation. To be sure, the question of monopolies comes before us under entirely different circumstances than in generations gone by. They are not shielded by grants from the Government. They have not yet reached the limit of seeking to monopolize all industries, such as the ownership and cultivation of the land; but under the guise of corporate organizations—grants of perpetual power—they have sought to control, and in some instances have controlled, all branches of certain industries in this country.

The questions before this Convention seem to be whether the Sherman Act, in its application to railroads and to industrial corporations, should be amended. The conditions controlling the two classes of corporations are to some extent different and need separate consideration.

SHERMAN LAW DESIGNED TO MAINTAIN COMPETITION.

The object of the Sherman Law, in its application to all corporations and enterprises, was to maintain those reasonably competitive conditions which have been potent causes in the development of our commercial and industrial institutions, and to prevent monopoly which would exclude the people from a reasonable participation in all enterprises and business. Let us briefly consider the application of the Sherman Act to railroads. I do not believe that its application to the railroad systems of the country was an afterthought, or judicial error. The time was, of course, when transportation formed but a small part of the commerce of our country. The products of the farm and local manufacture were exchanged in the nearby markets. But rapid communication, the construction of great lines of railway, have entirely changed the industrial conditions, and to-day transportation is a legitimate tax upon all classes of business. No farmer, no merchant, no manufacturer can carry on a business without paying this tax, and it should, therefore, be as reasonable and as uniform as possible, so as to afford all equal opportunities to engage in business. As to railway systems, the American people have established competition between competing lines of railway as the rule of law governing these corporations. The constitutions and the laws of more than forty States contain provisions prohibiting combination or control in one corporation of competing systems.

SERVICE RENDERED BY COMPETITION IN RAILWAY DEVELOPMENT.

And, while argument may be made against this as unscientific, we, as practical business men, know that independent action and reasonable competition between the lines of railway in this country have given the people most of the good service and reasonable rates which they are enjoying to-day from railway systems. You may say, as some railway managers do say, that all of the railways of the country could be operated more economically under one control and management, so long as the Federal Government will exercise over them that supervision which will insure reasonable and equal rates, privileges and good service. But we overlook the fact that but a few men of necessity must control the systems of railways, and unless we are prepared to have the Federal Government take over practically the man-

agement of these railways, I do not believe we are ready to trust their control to a few men, for men are ever abusive of power and can no more be trusted in the unlimited control of our railway facilities than they can be trusted in the unlimited control of government. Competition between railways does not necessarily mean ruinous rate wars. It has three aspects: The legitimate reduction of rates in order to reach out and increase the business of the railway system; good transportation facilities, quick service; and the construction of new lines of railway in the development of the country.

Take these away by permitting the consolidation of all lines of railway, and the Government must assume the obligation of enforcing these duties. Until we are ready to do this, I believe that Congress should maintain the separate integrity and management of naturally competing lines of railway systems in this country, and to that end should prohibit railway companies from acquiring the stock of competing lines. Railways should not be permitted to engage in the business of buying stock in other lines of railway, competitive to their own system. It is a power which is subject to abuse, and common ownership to that extent decreases the motive for furnishing good transportation. I do believe, however, that in some respects the Sherman Act, in its application to the railways, should be modified. It is a necessity for railway men to meet and consider the subject of competing rates. It is impossible for various systems of railroads, more or less competitive and yet reaching many different markets (which markets are competitive between themselves), to adjust schedules of rates equitably without such meetings, consultations, and in the first instance agreeing upon schedules of rates. This should, however, be under the control and supervision of the Interstate Commerce Commission, and should be limited to making or changing the rate in the first instance.

RAILWAY POOLS SHOULD NOT BE PERMITTED.

It is not necessary that railroads should be permitted to pool, or to make agreements for the maintenance of rates, in order to accomplish this result. While I believe in a strong, vigorous Federal control of railways, I am not ready to commit myself to the doctrine of unlimited combination between railway systems, or to that complete Federal or State control which shall take under governmental supervision all the details of

the construction and operation of the railways of this country. The Government should not engage in enterprises which can be left open to the people. Whatever may be the conditions under a limited monarchy, in a republic I believe these industries should be left to the people. Do not create a vast army of dependent government employes, the very nature of whose employment renders them subject more or less to political control and party manipulation. It tends to political corruption. We have today the cheapest and best transportation in the world. It may be said that there have been discrimination, rebates and corruption in the management of railways. Suppose there have. Have the people not rectified them? These revelations indicate rather a moral awakening and a determination to have a higher plane of business morality. Most of the people are honest, and I believe in the sterling integrity of the business men of this country.

SHERMAN ACT AND INDUSTRIAL COMBINATIONS.

As to industrial corporations, the questions are in my opinion more difficult of solution.

What was the object of the Sherman Act? Before we can apply a remedy we must understand the evil. Let us, therefore, for a few moments consider the cause which led to its enactment, and the effect of the great combinations in the form of corporations upon our industrial life.

In the early days of our national life, commerce, as we have before said, was very largely a matter of local exchange. The want of means of transportation facilitating the exchange of products and the centralization of manufacture made it impossible to monopolize an industry. But in time rapid-transportation facilities developed and became the most important factor in the control of our industries. Other conditions also changed—mechanical devices, the enterprise and ingenuity of our people under competitive force, have of course revolutionized the industrial conditions of this and other countries. The tremendous expansion of manufacture, trade, commerce and communication, together with the consequent expansion of the capital necessary to do the business, undoubtedly rendered necessary to a certain extent the combination of capital into large enterprises. This brought the corporation, as as instrument for uniting the efforts of many, and perpetuating a joint ownership and power of control. As corporate control of the industries increased, of necessity the opportun-

ity of individual enterprise decreased. The corporation enabled a few to become the managers of great institutions, and the individual was more and more eliminated from the field of commerce and industry. As time passed, various means were adopted in order to aggrandize the corporation and to eliminate the competition of the individual. Among other means was to control the transportation, and some of the greatest monopolies of this country had their foundation in grants of special privileges and rates, which made it impossible for competitors to remain in the field. A grant of special rates and privileges by a railroad is as great a power as a grant of monopoly by the government, because it is as impossible for a competitor to exist as though he was barred by statute. Other means were used; the combination of individuals and corporations to limit supply, enhance prices, or limit production of particular concerns—by which to gain control of the commerce. But the most effective means, aided by special privileges from the railroads, has been the organization of corporations or the consolidation of independent corporations engaged in business, either by the holding company acquiring stock, or by some means. People viewed with alarm these aggregations, gradually absorbing all the industries of the country, the control of which were centred of necessity in a few men, who not only had the power to dictate to the transportation lines, to dictate prices, to control the supply, but had the power through systems of raising prices in one part of the country and lowering them in another, to destroy the individual or the small corporation engaged in the same business. Experience has shown that these fears were not without foundation. The result has been that, under the guise of various corporate organizations a few men have been enabled to practically monopolize an entire industry and drive out all competition. If this is economically right, if it is the necessary result of our civilization and industrial life, then why should it not be extended to all industries and all occupations?

A few men by means of such ingenious corporate organizations, may build up a great financial institution, may perpetuate their power, and reduce the great majority of the people of this country from progressive independent business men to mere dependent employes, and close the door to all possible hope of themselves or their children ever becoming anything else. A system which makes a few men enormously rich—with the power which goes with wealth—and reduces the balance to the

subservient, menial position of employe, must in the end have a disastrous effect upon our civilization.

COMBINATION NOT A RESULT OF ECONOMIC CONDITIONS.

But, it is said that combination is an economic principle, against which it is useless to combat. I deny that many of the great corporations and trusts of this country are the result of economic principles. They are rather the result of the genius and cupidity of men who love wealth and power, and who have ever been abusive of power, and who will not stop in their grasp for power short of the industrial enslavement of their fellow men. Some of the great combinations of the last thirty years which reach that magnitude we call "trusts" or "monopolies," have not been created on any economical basis. They have been put together by promoters, upon values many times either their intrinsic worth or earning value; upon the expectation—which in many instances has been realized—that the public will buy their securities, and that they may make enormous fortunes and control great industries. We are not afraid of big things in this country. Large enterprises are necessary in the development of certain industries, notably transportation lines. But it is one thing for men to combine their capital in the execution of enterprises requiring large capital for their consummation, or to economically carry on their business; it is another thing to bring together separate and distinct corporations, enterprises and businesses upon a fictitious basis of value, to be sustained through the power of monopoly or for the purpose of crushing out competitive concerns.

Again, it is said that such combinations are economical and reduce the prices to the people. If it were true it would not be an answer to the proposition I make, for it is of more importance to keep open to the people the avenues of industry and individual enterprise, so that all men with ability and reasonable capital may not only engage in business with reasonable hopes of success, but that the future generations, under this stimulant, may grow to a great people. But it is not true. If you concede the right of unlimited combination, it gives the power to control supplies, and to extort unreasonable prices, and in the end such has been and will be the result.

Again, it enables a few men to amass large fortunes and to wield a power dangerous to the State. If once you concede the right of unlimited combination under corporate organization,

there is nothing to prevent a few men, by the device of holding companies, from controlling all of the industries of the country. Such enormous centralization of wealth has its influence upon our finances, our banking institutions, our transportation lines, our mediums of exchange, and our very political organization. They are dangerous to the State, and consequently to the individual.

PROGRESS NOT RESULT OF COMBINATIONS.

You say we have prospered beyond any age known in history. I admit it. We have been developing a new country, limitless in its resources. New factors of civilization have been brought to bear upon our industrial life in a hundred years, and it is undoubtedly true that these things have made much larger enterprises and aggregations of capital perfectly legitimate in our industrial life. But for the Sherman Act, or like enactments, there would be no limit to combination. How do we know what would have happened were it not for this? The great mass of the people are powerless to prevent it. A corporation which controls 80 or 90 per cent. of the industries scattered over the country can crush out feebler efforts. And when it has the control of one industry, and has sufficient wealth, it may reach out and control financial institutions, railroads and other industries, for in the ratio in which it grows in power and strength, in equal ratio decreases the power of its competitors. We have not yet reached that period of centralization where the whole people have felt the oppressive hand of monopoly. I ask you, how long would the American people stand it if a set of men undertook to monopolize the ownership of the land? If they sought to turn this country into a country of landlordism and tenantry, if they undertook to turn the wheels of progress back—to own and control the farms and homes of millions of people and reduce them to a state of peasantry? The mere expression of such a thing would be considered as shocking to the sense of the people. And yet, if you once concede the right of unlimited combination—if you follow the teachings of those who say "We have come to a new economic era. In the future business is to be carried on more and more by aggregations of capital; it cannot be otherwise; the day of individual competition has passed and gone"—it is not many steps to the extension of this economic principle to the ownership and cultivation of the land

of the country. The same principle applies to a lesser extent in other industries. No great nation springs from a dependent and subservient people. There must be independence, individual enterprise, proprietorship, opportunities for business enterprise to the individual.

The people of this country have demonstrated the evil effects of monopoly. They are awakened to-day. The alarm has gone forth, and it remains for us to correct its evils by law and orderly means, or they will be corrected by means more radical. Do you wish to drive this people into Socialism, where they will compel the government to take possession of and manage the commerce, the manufactures, all the industries, the cultivation of the soil for the benefit of all? If you do not wish to do this, then put a stop to the power of unlimited combination, and do it by orderly means. The Sherman Act forbids combinations in restraint of trade and prohibits monopolies. No corporation could to-day acquire control of all industries, or of one particular industry in this country, without the power of unlimited combination, and when it obtained this it would have a monopoly. It was this the act sought to prohibit.

It is said with a great deal of force, "Where will you stop? You deny men the right of acquisition of property. You take away from them the principal incentive to industry and thrift." I would not take away from men any such right. The right of acquisition of property and its control cannot be too sacredly guarded. But combination and acquisition by the means I have indicated may go to the extent of endangering the individual right. I would prohibit the unreasonable combinations in restraint of trade, and those combinations or acquisitions which reach the degree of monopoly.

DUTY TO THE FEDERAL GOVERNMENT.

We come now to the practical question, How will you control these corporations to keep them within proper bounds? Shall this be done by the States or the Federal Government? Manifestly only the Federal Government has this power. It is conceded by all that corporations engaged in interstate commerce can only be regulated under the power granted to Congress by the Federal Constitution, and that this power is exclusive. No one denies that there may be a commerce entirely within the State which is exclusively subject to its control. I do not advocate any extension or expansion of the Federal

power. In the control of corporations as instruments of interstate commerce I place myself squarely upon the decision of that great expounder of the Constitution, Chief Justice Marshall. Congress undoubtedly has power to regulate corporations engaged in interstate commerce. It may limit its capital, specify the subjects of the commerce in which it may engage, and provide rules and regulations for its control and an examination into all its affairs. It seems to me unnecessary at this time to further discuss this question of power. As the great commerce of this country to-day is interstate, the Federal Government can, therefore, effectually deal with these instrumentalities.

The next question is, How shall we regulate these corporations? I would enforce the Sherman Act against those combinations that have sought to and have practically monopolized the commerce of the country. Until a more effective system is created, I do not believe it is wise to repeal the act, or lessen the efficiency of its enforcement. The same end might possibly have been accomplished by other means, but this control is evolutionary. The processes by which we arrive at these conclusions come from long experience. The instruments of control have to be created, born of a necessity, and stand the test of trial and experience. The Sherman Act sprang from a demand to redress real grievances. Had we in the past proper State or Federal supervision over these corporations, no such great combinations could have existed. But under the power of unlimited corporate organization, granted by the State, they were easily made the instruments of monopoly.

CONTROL THROUGH PUBLICITY AND FEDERAL LICENSE.

(1st.) I believe there should be thorough Federal investigation by the Department of Commerce and Labor into the management of corporations, together with the widest publicity. This will tend to prevent unfair practices and oppressive methods, by which corporations have been enabled to crush out their competitors and obtain a practical monopoly. When subjected to the light of investigation and public scrutiny, corporations cannot obtain preferences in transportation, and will not resort to those oppressive means of unfair competition which have been such potent instruments in the past.

(2d.) In my opinion the time has come when proper limitations should be placed upon the power of corporations, by Federal license or Federal incorporation. By this means a reason-

able limitation may be placed upon the capital to be issued; they may be compelled to do business in the open; to devote their surplus to the legitimate business of the corporation. One of the great evils of to-day is the power these corporations have over the financial, transportation and other institutions of the country. Take a corporation with a surplus of a half a billion dollars, and its power over banks, financial institutions and railways is almost unlimited. Their resources should be limited to the legitimate business for which they are created.

Do not undertake to recommend the repeal of the Sherman law until you have substituted something equally effective to prevent unreasonable corporate aggrandizement.

After all, there is no question that the time has come when a limit must be placed upon the size of corporations, and limitations upon their power. We should approach this subject with caution, with liberality—preserving always those ancient safeguards for the preservation of the rights of the citizen.

THE CHAIRMAN: The Secretary will announce the Committee on Resolutions, as reported by the delegations from the State and appointed by the Chairman of the Conference.

MR. REYNOLDS: I will read the list of the committee, and I am requested to announce that the Committee on resolutions will meet immediately after the close of this session, for organization, in Room 200, Hotel Stratford, and it is urgently requested that every member be present at that meeting.

The Committee on Resolutions is constituted as follows:

MEMBERS AT LARGE.

SETH LOW	Publicist	*New York.*
SAMUEL GOMPERS	President American Federation of Labor	*Washington, D. C.*
C. H. SMITH	President Illinois Manufacturers' Association	*Chicago, Ill.*
JAMES M. LYNCH	President International Typographical Union	*Indianapolis, Ind.*
JOHN M. STAHL	Farmers' Congress	*Chicago, Ill.*
GEORGE W. PERKINS	President International Cigar Makers' Union	*Chicago, Ill.*

FRANKLIN MacVEAGH	Wholesale Grocer	*Chicago, Ill.*
A. T. ANKENY	Attorney-at-Law	*Minneapolis, Minn.*
JAMES O'CONNELL	President International Association of Machinists	*Washington, D. C.*
JOHN F. CROCKER	President Chamber of Commerce	*Boston, Mass.*
FRANK DUFFY	General Secretary United Brotherhood of Carpenters and Joiners of America	*Indianapolis, Ind.*
WILLIAM JAY SCHIEFFELIN	National Association of Wholesale Druggists	*New York.*
DANIEL J. KEEFE	President International Longshoremen, Marine and Transport Workers' Association	*Detroit, Mich.*
PROF. J. LAURENCE LAUGHLIN	University of Chicago	*Chicago, Ill.*
A. T. STEBBINS	National Retail Hardware Association	*Rochester, Minn.*

MEMBERS SELECTED BY STATE DELEGATIONS.

JOHN W. TOMLINSON	*Alabama.*
G. W. HULL	*Arizona.*
CHARLES S. THOMAS	*Colorado.*
IRVING FISHER	*Connecticut.*
J. HOWARD GORE	*District of Columbia.*
J. W. ARCHIBALD	*Florida.*
AVERY C. MOORE	*Idaho.*
JOHN V. FARWELL, JR	*Illinois.*
JOHN H. HOLLIDAY	*Indiana.*
F. L. MAYTAG	*Iowa.*
JAMES W. ORR	*Kansas.*
GEORGE L. SEHON	*Kentucky.*
THEODORE MARBURG	*Maryland.*
DR. FRED WILLIAM HAMILTON	*Massachusetts.*
GEORGE H. BARBOUR	*Michigan.*
JOHN W. WILLIS	*Minnesota.*
ROBERT H. WHITELAW	*Missouri.*
WALTER L. LOCKE	*Nebraska.*
NAHUM J. BACHELDER	*New Hampshire.*
HOWARD H. WOOD	*New Jersey.*
J. H. BEARRUP	*New Mexico.*
DR. ALBERT SHAW	*New York.*
D. A. TOMPKINS	*North Carolina.*
ALLEN R. FOOTE	*Ohio.*

DAVID P. MARUM..... *Oklahoma.*
GEORGE LANGFORD..... *Oregon.*
TALCOTT WILLIAMS..... *Pennsylvania.*
J. A. PICKLER..... *South Dakota.*
JAMES S. MEAD..... *Tennessee.*
F. G. HOWLAND..... *Vermont.*
WYNDHAM R. MEREDITH..... *Virginia.*
JAMES C. LAWRENCE..... *Washington.*
JAMES M. PAYNE..... *West Virginia.*
WILLIAM GEORGE BRUCE..... *Wisconsin.*
NELLIS CORTHELL..... *Wyoming.*

THE CHAIRMAN: It gives me pleasure now to present the Hon. Peter S. Grosscup, of Chicago, who will speak on "Anti-Trust Laws."

HON. PETER S. GROSSCUP.

Mr. Chairman—We are now well into the eighteenth year since the passage of the Sherman Anti-Trust Act, and well into the seventh year since Mr. Roosevelt's administration began actively to enforce it.

Thus, so far as enactments make law, there has been a prohibitory law against the so-called trusts or big corporations for nearly five times the length of time it took to fight out the civil war; and so far as a sincere and vigorous purpose to enforce law results in actual enforcement, the battle line against the so-called trusts or big corporations has been in action for nearly twice as long as it took to fight out the civil war.

In its means of enforcement, as well as in its purpose, the Sherman act was as comprehensive as language could make it. It withheld no power, civil or criminal, that the lawmakers thought would contribute to the complete eradication of the supposed evil. It had been preceded in Texas, Kansas, Michigan and Maine by State laws directed to the same end, and was quickly followed by like laws in one-half of the other States, including New York, Ohio, Indiana, Illinois, Wisconsin, Iowa and the West generally.

OUR INEFFECTIVE STRUGGLE AGAINST TRUSTS.

Have the so-called trusts or big corporations been exterminated? Have they been even diminished? Has the Sherman act brought about any decrease in the cost of living or any increase in wages? Has the process of combining ceased? Has any specific, practical purpose of the Sherman act, not present

in the law as it has existed for centuries, been fulfilled? On the contrary, were I to call the roll of the so-called trusts or big corporations, organized since the Sherman law went into effect, I would be naming the largest ones in America to-day, an inspection made for me of a list of one hundred and twelve of the leading so-called trusts or big corporations showing that all but thirteen have been organized since the passage of that act. And if it be said that this is because the Sherman act, until the past six years, was treated as a dead statute, I ask, How many of the so-called trusts or big corporations have been exterminated, or even diminished—what increase has there been in wages or decrease in the cost of living—by what is admitted on all hands to have been a sincere and vigorous attempt to enforce the law during the administration of President Roosevelt? Injunctions have issued against the several packing houses that make up the meat industry, and here in Indiana against certain concerns in the drug business, and against certain other so-called trusts throughout the country; but in no case have these so-called trusts or big corporations been exterminated; in no case have wages or prices been affected; in no case, except in minor detail, has anything been done that could not have been done as effectually under the common law that was in existence before the Sherman act went into effect—that could not be done against individuals as well as against corporations; and though, in this respect, perhaps, the case of the Northern Securities Company is an exception, even in that case the several railroads that made up the Securities Company are managed now almost precisely as they were before the order of dissolution was entered.

If, then, the enactment of the Sherman Anti-Trust act was intended to exterminate the so-called trusts or big corporations, or to affect wages or prices, manifestly the Sherman Act has failed. If the entrance of Mr. Roosevelt's administration upon a vigorous enforcement of that law was intended, as some of his more radical followers constantly give out, to exterminate the so-called trusts and big corporations, manifestly that feature of Mr. Roosevelt's administration has failed. The organization of industry into corporate form does not cease. Neither wages nor prices change. That much, at least, has been proven. And the reason that the organization of industry in corporate form is not ceasing, is because, as an effective, industrial agency to wield the energies of mankind, the corporate form, beyond any

other form, is the most effective yet discovered. What government is to mankind politically organized, the corporation is to modern industry organized. It is on that account that the corporation is here at all; and it is on that account that it is here to stay. And not until men, in their general relations to each other, can safely dispense with government, will come a time when men, in their industrial relations, can safely dispense with industrial organization.

OUR LEGISLATION WRONG IN PRINCIPLE.

But though what I am saying means, perhaps, that the aim of the American public thus far, in its treatment of incorporated industry, is not directed toward the right mark, it does not mean, that in the great new industrial life that this generation of men is living, so largely an incorporated life, there is nothing that is wrong. Somewhere in that life, something is wrong; for though in the midst of material prosperity, the country is without contentment; and there must be something wrong in a prosperity that does not bring contentment—something that, in the nature of things, in some way pinches and wounds some deep-seated human instincts. Nor does it mean that the administration of President Roosevelt has been a failure. As a preparation of the public mind for the great practical thing yet to be accomplished, that administration has been a great success.

CORPORATIONS REPRESENT CONCENTRATED CONTROL.

What, then, is the wrong that lies at the bottom of the popular disquiet, and what is the work yet to be done? I can best answer that question, perhaps, in the statement of three facts. The first of these is: that not only is the corporation to modern industry organized, what government is to mankind politically organized, but, that as it is through effective free government alone that political power is diffused among the people, it is through the corporation alone that the ownership of the industries of the country can ever be widely diffused among the people; for outside the field of agricultural properties, property is not now held, each individual piece by some individual man; between the man who seeks to own, and the thing to be owned, there is, throughout the industrial field, the State-created intermediary called the corporation.

The second fact is, that though the industrial property of the country is not widely diffused among the people, the people have the financial means to bring about such diffusion—that it is on their individual wealth, poured through the financial streams into Wall Street, that all the great corporations now chiefly rest.

In the last annual report of the Comptroller of the Currency it is stated that there are in operation in the United States twenty-one thousand three hundred and ninety-six banks and banking institutions, with total deposits of twelve billion six hundred and twenty-eight millions seven hundred and twenty-seven thousand six hundred and sixty-five dollars. This does not include redeposits by one banking institution in another; nor does it include the large sums held by life insurance companies in trust for their policy holders. What this huge total of nearly thirteen billion dollars does represent is the individual wealth of the American public, that, uninvested in the property of the country by the depositors directly, is put in the financial institutions of the country, from which it is, of course, eventually taken out for investment, chiefly by those who borrow it for that purpose.

To some extent these deposits represent what we call the working capital of the country—the particular amounts that the merchant, the manufacturer, the railway company, and other individual depositors always keep on hand in bank, to meet their current needs; and to some extent these deposits are kept in the bank vaults as reserve. But compared with the whole, neither this reserve nor this working capital is considerable. Inquiry of one of the greatest of the railroads, whose securities at present market values are between three and four hundred million dollars, disclosed that that road carries an average bank balance of about one million, or less than one dollar for every three hundred of its market value. Inquiry of a leading merchant shows that his average bank balance is proportionately larger than this, but considerably less than one dollar in one hundred of the value of his establishment. The largest average bank balance carried, as working capital, that I have discovered, is that of the largest manufacturing corporation of the United States—the United States Steel Company—a corporation that, beginning with the raw material, turns it over again and again until the finished product is delivered to the purchaser—in that

way plainly calling for the largest kind of cash capital. But even here the ratio of bank balance to the total value of the properties is only one in eighteen; so that assuming that the enterprises of the country that require distinctive working capital are of the value of fifty billion dollars—nearly one-half of the country's entire wealth—the bank deposits representing such working capital cannot much exceed one billion of the nearly thirteen billion dollars that constitute the total of the deposits—an estimate unaffected, too, by the fact whether such working capital is first borrowed from the bank and then redeposited, as is often the case, or is in the first instance deposited out of the depositor's own ready means. The truth is, that the great bulk of the thirteen billion dollars—a deposit without example anywhere else in the world, is either utilized by the banks themselves, in their business of buying bonds in large quantities and selling them out at retail, or is loaned by the banks to those who are doing the actual business of the country, and carrying the corporate securities of the country. Or, stated in another way, the American people have to-day in bank a sum of money unemployed for investment directly by themselves, but employed by a comparatively small borrowing class, that nearly equals, at their present market prices, the value of all the railroads of the country put together—stocks, bonds and all; and that increase by what the people of the country individually hold, in the way of bonds, stocks and other corporate securities, constitutes almost the entire wealth on which the corporate business of the country actually rests. So much then for this great fact—the fact that were all the banks and saving societies to liquidate at once, paying back to the depositors at their present market prices, the corporate securities into which, through the small borrowing class, a great part of these deposits have gone, there would immediately turn up throughout every quarter of the country, and in direct possession and ownership of those of our people who have saved anything at all, in addition to the corporate bonds and stocks already held by them, so large a part of the remaining corporate securities, that it could be truthfully said that the owners of the property of America were the people of America—the property that is incorporated as well as the property that is unincorporated.

PEOPLE HAVE NO MEANS OF SECURING AN INTEREST IN COMBINATIONS.

The third fact is, that the people's lack of ownership in the incorporated property of the country is not because the men and women who have saved something have no wish to set these savings at work for something more, nor that the workman and employe have no wish to have some proprietary part in the enterprise to which they are attached, but chiefly because, as the corporation is now organized and managed, there is no reasonably secure way to set such savings at work, or to acquire such part. Toward the general diffusion among the people of incorporated property, both the national government and the States thus far have been entirely indifferent. They have acted as if, having invited settlers into some fertile new region, the hands of the States and nation were at once withdrawn, leaving the land without law. It is indeed a thousand times worse than that, for such a region would be small and remote, while the region covered by the corporations of the country is bounded only by the nation's boundaries, and lies close at every man's door. At every turn of the year we see some part of this region of incorporated property ravaged—during the past few months deeply ravaged—but we stand still, never thinking, perhaps, that it is on account of just such ravages, and of the indifference of our national and State goverment, that the country's richest property field is effectively withdrawn from popular occupation —that the whole institution of private property is suffering shocks that may eventually wreck it.

There is still another fact that must not be overlooked, and that is, that competition will never be effectually restored until the capital of the country, springing, as it does, from every quarter of the country, and from the energy and frugality of all her people, is at the call, not of those who would suppress competition, but of those who would encourage it; and that this will never be the case until the corporation, the only medium through which capital can effectively be wielded, becomes, in the eyes of the people, a trustworthy medium for the wielding of the people's wealth and energy.

What, then, is the work that confronts us? Should we, for the sake of election tactics, be content to merely denounce or hawk at this industrial institution? Should we follow these so-called leaders who think that what it took the human race all its lifetime to build up can be taken down in a day and without a

jar? They have had the centre of the stage for a good while back and nothing practical has yet been accomplished.

Should we, on the other hand, go over to those who would leave the whole problem to time to work out—who would do nothing for fear that conditions might be disturbed? It is out of this do-nothing policy—this unrestricted license that has prevailed—that the problem has risen. But for that license the corporation scandals that confront us would not have been. Had the corporations been known trustworthy institutions the wealth of the country, instead of being poured into Wall Street, would have been expended elsewhere in the development of the country's industries—each community depending much more largely upon itself for the means of working out its own development. And had our development proceeded on such lines, the bank failures that have been startling us for the last few days would not have occurred, for in nearly every instance such failure has been due to some overleaping personal ambition having too easy access to great money deposits. No, no. The work to be done is not to tear down, nor yet again to let alone. The work to be done is to reform—if need be, to rebuild—this intermediary between the country's wealth and the country's industries; to readjust it to the American instinct for fair play and for every man having a fair part in the affairs of life.

NATIONAL COMMISSION ON CORPORATION REFORM NEEDED.

The detailed form that the work of corporate reconstruction should take would be best performed, perhaps, by a national commission, and such a commission would have for precedent the work done by Germany thirty years ago—a corporate reform that has almost disarmed German Socialism, except as an agitation, against the unjust land laws of that country. I shall not go into details now, but will confine myself to those fundamental principles that in their nature must lie at the foundation of the new corporate structure.

In this country the corporation is a creature of the executive department of the several States, and issues out of such department almost as a matter of course. Neither the object for which the corporation is formed, nor the amount of its capitalization, nor the character of the securities issued commands any preliminary attention other than such as is merely perfunctory. Put your nickel in the slot and take out a charter, is the invitation that the States extend; and in line before the slot machine, en-

titled, too, to an equal place in the line, are the corporate projects conceived to defraud, as well as those that have an honest purpose. Neither is detained by so much as an inquiry. For indifference such as that I would substitute at the very threshhold of the corporation's application for existence an honest, careful inquiry by some tribunal of government—a tribunal that will act only after it has heard; a hearing in which the public is represented by a District Attorney on whom is thus devolved the duty not merely of pursuing the horse after it is stolen, but of seeing to it that the door is locked before the horse is stolen. And what honest project, I ask, can object to such an inquiry?

ORIGIN OF FALSE CAPITALIZATION.

The corporation as at present organized by the States has license to issue all the securities it chooses, and all the kinds of securities it chooses—securities whose place in the corporate geologic stratification no ordinary mind can locate; and out of this have come the many instances of capitalizations that serve no purpose other than to exploit with one hand the consuming public, while baiting with the other that portion of the public that, with hard-earned savings, is looking for some opportunity to help itself along in the race of life. No honest project needs license like that. Let the initial securities issued be related in a fair business way to the actual values put in.

Incorporated enterprise, just as private enterprise, should be given room to grow. A dollar turned into two, ten, twenty, if turned honestly, wrongs no one. Go forth, increase and multiply, is a command without which economic progress would not be. But in all this there is no need that the corporation should initially capitalize a projected success that, if it exists at all, exists only in the future. Let the securities issued on account of success be issued only when success is established; and let them be fairly related, as the enterprise grows, to the increased value of the actual earning power developed. And I can see no reason why in any honest enterprise the question whether additional securities shall be issued should not be made the subject of judicial inquiry.

But the restriction of capitalization to figures that are fair will accomplish little if the declaring and paying of unearned dividends be left to those who are in control of the corporations; for it is not on the par value of securities, but upon the size and regularity of dividend payments, that the public makes up its judgment as to values; and it is not on mere capitalization that the

schemer in corporate securities counts, but upon his ability to make the public believe that the capitalization has an earning power. Take the well-known case of some of the Chicago traction companies. Without dividends the securities issued would have remained near zero, and that, too, irrespective of how small the issue was; but with high dividends, paid year after year until they were no longer questioned, the securities rose in the stock markets to par, to double par, and beyond that, irrespective of how large the issue was. It was not the capitalization, but the high dividends regularly paid for a long period that did the trick; not real dividends in any honest application of that word to earnings, but trick dividends—dividends that stripped the enterprise of its power to keep up with its public duty; that let the enterprise gradually but surely run down, and that borrowed millions for dividends on the top of the depletion. Indeed, the whole transaction was a moral crime—a crime that robbed honest men and women of the accumulations of a lifetime—a crime that is not fully expiated, either, by arraigning before the bar of public opinion the men who got away with the plunder. I arraign as accessory before the fact the people of the great State who, scrupulously honest in their individual dealings, issued to the projectors of this crime the ready-made corporate weapon without which the crime could not have been committed.

WORKERS SHOULD, IF POSSIBLE, BE PART OWNERS.

One thing more in the line of structural principles. The first duty of every enterprise, incorporated or private, is to secure to the capital invested its eventual safe return, while paying on it from time to time, after payment of operating expenses, such fair returns for its use as the nature of the venture suggests. That is what capital always has the right to ask. But this having been accomplished, there are some enterprises now that take labor and management into partnership in the further disposition of the fruits of success. That kind of partnership is not compulsory, and is not usual. I would not make it compulsory, but I would try to infuse into the corporation of the future an incentive and a spirit that would make it more usual—that would give to the workman, the clerk, the employe of every kind an opportunity to individually share in the growth of the enterprise to which he is attached. This is not a mere philanthropic dream. The spirit will come when the employe feels that what he gets he gets as a matter of contract, not as a matter of gift, and is as secure therein

as is the corresponding interest of the employer; and when the employer wakes up to the truth that as it is not by bread alone that men live, it is not for bread alone that men put forth their best work. And the incentive may be supplied by the application of those well-known powers of taxation that instead of being wholly directed toward transferring to the government a part of the success of the successful, could be employed to bring about a wider diffusion of the permanent fruits of success among those who by their labor had contributed to the success. This is not Socialism. It may have the philanthropic spirit of Socialism, but in its end and aim it is the antidote of Socialism—in any long look ahead the only antidote on which individualism can securely rely.

Do not misunderstand me—there is no way known, before men or under Heaven, to legislate men into the possession of anything. All we can do is to open the door—to hold out the opportunity. But that done—honestly, effectively done—I rely on the instincts of the American to do the rest.

I stood once on a battleship, marvelling at what the lightnings did. They lifted and lowered the anchor; they ran messages from the pilot house to the engine room; they lifted the ammunition from the magazine to the guns; they loaded the guns, leveled them to the mark aimed at, fired them; they lighted the ship when in friendly waters and darkened her when in the waters of the enemy; without a moment's intermission they swept the seas for a thousand miles around in search of whatever tidings the circle of a thousand miles might have; and through it all they remained as free as the lightnings that play in the summer clouds. The genius of man has not harnessed the lightnings; they work out his task only because the genius of man has given them the material agency, the open door through which to work out their own inherent instincts.

THE CORPORATION SHOULD BE AN INSTITUTION OF THE PEOPLE.

What government is to mankind politically organized I have already said the corporation, as an intermediary is to industry organized. It is the pride of free institutions that they have diffused among the people the political power of the mass. But that is not the secret of successful free government. The secret of the success of free government is, that by opening to the people the door to power they have awakened a universal instinct among

men, and have created the capacity to successfully exercise that instinct; so much so that it can be safely said that the successful government of the people, by the people, for the people, is not the product so much of the institution itself as of the opportunity that the institution opens up. And what can be done with the political instincts of mankind can be done with any instinct deeply imbedded in human nature.

It is for the reconstructed corporation, then, as an effective, trustworthy medium through which to work out one of the deepest and most insistent of human instincts, that I plead. I hold it up, it is true, as the ultimate fundamental solution of the merely economic problem of competition. But it is not an economic cause solely that I plead. It is a human cause. In the day when the conscience of this country went under the leadership of Lincoln the supreme human inquiry was, shall there be put into course of ultimate extinction the system whereby men were not permitted to eat the bread earned in the sweat of their own brows. It was a mighty moral and political inquiry. In our day that inquiry is settled. There is now no cloud upon the brow, no shackle upon the arm of any American anywhere. Before the law they all stand equal. But the same great movement in the affairs of men that has carried that great question into the western horizon has brought up over the eastern horizon this other great truth, written almost as long ago and by the same great hand, that it is not by bread alone that men live. And the question I put to you now in closing is, will you not, in declaring in favor of amendments of the Sherman Act that will put that act in accord with the economic necessity of the times, declare also in favor of such thoroughgoing reconstruction of the corporation that it—the medium thrugh which almost alone is wielded the world's industrial energies—will be put in accord with one of the deepest human instincts of all times.

THE CHAIRMAN: The next speaker will be Mr. Eugene E. Prussing, president of the Citizens' Association of Chicago, who will speak on "Corporate Reforms."

MR. EUGENE E. PRUSSING.

Mr. Chairman—The present corporation panic is greater than any disturbance of the financial world since the bursting of the South Sea bubble two hundred years ago. It is not merely a Wall Street affair; that is only where the acutest symptoms manifest themselves. Its pains and penalties pervade the whole

country, and its effects for a long time must be world-wide. The condition which led up to the present situation have been well known to observing men for a long time, but their warnings have, as usual, fallen on deaf ears.

From the day of Mr. Bryan's first defeat and the election of Mr. McKinley in 1896 successive debauches of promotion and resulting fits of indigestion of all kinds of securities have gradually weakened the people's resources and confidence. The extraordinary demands of the Spanish, Boer and Japanese wars have been the great sprees, adding their share to the depletion of strength, and finally the San Francisco disaster and the insurance, railroad, industrial, bank and other corporate scandals, unearthed and uncovered by long delayed legal investigations and prosecutions, have caused nausea, revulsion, fever and death. The continued selling of securities is the evidence of this condition.

The $29,240,000 fine was comparable in its effect to the blast of Gabriel's trumpet.

It opened all the graves, apparently, and there is considerable wailing and gnashing of teeth. How many thousand millions of paper and actual values have disappeared in the pit?

The separation of the sheep from the goats by the people now going on in corporate life, and the best ways and means to that end, are the causes which have brought us together to-day. And, as was well said by a great general after a great defeat, we must now begin all over again.

The man who first applied the corporate form to commercial enterprise and the man who invented the limited liability of stockholders therein are each entitled to a great monument as a public benefactor. Some commercial palace, some temple of industry or education, ought to be dedicated to their memory, even if their names cannot be discovered.

The corporation is the commercial application of the command to "love one another," exemplified in combined enterprise for mutual advantage, and has aided the development of mankind almost as quickly and as greatly in modern times as the discovery of fire and how to preserve it did in the prehistoric.

CORPORATIONS NOT FREE FROM ABUSES.

Of course there have been great abuses of these inventions, just as there are dangers in fire uncontrolled. Naturally, weak

and wicked men have used these splendid instruments for undue advantage and the oppression of their fellows. This is apt to be the case with privilege—for privilege it is to have the State put the breath of life into a mere paper creation of the mind and endow it with power and faculties equal to the combined capacity of a regiment of men—yes, in many cases, of an army, with practical immortality and, above all, with the right to take tolls, or the power to make great profits.

We are met because the abuse of these great charters to "work and prey," as they have been called, has become intolerable, and to endeavor to find a peaceful remedy calculated to remove the evils and to avoid those and kindred ones in the future.

The modern corporate organization has become, in the language of the law against monopolies, "an article of prime necessity." It is, therefore, a legitimate subject for strict legal control, or police regulation, and unless we accept this frankly and guide it fairly we may have in the end a revolution, whether by law or otherwise, which will give us Government ownership of *all* industrial enterprises.

Now, as one of those not content to see things drift or forced into the latter situation, but anxious to maintain corporate rights and individual liberty in proper balance, I am in favor of the greatest publicity and strictest regulation of corporate affairs compatible with practical operation. Only in this way, I think, can we save the honest usefulness of the great inventions known as "corporation" and "limited liability," as well as accomplish the protection of the innocent investing public, which is largely and helplessly tied to them, and of that larger public—the body politic.

PRIVATE CORPORATIONS AND PUBLIC SERVICE CORPORATIONS ESSENTIALLY ALIKE.

There is little difference, and that only in degree, between the extreme of municipal ownership of public utilities, and all-embracing industrial socialism. Socialists favor municipal ownership because it is in the line of universal public ownership. We have just escaped the recent tide of municipal ownership, if we *have* escaped it.

There is no difference in principle in the complaints against so-called private corporations, their owners and managers, and

the complaints against public utility corporations, their owners and managers. The substance of all is "you are abusing your high privileges to our detriment. We, the people, gave you these privileges for our benefit as well as yours." This, gentlemen, is the "handwriting on the wall." The question is. "Shall we heed it?"

In an address to the Merchants' Club of Chicago in April, 1906, while the insurance investigations were still on, President Eliot, of Harvard University, speaking on the "Ethics of Corporate Management," said: "That this Merchants' Club should ask one whose occupations have been teaching science for fifteen years, and educational administration for thirty-seven years, to address this club on the 'Ethics of Corporation Management' is an interesting manifestation of the prodigious change which has come about in the course of four or five centuries—gradually until recent times, but rapidly during the last half century—in regard to the responsibility of different classes of men for, the maintenance and diffusion of sound ethical standards."

The questions considered in that very able address lie at the foundation of our considerations here. They are indeed fundamental and, like every fundamental question of policy or method, are moral questions—ethical questions. And so, unless we call in the assistance of moral philosophy in this seemingly practical and legal situation, we shall lose the benefit of those guiding stars which should ever lead us—though we know we can never quite reach them.

Other countries have had similar experiences with corporations and have solved, in their own way, the same problems. Every student of Anglo-Saxon jurisprudence looks at once in difficulties of this kind, for precedents, knowing their force as arguments, their value as examples, their wisdom as guides.

Soon after this address the present speaker sent to the Chicago Legal News some suggestions upon the two main difficulties in the unsatisfactory conditions noted by President Eliot in modern corporate affairs, namely, the twin evils—overcapitalization and extravagant salaries—the latter being simply one of the elements in the broader subject of management.

These suggestions showed that remedies might readily be found for these matters—remedies which in England and on the Continent of Europe had proved efficient.

Before touching upon the details, I wish to give the principle

underlying them, namely: Corporation as between its managers on the one hand and its stockholders on the other is simply a trust in the good legal sense. The former are the trustees and the latter are the beneficiaries. As between the corporation and its stockholders on the one hand and the public on the other, the relation is the same, for the grant of the great privileges of incorporation and limited liability, to say nothing of the right to take tolls, by the public to individuals, is on the implied condition of the good use thereof for the public benefit as well as that of the stockholders.

Now a trust has always been a favored child and most precious object of the jurisdiction of courts of equity or conscience, and in many instances the arms of the Court have reached out to protect the innocent and have seized upon the dishonest or incompetent corporate managers and their tool, the corporation, to compel accounting, correction, liquidation or dissolution.

It is, therefore, not an innovation of much magnitude, nor is it adopting a new and radical principle or course when it is proposed that the jurisdiction of the Courts with respect to corporations be broadened so as to include the birth, capitalization, development and ordinary management of corporations, as well as their extraordinary affairs of sickness and death.

In the case of trusts involving the care of estates this plan has been evolved and expanded under the stimulus of manifest and growing necessity, so that now the widow, the orphan, the creditor and others, their beneficiaries, are all protected from the beginning to the end by the Court, and the trustees are appointed, controlled, punished, removed and compelled to account fully and regularly whenever sound policy or a complainant justly requires it. Their affairs are regulated by independent officials of judicial character upon principles of equity and the common law.

The same growing necessity confronts us respecting corporations, and as a prudent people, bred in the faith of the English and American common law—our noble heritage—we naturally look to it for guidance and help.

The suggestions I am about to make were deliberately accepted by the great advocate of the peopleization of corporations, Judge Grosscup, in his speech at Kansas City last Winter. They were unconsciously confirmed in the recent address of Mr. Robert Mather, president of the Rock Island Company, before the Chicago Commercial Association, wherein he declared that

the railroads would now cheerfully submit to a plan of Federal regulation of rates rather than longer continue in the chaotic condition resulting from their own competition, and competition among regulating States, inspired by local interests, without sufficient regard to the rights of the corporation or the citizens of other commonwealths.

The principles involved in these suggestions have been adopted in part in those laws of recent enactment for the control in capitalization and management of public utility corporations in New York, Wisconsin, Iowa and elsewhere, following the older example of Massachusetts—so that, as I say, they are suggestions along familiar lines following ancient methods "well understanded of the people."

AS TO THE CREATION OF CORPORATIONS.

Suppose it should be ordained as to the creation of corporations as follows: In case of every corporate organization proposed a petition shall be filed by the promoters, not with the Secretary of State, but in a local court of ample jurisdiction, as we now do in probate matters, setting forth the usual items of primary importance, such as the name of the proposed corporation, its capital stock, the number and amount of its shares, its length of life, the number of its directors, and its purposes, together with a statement of when, how and wherewith the capital is to be furnished, whether in money, property, labor, goodwill or what not, and praying for a rule on the State's attorney to attend and investigate the matter.

SPECIAL PRIVILEGES OR PREFERENCES FOR THE BENEFIT OF PARTICULAR STOCKHOLDERS MUST BE SPECIFIED IN THE PETITION NAMING THE BENEFICIARY.

In case the capital stock or any part therof shall be contributed otherwise than in money, or in case existing or future buildings or other property are to be acquired by the company, then these and the names of the vendors, the purchase price, payable in shares or other value, are to be specified.

In a separate specification shall be stated any sum or consideration which the corporation or any one else is required to pay or furnish for the promotion or other services in preparation of or the formation of the corporation.

Every agreement upon the foregoing subjects which is not so specified shall be void as to the corporation.

Similar details respecting the purposes of the corporation shall be given so that the uses to which it may be put or it is intended to put it may be carefully investigated by the party most interested—the State.

When the State's attorney has been notified, it shall be his duty to appear for the people, as in other cases, and a hearing shall speedily be had in which evidence shall be submitted in support of the petition, subject to examination and cross-examination and rebuttal, and a decree or judgment shall be passed as in equity cases, specifying in sufficient detail the result of the investigation, and either disallowing or allowing the incorporation and settling the details, especially those of the capitalization and its method, and the definition and intent of the corporate purposes, to the end that stock watering and stock jobbing may be minimized, if not wholly prevented, and the public may not be the victim of false pretenses or vicious schemes under claims of corporate privileges couched in general phrases, while the corporation will be protected against possible blackmailers by injunction.

In the case of additions to or reductions of the capital stock, or other changes in the constitution of the company, similar proceedings shall be had, and bond and other large issues of obligations shall be likewise adjudged and authorized in advance. Even compositions with creditors or compulsory reductions of stock to avoid bankruptcy may be instituted by any sufficiently large interest. Thus the corporation will be fostered, guarded, enlarged and controlled in leading an honest life, publicly beneficial, as the law always intended it should. Proper provision should be made for carrying out the decree and to punish disobedience or fraud, as cases of contempt of Court, by the imprisonment of the officials—not by fine.

The usual license fees are to be paid by the corporation to the State, and the charter shall consist of a certified copy of the petition and decree, duplicates of which shall be filed with the Secretary of State.

It needs no great acumen to perceive the advantages to the public, whether investors or not, and to honest promoters and corporations in thus having at the beginning a judicial certificate of good moral character and a sound constitution to offer the investing public, while the general effect upon business morals,

by removing both the temptation to water stocks and the corrupting example of large paper profits, must be wholly good. Again, the possibility of organizing trusts or piratical schemes is absolutely prevented, because not only the declared but the real purpose of the corporation is subject to scrutiny and adjudication under this plan at the time when it ought to be—before the mischief is done, before the supposed right to do wrong becomes vested. Illustrations of this will readily occur to all. The familiar cases of the reorganization of the Sugar Company and the Standard Oil Company after their trust agreements were condemned by the Courts at once suggest themselves. An application to incorporate them made and adjudicated as here suggested would have ended them.

The details of the plan I do not enlarge upon. They may be as varied and closely guarded as human ingenuity may devise, but they present no serious difficulty. It is the illustration of the principle of State superintendence of the birth, constitutional endowment and growth of its great offspring that we are now concerned with.

We come now to the second subject—

CORPORATION MANAGEMENT

Laying aside the ordinary dangers of direct theft and mistakes of judgment, we are concerned because officers and directors of corporations are disposed to take advantage of their insufficiently controlled powers over large funds and properties belonging to others, and to use them for their personal advantage in the form of large salaries and expense accounts, speculation, nepotism, dishonest contracts and otherwise, to the detriment of their stockholders and to the demoralization of the public; and, also, because they are disposed to defraud stockholders by withholding or declaring dividends without notice, or by paying them from borrowed money without earnings; because they are disposed to abuse the public by stock watering, by excesses of power, by unjust charges, illegal discrimination in services, or by rebates—in short, by the unjust levying of tolls and the making of unfair profits.

The underlying fault in our corporate constitutions, to my mind, is expressed in the single sentence, which forms the foundation of our corporate law, namely: "The corporate powers shall be exercised by a board of directors or managers."

This sentence has been held by the courts to mean *all* the powers, except a few expressly reserved by law to the stockholders, such as electing directors and acts in respect to the increase or decrease of capital stock, and similar fundamental things.

I know that in some States there are numerous attempts at the limitation of directors' powers, but I am speaking now generally and the words I have quoted are the express provision of the statute in this State, and in many others simply declaratory of the common law.

We all know that unlimited power produces abuses; we all know that a Government of limited powers is a necessary thing; that representatives long uncontrolled or insufficiently controlled, tend to vice and corruption, and that governments to be successful and long-lived, must have in them other checks and balances than the possibility of the loss of an election for the proper control of their officials. We know that periodical revision of constitutions and strict control of officers by legislation and the people are essential; that eternal vigilance is the price of liberty and that reserved powers are the safety of the people. Precisely the same is true of corporations, their officers and stockholders.

Corporate management should not be entrusted to a single body of directors or officers. Like our State and Federal governments, it should be divided into three parts, each actively exercising its functions to accomplish the desired end, long life and dividends. The stockholders, directors and officers, each of these groups, or parts, should have a substantial but separate and independent set of duties and powers, and should be subject to judicial control, although the latter should not be exercised until certain preliminary efforts of the others have been exhausted or refused.

Instead of autocratic government of corporations we should substitute constitutional government—for one man power, substitute a government of logically divided parts and proper checks and balances. Instead of the present oligarchy known as a board of directors or the Czarlike domination of a single individual, require the co-operation of the officers, directors and stockholders in the chief corporate acts and give to each department of such government separately only the powers and authority properly and necessarily required for it.

In respect to the management, the principle underlying the

division of powers should be that the stockholders should legislate for the company while the directors should supervise and determine, and the officers execute and guard its business.

In respect to the profits, the stockholders alone should control their application and the declaration of dividends.

SOME SOUND RULES OF ADMINISTRATION.

To go a little into details on each of these subjects, I take the case under my observation of a manufacturing corporation in which these principles have been applied with great success:

The by-laws of that company provide, among other things:

1. That certain public notices to the stockholders shall be regularly given in two specified newspapers in America and one in Germany, where many of the stockholders reside.

2. The board of directors shall direct and supervise the *management* of the company in all its branches. For that purpose it may at any time require any officer of the corporation to make to it a report touching the business of his office. The directors may inspect the books and papers, examine the money, valuables and merchandise of the company, and do and require anything which they may deem proper for the business of the corporation.

A special examination of the check books, cash, moneys, vouchers and valuables must take place at least once each year. The board of directors is at liberty to entrust, temporarily, one or more of its members with the supervision and decision respecting single business transactions or branches of business.

The board of directors has the power to appoint, suspend or dismiss for cause any officer, agent or employe of the company, whether appointed by the board of directors or otherwise, and may fill any vacancy in any office of the company.

The members of the board shall be entitled to the repayment of their expenses incurred in the performance of their duties, and shall each receive a salary of $1,000, in addition to the percentage of profits hereinafter specified.

Officers are not permitted to be members of the board of directors, which chooses its own chairman.

3. Respecting the minor officers, the usual provisions are made.

The president shall be the general manager of the business of the company, and as such shall have charge of its property and affairs, under the direction of the board.

He must, however, have the special authority of the board in the following instances:

1. For the acquirement, conveyance and mortgaging of real estate.

2. For the acquirement, assignment, pledge or satisfaction of mortgages.

3. For borrowing money in excess of ordinary bank credits.

4. For determining the principles regarding the plans of manufacturing and management, for the change of these plans, for all essential building plans and building contracts.

5. For the acquirement of machinery, tools and utensils, if the amount in each case is more than $5,000; likewise for fixing the principles to be observed in sales of merchandise, and the regulation of the conditions of sale.

6. For contracts containing obligations of the company extending over more than one year.

7. For appointing agents or employes, if the annual compensation amounts to more than $1,500, or the notice of discharge agreed upon is more than three months.

8. To fix the banks of deposit for the funds of the company.

It is a principle of the law in pursuance of which these by-laws were framed that officers and directors of corporations are jointly and severally liable, civilly to the corporation and others who may be injured, as well as criminally in case of a disregard or violation of its provisions; and all such provisions, of which these by-laws are merely a copy, are mandatory.

This law has developed a high and keen sense of moral and legal responsibility, and its prompt and vigorous enforcement in a few cases has resulted most satisfactorily to the public.

We know from our own experience under the National and State Banking Laws the value of such provisions and their enforcement. We need but to expand the policy of these laws by applying their principle with some modifications to all corporations to practically make an end of corporate fraud and mismanagement, certainly to prevent the speedy repetition of prevailing conditions.

BY-LAWS.

It is customary with us to limit the power of stockholders to the election of directors and similar fundamental acts. They should also have and exercise the power of making by-laws,

as they have in some of our States. By-laws should contain specific provisions, not general phrases, and the violation or neglect of these provisions by officers or directors should render subject to liability—in damages and punishment criminally, all who participate in or tolerate the wrongful acts. The underlying provisions of proper compensation to officers and directors is the basis for these liabilities.

Another element to be considered is that of dual management. In Germany and England, the chief executive of the corporation usually consists of two persons of equal power, whose joint act is required to bind the corporation in important matters, while they may act singly in minor matters specificed in the by-laws. This check is the result of long experience and it makes for prudence and honesty. It is true that such dual representatives are usually not of equal ability, and that one of them more or less dominates the other. Nevertheless their inherent legal powers are equal. Each has the right to call upon and report to the stockholders or directors, or to appeal to the courts, and the result is most wholesome conservatism.

Independent auditors are to be elected annually by the stockholders, and at the end of the fiscal year reports are to be submitted by officers, directors and auditors to the annual meeting of the stockholders with such recommendations as to the division of earnings, if any, as they may deem best.

SALARIES AND DIVIDENDS.

The by-laws from which I have quoted provide that officers shall receive moderate, good living salaries; that each director shall receive a salary of $1,000 a year; that then certain fixed percentages shall be deducted and written off for depreciation or renewals of plant, machinery, etc., whereupon the stockholders shall receive a minimum or first dividend of four per cent. per annum upon their capital. Out of the remainder the directors and officers shall each receive a moderate percentage, usually ten per cent. to each class. This they divide among themselves, the directors, usually, in equal parts, but the officers in varying proportion according to the importance of their services.

The surplus profits then remaining are subject to the vote of the stockholders for additional dividends or other purposes, such as increase of working capital, new construction or busi-

ness changes. Provision is made for ad interim dividends until the following annual meeting.

These are some of the results of English, French and especially German experience.

The latter country, after the great "Promoters' Swindle" panic in the middle seventies, fixed upon fraudulent promoters, officers and directors of corporations and their aiders and abettors posing as vendors, dummy directors, underwriters and bankers, severe civil and criminal liabilities, the latter especially of the most distasteful kind—namely imprisonment. These were so uniformly and vigorously enforced by the courts that for nearly thirty years Germany was free from corporation scandles of any magnitude and industrial securities became the favorite investments of the savings of the people. In 1901 a short check was caused to Germany's industrial development by the temporary panic precipitated by the failure of the malt drying companies, but the prompt flight, suicide or imprisonment of all concerned in that swindle restored public confidence and Germany soon resumed its former course. It is not free from corporate mismanagement, but the disease is rare, and its manifestations few.

HOW TO MAKE THE CHANGES DESIRED IN THE LAW OF CORPORATIONS.

In every State of the Union changes are being made in corporation laws along the lines suggested here. Conventions of Attorneys-General and other State officers are being held to consider ways of curbing and curing corporate abuses. We are here to-day for a similar purpose.

The American Bar Association has for many years been at work to bring about uniformity of the laws of the States on various subjects. It has prepared codes on bills and notes, divorce and similar matters and submitted them to the various legislatures through local committees or State Bar Associations and in a number of instances its codes have been enacted into laws. The plan is sensible, logical and slow enough to meet with the approval of conservative minds. An attempt at Federal control of all or most corporations would be so great a step in the direction of centralization of all government and so serious an inroad upon local and State Rights as well as so cumbersome and dangerous in its delays as to arouse universal opposition, while individual State legislation, properly guided,

standardized and harmonized, can be obtained by a campaign of education and friendly co-operation. The same laws will not fit all the States. There are differences so strong and peculiar that the laws on a subject like this must vary in different States. But the basic difficulty is universal, as is also the remedy. The time is ripe throughout this great valley; the struggle is on. Senator La Follette, Governor Deneen, Governor Johnson and Governor Folk are standard-bearers in the cause. In the East, Governor Hughes has packed more good work into eight months' time than any one thought possible, and has crushed all opposition. Last and foremost of all is Theodore Roosevelt, who has another year and a half in which not to compete, but to shape and build up the structure for which he has cleared away the rubbish and laid solid foundations on the rocks of truth and right, and reared the first story in the policy of a square deal and no favorites.

Nearly fifty years ago, on an occasion not much more serious than this, Mr. Lincoln said:

"If we could first know where we are and whither we are tending we could better judge what to do and how to do it. We are now far into the fifth year since a policy was initiated with the avowed object and confident promise of putting an end to slavery agitation. Under the operation of that policy, that agitation has not only not ceased, but has constantly augmented. In my opinion, it will *not* cease until a crisis shall have been reached and passed. 'A house divided against itself cannot stand.' I believe this Government cannot endure half slave and half free. I do not expect this Union to be dissolved. I do not expect the house to fall, but I do expect it to cease to be divided."

The crisis which confronts us to-day is like that which Mr. Lincoln faced. Brought about, not by the fault of individuals alone, but stimulated and fostered by our unexampled growth and prosperity as well as by our unexampled tolerance of wrong and wrongdoers, we—the people—are to-day seeing the growth of what we sowed.

What shall the harvest be—all tares and no wheat; all panic and loss and no gain or reform? That is the question—and the time for answer and action is now.

It is our *common* weal or woe. Our country is on trial. Our honor is in question. Harangue, invective, iconoclasm will not cleanse our escutcheon. The time has come for us to sink

individual interests and work as we may never again have the chance to work, for the right which finally *must* and *will* prevail.

Let us take up this great subject of corporate reform methodically, patiently, industriously through a representative committee. Let us try to formulate and enact into universal laws a few principles and methods founded on mutual rights warranted by experience and approved by justice, which will meet the present defects, until men shall say of our work as said the Apostle: "We know that the law is good, if a man use it lawfully."

Gentlemen, as of old, "these are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of his country, but he that stands it *now* deserves the love and thanks of man and woman."

THE CHAIRMAN: The Conference will now be addressed on "Labor and the Trusts" by Mr. Samuel Gompers, President of the American Federation of Labor, who needs no introduction to this audience.

MR. SAMUEL GOMPERS.

Mr. Chairman—The organization which I have the honor to represent is sometimes called by those who are not in sympathy with its aims a trust.

It is claimed that by belonging to a union a workingman surrenders his inalienable rights to individual action. No one would more gladly plead for the sovereignty and the individual action of every workman than would I, were it possible, but with the division of labor the worker loses his individuality the moment he enters a modern industrial plant, and becomes indeed but a cog in the whole wheel. I ask how any individual workman could hope to assert a right in a modern industrial plant or to seek redress for a wrong. And I may say to my friends that in my judgment there is a debt of obligation which all our people owe to the much abused organizations of labor and the combinations of capital. We have seen within this past two or three months what has been termed a shrinkage of values unparalleled in the history of the world. I am holding in my hand a paper of last Sunday, and I find there the assertion demonstrated by figures, past and present, that there has been a shrinkage of more than three billion dollars in value. Of course, as a rule, the statement is made that they are real

values. As a matter of fact they are nothing more or less than inflated values—watered stocks. I ask you, my friends, of the three billion dollars supposed to have been shrunk in the values of our country, where has been the real shrinkage of anything tangible. The princes of finance, with their tricks and machinations—many of them have been caught in their own maelstrom, which they themselves have created. And, as is always the case at such times, the large fish will swallow up the smaller. If the employers of labor in their combinations will but take the intelligent, the comprehensive and the sound economic stand which labor has declared for itself, we shall avoid a crisis in our own time. Never in the history of the world has there been such a financial shrinkage of values unless it has been accompanied by an industrial crisis that has had misery, poverty and degradation in its wake. It may be as well understood now as at any time, and I doubt if there is any other place in which it is more appropriate to say it than it is to say it now, in view of the conditions as we see them at this moment, that the American workingmen are as intelligent to-day, and perhaps will be more intelligent to-morrow than they were yesterday or the day before. They are just as willing and capable of working, and will be to-morrow as they are to-day and were yesterday; that the soil of our country is just as fertile, and that there is no absolute economic necessity for the attempt to force the burden of this artificial financial shrinkage upon the shoulders of the working people of our country. And it may as well be understood now that the working men have said it—and if I know anything of them at all I am sure that they are determined to live up to it—that the standard, the American standard, of life shall not be taken away from them.

THE IMPORTANCE OF THE TRUST.

There is perhaps no issue before the people to-day in which greater general interest is felt than that of trusts, their development, their policy, their effect upon civic and individual life. Few issues are more completely befogged to the average mind, and, this is not necessarily the fault of the average mind. Many forces are interested in befogging the issue. Then, too, the growth of trusts has been so marvelously rapid and their influence is felt in so many directions that it is only natural that the phenemenon of trust development should be viewed with amaze-

ment and a strong sense of protest by those whose chief knowledge of its existence is gained in the pains and penalties of an economic readjustment greater than civilization has ever known before.

To say that there are "good trusts and bad trusts" is to state a certain bromidic truism. But the statement needs a broad foundation and some explanation in order to take its place in the educational vocabulary of the new era.

Instead of discussing the various kinds of trusts, good and bad, let us understand clearly that the trust is the logical development of the present economic era.

With the invention of good artificial light, of machinery and power, and their application to industry, came the modern industrial plants. With their advent and development the day of individual workman and individual employer passed, never to return.

So new is the trust idea that the term is scarcely capable of accurate definition. Every man has a different definition of a trust, according to his point of view or his own interests.

MANY KINDS OF TRUSTS.

The perception of what a trust really is becomes the more confused, because the great aggregations of capital, loosely called by that name, differ much in their characteristics. Some strive to monopolize certain valuable and necessary sources of natural wealth, in order to completely control production, and, in addition, undertake to monopolize every avenue of distribution so completely that the consumer may be delivered to them, bound hand and foot, helpless against their most exorbitant demands, and all this for the enrichment of the few individuals who have contrived, in the shifting elements of a new era, to gain such control.

The revolt of the consumers, the masses, may well be bitter, and it is likely to become even violent if aggressions are unchecked. In fact, rapacity may sooner or later of itself react to the destruction of the very agents who promoted it, but not, perhaps, before great harm is done.

Yet this abuse of methods and functions does not at all invalidate the fact that this is absolutely the era of association as contrasted with individual effort, nor does the foregoing characterization apply to all the trusts.

Serious problems, indeed, confront us, but they are not hopeless. For this consideration this conference is partly called. *In intelligent and associated use of the powers of the many* will be found the solution. Disorganized and violent denunciation is more harmful than helpful. Constructive and associated effort must check and correct the abuses which have grown so rapidly in this era of concentrated methods of production and distribution.

The wage-workers of the country are setting an example in this respect. Their efforts will be successful in proportion to the unity of their effort and the thoroughness with which the people at large realize that the masses are one in interest and have unlimited power to check aggression, if they but assert their rights and their powers and use them constructively, intelligently and with unswerving persistence.

We cannot, if we would, turn back to the primitive conditions of industry which marked the early part of the last century. It is therefore idle chatter to talk of annihilating trusts.

In the association of many persons, in order to secure the large sums of money necessary to finance modern industry, lay the germ of the trust. We not only cannot prevent the association of these vast organizations of capital in what we call trusts, but in some sense we should not wish to do so.

TRUSTS A LOGICAL DEVELOPMENT.

The trust is, economically speaking, the *logical and inevitable accompaniment and development* of our modern commercial and industrial system.

It lessens the waste in production which is bound to occur under individual initiative. In fact, the trust may be said to have successfully solved the problem of the greatest economy in production. It has, however, other important functions which as a rule it does not yet properly perform, and the failure in these respects very justly arouses a widespread and intense feeling of protest among the masses of our people.

Asserting that the trust is a logical and an inevitable feature of our modern system of industry is merely stating that our modern plan of production, which for brevity and convenience we call the trust system, is the most perfect yet attained. We do not, however, mean to imply by this that the *individuals* who form trusts, who manipulate them, who profit by them, are

logically and inevitably right in many of the methods they employ or the lengths to which they go. Neither do we concede the argument that these individuals who form and manage trusts are so superior a class of beings that they are entitled to the enormous largesse which many of them claim from the profits of economical production. Quite the contrary is the fact. Much of the protest against trust methods is justly and legitimately based on the fact that trust promoters, managers and owners seize and keep for themselves a far greater share of the profits of modern production and distribution than that to which they are entitled.

Many of these gentlemen are merely fortunate accidents in the crystallization of a new era. They, too, often forget that they are bound to give accounting, to do justice to that great force which makes industry possible—the people in their two capacities, as producers and consumers.

Speaking for the American Federation of Labor, including as it does more than two millions of wage-workers, it is scarcely presumption when I say that I have the right and the honor at least in part to represent the masses in the two capacities of *producers and consumers.*

It must be borne in mind that the American Federation of Labor speaks for labor—that is, for the masses as a whole, whether organized or unorganized. The trade union is the only successful attempt to give voice to the "voiceless masses."

In every trade, in every community where trade unions exist, they are recognized as the spokesmen of the workers and in fact of all except the employing and the idle rich classes. None concede this more promptly than the unorganized themselves, who from ignorance or adverse environment may not yet be able to join the ranks of the organized workers. But they look to that protector of their rights as wage-workers and are glad to be represented by their more advanced fellow-workers.

The public itself does not seriously question that the trade unions speak for all labor, and hence for the masses. This is seen even more clearly in places of moderate size than in our largest cities where the constant and great influx of ignorant foreign immigration continually tends to disturb the normal industrial balance.

THE LABOR UNION IS NOT A TRUST.

It must be remembered that the trade union, *while not a*

trust, is just as inevitable and logical a development as the trust itself. The trade union finds its greatest development under the same economic conditions which produce the trust; that is, the introduction of machinery, the subdivision of industry, the adoption of vast and complicated systems of production which obliterate the individuality of the worker and thus force him into an association, but not a trust, with his fellows in order that collectively they may protect their rights as wage workers and as citizens, and also guard the interests of all workers.

Let me reiterate most emphatically here and now that *the trade union is not, and from its very nature cannot be, a trust.* It is sometimes derisively called a trust by those who expos their own ignorance of economic first principles in making such a statement.

The trade union is the *voluntary association of the many for the benefit of all* the community. The trust is the voluntary association of the few for their own benefit. The trade union puts no limit upon its membership, except that of skill and character; it welcomes every wage-worker. In fact, its strength and influence rest in its universal adoption by the wage-workers as the permanent and potent method of voicing their needs. Were every wage-worker in the country a member of organized labor, still there would be no labor trust.

Trusts consist of organizations for the control of the products of labor. Laborers have not a product for sale. They possess their labor power; that is, their power to produce. Certainly there cannot be a trust in anything which has not been produced. Hence, for this, if for no other potent reason, it is economically unsound as well as it is untrue to designate organizations of labor as trusts.

The trade union, through association, makes production more effective, but unlike the trust it does not seek a monopoly of the benefits for the few. The trade union ever seeks to distribute the benefits of modern methods of production among the many. It sets an example that trust promoters may well follow.

As producers, as wage-workers, the organized men of the country are demonstrating their ability to cope with the situation. They are, as a result of their own efforts, securing fairer wages, more reasonable hours and conditions of employment.

TRUSTS AND UNIONS NOT NECESSARILY HOSTILE.

It is only fair to say that the greatest and most enlightened combinations of capital in industry have not seriously questioned the right and, indeed, the advisability of organization among employes. There is economy of time and power and means of placing responsibility in "collective bargaining" with employes which bring the best results for the benefit of all.

Organized labor has less difficulty in dealing with large firms and corporations to-day than with many individual employers or small firms.

We have recently seen examples of the bitter antagonism to labor by certain small employers, whose ideas of industry seem to be medieval rather than modern. To some extent they have grasped the idea of organization or association among themselves, but they fail to concede the right and the necessity of organization among wage-workers. In an opera bouffe fashion they emulate the robber barons of the middle ages, whose sole idea of profit was to plunder the individual whom they could find at a disadvantage.

The workers of the country have pretty thoroughly mastered the broad, economic truth that organization is the watchword of modern industry. Labor concedes the right of organization among employers. It is perfectly willing to deal with such associations, provided its own rights are not denied or invaded, to put it more strongly, provided its rights are recognized and conceded.

Wage-workers, speaking for themselves and for the masses, are certain that they in their capacity as producers will be able to protect their rights and interests. The progress they have made thus far justifies this confidence. As to the future the workers are alert to the dangers which beset them. Owing to the logical basis on which the trade union is grounded it can and will adapt its course to every changing condition which affects its existence and progress. Intelligent organized labor constantly urges its rightful demands on modern society.

The work of organization will go on with increasing vigor each year, until every worker, skilled and unskilled, is a member of his organization and educated to an understanding of his rights, both civic and economic, and how to lawfully protect them.

When we take up the case of the worker as a consumer, still speaking for the masses, the situation is more complicated. The worker has not yet developed the same capacity to protect himself as a consumer that he has as a producer, or, rather, to put it more accurately, trust abuses are more pronounced in the realm of distribution.

Despite the lessened cost of production in many trust-controlled industries, it is a self-evident and painful fact that prices in the past decade have steadily increased to the consumer. The toll so unjustly exacted is the more exasperating because the trusts carry the same goods to foreign marts and sell them at a far lower figure than in this country, thus brazenly challenging the consumers of this country to unrest.

This control of vast distributing powers by certain trusts has been acquired through means which are only beginning to be understood by the people at large, the consumers.

In the past two years so much publicity has been given to trust association with railroads in order to fleece the people that it is hardly necessary to refer to that phase here, except to say that honest investigation and truthful exposure of wrong conditions are as invigorating and healthful to the growth of a correct public opinion as fresh air and sunlight let in upon the gloomy den of the sweater of human labor.

What I have just said as to railroad manipulation applies equally well to exposures of illegal transactions in stock and to political grafting high and low.

Such information is the first step toward the building up of a healthy, powerful and honest public opinion, which will prove a Nemesis to those trust manipulators who have abused their true civic and economic functions.

The organized wage-workers are here, as ever, in the vanguard of public opinion, co-operating with their fellow citizens in an earnest effort to find the equitable remedy for the abuses uncovered.

The courts of our country, too, must come in for their share of attention. The function of the judiciary is a most vital one to the perpetuation of our institutions and to the progress of our nation. It is to the courts that we must look in many instances for protection against assaults upon our rights as citizens.

Yet it must cause us all regret to be compelled to say that the

courts in too many instances allow themselves to be bound by precedents which either have no application to present industrial conditions or else such precedents are twisted to apply most injuriously to cases to which they never were intended to apply.

Let me illustrate on one point—the abuse of injunctions. In this respect we find the courts creating new dicta which invariably oppress the wage-worker and encourage the abuse of corporate power.

The injunction has been changed from its original beneficent intent (to protect property rights) and made an instrument of oppression to deprive citizens (when they are wage-earners) of their personal rights and liberties. By its abuse men are restrained from doing perfectly lawful things and then found in contempt and sentenced to imprisonment without trial by jury. It is an alarming state of affairs when a judge may first lay down his ex-parte conception (through injunction) of what a citizen may or may not do and then hale the alleged offender before him for judgment and sentence without trial by jury or opportunity for defense. The injunction process as now employed aims to deny liberty of the press and liberty of speech. In a case now pending Mr. Van Cleave, of St. Louis, endeavors to enjoin ahe *American Federationist,* the official magazine of the American Federation of Labor, from stating the fact that his employes have found him unfair.

CORPORATE INFLUENCE AND JUDICIAL ACTION.

This may be considered far-fetched in one sense and having nothing to do with trusts, but the deterioration or invasion of the courts bears a marked coincidence to the comparative growth of corporate influence in recent years. I do not charge or intimate that judges are bribed, or anything of that sort, but there is no doubt in the mind of any careful observer that vast corporations, wielding many sorts of influence, do find themselves exempt from interference at the hands of the courts, even when they break the laws, and that, conversely, the wage-workers find their rights and liberties being curtailed by these same courts who are so complaisant and so dilatory about enforcing sentence, even when a trust has been found guilty of violation of law.

Permit me another illustration—over and over again have wage-workers secured from legislatures laws absolutely needed

for the protection of life and health under present industrial conditions, only to have such measures declared unconstitutional by the courts.

We have found Congress and Legislatures only too dilatory in the passage of laws necessary to protect the rights of the people and only too ready to let trust and corporate abuses go unchecked. I do not say these things in vindictiveness or malice. Had I the time at my disposal I could amply prove by specific example far more than I assert here. I speak of this dangerous tendency of the courts because it is most important that the people should awake to the danger of such a state of affairs.

The masscs—the consumers—are somewhat to blame in that they have so far mostly contented themselves with restless protest instead of constructive effort.

For the consumer to shout "down with the trusts" because he finds his pocketbook affected is no more reasonable than the cry of "smash the machines" which was once heard from wage-workers whose means of livelihood were threatened during the period of adjustment in certain trades while machinery was replacing hand labor.

It is easy to comment on the short-sightedness of the poor, misguided worker who had no organization and no philosophy to tide him over the period of adjustment and who had not yet learned to fit himself to the new conditions; but it does not seem so easy for many people to see that trust smashing is quite as impossible a remedy for the evils which now confront them.

CAN TRUST REFORM BE ATTAINED?

It must be trust reform in order that our vaunted economy in production and distribution shall inure to all the people to whatever degree they are entitled. That reform, to be effective, must come from another source than that now generally accepted. There must be created a public opinion which will see to it that the will of the *people* and not the mandate of corporate influences shall be paramount. What we want is a more democratic spirit in th conduct of affairs, industrial, commercial, executive, legislative and judicial.

Our courts must, indeed, adapt themselves to changing conditions, but they must do this with the welfare of the people as their guiding star.

If our Constitution must be construed liberally in order to meet new conditions, let it be construed to give the masses the greater liberty and freedom and happiness to which they are entitled under the most wonderful industrial development the world has ever known.

We need not be afraid to trust the people. On the contrary, we must trust them more and more. Let the aggregations of wealth which seek to control our industries remember that in the last analysis they must depend upon the labor and the intelligence and the willingness of the masses. Without workers, who are law-abiding and intelligent citizens, to produce their goods, and, in turn, consume them, the trusts might as well be in the desert of Sahara.

TRUSTS SHOULD ACT AS TRUSTEES.

Let the trusts remember that they will be required to give an account of their stewardship to the people. An assumption of divine right and trusteeship is not enough; the accounting must square with the assumption.

The greater the scope of trust enterprise the heavier its weight of responsibility to those who produce and consume its products.

This responsibility to the masses is a very real and vital thing. Upon a proper appreciation of it rests our hope of national progress.

These words are not uttered in a pessimistic spirit. On the contrary, I have full faith in our ability as a people to deal with all problems, and I believe that the trusts which now abuse their powers can be brought to see that it is better policy to deal justly rather than unjustly with those whom they serve.

The toilers of our country are the most intelligent workers and greatest producers of any of the workers in any country. They are law-abiding, faithful and patriotic citizens. Their lives, hopes and aspirations for the future are entwined in the progress and advancement of our republic, for whose unity they have fought, for whose perpetuation they strive. They have organized, united and federated to affirm and maintain the principles upon which the institutions of our republic are founded, to make them the watchword in the every-day course of life of all our people.

Labor aims to co-operate with all influential and powerful forces for the attainment of the greatest good to all our people.

Asking liberty for ourselves, we protest against its denial to others. Any movement that will contribute to the common weal ought not and cannot be regarded as unlawful or improper.

Labor and industry cannot be halted or turned back to conform to old conceptions and old conditions. It deals with the present and for the future. There must be the largest liberty of action, the freest possible opportunities for the highest development and greatest expansion of labor, industry and commerce to make for the common good, for the common progress and for civilization.

THE CHAIRMAN: The Secretary will read a resolution offered by Mr. Prussing.

Secretary Reynolds read the following resolution:

Resolved, That this National Civic Federation Conference on Corporations institute a permanent committee on the law of corporations and their management, consisting of one member from each State and Territory, to be selected by the delegates from the respective constituencies; that said committee shall endeavor to formulate a code on said subjects for enactment by each State and Territory, and shall report the same to the next conference of this body for consideration.

THE CHAIRMAN: The resolution will be referred to the Committee on Resolutions. Now, pursuant to announcement, the meeting is open for five-minute talks by delegates. The Secretary will have some announcements which he will make.

SECRETARY REYNOLDS: I am requested to announce that as Mr. John M. Stahl, President of the National Farmers' Congress, is not present, Mr. Aaron Jones, representing the National Grange, will be substituted for him among the delegates-at-large.

The Committee on Resolutions will meet immediately after the close of this session in Room 200 of the Stratford Hotel.

On motion, the conference then adjourned until 8:15 P. M.

Sixth Session, October 23, 8 P. M.

The session was called to order by Mr. Samuel Gompers at 8.15 P. M.

The following telegram from the President of the Association of State Railway Commissioners was read by Secretary Reynolds:

Louisville, Ky., October 23, 1907.

Chairman National Civic Federation Conference, Studebaker Hall, Chicago:

I regret exceedingly that other engagements which I find impossible to postpone will prevent my presence at your conference. The subject for consideration is of such vast importance that there must be a solution of the great trust and combination problem. I believe that this conference will be productive of great good to all interests.

C. C. McCHORD.

SECRETARY REYNOLDS: Mr. Chairman and gentlemen, I am requested by the Committee on Resolutions to announce that the last opportunity for handing in resolutions will be to-morrow noon, so that resolutions must be either handed in at the close of this session or during the forenoon session. After the close of the session to-morrow morning it will not be possible to receive any further resolutions.

THE CHAIRMAN: Ladies and gentlemen of the conference, I have the pleasure of introducing to you, if an introduction is necessary of a gentleman so well known, Honorable Charles G. Dawes, President of the Central Trust Company, who will address himself to the subject, "The Sherman Anti-Trust Law."

HON. CHARLES G. DAWES.

Mr. Chairman—When a nation becomes prosperous it becomes critical. We have been very prosperous in this nation, and it

seems we are about ending a period of greatest prosperity. We may have a prosperous future before us, but the climax of prosperity has perhaps been reached, and I hope a climax of criticism in this country. Personally, I have very little use for the critic. We are living and have lived for the past two or three years in an atmosphere of criticism, much of is very useful, much of it, though destructive, very useful.

But the kind of criticism we want and of which we have not had enough as yet is the criticism that is designed to tear down for the purpose of building up afterwards, and the kind of a critic who is valuable to his community and to his State is the man who criticises not simply for the purpose of destroying an institution or of destroying a man, except in so far as that destruction is necessary to the accomplishment of a reform. Then he, too, must bear the lash of criticism, for it is the doers and not the drones who attract people's attention and who must take the lashings of these gentlemen who like to tell us so well how things should be done in this country.

DUBIOUS PRODUCT OF THE CRITICAL SPIRIT.

This is an age of criticism. We had another such period about seventeen years ago, and at the end of that period of the greatest prosperity which the country had then known for many years, in a period of protest against undoubted corporate abuses such as that through which we are passing, at a time when there was wide-spread protest against certain corporation practices, as there is at present, at a time when hostile legislation was being enacted in the different State Legislatures, as there is at present, there was passed this hostile, illy-conceived, superficial legislation which is called the Sherman Anti-Trust Law. Passed without due consideration, passed in a period of public excitement; radical legislation, it has until recently remained a dead letter upon the statute books of the United States, and not until recently has any attempt been made to use it as a corrective agent of reform in the United States.

The Sherman Anti-Trust Law provides, without further definition, that all agreements in restraint of trade are criminal. It does not define the crime. It includes in its provisions all kinds of trade agreements in restraint of trade, whether publicly beneficial or publicly detrimental.

TRADE AGREEMENTS MAY BE BENEFICIAL.

Now this is the day of the trade agreement. We have agreements in restraint of trade which are unquestionably of public benefit. An agreement among manufacturers, for instance, to compete upon pure goods only as distinguished from adulterated goods, is unquestionably to the public benefit, and yet under the provisions of the Sherman Anti-Trust Law it is as criminal as any agreement for the purpose of charging extortionate prices. An agreement among manufacturers to prevent the undue accumulation of fruits or meats or other perishable commodities at places where the demand cannot possibly equal the supply and where the accumulation of such commodities would result in a loss of wealth, which is injurious both to the producer and to the community, such an agreement in restraint of trade is to the public benefit. An agreement not to sell below cost even may be a public benefit as preserving a large area of reasonable competition, for certainly we have heard a great deal lately about these great corporations which seek to secure a monopolistic control of a commodity in a certain district for the sake of raising prices later after crushing out local competition. We have heard the greatest complaint about that form of competition. So that I say an agreement in restraint of trade for the purpose of preventing selling below cost may be a public benefit. Of course it may not be a public benefit. It may be for the purpose of extorting an unreasonable price, and if such an agreement is for the purpose of extorting an unreasonable price it should be put under the ban of the law, as it is under the ban of the Sherman Anti-Trust Law at present.

ALL TRADE AGREEMENTS ILLEGAL.

But the point I wish to make is that there are good agreements in restraint of trade, agreements in restraint of trade publicly beneficial, as well as those which are publicly detrimental, and that the Sherman Anti-Trust Law, including as it does good agreements with bad agreements, is a law which is operating to-day against the proper conduct of business and of commerce in the United States.

In the first place, it is operating against the proper conduct of business because the crime is not defined. The business community to-day is in doubt as to what is criminal under the Sherman Anti-Trust Law and the crime has not yet been defined, but

it is defined only as each case arises under the Sherman Anti-Trust Law through court decisions. The result is that the business community is in doubt as to what constitutes a crime under the Sherman Anti-Trust Law.

Now, what is the effect of that upon the business community? It militates against the scrupulous man in business and in favor of the unscrupulous man in business, for the reason that the scrupulous man desires to take no risk with the law and refrains from action, and the unscrupulous man violates the law with greater impunity; for experience shows that in this country and in any country any law which includes actions inherently innocent with those inherently guilty under its ban is inevitably difficult of enforcement. So the unscrupulous man violates the law with greater impunity and the scrupulous man refrains from action. And as a consequence the Sherman Anti-Trust Law today is encouraging the crushing out of competition, is encouraging the formation of larger corporations all the time, because they can do legally by consolidation what they cannot do legally under the Sherman Anti-Trust Law as separate corporations through a trade agreement.

APPARENT INEQUALITY IN ENFORCING SHERMAN LAW.

Another objection to the Sherman Anti-Trust Law, and it is a very serious objection, is that under a law so indefinite in its description of a crime, of necessity such latitude and discretion is given to the executive officers of the Department of Justice in their right to proceed against corporations and against individuals that inevitably the appearance at least of favoritism is had in the institution and in the bringing of those cases. Public sentiment will not sustain the criminal prosecution of those men whose business seems to be conducted for the public benefit and whose prosecution seems to be against the public benefit, there being no inherent guilt in their methods. As a result of this latitude which is given of necessity, as I say, to the executive officers of the Government in their right to proceed against corporations and against individuals there has been—and I do not wish to say this to cast reflection upon the rightfulness of intention of the Department of Justice—but there has been the appearance of favoritism in the prosecutions instituted in that Deparment. In the case against the Northern Securities Company, suit was brought against the corporation alone. In the

case against the packers the suit was brought not only against the corporation but against the individuals, and the Government found itself in that latter case in the position of announcing through one department that the business was not a monopoly and was conducted at a reasonable profit, and through another department at the same time seeking to put the owners of that business into jail as public malefactors. Other instances could be cited.

Another thing, the fact that attacks upon men of prestige and men of supposedly high character and men of position are made possible under this law, and that attacks upon men who do things, attract attention in this country, has resulted so far apparently in an inability on the part of the Department of Justice to refrain from trying their case in the newspapers prior to the institution of the case.

LESSONS OF NORTHERN SECURITIES CASE.

Now, let us take up this Northern Securities case and let me explain just what that case is, in order that we may see the futility of a penal law such as the Sherman Anti-Trust Law when an attempt is made to use it as a corrective of assumed business ills. Now follow this: The Great Northern Railroad and the Northern Pacific Railroad jointly bought the stock of the Chicago, Burlington & Quincy Railroad Company. They then formed the Chicago, Burlington & Quincy Railway Company, with one hundred million dollars of capital stock, and this hundred million dollars of capital stock of the Chicago, Burlington & Quincy Railway Company was divided equally between the Great Northern Railroad and the Northern Pacific Railroad. Then the Chicago, Burlington & Quincy Railway Company issued $215,000,000 joint four per cent bonds, guaranteed by the other two roads, behind which bond issue was placed as collateral security the stock of the Chicago, Burlington & Quincy Railroad Company. The voting power of the stock, therefore, of the Chicago, Burlington & Quincy Railroad Company, the road which made the rates, the road which it was desired to wipe out as a competitor of the other two roads, passed to the Great Northern Railroad Company, and to the Northern Pacific Railroad Company, since they owned the stock, half and half, of the Chicago, Burlington & Quincy Railway Company. And then the Northern Securities Company was formed and

these stock certificates of the Great Northern and the Northern Pacific Railroads were put into the hat called the Northern Securities Company and the Northern Securities stock issued in their place.

Now, the Department of Justice in bringing that case made no attempt to have adjudicated the status of the $215,000,000 of joint 4's of the Chicago, Burlington & Quincy Railway Company bonds which had been guaranteed by the Great Northern and the Northern Pacific Railroads. Certainly, if any step in that transaction was against public policy, the step by which the independent railroad—the Chicago, Burlington & Quincy Railroad—was wiped out of competitive existence—certainly if any step should have been attacked in the Northern Securities case that step, which was the financial step-ladder over which the whole transaction was lifted, should have been attacked, but it was not attacked, and the court in the Northern Securities case, since the Department of Justice had not attacked that bond issue and the segregation behind it of the Chicago, Burlington & Quincy Railroad stock, simply held that the Northern Pacific stock and the Great Northern stock which was held by the Northern Securities Company should be traded for the stock of the Northern Securities Company, so that every man who had a certificate of stock in the Northern Securities Company received two certificates of stock in lieu of it, one in the Great Northern Company and the other in the Northern Pacific Company. That involved no change of ownership. The voting power which controlled this great Northwestern system remained in the same men. The Northern Securities Company had done its work. Conditions had been changed permanently and no attempt was made in this legal effort to bring about the former conditions. Manifestly the Anti-Trust Law proved a failure so far as any improvement or practical change in the condition of the Northwestern railway situation is concerned. The proper remedy should have been sought in an effort to restore the old conditions of competition, not in changing in the hands of the same owners a piece of white paper for a piece of red paper and a piece of blue paper, the certificates of stock in the Great Northern and the Northern Pacific Railroads for one of the Northern Securities Company. And why did they not do it? Because they reasoned that to attack the security of the innocent holders of those bonds would result in

more harm than it would good, and they were probably right. But what hope was there at any time of securing any practical change in the railway situation in the Northwest through the Northern Securities case when they left undisturbed the segregation of that stock behind those bonds which wiped the Chicago, Burlington & Quincy Railroad out of existence as a competitor of the other two roads. And yet how many reputations have been built up on the Northern Securities decision. The proper law would provide that in such a case as the Northern Securities case it should be first determined whether or not that consolidation was for the public interest or against the public interest. If it should be held by some tribunal established by our Government that this agreement in restraint of trade was beneficial to the Northwest then that agreement should be sanctioned and upheld; and if it was found to be publicly detrimental then that agreement should be set aside and the law should provide the method for the restoration of former conditions. But it must have been known at the time that the Northern Securities case was brought that it could result in nothing practical, when no attempt was made to bring into court the very cornerstone of that whole transaction. Give us honesty of purpose; give us those men in charge of such prosecutions as these who will take action when they believe it will result in practical good for this people and to this nation. Every attempt to seek the enforcement of such a law as this which does not succeed tends to undermine respect for all law. Every unenforced and unenforcible law on the statute books of the United States tends to undermine respect for all law. The Sherman Anti-Trust Law has been a dead letter for nearly seventeen years; and it has failed thus far to be a practical benefit, though attempts have been made to use it recently for the correction of existing business evils.

SHERMAN ACT NEEDS AMENDMENT.

We need the amendment of this law. We need first a clear definition of what is criminal under the Sherman Anti-Trust Law, so that any one who is contemplating an agreement in restraint of trade which may be beneficial or which may not be publicly detrimental shall know what he can do without running the risk of indictment under the criminal laws of the United States and imprisonment after conviction. One of the promi-

nent lawyers of the city of Chicago told me that he had at one time not long ago four agreements in restraint of trade brought to him by clients, two of which were publicly beneficial and two of which were not publicly detrimental, and he was unable to advise his clients that they could enter into one of them without running the risk of indictment.

PUBLIC SERVICE RENDERED BY COMMERCIAL LEADERS.

I am going to say here something to-night about the men who do things in the United States. I have gotten tired of interminable criticism of men who are doing things in the United States.

Take James J. Hill, who was responsible for the Northern Securities Company, starting out as a poor boy on the upper Mississippi, checking freight on a steamboat landing and sharing his room with Philip D. Armour in order to save expense—starting from small beginnings, but a great man and a man who had imagination—which is as essential in great undertakings as the commercial instinct itself—looking out to the great Northwest, starting with his small road and extending it and sharing his profits honestly pro rata with his stockholders, until in 1904 he had built a road which carried eleven million tons of freight and over three million passengers. He was building up other fortunes while he was making that great fortune of his own. He was building up a great part of the Northwest. He was creating the opportunity for thousands of industries. Where was it in the course of that career from a poor boy checking freight on that steamboat landing until to-day, when he stands at the head of that great road—tell me where it was that James J. Hill first became a menace to the people of the United States and to the prosperity of this country, and a man properly to be indicted under its criminal laws? And yet James J. Hill is practically an adjudicated criminal under the Northern Securities case. And if the statute of limitations has not run he is liable to indictment and after trial and conviction to imprisonment to-day.

This talk by the muck-raking magazine critics of to-day is one-sided. Who are the men to-night who are doing the most for their country at this time? In the city of New York to-night some of these very men who for the last four years have borne the lash are doing a work for their country the value of

which it is hard to estimate, however extravagant might be our language. As you and I will sleep in peace and in quiet to-night devoted men in that great financial heart of our nation will be awake in the early morning hours seeking to hold values, seeking to prevent the destruction of confidence, seeking to uphold credit and confidence, upon which the whole prosperity of the nation depends. Are they seeking to depress values to-day as our friends, the critics, would have us believe, in order that they may reap the benefit? No, they are seeking to uphold the credit and reputation upon which prosperity exists. They are seeking to save employment for thousands of your men, Mr. Gompers, by sustaining credit and sustaining confidence. They are seeking to save the opportunity for the profitable continuance of you who are merchandising, of you who are manufacturing, of you who are in any of the various walks of business life. And I would rather have half a dozen of those men than all the muck-raking magazine critics that ever walked the face of the earth—those men who point out a crack in the sidewalk and claim that the whole town is going to fall through it. The American business man is honest—the average American business man. He wants the Sherman Anti-Trust Law corrected, because he believes in obeying his country's laws, because he has accumulated his property under his country's laws, and I repel the assumption of so many in these days, that the American business man is a man who must be watched, watched, watched. The American business man stands for that which is right in this country. He is standing for that which is right in this country to-day. He asks that this law be amended so that he can pursue his business, that business which is proper and correct, without the fear of molestation or criminal prosecution, when he is not a criminal.

LET THE LAW DISCRIMINATE.

Very many of these agreements in restraint of trade are for the purpose of existing, not of extorting. But for some not very singular reason we do not seem to have at this time that particular kind of courage in statesmanship which leads a man to stand against that which is wrong when it is unpopular to stand against it. It requires no great courage for a public man who exists through his popularity to fight the Standard Oil

Company or some of these great trusts. That which is true courage in statesmanship is the standing up for that which is right but that which is unpopular, and which will bring down upon the man who so stands the castigation instead of the applause of the radical portion of our people. We need more of such leadership to stand for that which is right, and in this country of ours the man who nails himself to a right principle in the long run will be vindicated. But while we have those who are standing for radical railway legislation—and I do not say that it is not needed—while we have those who do not hesitate to seize leadership in those reforms which are pleasing to the radical portion of our people, we do not seem to have that leadership which will stand for the reform of a radical, ineffective, existing law like the Sherman Anti-Trust Law when such action on their part will bring down the castigation of the public instead of its applause. What the business man wants to do is what you are endeavoring to do—you who represent the laboring men of the United States (addressing Mr. Gompers) when you are seeking to prevent that kind of competition which crushes out life—when you are seeking to bring about co-operation and better understanding between those who employ and those who are employed. You have singularly good fortune in not being opposed by the politician. The business man in attempting to secure fair and honest co-operation may not meet with the opposition of politicians, but he meets with very indifferent support. If we are going to make any progress in this vexed question the Sherman Anti-Trust Law must be amended so as to clearly define what the crime is. Provision must be made by which agreements in restraint of trade can be submitted to some tribunal acting in the interest of the public and representing them, before which such agreements can be tried in their relation to the public interest. Then such agreements, whether in restraint of trade or not, if not publicly detrimental, or if publicly beneficial, must be permitted, and if for the purpose of extorting an unreasonable price or otherwise publicly detrimental they should be put under the ban of the law, and if consumated the offenders should be punished.

THE CHAIRMAN: I am sure we have all been very greatly benefited by the address of Mr. Dawes. His points are telling and effective. The only dissent that the chair would express from this statement was that we as the representatives

of labor have been fortunate in not having the opposition of politicians. We do not often have it openly—but nevertheless effectively.

By agreement with the Committee on Program Mr. Tompkins has agreed to deliver his address, "The Railways and the People," to-morrow morning, and in his stead a gentlemen who was to have spoken at a later session will address us now, Mr. Grange Sard, of Albany, N. Y., whose subject is "Evils of Competition."

MR. GRANGE SARD.

Mr. Chairman—We have observed, I think generally, that when the subject of trusts is being considered the Standard Oil is always taken as a typical representative trust, as representing trusts, combinations, consolidations and all of those mischievous things that the Sherman law is supposed to be opposed to. The Standard Oil has had an experience of many years, and during a part of that time all merchants and shippers and manufacturers were doing substantially the same thing that the Standard Oil was doing. It is unfortunate that none of these wicked trusts have any advocates before a meeting of this kind, and I do not stand here as attorney for any of these trusts, but I feel that it might be proper for me to briefly suggest that when we talk of all the sin of these trusts, such as the Standard Oil, we should also take into account the fact that they have done a great many good and wonderful things for the good of this country, greatly for public benefit, and that the beneficiaries of the Standard Oil, those men who are supposed to reap all these great gains, have made magnificent use of much of their money. It is most unfortunate, in my humble judgment, that while these particular trusts are being so badly prosecuted—I don't pretend to say that they don't need reformation—that all the other industries of the country must be made to suffer with them at this time. The innocent and the guilty are suffering together now. Those of us who have to do with affairs and are connected with the manufacturing, and especially with the banking, interests of the country—and I am fortunate enough to be connected with both—realize how serious is the situation at this time; what great suffering and harm is being endured by innocent people—people who are not of the sort that the Sherman Law is intended to oppress, but people who have invested their savings and the

fruit of their self-denial in securities which the shrinkage of the market has taken away from them. So that while there is reason for the Sherman Law, and while there is need of reform, I wish to say that everybody who is engaged in manufacturing business and everybody who desires to work harmoniously with his competitors, while he may be in the eyes of this law a criminal, yet he is not.

PRESENT LAWS OBSTRUCT BUSINESS.

When Governor Hughes, of New York, asked me to come here as a delegate from that State I thought that I ought to do so, because I wanted to say a few words for the manufacturers of this country—not those large organizations that represent the capital of ten or twenty or thirty or more millions, since, as was said this afternoon by one of the speakers, it is only the minority of manufacturers who have these large aggregations of capital. The great majority of thousands and tens of thousands of manufacturers, who employ hundreds and thousands and millions of workingmen, belong to the somewhat smaller class of manufacturers who do a large business, who want to do business honestly according to the law, and yet they feel under the present Sherman Law it is impossible for them to make agreements which are perfectly reasonable in themselves, that are not for the disadvantage of their companies, that are distinctly for the advantage of their workingmen, but the law forbids it; and I wish, in a very few words and a very short time, to mention to you what are some of the evils of competition.

UNLIMITED COMPETITION AN EVIL.

The existing tariff laws in this country are based upon the belief that it is for the general good to exclude foreign manufacturers from supplying American consumers with articles that can be produced here, even if they will do so at a lower price.

This is an admission that unlimited competition is an evil. It is our purpose to point out that the result of unlimited, unregulated competition between domestic manufacturers is also an evil, alike to the community, to capital and to the labor which is employed in production.

There are no traders more energetic and enterprising than

the American. The striving for business among rivals is keen and relentless. The man who has the business suffers attack from the men who want it. The method of attack is by offering lower prices or selling goods of greater cost and value at equal prices; by giving more favorable terms of payment, larger discounts for cash, more favorable freight allowances, or by making secret rebates.

The manufacturer who is attacked is compelled to protect himself by meeting the offers. This develops into a species of warfare. There are thousands of buyers who profit by originating and encouraging this warfare. There are thousands of salesmen who are too often more interested in the volume of their sales than in the resulting profits, and who are misled as to what the competitor is doing. The salesman is led to believe the half-truths which the shrewd buyer would have him believe; other salesmen similarly constituted confirm the reports as to the cutting of prices, terms, etc., and, as these various statements reach the principals from so many sources, and there is no way by which their accuracy can be tested, or their falsity proved, it is inevitable that the basis of selling prices should be undermined. Demoralization ensues. The question of profits goes by the board, and the producer, who sees ruin staring him in the face, struggles to save himself by the lowering of the quality of his goods, using inferior materials; by reducing the wages, and the multiplication of these disasters brings about him as a victim; his creditors lose heavily; his reputation is injured his family life is darkened and the general result is not less evil than if these unhappy conditions were brought about by a foreign manufacturer whose goods came into this country duty free.

Unregulated competition is "war to the knife" with the uncivilized "survival of the fittest." The weak are pushed under by the strong. The man of small capital stands no chance against the endurance of the very rich. The workmen, with their wives and children, suffer from the loss of or reduction in wages, and the multiplication of these disasters brings about hard times, panics and financial stress.

THE MENACE OF THE BANKRUPT COMPETITOR.

It is a well-known fact that it is only a small minority of those who engage in business that are successful.

The insolvent manufacturer may settle his debts at 25 or 50 cents on a dollar and again resume business, or the sheriff may sell out the business at a forced sale at a similar reduction from values, and the factory resumes operations. In either case the insolvent man whose liabilities have been scaled down, or his successor, who has purchased the plant, materials and merchandise at half price or less, can again compete with the solvent manufacturer, and the ruinous competition is resumed under conditions most unfavorable to the careful trader.

Bankrupt concerns work havoc everywhere. The wrecked, half-derelict concern, improperly managed, inefficiently manned, with no intelligent policy, is a menace, with great powers for mischief.

It is not desirable to have business conducted unprofitably, and to have unwise competition destroy the prospects of those who are careful, skilful and successful. It is most desirable to prevent failures and to protect the capital which is invested in manufacturing from the reckless and unwise competition that leads to destruction.

NEED OF REGULATING COMPETITION.

A system of regulated competition will prevent, in a large measure, the practices which bring about the unhappy conditions just described. Capital will seek investment in smaller manufacturing establishments all over the country, because it will be more safe, the dividends more certain and the securities more marketable. Securities of local manufacturing concerns generally at present lack these qualities, with rare exceptions.

In these days, when peaceful methods between nations are being promoted, there is also a movement to bring into harmonious relations those who in their business activities have been violently striving to *build up* themselves by *pulling down* others.

FUNCTION OF MANUFACTURERS' ASSOCIATIONS.

The tendency to association and co-operation of those who have similar desires, views and occupations has not passed by the man of business, nor the man who labors. They have seen and felt a desire to prevent the havoc of industrial warfare.

The means which are presented for regulating competition and preventing wasteful industrial warfare are the formation of

trade associations, or establishing in some form a community of interests, by arranging pools, selling agencies, and the various methods which are in general called "trusts." All of these means for establishing harmonious relations will surely fail if they have for their purpose the exaction of excessive prices on any commodity or article of manufacture.

It must be understood that the men who bring about the demoralization of prices, terms, etc., are not bad men, but they are generally inexperienced men who unwittingly attempt to secure business on terms which they do not know lead to disaster. But when men are brought together for commercial harmony the weak man is the greatest gainer. The successful men dominate and teach the inexperienced what is good and what is bad.

Any association which establishes conditions which are unfavorable to the community by putting up prices unduly is most unwise. It has inherent defects which will surely destroy its usefulness.

The difficulties in the way of bringing about harmonious competition are very great, but the maintenance of such organizations is still more difficult. "Gentlemen's agreements" are notoriously shortlived. Their success depends upon their moderation as much as upon the good faith and intelligence of those who participate in them.

UNREGULATED COMPETITION A GREATER EVIL THAN COMBINATION.

We submit that the evils of unregulated competition are much more serious than the possible evils of combinations, consolidations and trusts. A salutary check upon greed will be the letting down by degrees of the tariff wall which has excluded the regulating influence of foreign competition. We are in greater danger from too much governmental regulation than from some of the evils which it proposes to remedy. There are natural laws in force that do not need to be supplemented by legislative enactment, except it be for political purposes. There are economic forces in operation more inexorable than acts of Congress which serve to protect the community from imposition. There is danger in enacting a law that may have a good purpose, but which may do infinite harm in its execution or interpretation.

The "Sherman Law" as it stands is a cause of greater evils than those it was intended to remedy. If its defects cannot be quickly eliminated it were better that it should be repealed, preparatory to enacting a new law which shall be beneficent in its effects, which it will be possible to enforce, and which the entire business community can respect and obey.

As the situation exists to-day nearly all the laws are being violated, and I appeal, in behalf of the manufacturers of this country, that such action may be taken and such laws may be passed that we may all feel that we are engaged in our vocation in such way that we are not violators of the law, and that our acts are within the law; therefore entitled to the protection of the law.

THE CHAIRMAN: I now have the honor and pleasure of presenting to you Mr. Robert Mather, of New York, who will address you upon the question of the "Regulation of Transportation Rates."

MR. ROBERT MATHER.

Mr. Chairman—Three years ago President Roosevelt recommended to Congress. as the most important legislation then needed for the regulation of corporations, the enactment of a law conferring upon the Interstate Commerce Commission the power to rvise and prescribe the rates that should be charged for interstate transportation. In common with many others, I thought it unwise to grant this power to the commission, and appeared before the Senate Committee on Interstate Commerce to argue against the proposed legislation. I come here to-day to admit that the action taken in pursuance of that recommendation was wise, and to advocate an enlargement of the rate-making power of the Federal commission.

POWERS OF THE INTERSTATE COMMERCE COMMISSION.

Though the commission has been in possession of the rate-making power for more than a year, the power has not yet been directly exercised. Within that year, however, the rate-making and other regulatory powers of the several States have been exercised to an extent and in a degree unparalleled in any previous period. Some of these requirements are in direct conflict with Congressional regulation of the same subject. Others indirectly but quite as effectually invade the proper

sphere of Federal influence and power. The Hepburn Act requires the Interstate Commerce Commission to prescribe for common carriers the method of keeping their accounts, and makes it unlawful for such carriers to keep any other accounts, records or memoranda than those prescribed by the commission under penalty of $500 for each offense and for each and every day of the continuance of such offense. In the teeth of this Federal regulation a State Commission prescribes other methods of keeping the accounts of carriers relating to their interstate business, and disclaims any desire to discuss with the Interstate Commission the palpable conflict between State regulation and Federal law. State laws have reduced the passenger fares and rates of freight, and upon complaint and showing by the carriers that the reduced rates are so far below the point of reasonable compensation as to amount to a taking of their property without due compensation and a denial to them of the equal protection of the laws, the consequent and logical appeal to the Federal courts for the protection assured to them by the Federal Constitution has been met by the claim that no injunction of a Federal court can issue against the enforcement of the State law except upon final decree in the Supreme Court of the United States. And to the support of this novel theory, refuted by the uniform practice of the Federal courts since their institution, State executives have pledged the martial power of their States. Conflict more serious in its threatened consequences than that of the courts has been narrowly averted, and temporary obedience to enactments that may yet be adjudged to be not the law of the land, because violative of protective provisions of the national Constitution, has been compelled by threat of force.

HOW STATE LAWS MAKE INTERSTATE RATES.

The State laws over which these unseemly contests are being fought purport only to make the rates from point to point within the State. As a matter of fact, they make the interstate rates as effectively and inevitably as if, in the exercise of plenary power, they declared that to be their unhidden purpose. So national in character has become our imposing commerce, so diverse in location the lines that bid for the movement of its tonnage, so numberless the markets it seeks to reach and so many the ports through which it may pass, that any change

over any given territory, however local or circumscribed, in the rate on any commodity furnishing large tonnage to the railroads finds immediate and inevitable reflection in all the rates for the movement of that commodity over all the routes from the point of production to the point of consumption or of export. Inexorable laws of business force this result, without the aid and beyond the power of prevention of any laws of man. It needs not, therefore, the intimation of the Interstate Commerce Commission that the interstate rate must not exceed the sum of the locals to demonstrate the perfect practical power of the States to prescribe the interstate rates.

Let me make this plain. Arkansas reduces the rate for the carriage of passengers from point to point within the State from three cents to two cents per mile. Thereby, though the rates in Missouri, in Louisiana and in Texas remain unchanged, the interstate rate from St. Louis to Galveston or New Orleans is proportionately reduced without affirmative action either by the carrier or by the Interstate Commerce Commission. For the expedient is clearly open to the passenger to buy his ticket to the first station in Arkansas, then to avail himself of the reduced local rates to the last station in the State, and thence to pay the former rate to his destination. And this effective reduction by State law of the interstate rate through Missouri, Arkansas and Texas or Louisiana works just as inevitably, through the operation of the inflexible law of competition, a like reduction in the rate from St. Louis to New Orleans over the Illinois Central Railroad, whose line, passing through Illinois, Kentucky, Tennessee and Louisiana, nowhere touches the soil of the regulating State. In the face of such an unalterable situation the Federal rate-making body admits its impotence rather than asserts its power when it rules that the through rate shall not exceed the sum of the locals.

The State of Texas produced in 1906 fourteen million bushels of winter wheat. Its Railroad Commission made the rate under which there was moved to market 192,000,000 other bushels of winter wheat raised in Oklahoma, Indian Territory, Kansas, Nebraska, Missouri, Arkansas and Iowa. In the same year the corn crop of Texas was 155,804,782 bushels; that of the other States named exceeded 1,233,000,000 bushels. Yet Texas, in the exercise of a conceded and apparently unassailable power to fix the rate at which the 155,000,000 bushel of corn grown

within her borders shall move to ports on her own seaboard, fixes beyond the power of the carriers or of the Federal Commission to disturb the rate at which the billion and more bushels raised by the other States shall be carried to ship side.

STATE LAWS NULLIFYING CONSTITUTIONAL GUARANTEES.

At the same time that the power to regulate commerce among the States was surrendered by the States to the Federal Government, and as a condition of that surrender the builders of the Constitution fastened into that well-rounded instrument this provision:

"No preference shall be given by any regulation of commerce or revenue to ports of one State over those of another."

It is inconceivable that the Interstate Commerce Commission, in the exercise of its rate-making power, should ever, with this Constitutional provision before them, make a rate so preferential to Texas ports as to force through them alone, to the exclusion of all Atlantic and other Gulf ports, the vast volume of grain which the fertile soil between the Allegheny and the Rocky Mountains annually produces for export. Yet the State of Texas, if past theories are to prevail, has ample power to produce that result, unhampered by the Constitutional limitation that the builders of the Union framed to prevent it. And the day when she will accomplish the result is only postponed to the time when the facilities of her ports shall be ample to the task. And if, by her drastic action, the revenues of the railroads are shrunk below the level of that fair compensation to which, under the law, they are entitled, the other traffic of the country must be burdened to make up the deficit.

I have used Texas as an illustration not in any spirit of criticism of her past or her possible action, but only because the possibilities of her magnificent situation lend point to my argument. I might as well have said Missouri, whose local grain rate from Kansas City to St. Louis, both points within the State, controls the interstate rates on grain to the Atlantic ports. If the natural resources, the location or the other advantages of any State enable her, under the Constitution, to surpass her sister States in commercial achievement, she would be a traitor to her destiny if she failed to press the advantage to its farthest possibilities. But if I read aright, the spirit of our Constitution, the power to regulate commerce among the

States, limited as it was by the provision that by such regulation no preference should be given to ports of one State over those of another, was given to the general government in order to insure that no such advantages of any State should be pressed to the disadvantage of the Union or of any other State. And I think it perfectly clear that, in its effort to secure just and reasonable interstate rates for all the country, without preference to the ports or commerce of any State over those of another, the Federal Government may employ its express power to regulate commerce, not only to the futile end of making the nominal but ineffective interstate rate, but also to the efficient end of making the effective and controlling local rate.

We have grown accustomed, by long acquiescence in its use, to yield to the States as their unquestioned prerogative the power of making the rates for transportation from point to point within their respective boundaries. But the long exercise by a State of a given power gives no prescriptive rights to its continued exercise whenever its acts on the subject come in conflict with a law of the Federal Government upon the same subject, enacted for the purpose of carrying into effect an express Federal power.

HAVE STATES SOLE POWER OVER RATES WITHIN THEIR BOUNDARIES?

From a legal standpoint the view that the States alone may regulate the rates for interstate transportation is based upon the statement of Mr. Chief Justice Marshall in the pioneer case of Gibbons v. Ogden, that "the completely internal commerce of a State may be considered as reserved for the State itself." But the interpretation which holds that the words "completely internal commerce of a State" include *all transportation* that begins and ends within the State overlooks the important definition which Marshall himself, in the same context, gives to the terms. He defines "completely internal commerce" as that "which is carried on between man and man in a State, or between different parts of the same State, and *which does not extend to or affect other States.*" And with this definition in mind he says: "The genius and character of the whole government seem to be that its action is to be applied to all the external concerns of the nation, *and to those internal concerns which affect the States generally;* but not to those *which do not affect*

other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government." And it is immediately following this significant language that the expression is found upon which is hung the entire argument in favor of the exclusive power of the States to regulate intrastate rates, that "the completely internal commerce of a State, then, may be considered as reserved for the State itself." Plainly the "completely internal commerce" thus reserved was that already carefully described as that "which does not extend to *or affect* other States" and *"with which it is not necessary to interfere for the purpose of executing some of the general powers of the Government."* Then, speaking generally of local laws, such as "inspection laws, quarantine laws, health laws of every description, *as well as laws for regulating the internal commerce of a State,"* Marshall continues: "No direct general power over these objects is granted to Congress, and, consequently, they remain subject to State legislation. *If the legislative power of the Union can reach them, it must be for national purposes;* it must be where the power is expressly given for a special purpose, or is clearly incidental to some power which is expressly given." And finally, as though his luminous mind had thrown a searchlight upon present deplorable conditions, he concludes: "It is obvious that the Government of the Union, in the exercise of its express powers, that, for example, of regulating commerce with foreign nations and among the States, *may use means that may also be employed by a State,* in the exercise of its acknowledged powers; *that, for example, of regulating commerce within the State."*

RATES WITHIN STATES AFFECTING INTERSTATE COMMERCE SUBJECT TO NATIONAL CONTROL.

Now, if any proposition stands out as demonstrated by the legislation, the litigation and the discussion of the past twelve months, it is that the commerce regulated by State rate-making and other enactments *does* "extend to or affect other States," and that it is commerce "with which it *is* necessary to interfere for the purpose of executing (one) of the general powers of the Government," namely, the power to regulate commerce among the States. Politicians may not admit it, but the business interests of the country, carriers and shippers alike, are agreed that the great menace to our industry lies in the conflicting

regulations of differing bodies and the lack of a comprehensive plan of regulation with sane views and national purposes.

In my judgment, the language I have quoted from the great Chief Justice points the way for the speedy removal of that menace. It only remains for Congress to say that the same power it has in the Hepburn Act conferred upon the Interstate Commerce Commission for the revision and correction of interstate rates shall be extended, under like conditions and restrictions, to the revision and correction of local rates that control or affect the interstate rates.

THE CHAIRMAN: We should like to have the ladies and gentlemen remain with us a little while longer. The gentleman who will address us now will be the last for this evening. I have the pleasure of introducing to you Mr. Allen R. Foote, of Columbus, Ohio, who will address this conference upon the question of "Governmental Regulation of Competitive and Monopolistic Corporations."

MR. ALLEN R. FOOTE.

Mr. Chairman—No general question of governmental policy occupies at this time so prominent a place in the thoughts of the people as that of properly controlling, without unnecessarily checking, the growth of corporate power.

The success of the American people has been achieved by permitting and inducing individual development within self-governed political and industrial organizations. The limit of liberty is found in the fundamental requirement that EVERY PERSON SHALL EXERCISE HIS RIGHTS WITH A DUE REGARD FOR THE SIMILAR RIGHTS OF OTHERS.

With self-governed municipalities within self-governed States, with self-governed States within a self-governed nation, and with self-governed corporations within self-governed trusts or combinations, the people of the United States hold a position of commanding political and industrial influence among the powers of the world by virtue of the supreme power of an indivisible political union and indivisible industrial combinations.

The political and industrial supremacy of America cannot be destroyed except by an unwise exercise of political power by its people in ill-advised attempts to restrict the economic organization and development of their industries. No such fate awaits

us. Discussions, such as are promoted by this conference, will bring a knowledge of the truth to the people. When the people are rightly informed, their political action will be right. Such action will aid, instead of obstruct, the further organization of our industries on lines of greatest economic efficiency until combinations reach the limit of economic production and management.

The tendency to combination which permeates every form of human activity, political and industrial, gives evidence of an ever-increasing strength regardless of misinformed denunciation and antagonistic legislation, State and national. This tendency is the result of the outworking force of a natural law against which obstructions, interposed by fear, are powerless. Until this natural law is recognized, correctly understood and applied in the solution of the problem under consideration, all efforts to correctly regulate and utilize its force will be made in vain. The time was when men were paralyzed with fear in the presence of a vivid display of uncontrolled electrical energy. Behold what is being accomplished by those who, by studying natural laws, have learned how to comply with these laws in their attempts to utilize this force. Through their efforts the force that once paralyzed men with fear when they witnessed the destruction wrought by its unbridled energy is to-day being made man's most helpful and obedient servant. Such will be the result of an intelligent study of the natural law of competition and monopoly.

The problem of to-day is the correct education of the people so that they will understand the natural law that forces political and industrial combination, and, understanding it, will know how they can most wisely utilize it in their attempts to make such combinations, whether small or great, their most helpful and obedient servants.

THE NATURAL LAW OF PROGRESS.

All truth is made known by revelation or experience. Each assimilated truth raises mankind to a higher plane of moral and economic development. Such are the steps by which the march is made from one degree of progress to another. Each individual is engaged in climbing an echelon column of progress. His progress is due to a clearer understanding, a more perfect assimilation of truth revealed or developed by experience. He

is occupied in assimilating the mysteries of the truths involved in the step of progress he is attempting to take. Until this is accomplished he cannot advance. He can exert no uplifting influence beyond the limits of his intelligence. This renders it impossible for those in a low degree of development to control those above them. Each echelon in the column of progress has laws peculiar to itself. It has its own standards of moral, economic and political justice, and its own language. Until an individual has learned the language and assimilated the truths of the step of progress he is engaged in taking he cannot acquire that of the next. The actions of men must be judged by the standards of the echelon of progress in which they live and work. Moral responsibility is limited by intelligence.

The social, political and business customs and laws of the times and communities in which men live furnish the only standards by which the character of their conduct can be justly estimated. Only those whose conduct conforms to such standards are the moral and upright men of their time and place. They are the only benefactors of their day. In this fact is found an explanation of the conflicting estimates of conduct held by those who view an identical action from different planes of progress.

German and English standards for the regulation of corporations differ from those which political speculators are seeking to establish in this country. In the United States the attempt is being made to deify statutory law through efforts to brand as malefactors, men who have been guilty of no crime other than that of conforming to the custom of their time and place

In Germany combinations are fostered and encouraged by the government. In England the government does not interfere with them at all. An act which is a crime and makes a man an undesirable citizen in the United States makes a man a captain of industry and gives him honor on the other side of the ocean.

Provisions of statutory law by which men are to be judged should be made to conform to the requirements of moral and economic law. They should not be changed in response to the requirements of party expediency or the political ambition of any man. Efforts to make laws just should not be less sincere and strenuous than efforts to enforce obedience to laws. The progress of civilization is due to refusals to obey unjust laws.

Every step of progress achieved by mankind has been taken by changing the social, political and business customs and laws

which furnish the standards by which the character of conduct is estimated, to cause them to conform to a more enlightened conception of the requirements of justice. As a result of ages spent in the assimilation of truth, revealed or developed by experience; as a result of ages spent in declaring such truths and in insistence upon their application to the actions of men by the churches and teachers of righteous thought, we now have a conception of the requirements of justice greatly different from that held in the past, even so recently as fifty years ago.

THE NATURAL LAW OF COMPETITION.

The natural law of competition requires the unrestrained use of any means, within the limits of honesty, that will aid one competitor to wrest a business profit from another. The success of the winning competitor is measured by the advantage gained.

It is obvious that the successful competitor will be the one who most successfully conceals from his competitors, or from those to whom he seeks to sell or from whom he seeks to buy, the cost of his products, a correct knowledge of his necessities, or of market conditions. Secrecy in the management of a competitive business is absolutely necessary to success. Exact knowledge of the necessities of buyers on the part of sellers, or of sellers on the part of buyers, would be fatal to success, and would operate as the most potent restraint upon trade, the most powerful agent for the destruction of competition than can be devised.

Success is not won by advertising the cost of products or the necessities of buyers or sellers. The right and the power to keep secret that which could be used to one's disadvantage, if known to his competitors, are inalienable safeguards to his success. This right and power cannot be curtailed in any way without correspondingly curtailing the power of competition and the chances of success in any competitive business.

Secrecy and absolute freedom in management are fundamental requirements for effective competition. Through all the past, "Let the buyer beware," has been the ethical standard of competitive selling. In that degree of development a gain made by lying was classed as legitimate. We are now entering a degree of development in which gains made by lying will be classed with gains made by stealing. Both will be branded as

criminal. We know the suppression of stealing, so far as it has been successfully done, has been of enormous moral and economic advantage, a contribution to the general welfare of incalculable value. Still greater will be the benefits derivable from the suppression of lying. Progress in this direction is slow, but ever moving in the right direction. The day is not far distant when those who seek gains by lying will be ruled out of social and business circles as promptly and effectively as are those convicted of making gains by stealing. Within the limits of honest dealing no restraint upon competitive corporations is necessary or desirable.

The functions of government are to prevent and punish fraud, to safeguard individual freedom, and to enforce freely-made contracts. The only limit upon the organization of labor and of capital should be a prohibition of interference with the similar rights of others.

Consumers depend upon the regulative power of free competition to secure competitive commodities at an economic selling price, a price that will yield the seller only a reasonable profit. The best results for consumers are obtained by inducing the largest possible number of competitors, or competitors best equipped for economic production, to enter into competition with each other in an absolutely free market. A competitive price can be determined only by free competition in a free market.

Rebates, bonuses, discounts, commissions and special terms and favors of every kind are the natural weapons of competition, which every competing seller must be free to use at his own discretion in his efforts to win trade from others. The fixing of prices for competitive commodities by governmental regulation would be an intolerable interference with the natural law of competition. It would destroy competition.

For competitive industries, governmental regulation must undertake to enforce honesty in representations as to the quality and quantity of commodities offered for sale. Gains secured by lying must be prohibited as effectively as gains secured by stealing. The enforcement of proper governmental regulation of competitive industries requires only an inspection of the commodities offered for sale to insure buyers that they are as represented.

Free and honest competition is the true safeguard of the gen-

eral welfare in all competitive industries. Competition cannot exist between those from whom nothing is concealed. With an exact knowledge of each other's condition, those who otherwise would be competitors will not compete. They will combine for mutual benefit and profit. Active competition is impossible where profitable combination is possible. Competition and publicity are incompatible.

THE NATURAL LAW OF MONOPOLY.

Monopoly is the antithesis of competition. Publicity will kill competition, it is indispensable to an effective monopoly. Users must depend upon the power of governmental regulation to secure monopolistic services at an economic selling price, a price that will yield the seller only a reasonable profit. The price should be determined by the seller, subject to review as to its reasonableness, by governmental commissions and the courts. The best results for users of monopolistic services are obtained by prohibiting competition within a territory that can be served by one corporation, and the making of uniform rates by traffic associations at all central points served by two or more public service corporations.

The fixing of rates that shall be uniform to all users taking service under similar conditions at the same time is a correct application of the economic law of monopoly which must be enforced by governmental regulation whenever and wherever public service corporation managers fail to do so. Uniform rates, *and the prohibition of rebates, bonuses, discounts, commissions and special terms or favors,* are the natural weapons of monopoly, which every public service corporation manager must insist upon using within his own territory, and in combination with others at all so-called competing points, in his efforts to render the best possible service at the lowest economic rates to all users.

Governmental regulation must undertake to enforce honesty in requiring all users to pay identical rates for service of the same character rendered at the same point on the same date. The power of monopoly must be used to establish, not to destroy, equality of opportunity.

The enforcement of proper governmental regulation of all services rendered by public service utilities, however owned and operated, requires an inspection and publicity of accounts to as-

sure all users that equality of opportunity is established by the approved rates and rules to which they are required to conform.

Uniform rates and rules, honestly enforced, are the true safeguards for the general welfare in all monopolistic industries.

Attempts to establish competition in the business of public service utilities are as unnatural and harmful restraints upon industrial development as are attempts to establish monopolies in the production and sale of the commodities of commerce.

All evils exposed by the investigations of the Public Utilities Commission in New York City are the direct results of the unwise public policy of granting short-term franchises to competing public service corporations and the failure to require publicity of accounting as a fundamental safeguard for the public and individual interests of the people in every franchise granted. Every competing franchise induces a merger. Every merger gives opportunity for over-capitalization.

All complaints preferred against public service corporations throughout the country are the inevitable result of a public policy that has denied public service corporations the protection from competition required by the natural law of monopoly, and attempts to enforce a prohibition against mergers and rate agreements without which there can be no governmental regulation of rates. The fixing of a uniform rate by the Interstate Commerce Commission, for an identical service rendered between two points by two or more public service corporations, and the requirements that such rate shall be enforced against all shippers, as required by recent legislation, is precisely the kind of agreement which public service corporations have been prohibited from making for themselves by a construction of the so-called Sherman Anti-Trust Law.

COMPETITIVE INDUSTRIAL CORPORATIONS SHOULD BE REGULATED BY THE SHERMAN ANTI-TRUST LAW. PUBLIC SERVICE CORPORATIONS SHOULD BE REGULATED BY THE INTERSTATE COMMERCE LAW.

An intelligent recognition of the Natural law of Competition and the Natural law of Monopoly will demonstrate the fact that competitive industrial corporations and public service corporations cannot be effectively regulated by the same methods under laws applicable to both.

The Sherman Anti-Trust Law and the Interstate Commerce Law have been disappointments because they do not draw proper lines of demarcation between corporations that are by nature organically opposite in character. By reason of this fact, there is a failure to recognize and properly apply in these laws the fundamental requirements of the natural laws of competition and monopoly.

The Sherman Anti-Trust Law should be amended to exclude public service corporations from its operation and to permit reasonable trade agreements under the supervision of the Department of Commerce and Labor.

The Interstate Commerce Law should be amended to exclude industrial competitive corporations from its operation, and so as to permit reasonable traffic agreements under the supervision of the Interstate Commerce Commission, in order to secure uniformity of rates, rules and methods of operation.

A sane and safe plan of action is impossible unless it is based upon a sane and safe principle. All plans must be based primarily upon a recognition of the human element involved. Those who are affected by a regulation must be satisfied that it is just, and their sense of justice must be strong enough to control their greed for gain or lust for power, or they will feel no moral obligation to obey it.

A solution of the problem of the proper regulation of trusts and combinations must be sought in a more intelligent recognition and application of the moral law which teaches honesty as a principle and of the economic law which requires the enforcement of honesty as a practice.

I have gathered from remarks made to-day a new war cry. In 1776 the war cry was, "No taxation without representation." Mr. Seligman made some statements to-day which have led me to formulate a new war cry: "There is no responsibility without compensation."

Mr. Chairman, I now desire to offer the following resolution:

Resolved, That we recommend the Congress of the United States to amend the Sherman Anti-Trust Law to exclude public service corporations from its operation, and to permit reasonable trade agreements between individuals, firms and industrial companies engaged in competitive business, subject to the approval of the Department of Commerce and Labor; and to amend the Interstate Commerce Law to exclude competitive

industrial corporations from its operation, and to permit reasonable traffic agreements subject to the approval of the Interstate Commerce Commission, in order to secure uniformity in rates, rules and methods of operation.

THE CHAIRMAN: The resolution will be referred to the Committee on Resolutions. Do any others desire to introduce resolutions?

A DELEGATE: I would like to offer a resolution bearing on the addresses of the evening, and in harmony with the one just introduced.

Whereas, The Sherman Act prohibits all agreements in restraint of trade, and the statutes of many States place similar restrictions upon such agreements within those States; and

Whereas, Some agreements in restraint of trade are beneficial in their purpose and effect; now therefore be it

Resolved, That this conference recommends to Congress in behalf of interstate commerce, and to the legislatures of the several States in behalf of intra-state commerce, that the laws be so amended as to permit, under proper restrictions, the formation of agreements for the purpose of maintaining reasonably profitable prices for the products of manufacture, mining, agriculture and labor, the purpose and terms of such agreements to be expressly stated and made public, and prior to their taking effect to be submitted to and approved by the Department of Commerce and Labor; provided, that associations and individuals parties to such agreements shall be held individually and collectively responsible for the proper exercise of the privilege thus extended; failing this, they should be subject to the penalties hitherto provided; and further provided, that no monopoly of any natural resources shall thereby be created.

THE CHAIRMAN: The resolution will be referred to the Committee on Resolutions.

The conference then adjourned until 10:30 the following day.

Seventh Session, October 24, 10:30 A. M.

The conference was called to order by Mr. Marcus M. Marks at 10:30 A. M.

THE CHAIRMAN: In accordance with the notice given by the Committee on Resolutions yesterday, this morning will be the last opportunity for the presentation of resolutions, and it will, perhaps, be well to give you the opportunity for the presentation of resolutions now, and again at the close of the session. Are there any resolutions to be presented at this time?

MR. JOHN W. TOMLINSON (Alabama): Mr. Chairman, I have a resolution which I desire to go to the Committee on Resolutions in the regular way, of which committee I am a member, and I shall read the resolution.

Be It Resolved, That it is the sense of this conference that both Federal and State authority shall be invoked in the solution of the trust and transportation problems without attempting to supersede or abridge either jurisdiction, under the Constitution; and that, when deemed advisable to change our organic law in regard to these matters, it shall be done by getting the consent of the people in the manner prescribed in the Constitution itself.

THE CHAIRMAN: Gentlemen, the trouble in New York has been largely an excess of paper, and our Committee on Program, having decided that there is some danger of the same thing occurring in this convention—excess of papers—the gentlemen who are to speak to-day have consented to address you instead of reading to you. The time has been arranged in this way: There will be four speakers, the last of whom is Mr. Herman Ridder, who will have twenty minutes each, and that twenty minutes will be decided in a business-like way. The slow clock has been removed and a fast watch has been substituted. The floor will be thrown open for discussion from the business organizations upon their relation to this question. The business

men have been very modest, although this is entirely a business question; they have been very glad to allow the educators to explain and to teach, but they have been called forth from their modest situation and urged to come on and say a few words from the practical standpoint, giving their ideas of the problems. They will discuss the question of the evils and the benefits of trusts and combinations, how to eradicate the evils and at the same time conserve the benefits. I may say that to-day will be the day for commerce and labor—the morning will be devoted to commerce and the afternoon to labor. The committee has decided to hold the speakers down to time, and as I am not a candidate for any office I have accepted this task. It is quite appropriate to tell you that at 4 o'clock this afternoon the speech-making will end, as far as set speeches go, and all that are brought in after that time will be simply handed in for printing. There will be a stenographic report of this congress, printed in full, and every paper that is not read will be printed, so that the public will know what is intended. Being a day for commerce and labor, it is quite appropriate that the first speaker shall be the representative of the Department of Commerce and Labor, the Commissioner of Corporations from Washington, the Hon. Herbert Knox Smith, who will speak on "Administrative Regulation of Corporations."

HON. HERBERT KNOX SMITH.

Mr. Chairman—I wish to present for your consideration certain suggestions of a constructive nature for the systematic regulation of corporations; in particular, to suggest the need of a positive and effective system for the supervision of corporations, through the medium of a specialized administrative office organized for that purpose. In speaking of the need of such supervision, I have especially in mind the so-called industrial corporations.

Allow me, therefore to note the need for such a system, the reason for it, the way in which it should work, and some of the results that might reasonably be expected from it.

First, as to the need of such supervision. The corporation is, of course, an absolute essential for the carrying on of modern

business. We must remember, however, that this condition is comparatively new; that only within the last fifty years has our commercial progress been such as to bring the corporation to the front as a business fact. The result of this sudden demand for the corporate form has been a very hasty development of corporation law, as compared with the slow and normal growth of our common law. Consequently, our corporation law is in an unfinished and ill-balanced state, and as a piece of machinery for the direction of our great industrial forces it is in a highly unsatisfactory condition.

DUTY OF GOVERNMENTS TO REGULATE CORPORATIONS.

The community has created corporations, and, of course, has power to regulate them. It is, in fact, our duty to do so, because we have given to these artificial creatures certain great rights and exemptions which do not belong to the individual, for the abuse of which we, therefore, are responsible. A corporation has permanent existence, which gives an effective continuity of policy; indefinite divisibility of property interests, which allows of the concentration of great masses of capital; a highly centralized internal control, and, finally, the limited liability of the stockholder. These exceptional powers, when applied to modern industry, produce far-reaching commercial results. Their abuse affects our entire national life.

They result in a concentration of enormous industrial power in the hands of the corporate manager. They result, on the other hand, in decreasing his personal responsibility. One man may be in absolute practical control of a great corporation, and at the same time his own financial interest therein may be insignificant. His responsibility may be so wholly incommensurate with his power as to leave him practically irresponsible. The community is responsible for the existence of those peculiar powers that have led to such results. Having created, we must control.

Now, what do we want this corporation to accomplish? We demand certain things of our industrial machinery—efficiency in business, equity in its various relationships, a reasonable return for services rendered, the maintenance of equal commercial opportunity, and the furnishing of complete information to all concerned, so that we may know that this machinery is

accomplishing what we demand of it. The question is, how to get these things.

ANTI-TRUST LAWS A MISTAKEN POLICY.

Our most conspicuous attempts so far at the solution of this general question have chiefly taken the shape of laws prohibiting combination, the so-called "anti-trust" laws. These laws forbid, in substance, combination in restraint of trade. Inasmuch as it is hard to conceive of any sort of important combination which does not to a certain extent reduce competition, and thereby in the technical legal sense restrain trade, it may be generally said that the anti-trust laws forbid industrial combination.

These "anti-trust" laws have covered a transition period in our policy. They have turned public attention to the general questions, and have in certain instances accomplished economic good. But it can hardly be claimed that they have proved adequate as a general and practical regulation of corporations. They have been very difficult of enforcement. The tremendous tendency toward concentration has been too strong for them.

We might as well recognize the fact that industrial and corporate combination is an economic necessity; that it is not only a necessity, but also an accomplished fact. We must admit the situation, and adapt ourselves to it. If then, this be true, the real matter to be considered is not the fact that combination power exists, but the question how that power is used. It is not the existence, but the misuse, of industrial power, that is the significant consideration.

Some corporate managers use their power justly, some unjustly.

It is the difference in this use that makes the problem. Certain concerns use their power to increase their own efficiency. They maintain their hold on their business simply because they give better service or lower prices. This is a proper use of power. On the other hand, certain concerns try to cripple the efficiency of competitors by unfair methods of competition. They induce railways, which are public agencies, to give them private discriminations; they suborn competitors' employes; they institute oppressive litigation. They misuse their commercial power.

The one acquires and maintains its power by giving the

best service; the other, by preventing any one else from giving service.

ADMINISTRATIVE REGULATION NEEDED.

Suppose, therefore, that we give our attention to this, the real issue. Suppose that we allow combination, and see that the centralized power which it creates is properly used. If we are to do this, we must have some efficient system of regulation, by permanent supervision. Such a control must be active and positive, not negative. It cannot be accomplished by simple prohibition or by the piling up of penal statutes. Our industrial machinery is so infinitely complex that it cannot be adjusted by the remote, inflexible, occasional remedy of judicial procedure. It must be regulated by close administrative supervision on the part of the Government, not by the process of the court.

In fact, even in the proper field of prohibitive statutes, we are beginning to see by experience that the established procedure, with its strict construction of penal laws, which suffices in the case of the elementary crimes of murder and burglary, is helpless in the face of modern industrial crimes and misdemeanors. For instance, I do not believe any statute could be drawn which will of itself cover all forms of railway rebates.

We are finding that administrative supervision must help out judicial procedure even in such criminal matters. We have to have our Commissions and our Bureaus in order to make of any effect prohibitive statutes against commercial crimes, no matter how minute, how apparently complete those statutes are.

The English Companies Act is often referred to as a model, especially in its sweeping requirements that the promoter of a corporation shall file copies of all contracts which are to bind the new corporation. I have just inspected a set of documents recently so filed by a promoter in London. They cover thirty pages of the finest print. I defy any man to spend a day on them, and have at the end of that time the faintest idea of the real liabilities and rights which they purport to describe. These documents were deliberately and successfully framed to nullify the law.

We must meet business organization with business organization, not with the mere fiat of statute, left to enforce itself unsupported.

In short, in dealing with this whole matter of industrial concentration, we have the choice of two alternatives. We may either prohibit or regulate combinations. But the two are absolutely inconsistent; we cannot do both at the same time. To my mind regulation is the only choice. Regulation by an administrative office exercising supervision over corporate operations, accompanied by wide publicity, and backed up by criminal penalties directed at unfair methods of competition, by prohibition only where supervision fails. It is the only system which has the flexibility and efficiency needed to deal with the great and complex operation of large corporations.

The anti-trust laws are wholly unsuited to accomplish any such results. They are negative and prohibitive. They condemn all combination, whether beneficial or harmful. They are enforced only by Courts. They also forbid necessarily any co-operation between the Government and corporate interests, because the anti-trust laws are an attack on corporate existence itself, and inevitably place corporate managers in opposition in spite of themselves.

SCOPE AND FUNCTION OF ADMINISTRATIVE REGULATION.

I believe that these considerations show the need of a positive system. To make it tangible, let me suggest concrete details. Establish, say, a simple system of regulation by supervision. Provide a government office to administer it. Require that all large corporations doing a certain gross amount of business a year shall make reports to that office; make their accounts subject to inspection at will by that office; provide for publication by that office, in concise form, of all the facts in regard to such corporations which are of public interest, safeguarding all proper business secrets. Provide also for that protection of law-abiding corporations that is the correlative of regulation.

The suggestion is tentative. I do not pretend to say just how it would work. But it has certain important possibilities, any one of which would justify the change. It will give information; that result alone would justify the whole system. If there is any one kind of information which the citizen has a right to demand from his Government, it is information as to the great interstate corporations. They are handling the dominant forces of the century; their operations affect directly the lives of nearly all of us. Their legal and business conditions

are far too complex and many sided to be grasped by the average citizen with his present means of information. And yet the political theory of our institutions requires that he should understand and act intelligently on current questions, involving details of capitalization, prices, profits, markets and transportation.

These facts, which he cannot get now, which he must have, and which may put an entirely new face on the national view of corporate activity, will be provided for him by such a system of supervision and publication.

Again, such a system will, to a certain extent, react and prevent wrongs that cannot be reached by statute, because, as every one knows, the penal law, which can exercise no discretion, leaves now untouched a broad zone of transactions which nevertheless all admit to be unfair and inequitable. They can only be reached by the condemnation of the public.

BENEFITS OF PUBLICITY.

Supervision and publicity will also prevent wrong beforehand, and prevention is far better than punishment. The mere knowledge that a governmental agency has the right at any time to investigate the operations of a corporation, and will surely make public improper transactions, will often prevent the inception of such transactions. That corporate manager is rare who has the nerve to continue wrong practices which have been authoritatively exposed to the public by specific facts of time, place, person and amount.

I am not talking on theory. The thing has been convincingly done. For example, the report of my predecessor in office, Mr. Garfield, the Commissioner of Corporations, in May, 1906, set forth, with just such specific detail, an extensive system of railway discriminations. Some of them were criticised as illegal, and others, not as illegal, but as unfair. Immediately the railroads canceled every illegal rate criticised in that Report, as well as many of those which, while legal, were yet inequitable.

Nor was this done to avoid prosecution, because the criminal liabilities had already accrued. Furthermore, the railroads canceled rates which were admittedly legal, though unfair. This example shows the efficiency of publicity. Not a single court process had been issued. Now, suppose the attack had been made solely through the courts. One or two cases only would

have been tried; they would have been contested up to the court of last resort, with two or three years delay, might readily have been lost by technicalities, and meantime the original rebate system itself would have been continued with hardly a jar. Contrast this meagre result with the instantaneous and sweeping effect of simple publication.

The unfair methods that are now prohibited by law, such as railway discriminations, will be exposed by such supervision, and taken care of by the courts.

A further class of unfair methods of competition will be met by additional penal laws where our increased information shall show that legislation is reasonably applicable.

Still others will be conducted effectively by public opinion as they are exposed from time to time.

There would be a greatly increased soundness of the industrial situation. Confidence, upon which prosperity largely depends, can be permanent only when placed on a basis of complete information.

SUPERVISION PROMOTES MUTUAL UNDERSTANDING.

The regulating authority, on the one hand, and the masters of industry on the other, would be brought together in the exercise of the supervisory powers on the ground of conference, in a flexible system which allows of mutual adjustment through mutual enlightenment, so that the two points of view—that of the Government official who has in mind the public interest, and that of the corporate manager, who has in mind commercial success, shall be made to approximate. From the contact of these two points of view through the medium of such administrative office, there would certainly come two things—information for the public, and better understanding between the Government and the corporate managers. Both of these are absolutely essential for any handling of this great and complex problem. I would rather have an added ounce of mutual understanding than a ton of criminal penalties.

It is not, in short, too much to hope that there will arise some co-operation between the Government, charged with the public welfare, and corporate managers who control forces so large as to be governmental in their scope, and public interest. We may thus see an increasing abandonment of the old theory that industrial and corporate matters are wholly private affairs,

and the rise of the modern ideal that the possession of great commercial power is largely affected by a public trust. And in all these possibilities lies the greatest of all possibilities, that both the public and the captains of industry will grow toward the establishment of those higher standards of business morals that must be created if our commercial prosperity is to be permanent.

Such results have already arisen in the fields where the Government and business interests have come in contact. The Department of Commerce and Labor regulates very extensively the construction, equipment and operation of steamboats. These regulations are made only after the fullest consultation with shipping interests, and these interests have in most cases grown to be almost as keen as the Government in providing safeguards for water traffic. On the other hand the Government officers, by this constant consultation with traffic men have avoided many serious practical errors.

The National Bank system, with its constant governmental supervision, is another example of the effectiveness of such administrative action.

The experience of the Bureau of Corporations, in its constant contact with corporate managers, has revealed surprising possibilities of such co-operation, in the improvement of business methods.

Make it possible to get some of these results. Force the Government and the corporations on to some common ground where they must meet constantly in practical contact. Give the two sides of the question an ordinary, common-sense chance to talk it over, to settle it out of court, without being forced into continuous opposition, and human nature will work out the matter here as it already has in those relations where it has had a reasonable chance.

COMMERCIAL POWER A PUBLIC TRUST.

I know that there is among commercial leaders a marked increase of the feeling that commercial powr is largely a public trust. It is only fair to say that most of the great managers of corporations are not working for purely self-indulgent ends Men who have more money than they can spend on themselves are not giving their lives in strenuous effort for the mere accumulation of more wealth for their own consumption. Some sort of ideal outside of themselves is driving them; the desire

of power, the lust of success in the game. I do not believe that it would be impossible to take these present ideals and shape them into a broader conception of the use of industrial power for the benefit largely of the public, leaving still the old zest in the game and the chance of acquiring power for the man best able to grasp it by fair and open means, and hold it by best serving the public with it.

Where shall such a system be established? Can any number of the States agree on one system? Can any one State alone make its own system effective?

The Federal Government is the only power that can carry on such a system of regulation, for it is the only jurisdiction commensurate with the scope of present corporate operations. Any system by the States must always be, as it is now, a chaos of conflicting legal conditions resulting in inefficiency and uncertainty.

NO DANGER IN CENTRALIZATION.

We must recognize that centralization in business is an accomplished fact; that the corporate interests who are bewailing "the danger of governmental centralization" are taking an absurd position. They themselves have centralized business and made it national. They now object to any corresponding legal centralization competent to deal with the facts which they have themselves established. As the Romans said, so now these astute opponents of all control say, "Divide and conquer."

There is no need that any such Federal system of supervision and publicity of interstate corporations should be in derogation of the powers of the States. Such a system should be based wholly on interstate commerce; must indeed be so based, or the Supreme Court will wipe it out on the first decision. Such a system would simply carry out the express provision of the Constitution that the United States shall have power "to regulate interstate commerce;" it would come into being for the same fundamental reason for which the interstate commerce clause was originally placed in the Constitution, that is, because no one State, nor all the States acting as States, can effectively regulate interstate commerce. The very nature of the subject matter renders the States almost powerless in it. It is clearly within the constitutional power, as it is within the intent of the framers of that document. They put the interstate commerce clause there for just such a purpose, as their debates show.

If the application of this power to this specific subject be a new one, it is because the need for such application is newly arisen, and the men who framed the Constitution were not making it for their time alone, for the stage coach and the coasting schooner, but for the needs of time, for the living, growing future, not for the dead past. The power has been always there. As Marshall said, "It is plenary itself. No past can limit the present use."

MORAL ISSUES INVOLVED.

I am afraid to speak of morals in connection with dollars. In the last resort, all human institutions rest on personal character. An individual may indeed do wrong and end his life in full material success, though the revenges of time usually work themselves out even in the short span of human existence. But no nation can do wrong and escape the ultimate penalty. No system of law, or arms, or politics, or business, that is based on inequity can live long enough or pay enough profits to balance the debit side of the account when that system goes to its inevitable ruin. Industrial methods cannot permanently diverge from moral standards without industrial disaster. No amount of legislation, no amount of supervision by government, can accomplish any permanent good unless that system takes into account the moral side of the great industrial forces.

To each age and each era comes its own peculiar conflict. History has seen the struggles of the race, first to establish order from chaos; to set up kingdoms instead of tribal confederacies; later, to establish those great guaranties of personal liberty that are now embodied in our fundamental law; now finally, having established these great rights and institutions, our own time has before it the struggle with the greatest forces of all, those tremendous financial and industrial currents upon which the civilization of to-day is borne.

In one form or another the conflict always has been and always will be with us—differing only in form from century to century, but always in substance the same, the conflict to impose the standards of righteousness upon the dominant forces of the particular time.

THE CHAIRMAN: I am asked to announce that the Committee on Resolutions will report to-morrow at 10:30 promptly, whereupon the floor will be open for discussion, and

those gentlemen whose addresses may probably be crowded out to-day, on account of the shortness of time, will have the floor.

The next speaker is a practical man of affairs, a manufacturer from the State of North Carolina, representing also the State by appointment from the Governor. I have pleasure in introducing Mr. D. A. Tompkins, of North Carolina, who will speak on the Railways and the People.

MR. D. A. TOMPKINS.

Mr. Chairman—The Federal Government was not founded by our forefathers without reason based upon very serious consideration. It was never intended or desired that the sovereign capacity of any State should be impaired. On the other hand, it was recognized that federation and Federal control of matters relating to war had been the foundation upon which the States had achieved their independence of British rule. Therefore, none were in position to deny that at least in matters of war there was need for unity of action, and it was clear that uniform action could only be accomplished through a central general government. After the war it was soon made evident, largely through confusion in the matter of import duties, that a uniform control of that subject would be advantageous, while legislation by the different States on the subject was confusing and disadvantageous. It was further recognized that there were a number of subjects other than that of war, over which Federal control for the sake of uniformity and other advantages was desirable. Amongst these was not only the tariff, but also the coinage of money, all interstate and foreign commerce, the establishment and control of a postal service and post roads, excise duties upon whiskey and tobacco, and things in connection with which uniformity over all the States was very advantageous, whereas conflicting State legislation would lead to confusion, loss, and the destruction of economy. In determining upon subjects that should be handled by the Federal Government, particular care was taken to include nothing which could be handled by the separate States. Thus was made a nation of United States—each State having the strength of the nation and yet each reserving sovereign power in all affairs that were local. In those early days all interstate commerce of magnitude was practically handled over the high seas in ships. The tariff was the phase of interstate commerce with which the legislation of

the different States had most trouble, and in connection with which the legislation of the different States led to most confusion. At that time the interstate commerce on land was done by wagons, and was by comparison with the present day all local. In the present situation railway development has brought the interstate commerce by land to be of even greater importance than that by sea. Along with the growth of the railway system there have grown up evils of discrimination, of speculation in railway investments, of juggling railway securities, and other evils far greater than the evils of the tariff in the early days, when the Federal Constitution was adopted and the general government organized under it. Therefore, we should endeavor to be as wise as our forefathers, and when we find that a department of interstate commerce has been brought into much confusion and no order by multitudinous State legislation, and when we find also that interstate commerce on land has grown to be entirely beyond the control of any one State, it is very important that we take steps to bring it under one general control and to a condition of uniform treatment throughout the United States.

THE STATES AND THE RAILWAYS.

At present we have two opposing influences to make confusion and dissatisfaction: One of them is drastic State legislation inaugurated in many instances by demagogic politicians, but largely supported by good State officers and many good people, because of evils of railway organization and management. On the other side, the railway companies themselves are indulging in many evil practices, such as discrimination, speculation, the issuing of vitiated securities; and as the tendency on one side is to make legislation more drastic, so the tendency seems to be on the other side to hold with increasing dogged tenacity to a situation which gives opportunity for the evil practices, against which the people are so exasperated, and justly exasperated. It is plain that the escape from both of these unsatisfactory situations lies in some course leading to the abolishment of both. It is as important now to escape the confusion and injury of further drastic legislation, as it is to escape the railway evils. It is equally as important to escape the railway evils as to escape the drastic legislation. The middle course by which we escape both of these evils at once is the same as that adopted by our forefathers to

escape the evils of multitudinous State legislation about the tariff. It is the same which brought a good banking system and a uniformly safe currency out of the former confused condition of money issued by State banks under the multitudinous and various State laws. State rights are not in the slightest degree infringed if a subject is relegated to the general government which is wholly beyond the control of the States. The constitution has wisely relegated to the control of general government things which are national in their character, and concerning which legislation by many States leads to confusion, rather than order. Federal control, examination, and publicity would, in my opinion, have the same effect upon the railways, as it had upon the national banks. By this means it would not only be that the operations of the roads would be regulated, but the issuing of all railway securities would be regulated, and the condition of railway finances made public. Thus investment in railway securities would be brought within the reach of the people, and the present complaint on the part of the railway managements about the difficulty of getting money for necessary extensions and improvements would all be gone. The people along the lines of the roads would buy their securities, as the people in each locality now buy national bank stock. A large volume of national bank stock of the United States is now held by widows and orphans, by sanction of the courts. What court would in the present situation, permit the money of widows and orphans to be invested in railway securities, or to remain invested, even where the deceased husband and father had already bought them?

POWER OF THE NATION TO REGULATE COMMERCE.

The question of constitutional right for such government control, regulation, and publicity is amply provided for in the constitution, and on two different counts. The constitution provides for the control by the Federal government of interstate and foreign commerce. This is ample authority alone, but the constitution also provides for the control by the Federal government of the mail service and post roads. We are prone to forget, in a degree, that every railroad is a post road, and that it carries the mails. The railway people themselves sometimes remember this in case of strikes, but they don't remember it when it comes to obeying the general laws relating to discrimination, rebates,

combinations, and the issuance of watered securities. It is idle to complain of drastic State legislation, until some remedy has been found for the railway evils. It is self-evident that no State legislation can accomplish a remedy for railway evils, except by harassment, and this harassment is very dangerous to commerce. It is idle to talk about the railways reforming themselves. They will never do it until forced. Many railroad men will help, but the ultimate reform must be made by the whole people. The controversy has come to be one of an evil on one side against an evil on the other side. The roads complain about drastic State legislation, while the people of every State are complaining of railway evils, and bitterly resenting the idea that railway investments have been put by speculation and fraud wholly beyond the reach of the people themselves. If these railway evils existed in one State only, the State might well undertake its remedy. The best legislation any State could make would be to request the Federal government to immediately inaugurate a system of control, regulation and publicity for all the railways of the country upon precisely the same lines by which the general government now controls, regulates, and makes public the affairs of national banks. So far from State rights being infringed, any State would be exercising one of its highest rights to appeal to the general government to remedy an evil with which the State itself is unable to cope, and precisely as the State would appeal to the general government in case war was declared against it.

THE PROBLEM A NATIONAL ONE.

The usurpation by the general government of the control within a State of anything which the State could handle by itself would be an infringement of the State's rights. The reference by a State of a matter beyond its control to the control of the general government, is one of the highest and most important of the rights of the States which are in the American Union, and while none could be more opposed than I to the surrender of any State's rights, none could appreciate more than I the right of a State to call the general government to its aid to help it in connection with a matter that was beyond its power of handling and control.

At the conclusion of his address, Mr. D. A. Tompkins presented the following resolutions:

Whereas, Federal control and regulation of National Banks as a rule has been effective and satisfactory, and

Whereas, The Federal control of banks is only in matters where the separate States have failed to protect the interests of the people, and

Whereas, Such Federal control in no way interferes with the business of the banks, but only with evils, and only those evils which the States have failed to correct, and

Whereas, The same plan of remedy would seem applicable to interstate commerce; therefore be it

Resolved, That the consensus of opinion of this conference is:

(1.) That all laws against combinations in restraint of trade be repealed and that new laws be passed against the evils of combinations.

(2.) That when these evils continue in spite of State laws, the Federal Government shall assume control of the evils of the trade and regulate the same in the interest of the people.

(3.) That all railways doing an interstate business be subjected to Federal control in matters which are beyond the control of State laws.

(4.) In all cases of corporations doing an interstate business the Federal control should include examinations of accounts, publication of same, and in the case of railways regulation of issues of securities, to the end that the people could with safety invest in them, and in all cases requiring fair and equitable dealings with the people.

(5.) That the Federal Government should do nothing which the States can, or fail to do, with equal effect, nor should the Federal Government undertake control of any phase of business which is legitimate, but only the evils of business.

(6.) That American commerce should be fostered and developed along lines of the greatest possible liberty of trade for all the people, and the least possible Government ownership, and no Government interference except against evils.

SECRETARY REYNOLDS: Mr. Easley has just handed me a notice which he requests read at once. At an earlier session it was stated that a Committee on Ways and Means to take care of the expenses of this conference would be appointed. This Committee has been named, and is composed of the following members of the conference:

Theodore Marburg, Maryland,
F. B. Sears, Massachusetts,
Mr. Mahlon N. Kline, Pennsylvania,
Franklin MacVeagh, Chicago,
E. A. Bancroft, Chicago.

THE CHAIRMAN: The next speaker will be a representative of the State of New York, and one of whom the State of New York is justly proud. He represents also the Wholesale Druggists' Associations and his subject is, "Reasonable Agreements Beneficial to Commerce." I have the honor of introducing Mr. William J. Schieffelin, of New York.

MR. WILLIAM JAY SCHIEFFELIN.

Mr. Chairman—Thirty years ago the wholesale drug trade of the United States was in a demoralized condition. Competition was fierce, especially in proprietary medicines, which constitute more than half of the average drug jobber's business. There was little or no profit on these goods, and with many wholesale druggists it was a severe struggle for mere existence. The situation became so acute that it was absolutely necessary to find a remedy, and about that time the wholesale druggists of the country, all suffering from the disastrous results of excessive competition in proprietary medicines, formed their Association. Upon the petition of the Association, many proprietors of these goods adopted the so-called "rebate plan" in the mutual interest of the jobbers and themselves. Under this plan the proprietor fixed a uniform wholesale price for his goods all over the country, and paid the jobber a rebate therefrom, upon condition that the latter would not sell below that price; the matter being covered by a contract or agreement between the proprietor and each of his wholesale distributers. This rebate or discount constituted the jobber's entire compensation for handling the proprietor's goods, and the allowance was only a reasonable one, being but little more than the cost of transacting the wholesale drug business. The jobber was thereby insured a steady, although small, profit on proprietary articles, and the cut-throat competition which formerly prevailed in the wholesale drug trade on this class of goods was greatly reduced. The present margin of profit in the wholesale drug business is not to exceed 3 per cent. on the total amount of sales, which is a

very moderate return, considering the large capital invested and the technical knowledge required to conduct the business.

ORGANIZATION IN THE DRUG TRADE.

While the "rebate plan" provided a reasonable remuneration for the jobber, it gave no protection to the large army of retail druggists who some years later were compelled to sell proprietary medicines practically at cost, to meet the ruinous competition of department stores and the few large retailers who made a specialty of cutting prices on these articles, mainly for the purpose of drawing customers to their stores and selling them other goods on which they made a large profit. In order to assist the rank and file of the retail drug trade, many proprietors adopted about seven years ago what was known as the "tri-partite plan," under which they required their wholesale distributers to refuse sales of their goods to the "aggressive cutters," who insisted upon selling below the prices agreed upon by most of the retailers in their respective communities.

The "direct contract and serial numbering plan" was later adopted by some of the proprietors, who fixed both the retail and wholesale prices on their goods, and took direct contracts from the retailers as well as the wholesalers, requiring them not to sell below such prices.

Under none of these plans were the prices of proprietary medicines unreasonably increased. They were never advanced beyond the retail prices marked on the goods by the proprietors themselves, and, in fact, the retailers sold considerably below such prices in the great majority of cases.

ORGANIZATION ADJUDGED IN VIOLATION OF SHERMAN ANTI-TRUST LAW.

Unfortunately, however, some mistakes occurred in the operation of the "trip-partite plan," the principal one being the effort of the retailers, through a so-called "honor roll," to persuade jobbers to refuse goods of every kind to "aggressive cutters." This led to excesses, which occasionally took on the appearance of an attempt at tyranny, and the result was that the Government brought a suit against the proprietors, wholesalers and retailers, on a charge of combination or conspiracy to restrain trade in violation of the Sherman Anti-Trust law. As the outcome of this suit, the United States Circuit Court at

Indianapolis issued a decree forbidding any further co-operation between the three branches of the trade in carrying out any plans for the sale of goods, and even enjoining the wholesalers and retailers, through their respective Associations, from making any effort to secure the adoption by proprietors of plans for the maintenance of their prices. But the decree does not deny the right of a manufacturer to adopt and enforce any plan he may choose for the sale of his own goods, provided his action is individual and not in combination with any other person or association.

While some errors were made in the attempt to improve the deplorable conditions existing in the retail drug trade, they were due to an excess of zeal, and there was no intention on the part of any one concerned to violate the law.

It was a great injustice to designate as a "Drug Trust" the trade arrangements which existed among manufacturers, wholesalers and retailers for the sale of proprietary articles. On the contrary, these arrangements were directly opposed to the "trust" idea. Their object was simply to establish uniform selling prices which provided only a fair margin of profit, so that the thousands of small dealers could continue in business instead of being driven out by the comparatively few "aggressive cutters" whose methods tended to monopolize the business in their own hands.

Until the Government suit was brought against the drug interests it had always been supposed that the Sherman Anti-Trust law was intended for the protection of the many aganist the few. It was used, however, to produce exactly the opposite result in this case. It was also humiliating that the whole drug trade of the United States should be branded as conspirators and lawbreakers because they were parties to trade arrangements which had always been considered entirely proper until the Sherman law was invoked. It has been truly said that it is not possible to indict a whole nation, but now our own Government has enjoined a whole trade, because the number of druggists who had not signed the contracts was so small as to be practically negligible.

The Sherman law is such a broad one that the injunction in the Government suit completely tied the hands of the two large associations existing in the wholesale and retail branches of the drug trade, and prevents either of them from making any organized effort to obtain protection from the manufacturers whose goods

they handle. It can hardly be conceived that the law was ever intended to work such a great hardship upon thousands of good citizens engaged in the same line of business. Unless this law is so amended as to permit reasonable agreements which are beneficial to commerce and which do not conflict with the public welfare in any way, the business men of this country will undoubtedly be placed at a great disadvantage. If this law should be literally applied, it will cause the greatest possible restraint of trade, although it was intended to prevent that condition. Reasonable agreements do not restrain trade, but promote it.

POSSIBLE SCOPE OF THE SHERMAN ACT.

Should the Sherman law be pushed to its logical conclusion, the merchants and manufacturers who are being held to a strict accountability under it are not the only class of citizens whom it will involve. For instance, it is well known that the farmers, through their associations, fix the price of cotton, and perhaps other commodities produced by them. According to the newspapers, such associations have not only established minimum selling prices on cotton, but have arranged for storing and holding the crops until purchasers are compelled to buy at the prices fixed by them. Labor unions have also been actively engaged for many years in making agreements with their employers, fixing the prices of labor, regulating the hours of work, etc. It is hardly necessary to refer to the many strikes and boycotts which have been inflicted upon the country, often with serious results to the public interest, as they are matters of common knowledge. Once the toiling and voting masses of the nation realize that their own interests are threatened by the Sherman law, it is easy to conceive that our national legislators will no longer fail to appreciate the necessity of correcting its defects.

EUROPEAN LAW RELATING TO MERCHANTS AND MANUFACTURERS' ASSOCIATIONS.

In striking contrast to the restrictions imposed by the Sherman law in our own country, it is enlightening to observe what absolute freedom of trade is permitted by the governments of other countries, notably England, France and Germany, which place practically no legal restrictions upon agreements regulating the prices and sale of goods.

Through the courtesy of the Department of State at Wash-

ington a series of questions, prepared by me, were answered by the American Consuls in more than fifty of the principal cities in the three countries named. Under each question is given a brief synopsis in a general way of the answers received. Quotations are also made from some of the reports in a number of instances where the information is of special interest at this time.

Question No. 1.

"Are agreements on prices and terms between a number of dealers, a number of manufacturers, or both manufacturers and dealers, permitted by law?"

The answers state that such agreements are legal in Great Britain, France and Germany.

Our Consul at Liverpool, England, says: "There is absolute freedom in England in regard to all agreements as to prices and terms between a number of dealers, a number of manufacturers, or both manufacturers and dealers. No law has been enacted restricting such freedom."

Our Consul at Dundee, Scotland, writes: "In considering the question of sales and trade agreements as obtaining in Scotland, it has to be noted that the tendency of all Scottish legislation is to refrain as far as possible from interfering with the unquestioned right of the individual to buy and sell where he finds what he considers to be his best market. He has the utmost freedom to attach any conditions which are not contrary to public policy to any purchase or sale he may make, and what is said of individuals applies with equal force to combinations of individuals. There is, therefore, no legal objection to dealers or manufacturers, or both, entering into agreements among themselves or between themselves and others in regard to prices and terms."

The following is from our Consul at Belfast, Ireland: "The Ulster Drug Trade Association, with headquarters in Belfast, is composed of retail druggists. Its objects, as stated in its printed price lists, are: 'To regulate from time to time the retail prices of patent and proprietary articles dealt in by the trade. To maintain a uniform minimum selling price for all patent and proprietary articles.' Each member signs an agreement to sell all such articles 'at prices not less than the prices set forth in the Association's price-list.'

"The Proprietary Articles Trade Association, organized in 1896, has a membership throughout the United Kingdom. It includes manufacturers of proprietary articles, and wholesale and retail dealers in the same. Its affairs are directed by a council

of thirty members, elected annually, ten from the manufacturers, ten from the wholesalers and ten from the retailers. Among the objects named are 'The taking of such steps as the Association may be advised are legal to deal with extreme cutting of prices.'

"This association issues a 'List of Protected Articles,' with the minimum wholesale and retail prices of each. This printed list has the following notice at its head: 'Dealers in the articles included in the following lists are respectfully informed that the articles referred to are supplied to the trade only upon condition that they be not resold below the prices therein stipulated, and that all wholesale houses dealing in the articles are under agreement with the manufacturers not to supply them to firms who sell them below the stipulated price.' In case any dealer, wholesale or retail, is proved to have sold proprietary goods below the minimum price fixed by the Association, his name is placed on the 'stop list,' which is defined as 'the list of firms from whom it is found necessary to withhold supplies.' The offending firm can obtain no further supply of any goods included in the Association's 'protected list' from either the manufacturers or from other dealers."

Our Consult at Bordeaux, France, reports: "In France trade is practically free and unrestrained, manufacturers and dealers being at liberty to fix the price of the goods they manufacture or sell. Under the law, they have the right to combine for the study and protection of their interests. They have the right also to make agreements as to prices, but the law imposes certain restrictions. For instance, if the 'holders' of an article combine to force its price, they may be prosecuted under Section 419 of the French Penal Code, which, it would appear, was enacted for the purpose of forbidding 'corners' and monopolies."

The following is from our Consul-General at Berlin, Germany: "There are no laws in Germany, either national or state, which are specially directed against the formation of combinations for the purpose of conserving and promoting the interests of the various trades. These combinations, called 'Verbande,' 'Kartellen,' syndicates, etc., have risen to such a degree of importance that they exercise a powerful influence upon, if not control the industrial and commercial conditions of Germany. In fact, the organizations of German manufacturers and producers cover practically the entire field of industrial activity in this country. The various forms of syndicates are organized

under the German law of corporations. * * * The contracts and agreements of the cartels like those of all business enterprises are subject to the provisions of the Civil Code and Code of Commerce. Proceedings have been frequently taken against the combinations, based upon Paragraph 138 of the Civil Code, which states that any agreement is null and void which is opposed to the principles of moral law or which may result in usurious extortion, and also upon the plea that the agreements made by cartels had a tendency to restrict the enjoyment of industrial liberty.

"The Supreme Court of Justice of Germany at Leipsic has decided in many cases that the agreements of the cartels were not null from the mere fact that such agreements have been made, but that it could be possible to contest the agreements, in the general interest of the industrial and commercial world and of the people at large, and to protect industrial liberty, when the agreements tended to control the markets for speculative purposes, or to create a monopoly and eliminate legitimate competition, so that merchandise would be sold at extortionate prices. Agreements, however, made in good faith to protect certain branches of trade from a ruinous fluctuation of prices owing to a needless competition, are not contrary to the principles of morality and do not tend to restrict industrial liberty, but are only the legitimate results of an act of self-defence, taken in the interest of the trades concerned. In other words, the German Supreme Court, up to the present time, has rejected the interpretation of Article 138 of the Civil Code which would tend to nullify the agreements of the syndicates as contrary to the principles of morality, and has officially recognized the economic justification of combinations and their right to legal protection unless they use unlawful methods of checking competitors who refuse to join them."

Our Vice-Consul-General at Frankfort, Germany, says:

"As yet no anti-trust laws have been issued in Germany; there has been no necessity for them, because the measures adopted by the trusts and combines to fix moderate prices with a fair margin of profit have proved beneficial to all—to the trusts, the traders and the public—on account of the increased stability of prices and reasonable terms.

"The Government seems rather to favor the trusts, and in some instances Government officials have been permitted, after

having nominally resigned their posts, to act as managers of such organizations."

COERCIVE ACTION PERMISSIBLE FOR MANUFACTURERS' ASSOCIATIONS.

Question No. 2.

"What penalties, if any, are associations or manufacturers allowed to impose on dealers who violate agreements or accepted terms?"

The gist of the answers is that they are free to stop supplies or impose such pecuniary penalties as they may see fit.

Our Consul at Liverpool, England, reported:

"Penalties imposed by associations or manufacturers for a violation of any agreement entered into or accepted by them are enforcible."

Our Consul at Edinburgh, Scotland, writes:

"Associations or manufacturers may refuse to sell to dealers who violate agreements or accepted terms. Or they may exact payment of a penalty for violation of the agreement, as a condition precedent to further sales to such dealers. If the agreement between an association, or manufacturers, and dealers is in the form of a contract, prescribing a penalty for violation, this penalty may be enforced at law. It has been held, however, that though a contract stipulates for a sum as a penalty or as liquidated damages, the court may, in the exercise of its equitable jurisdiction, modify the amount if it is exorbitant."

From our Vice-Consul at Glasgow, Scotland:

"Such agreements may contain a clause or clauses imposing penalties for failure to fulfil the conditions set forth therein. If the restraint contained in the agreement is such as only to afford fair protection to the interests of the party in favor of whom it is given, and is not so far-reaching as to interfere with the interests of the public, an action for payment of the penalties specified in the agreement would probably be sustained by the court."

Our Consul at Nice, France, reports:

"There is no 'associations' of druggists in this Consular District, but if there were they would be allowed to impose on dealers who violate agreements or accepted terms such penalties as each 'association' might deem proper to inflict by rules established by it."

Our Consul-General at Berlin, Germany, says:

"The nature of the penalties to be imposed by syndicates on its members or on dealers who violate agreements or accepted terms is usually stated in the statutes of the cartel, and if the syndicate has not been declared illegal, the penalties can be enforced through the courts of justice. In the Steel Syndicate a strict surveillance is exercised, and serious penalties are inflicted upon any manufacturer who violates the stipulations of the cartel. Blank acceptances are signed by each member and put in the hands of the treasurer of the syndicate. Should a member be fined, the treasurer fills in the amount of such penalty on the signed check and puts it into circulation. In case of dispute between a manufacturer and the syndicate, the matter is referred for decision to a committee of arbitration of the cartel.

"In Germany there exists a protective organization of drug and perfumery manufacturers with an international membership, called the '*Verband der Fabrikanten von Markenartikeln E. V.*,' an association of manufacturers of articles which have copyrighted brands, such as Odol, Roger and Gallet perfumery, etc. Its customers are bound by an agreement not to sell any of the products of its members at other than fixed prices or to anybody who may be blacklisted. An infringement of the agreement is punishable by the refusal of the members of the association to supply goods to the guilty party."

From our Vice-Consul at Plauen, Germany:

"Fines, to almost any extent, if previously fixed and agreed to, are allowed to be imposed on dealers who violate the accepted terms or agreements made with associations, manufacturers, wholesalers or others, as long as the penalties are not considered an offence against good customs, when the law courts can be called upon to judge whether the terms are reasonable or not."

Question No. 3.

"Does the country to which you are accredited prohibit manufacturers or dealers from fixing prices with a fair margin of profit on their wares?"

The answers show that it is lawful for manufacturers and dealers to fix whatever prices they choose on their goods. In Germany, however, the Government fixes the prices of medicine other than proprietary articles, and a severe fine is imposed on those dealers whose charge more than the legal rate.

Question No. 4.

"Does it distinguish between articles known as 'necessities of life' and other articles in trade agreements?"

No distinction is made except in France, where the municipal authorities sometimes fix the price of bread, meat and possibly other "necessities of life."

Question No. 5.

"Does it distinguish between articles protected by patents or trade marks and those which are not?"

According to the answers, there is no distinction made.

Question No. 6.

"Does it permit a manufacturer of proprietary or other articles to refuse sales of his goods to a dealer who violates the prices and terms of other manufacturers?"

It is clear from the answers that a manufacturer can legally refuse to sell to any one he pleases.

Our Consul at Liverpool, England, writes:

"A manufacturer of proprietory or other articles in this country can legally refuse to sell his goods to a dealer who has violated the prices and terms of other manufacturers. One of the leading legal authorities in England upon the submission to him a test question and his opinion may be accepted as a correct interpretation of English law on the subject, replied 'that it would not be illegal for an association of dealers in proprietary articles, instead of stating two prices, to refuse altogether to supply a man who did not sell at the prices which they stipulated—that is to say, that they could legally undertake either by themselves or through their agents to refuse to supply a man with all or any of the articles sold by them respectively because he cut one of them below the prices stipulated for by the particular manufacturer who owned it.'"

Our Vice-Consul at Glasgow, Scotland, says:

"A manufacturer of articles of any kind can lawfully refuse to sell to anyone without even assigning a reason."

From our Consul at Bordeaux, France:

"A manufacturer of proprietary or other articles is free to sell or not to sell his goods to whom he pleases. The manufacturers of any line of goods having come to an agreement, may refuse to sell to a dealer who may have violated the prices and terms of other manufacturers. Under the civil law, however, such dealer has the right to have a 'proces' issued to de-

termine the validity of the agreement, but no criminal action can be taken."

Our Vice-Consul-General at Frankfort, Germany, says:

"No law in Prussia prohibits a manufacturer to refuse sales of his goods to a dealer who violates the prices and terms of other manufacturers, or to other parties."

USE OF BLACK LIST IN EUROPE.

Question No. 7.

"Is it lawful for a single manufacturer, or any number of them acting together, to issue a so-called 'black list' of those dealers who cut the prices fixed by one or all of such manufacturers, and can wholesale dealers legally refuse sales to parties named on such list?"

In Great Britain there is no specific law against "black lists," but anyone claiming to be injured thereby might invoke the general libel laws. In France the "black list" is apparently seldom used in business, but some of the replies from that country indicate that it is customary for manufacturers to remove from their list of agents those who do not adhere to agreements. The answers from Germany show that a "black list" is permissible, and that supplies may be refused to parties on such list, excepting medicinal drugs, etc., required by privileged apothecaries, who are appointed by the Government.

Our Consul at Liverpool, England, says:

"The best information that I have been able to secure is to the effect that it would be lawful for a single manufacturer, or any number of manufacturers acting together, to issue a so-called 'black list' of those dealers who cut the prices fixed by one or all of such manufacturers, and that wholesale dealers could legally refuse to sell to parties on such 'black list.' The 'black list,' however, to be within the protection of the law, would have to be issued privately. If it were issued publicly an action might lie for damages or injury to trade suffered by the parties mentioned on such list."

From our Consul at Plymouth, England:

"There is no law forbidding a single manufacturer, or any number of them acting together, to issue a so-called 'black list' of those dealers who cut the prices fixed by one or all of such manufacturers, and wholesale dealers can legally refuse to sell to parties named on such list."

Our Consul at Edinburgh, Scotland, reports:

"It is not unlawful for a single manufacturer, or any number of them acting together, to issue a so-called 'black list' of those dealers who cut the prices fixed by one or all of such manufacturers, and wholesale dealers can legally refuse sales to parties named on such list."

From our Consul at Belfast, Ireland:

"It is lawful for a single manufacturer, or a combination of manufacturers, to issue a 'black list,' i. e., a list of those dealers who cut the prices fixed. Wholesale dealers can legally refuse to sell to parties named in said list."

Our Consul-General at Paris, France, writes:

"It is not customary in France for manufacturers or merchants to issue formally a 'black list,' but if, in the drug trade, for instance, a dealer should cut prices or otherwise offend the manufacturer, the latter would or could refuse to sell further to such dealer, and the result would be that the dealer's name would be dropped from the advertised list of those authorized by the manufacturer to sell his products."

Our Consul at Limoges, France, says:

"It is lawful for manufacturers to give out to wholesale dealers a list of dealers who cut prices, and they can refuse to sell to those who fail in their agreements."

From our Vice-Consul General at Hamburg, Germany:

"In Germany a manufacturer of proprietary and other articles is legally permitted to refuse sales of his goods to a dealer who violates the prices and terms of other manufacturers. In this respect so-called 'black lists' are regularly circulated among the members of associations, and the issuing and circulation of such lists is entirely lawful. In the same manner can wholesale dealers legally refuse sales to parties named on such lists, and frequent use is made of such privilege."

Our Vice-Consul General at Frankfort, Germany, writes:

"No law forbids issuing privately a so-called 'black list' of those dealers who cut the prices fixed by manufacturers; wholesale dealers can refuse sales to parties named on such list and other parties."

Our Vice-Consul at Plauen, Germany, reports:

"The German law does not forbid to keep or issue so-called 'black list of dealers who cut the prices fixed by one or more manufacturers, and these or wholesale dealers can re-

fuse sales to parties named in such lists, excepting medicinal drugs, etc., required by privileged apothecaries."

GOVERNMENT RELATIONS TO TRADE ASSOCIATIONS IN EUROPE.

Question No. 8.

"Are there any commissions or authorities appointed by the Government of the country for the purpose of deciding whether a trade combination or agreement is in restraint of trade, or illegal, or not?"

These Consular reports show that Great Britain, France and Germany have never undertaken to prevent or interfere with proper trade agreements. On the contrary, the widest latitude seems to be allowed manufacturers and dealers, among whom numerous combinations exist, especially in England and Germany, to secure the maintenance of prices and terms.

In our own country, however, the Sherman Anti-Trust law is so sweeping that it makes illegal every contract or combination in restraint of trade. Even if the contract or agreement is a reasonable one and does not menace the public welfare in any way, it is nevertheless prohibited by this law.

As a matter of curiosity, it is interesting to refer to a "Catalogue of Drugs, Medicines and Chemicals sold wholesale and retail by Jacob Schieffelin, 193 Pearl street, New York," published more than 100 years ago. This old price list was printed in 1804, and it bears the following official endorsement: "Examined and approved by the New York Druggists' Association, New York, August 6, 1806. By order, Henry H. Schieffelin, Secretary." It would seem that it was entirely lawful in those early days for merchants to form an association and agree upon the prices to be charged by its members.

There is a pressing need of Congressional legislation which will make it lawful to enter into reasonable and proper trade agreements, for without such agreements it is difficult to meet the complex conditions of modern business.

I therefore urge this convention to petition Congress to amend the Sherman law so as to make its provisions apply only to agreements and contracts which are in unreasonable restraint of trade.

THE CHAIRMAN: In spite of all the difficulties, the firm has lasted one hundred and twenty-odd years. Before calling

upon Mr. Herman Ridder to close to-day's discussion, I will declare the floor open for general discussion on behalf of the merchants and manufacturers' associations here represented. We have heard from the Wholesale Drug Association. I understand that we have with us the representative of the Retail Drug Association, Mr. Wooten, to whom we extend the privilege of the floor.

MR. THOMAS V. WOOTEN: I shall only take a few moments' time, because Mr. Schieffelin, as a representative of the wholesale druggists, has so completely covered the ground in reference to the drug trade; but there is one thing about which I want to talk that will impress upon you the importance of this discussion to the retail druggists. About fifteen years ago we began to have an influx into the drug business of people who were not druggists; people who, on the contrary, were speculative capitalists; people who wanted to sell drugs, the conspicuous articles of the drug business, at a phenomenally low profit in order to create the impression that everything in their store was sold at as much less than its real value as 50 or 60 per cent., selling a bottle of patent medicine at a little more than half the usual price of that article. At that time our business began to suffer, and it has gone on from bad to worse, until the condition of the retail drug business is anything but satisfactory to-day. Our efforts to better our condition brought us into contact with the national government and we were prosecuted as part of the drug trust. No more unjust action could have been conceived or carried out.

Now, in order to show you how patent medicines are used, the retail druggist pays for these articles 67 to 80 cents. The wholesaler, buying them at best prices, pays 57 to 67 cents, something like that, but the department stores sell them as low as 49 cents. You know how that is done. It is very simple. The actual loss is charged to the advertising account, and it is regarded as cheap advertising at that. But what becomes of the retail druggist, the man who has paid 67 or 80 cents for it, and whose expense of doing business is 25 per cent. of his gross receipts? He has to sell that article at $1, or else at an actual loss, and when he tries to get a dollar for it the woman who has seen the 49 cent price in the daily paper looks upon the druggist as a highwayman, and treats him as such, because she figures out that the department store makes a profit at 49

cents. That illustrates the importance of this discussion to our branch of business. That is not the worst of it, though, Mr. Chairman. The prescription business has suffered likewise. The department stores, and some of these syndicated drug stores, are taking prescriptions that have been filled by reputable drug stores of long standing, and refilling them at a small fraction of their actual value, in order to create the impression that everything is sold at that phenomenally low price. When you take a new prescription in there you get an entirely different story; they charge the usual price, but what they want to do is create the impression that the retail druggist in the outlying district is a robber.

We have been trying to benefit our condition by having a thorough understanding in regard to prices. Personally, I do not think the retail drug business can be carried on profitably or satisfactorily without some kind of tacit agreement as to prices. We are willing in our line of business to submit the question of profits to any responsible tribunal. We have educated ourselves to this business. Everything about this business is regulated by law. First of all we are required to prove to some responsible tribunal that our educational acquirements fit us to carry on this business. There is nothing about a drug store that is not regulated by law except the fact that the proprietor is not allowed to talk to anybody else about prices or about improving his condition of business. If he does he is running contrary to the Sherman Anti-Trust law, and liable to be prosecuted, and, worst of all, held up to scorn in the public press. That is about all I want to say, because I think the subject has been covered; but we are very much interested in this, and we want the law repealed.

THE CHAIRMAN—Mr. Ninde has asked for the floor. Mr. Ninde represents the Retail Furniture Dealers' Association. There is only one more speaker after Mr. Ninde, who has been put on the programme for a five-minute talk, after which the floor will be open to everybody.

MR. J. NEWTON NINDE: Mr. Chairman—The question which the furniture dealers have confronting them is not a question of price, but a question of trade ethics, and I cannot better illustrate the position in which the furniture dealers of this country find themselves as this time than to make the mere statement of fact.

Some of you may know and some of you may not know that in the cities of New York, Chicago and Grand Rapids there has been established a number of buildings in which are assembled, for the personal inspection at the hands of the furniture buyer and the retailer of furniture, the samples of the factories all over this country. These show rooms or exhibition buildings are wholesale show rooms, but because furniture is so tempting a thing to the average woman and because of its bulk and the necessary fixed charges in its handling, the margin of price between the wholesaler and the retailer is necessarily large. These wholesale show rooms, it was soon found, became retail establishments into which curbstone brokers, salesmen and others who carried no stock were bringing the consumer in the attempt to buy goods at the wholesale price. The individual protest of the buyers was registered without effect; and so about four years ago there came into existence the National Retail Furniture Dealers' Association, made up of buyers from all over the country. They convinced the managers of these buildings and the exhibitors that it was but just if they expected their patronage they should protect them in their legitimate trade. Strictly, under the Sherman Anti-Trust law, this might be construed in restraint of trade; but this was not all. There were other centres in which factories were located, and the breakfast food men and the tobacco trust and the soap makers were all using furniture to aid in the distribution of their goods. One soap house, we are told, gives away, or ostensibly gives away—for we, as business men, know such is not the case—over two million dollars worth of furniture each year. In the city of Chicago there have grown up great mail order houses that are conveying to the people in the country the same impression that the department stores are conveying to the people in the cities, that they were selling their goods for so much lower prices that the retail dealer in the country generally was a thief and a robber. More than that if you will remember, in Mr. Seth Low's address yesterday morning he called attention to the fact that each article imported into this country, whether one, 100 or 1,000, brought the same amount of duty. The mail order house went to the weak and venal, the dishonest, I might say, manufacturer and said to him, "We will take so many of your goods if you will allow us a discount of from 20 to 50 per cent."; and what was the result? Certain mail order houses have been able to dis-

tribute to the consumer, although their expense for doing business, we find, is quite as great as that of the merchant in the country, goods for less than the retailer in the country can buy them from the same manufacturer as the mail order house procures them from. These were evils which threatened to ruin, not only the retail furniture dealer, because these same difficulties are present particularly in the West, but the retailers in all lines; and so there grew up twenty-three State and city associations throughout this country. And what was the result? In the State of Oregon there have been organized several associations which say to the manufacturer of furniture: "If you will protect us we will try to protect you and confine our trade to you."

(Upon motion, the time of the speaker was extended three minutes longer.)

An active, enterprising man commenced proceedings against the furniture manufacturers and retailers of Oregon and Washington and California. One hundred and eighty merchants were indicted, everybody who had ever belonged to an association, including many men who were out of business and men who were dead, and then, to make a mockery of the thing, these men were quietly given to understand that if they would come into court and plead guilty they would be let off with a fine of ten dollars. After the proceedings had begun, because some of us have had experience with lawyers, we thought it was easier to pay the fine than to pay the lawyer—the District Attorney glibly remarked, "We have secured enough money out of this to permit us to pay our expenses in the proceedings."

The retail furniture dealers in this country and the merchants in all lines—for there are hundreds of such organizations as ours—simply want a privilege to gather together and correct, as far as possible, these abuses and be in a position to say to the manufacturer, "If you sell me you must not sell my customer, and you must not destroy my business."

THE CHAIRMAN—The third representative selected by the retail merchants to state their case is Mr. Charles J. Traxler, of Minneapolis, who represents the Retail Lumber Dealers' Association.

MR. CHARLES J. TRAXLER.

Mr. Chairman—As to the industrial trusts and combinations, let it be said briefly in passing that experience has proven that not all

trusts, nor all combinations, are bad. On the contrary, some of them serve a most useful purpose for the advancement of the public good. But all of them, whether good or bad, should be subject to public inspection and regulation under either State or Federal authority; where the scope of the business is exclusively within a State, then under State authority; where interstate, then under the Federal authority.

With publicity, with a standard accounting or auditing system, and with a law requiring that all rates or charges for any commodity of general public use or utility shall at all times be just and reasonable, and a provision for investigation and prosecution similar in effect to that herein proposed for common carriers, the menace of industrial trusts will disappear.

All present plans for dealing with these powers are inefficient. Moreover the method of procedure is slow and unproductive of satisfactory results. It is of small consequence what laws are on our statute books if adequate means are not provided for producing in court the evidence of their violation. No plan of investigation will succeed that does not cast the burden of proof upon the party having possession of the facts to produce them in court.

Then amend the Sherman Anti-Trust Act to make the gist of the offense, not the agreeing together, but the actual injury to the public, so that the constitutional right of private contract shall indeed be inviolate and no longer a crime punishable by fine and imprisonment.

What the American people want is such laws and their enforcement as will safeguard them in the enjoyment of their equal rights and equal privileges and protect them against the encroachments of the rich and powerful.

What they want, and should have, is laws that *will control,* not destroy; laws that will regulate, not confiscate; laws that will give them a fair share of the benefits of aggregate industrial wealth under *private* ownership, not public ownership.

Probably the question of greatest economic significance touching the business interests of this country in the present generation is that of Federal regulation of industrial trusts, common carriers engaged in the carrying traffic which constitutes interstate commerce. It may be taken, I think, as the common belief that some definite means should be provided by Congress for the effectual regulation of that part of the business of common carriers to the end that all classes of people

and all industries shall receive equal service at uniform rates, and that industrial trusts should be so regulated that they shall no longer be a menace to the public welfare. Let us consider first the railway problem.

POWER OF CONGRESS TO REGULATE RAILROADS.

That Congress has the power to regulate interstate commerce is so well settled that any discussion upon that point in this connection seems undesirable and unnecessary. It is also agreed that the interstate traffic of railroads as common carriers is interstate commerce, and almost all recent writers upon that subject agree that in the exercise of the right to regulate interstate commerce Congress has, if it chooses to exercise it, the legal right to fix the rates to be charged by common carriers for that part of their business which has to do with the transportation of freight and passengers between the States, or between the States and foreign countries. This plan may be passed without further consideration as there is no one at present advocating its adoption on account of its obvious impracticability.

CAN CONGRESS DELEGATE ITS POWER TO A COMMISSION?

There is, however, a great diversity of opinion as to whether Congress may lawfully delegate this power to a commission, and if Congress may delegate it at all, how far it may lawfully go in doing so. There are those whose opinions are entitled to the greatest consideration who contend that Congress has no constitutional authority to delegate this power or any part of it, and it is earnestly contended with considerable force of argument that *so far as the United States Supreme Court is concerned, the question may be deemed an open one.* A noted lawyer and statesman, who has recently written on the subject, has expressed that opinion. He says: "There are dicta by judges in various cases decided by the Supreme Court to the effect that Congress may regulate rates of national transportation, either directly or by a commission. In other cases, the point has been taken for granted. But an examination of the cases shows that whether authorizing a commission to fix rates is or is not a delegation of legislative power which Congress is competent to make has never been the ground of decision in any case, and presents an issue which has never been thor-

oughly discussed either by the bar or by the court." There are many other prominent Americans who hold the same view.

There can be no doubt of the paucity of judicial expression, and it must be conceded that what there is has not the force and is not entitled to the weight it would have as the ground of direct decision after full discussion. There is one opinion, however, which from the very nature of the case, the question of how the matter of rates might be disposed of by Congress, must have been the subject of serious consideration by the court. I refer to the opinion of the Supreme Court of the United States in the Maximum Rate Case, 167 U. S. Rep. 479, from which the previous quotation was taken. The Court said, "The present inquiry is limited to the question as to what it (the Interstate Commerce Act) determined should be done with reference to the matter of rates. There are three obvious and dissimilar courses open for consideration. Congress might itself prescribe the rate; or it might commit to some subordinate tribunal this duty; or it might leave with the company the right to fix rates, subject to regulations and restrictions, as well as to the rule which is as old as the existence of common carriers, to wit: that rates must be reasonable."

Aside from what is claimed to be the inherent right of Congress to delegate this power, together with such expressions of the Supreme Court as have been made on the subject, there are other arguments entitled to great weight, but it is sufficient for the present purpose to point out the different views held, and then to concede the right of Congress to name future rates indirectly through a commission—which, on the whole, seems to be the better view, though it is not so clear that its exercise would be either wise or expedient.

FIXING RATES IS A LEGISLATIVE ACT.

Passing the question of the right of Congress to name rates and the right to delegate that power to a commission, what, then, will be the effect of the exercise of that power? It is clear that if Congress has this power and may exercise the right of fixing a rate, that the exercise of such a power must be a legislative act, for Congress can exercise none other than legislative functions. Hence it follows that if it delegates this power to a commission the delegated power is also a legislative function. If the rate was fixed by Congress it would be by the enactment into law of a bill in regular form, and it

would be a law of the land as soon as it became operative, the same as any other act of Congress. Hence it seems a logical conclusion that if Congress enact a law empowering a commission to name a rate, which Congress itself might do, and such commission, having due authority from Congress to name a rate to go into immediate effect, should name such a rate, which should go into immediate effect, does it not at once become in force and effect a law? That this is the purpose of the present law seems clear, for they propose a penalty be provided for a refusal to adopt the rate. Such a rate must have both the force and effect of law to justify setting into operation any provision of law imposing a fine or penalty for a violation or refusal to adopt it, and if it has not the force and effect of law, for that purpose at least, how then can a carrier be compelled to adopt a commission-made rate or be punished for a failure or refusal to adopt it? There can be no compulsory adoption without a fine or penalty, and there can be no enforcement of a penalty without a violation of law. If, then a commission-made rate has the force and effect of law for this purpose, is it not only fair and just that it should have the same force and effect for all purposes, and therefore be entitled to be treated as such?

NO LEGISLATIVE POWER IN INTERSTATE COMMERCE COMMISSION.

I am not unmindful of the fact that it is claimed that the functions of the commission are to be administrative and not legislative. No one questions the authority of Congress to empower a commission to do administrative and detail work, such as would be involved in fixing the actual rates, provided specific rules and fixed standards are prescribed by Congress in accordance with which the work is to be done. But the power asked for by those who favor the giving to the commission power to name a rate, either absolute minimum or maximum, in cases where the commission itself has determined that a rate established by the carrier is unjust, unreasonable or discriminating, without any prescribed standard as to what is an unjust or unreasonable rate or without any specific rules as to how they may be determined, would, it is believed, call for the exercise of a discretion which is purely legislative and not merely administrative.

The United States Supreme Court in Interstate Commerce

Commission vs. Railway Co., 167 U. S. 479, says: "The power to prescribe a tariff of rates for carriage by a common carrier is a legislative and not an administrative or judicial function," and a power to fix a rate to take the place of one condemned is power to fix all rates if all should be condemned, hence power to fix a tariff of rates.

The same court in the Maximum Rate Case, speaking of the powers given to the present Interstate Commerce Commission, also says: "The power given is partly judicial, partly executive and partly administrative, but not legislative. * * * Our conclusion then is that Congress has not conferred upon the Commission the legislative power of prescribing rates, either Maximum, Minimum or Absolute."

It must be conceded, however, as has been pointed out by the U. S. Supreme Court in Chicago & N. W. Ry. Co. vs. Dey, 35 Fed. Rep. 866, that while the power to fix rates is legislative "yet the line of demarcation between legislative and administrative functions is not always easily discerned. The one runs into the other." However, to determine whether the act of fixing the rate in the manner called for by the President's Message be purely legislative or whether it be both legislative and administrative does not lessen the legal complications nor simplify the solution of the problem. The fact will remain, that a commission-made rate would still be sufficiently legislative in its character to have the force and effect of law, at least for the purposes of any provision designed to enforce its observance.

Another interesting feature of the act, which seems to have been intended to safeguard the interests of the carrier, is the provision by which it is proposed to make a commission-made rate subject to review by the courts.

REVIEW BY COURTS GIVES LEGISLATIVE POWER TO JUDICIARY.

As the power to fix rates is legislative, Congress cannot confer that power upon the courts, nor can it confer upon them the right to revise commission-made rates, which is essentially the same thing. Courts may inquire whether rates made by carriers, which have been collected, are reasonable and just, for that is a judicial act, but courts cannot prescribe future rates to be charged by carriers, for that is a legislative act. It does not help the matter to call the act administrative, for the Supreme Court of the United States in Reagan vs. Farmers'

Loan and Trust Co., 154 U. S. Rep. 397, has said: "The courts are not authorized to *revise* or *change* the body of the rates imposed by a legislature or a commission; they do not determine whether one rate is preferable to another or what under all the circumstances would be fair and reasonable as between the carrier and the shipper; *they do not engage in any mere administrative work.*" If the courts are not authorized to *revise* or *change* legislative or commission-made rates and cannot determine whether one rate is preferable to another, nor what under all the circumstances would be a fair and reasonable rate, between the carrier and the shipper, how, then, can a commission-made rate be *reviewed* by the courts?

As we have seen, a commission-made rate is, in the very nature of things, a law as soon as it goes into effect, and being a law it is subject to interpretation by the courts as any other law. It may be amended or repealed by Congress, but unless it is unconstitutional in that it is so unreasonable that its enforcement would deprive the carrier of a fair return for the use of its property, the courts cannot interfere. A court cannot question its expediency or propriety, nor substitute its opinion for that of a commission. Courts undoubtedly have the right to determine whether or not a rate made by a carrier is reasonable or just, but such a rate is essentially different from a commission-made rate; the former is always subject to investigation by the courts, which may pass upon its justness and reasonableness even under the common law, and they may restrain its collection if found unjust or unreasonable. The latter is a law, and the courts cannot pass upon the reasonableness or justness of a law; they may interpret it and declare what it means, but they cannot alter it by amendment or by substitution; and if it does not conflict with the Constitutional provision and operate as a taking of property without due process of law, it must stand until altered, amended or repealed by Congress. In support of this view is the statement by the United States Supreme Court in M. & St. L. Ry. Co. vs. Minnesota, 186 U. S. Rep. 268. The court said: "The action of the Commission in fixing the rate complained of as to this particular class of freight has not been shown to be *so unjust or unreasonable as to amount to a taking of property without due process of law.*" And upon that ground the court declined to interfere with the action of the Minnesota Commission, and the rate made by it was allowed to stand.

Again, the act of determining whether a rate is reasonable or unreasonable, or whether it is just or unjust, is a judicial function, and its exercise should involve all the formality implied by the Constitution, which declares that "no person shall be deprived of life, liberty or property without *due process of law.*" Such powers should be jealously guarded; they should not be exercised except by courts, and by courts only after hearing the parties and all the evidence that can be adduced.

No special point, however, is made here against the granting of judicial powers to a commission, provided judicial powers only be granted; but, as we have seen, the rate-making power is a legislative function—or possibly administrative and legislative—and to combine the two functions with the legislative function into one body would be to invite the consequences of combining the functions of the independent departments of government. The framers of our Constitution, profiting by the lessons of history, and the experience of the mother country, created three co-ordinate, though independent, branches in our national system as the most perfect model for a democratic form of government. Our own national experience has shown that a strict observance of the lines of demarcation drawn by the framers of our Constitution between these three independent and co-ordinate branches is vital to the very existence of government itself. Any line of conduct or any proposed legislation that does not maintain with strictest integrity these lines of demarcation, to the end that neither shall invade the other, unhesitatingly and uncompromisingly, deserves to be condemned.

DEFECTS OF RATES MADE BY LEGISLATURES.

What I have said against the advisability of commission-made rates does not apply with equal force to legislature-made rates, but such rates have their own inherent weaknesses and objections. A maximum legislative rate, fixed by a State or a nation to apply with equal force to all classes of railroads within its jurisdiction under all the various circumstances and conditions which may obtain, is more apt to operate to the detriment of the public than otherwise.

The natural and logical tendency of such a law is to benefit the stronger roads against the weaker, those having a territorial advantage either as to the directness of its route or as to the population of the country through which it passes or as

to the quantity, quality and value of freight handled as against those less favored. This effectually, though indirectly, drives out of the field the weaker roads and thus eventually establishes a monopoly of the business for the stronger roads. This must be true unless the rate fixed by law is high enough to permit the weakest road to make a fair profit on its business, in which case it would be so high that it would not operate as a restraint upon the stronger roads, and hence be of no public benefit, to say nothing of the tendency to interfere with proper Federal regulation.

I, therefore, oppose any fixed, inelastic, legislative or commission-made rate which must stand, whether just or unjust, till declared unconstitutional by a court of competent jurisdiction or repealed by legislative action.

CARRIERS SHOULD MAKE THEIR OWN RATES.

I should rather favor leaving the rate making in the hands of the carriers, *subject, however,* to legislative or Congressional *regulation* within the meaning of the phrase *"to regulate commerce"* in the "so-called" commerce clause of the Federal Constitution. If that can be rightfully construed to mean "to control," then subject to Congressional control.

This may be done by some substantial amendments and additions to the present commerce act, and I make bold to offer a few suggestions.

There are well-informed and well-intentioned men of national prominence who advocate the creation of a special tribunal for the trial of cases arising under this act, on the theory that such a plan would make it possible to secure experts as judges of such courts. The advantage of expert judges is conceded, though it is not believed to be greater in such a court than in any other court. Then there is a well-grounded belief that the creation of a special tribunal for a specific industry would be an innovation inimical to our free institutions and contrary to the spirit of our Government, to say nothing of the greater possibilities for the use of corrupting influences.

LET COURTS PASS UPON REASONABLENESS OF RATES.

A better plan, it is believed, is to vest in the U. S. Circuit Courts complete jurisdiction in such matters and provide for the appointment of *referees* after the manner of referees in

bankruptcy. Vest the referees with all the powers of the court in all matters relating to compulsory attendance of witnesses and the compulsory production of all forms of evidence; also with power to take the testimony, to try the cause, and to find the facts. The reason for the provision for the appointment of referees is two-fold. It enables the court to handle the business without increasing the number of judges, and it also makes it possible to secure the services of men as referees who are experts or specialists in transportation matters.

Then vest a commission with power to investigate, arbitrate or prosecute all complaints, and to initiate proceedings in the courts having jurisdiction in the district or circuit in which the cause of complaint arose, on its own motion or at the request of a complaining party or parties, either in its own name, in the name of the Government or in the name of the complaining party or parties, by complaint or petition in the nature of a petition in equity, setting out in general terms the facts upon which reliance is had to establish their cause, with a prayer for the relief demanded, and, when the action is in the name or on behalf of a party claiming damages, let the prayer for relief include a demand for damages claimed.

Provide that when a *prima facie* case has been stated in the complaint or petition, the offending carrier or carriers shall be cited to appear before the referee or the court, upon proper notice, and show cause, if any there be, why the relief demanded should not be granted by the court. In case of failure or refusal to appear, let judgment be entered as of default. The same result might be obtained by information in the nature of *quo warranto,* the purpose of which should be to obtain a judicial declaration and enforcement of existing rights, and not to create or destroy them.

This provision operates to shift the burden of proof upon the carriers to justify the act complained of instead of imposing the almost impossible task upon the commission or other complainant to produce evidence which is peculiarly within the knowledge and control of the carriers. It will also go far toward overcoming difficulties heretofore encountered in securing evidence, for, it will be seen, if the carriers do not themselves furnish satisfactory evidence to sustain the legality of their conduct, they must suffer the penalty of law. It imposes no hardships upon the carriers, for if any acts or omissions complained of are in fact lawful, they of all others are in the

best position to furnish the evidence to establish their legality in the shortest possible time and with the least expense. The carriers may say that this plan reverses the usual course of trial by requiring them to prove themselves innocent before they have been proven guilty. Railroad companies, being purely creatures of law, have no rights except such as are given under the law by which they are created. They have no natural rights, such as the natural rights of individuals. The rule of criminal law that a man's innocence must be presumed until he has been proven guilty does not apply. The American people owe the railroad companies no presumption of innocence, but the railroads do owe the American people evidence of good faith, and of full compliance with law. It is their duty, and it should be the law that they should prove themselves free of guilt.

METHODS OF FACILITATING PROCEDURE.

There should be a provision also requiring referees to file their reports within a reasonable time—say thirty days after the close of the hearing; also that the cause may be brought before the court, in term or in chambers, by either party on motion for judgment on twenty days' notice at any time after the filing of the report and findings of the referees. The court should pass upon all questions of law, but the findings of fact of the referees should be subject to review of the court on the ground that they are not supported by the evidence, and on that ground only. The judgment which should be rendered by the court, or by any judge thereof, either in term or at chambers, should include damages to the complainant, where damages have been shown, and, where necessary, injunctions or restraining orders should be issued restraining a repetition of the act or acts which have been found to be unlawful; such order to remain in force until the further order of the court.

The reason for the provision making the restraining order subject to the *further order of the court* is to make the order elastic and adjustable to changing conditions. It will enable the court to change or modify its order of injunction whenever it shall be made to appear to the court, upon proper and formal application with notice to the commission, that the conditions have changed so that the act complained of would be no longer unlawful.

In all cases where a rate or line of conduct has been found unlawful by the court, and the carrier fixes a new rate and establishes a new line of conduct to take the place of that condemned by the court, which new rate is also deemed unlawful by the commission, the matter should be brought before the court on an order to show cause, without further evidence, and summarily determined.

In all cases either party should have the same rights of appeal from the judgment of the court on questions of law alone, as are now provided for other litigants, but no appeal should operate to supersede or suspend the judgment of the trial court.

Proceedings on behalf of the commission or of other complainants that shall be conducted under the direction of the commission should be conducted by counsel furnished by the Government, and the commission should have the right to call for legal assistance upon the Attorney-General of the United States or upon any United States District Attorney, and upon application they should be supplied by special counsel to be appointed by the courts, and all costs of prosecution should be borne by the Government.

The reason for requiring expenses to be paid by the Government is to enable the small shipper or receiver of freight to have a hearing, and to secure to the poor man equal rights with the rich man in fact as well as in theory. There is also the further reason that in most cases these complaints would involve the rights of numerous localities, thousands of shippers and millions of rates. Rare indeed would be the cases where only the rights of a single individual or a single rate is involved. The proceeding, in its very nature, is for the public good, and hence should be on behalf of the public and at the public expense.

Some such plan, it is believed, will avoid all legal and constitutional complications which must necessarily be encountered by any plan which gives the rate-making power to a commission, whether that power be the power to fix an absolute or a maximum rate. It eliminates all questions as to the combination of legislative, executive and judicial powers in one body. It neither vests the commission with any purely executive functions, nor with the legislative power to fix the rate, nor with the judicial power to enforce a law. It makes of the commission in truth and in fact a purely "administrative body." It shifts the burden of proof upon the carrier, and at the same

time leaves the commission and all other persons interested free to exercise all the powers granted by law for producing all the evidence obtainable, thus making it to the interest of all parties to join in furnishing the facts, instead of offering a reward for duplicity or furnishing an incentive for concealing evidence or procrastinating the final trial of the case.

It avoids the creation of a special tribunal for a specific industry, and rests upon the honesty and integrity of our established courts, thus saving the expense and delay of experimental practice before an untried tribunal. And when it is known that about 48 per cent. of all questions determined by Appellate Courts are determined upon questions of practice alone, this is no small consideration.

It is believed that legislation along the line suggested will furnish a direct, speedy and effective scheme for regulating and controlling the conduct of our carriers; make it possible for all classes of people to have equal rights and equal opportunities in the enjoyment of traffic facilities, and secure prompt and substantial justice under its provisions, while at the same time it will leave the matter of rate making in the hands of the carriers, where it naturally and logically belongs, and will not transgress any other of their vested rights.

THE CHAIRMAN: The floor is now open for discussion of this question from the practical business man's standpoint.

MR. HENRY OTHMER (Representing the Wholesale Saddlery Association of the United States.) Mr. Chairman:—During the past two days I have listened with a great deal of interest to the able addresses presented by the professors of law and learning, and I am satisfied that men engaged in trade and commerce have nothing to fear, so long as we continue to have a plentiful crop of legal advisors to point out the way to success, as well as to assist us in getting out of trouble, when we happen to be unfortunate enough to run up against the "buzz saw." I am also satisfied that the average politician, who represents us in State and nation, will be only too glad to listen to our troubles before election day, and conveniently forget them the day after.

The association I have the honor to represent is composed of jobbers and manufacturing jobbers, and the keenest competition exists between members. Never in the history of our association has any attempt been made by the members to regulate or fix prices, and it is the policy of our association to pro-

mote trade and commerce in the time-honored and regular channels, namely, through sales of goods by the manufacturer to the jobber, by the jobber to the retailer, and by the retailer to the consumer, thus maintaining the stability of business and contributing to the prosperity of all in their respective stations.

The general tendency to eliminate the middleman from the channels of trade has made trade organization a necessity, and the business interests of the country have come to realize the fact that co-operation has taken the place of competition as the life of trade.

The jobber is the natural distributor from the manufacturer to the retail dealer, and it is a question whether jobbers' organizations which provide reasonable rules and regulations to maintain long established trade customs, will not be construed as conspiracies in restraint of trade and in violation of the Sherman act at this time, when public opinion places associations organized to promote trade and commerce, in the same class with the trusts, which are monopolistic in their tendencies.

The jobber is being harassed on one side by the manufacturer selling direct to the consumer, and on the other by the retailer, who sues because jobbers' associations try to keep him in regular trade channels, and while the jobber and the retailer have many interests in common, the elimination of either jobber or retailer from the channels of trade can only be construed as a step in the direction of monopoly, and it seems that it might be wise, inasmuch as the Sherman act was devised to prevent monopoly, yet does not clearly define the status of the jobber or retailer, that it be amended in such a way as will give the jobber and the retailer their proper place in the distribution of trade.

The Sherman law, as now construed, places the legitimate business interests of the country in jeopardy, and in my opinion all associations engaged in trade and commerce should be interested in having the Sherman act amended in such a way as will clearly define the status of the jobber and the retailer, as their position under the law is critical and uncertain.

THE CHAIRMAN: The floor is open for further discussion.

MR. MARUM (Oklahoma): Mr. Chairman—I represent on this floor neither the manufacturers, the wholesalers nor the re-

tailers. I represent a larger constituency, the consumers. Our worthy chairman knows the difference between those different classes in our old city, so I will not explain it here. I am not interested in the prices of furniture or lumber. In Oklahoma, if the lumber is too high, we can erect sod houses, and if the furniture is too high we can do without it; but when it comes to the drugs it is a different proposition.

A few years ago we had a calamity that prevailed in our part of the United States, but the Government of the United States came to our rescue and furnished free vaccine to prevent black leg in the cattle. Every manufacturing druggist that had his patent on that medicine rushed to Congress with petitions asking the Government not to come to the relief of a poor people. But that was without effect. There is a greater question that has come up that interests all of us in Oklahoma. We have prohibition in that State, and the only way we can get that medicine is by prescription. I do not want to see a combination of doctors to fix the price of prescriptions; neither do I want to see a combination of dispensaries fixing the price of the medicine.

If the trust is an organization doing Interstate Commerce that part of its business should be under the supervision of the Federal Government. All else should be under the supervision of the State.

Since coming to Chicago I hear many things that seem strange to a person living in a State whose motto is: "Let the People Rule."

I hear distinguished speakers say that words are not to be construed in the ordinary language in which they were written, but that every word in the Constitution of the United States has a hidden meaning and that the Supreme Court of the United States can be depended upon to render any decision required to extend the power and the jurisdiction of the Congress of the United States. This statement is not a fact and is not borne out by the decisions of the Supreme Court of the United States.

It will not do at this time to say that the great decisions rendered prior to the Civil War are not to be considered in defining the powers of Congress—that all such decisions were wiped out at Appomatox. This is not a fact. We do not need to go back to the great case of Permoli vs. the Municipality, rendered in 1845. They then told the people of Louisiana that

if they wanted Civil and Religious Liberty they must look to the Constitution of their own State. That Civil and Religious Liberties were not one of the rights guaranteed by the Constitution. In the recent case decided during the last term of the Supreme Court, Justice Brewer rendered the opinion in Kansas vs. Colorado, and in passing upon the petition of intervention of the United States says, when dismissing said petition, as follows:

"When this Government was formed it was a new Government. It did not succeed the powers of any other Government that ever existed. It was a Government of limited powers, such as were granted it, either by express words or by implication in the Constitution of the United States. That each State then created, or that would be thereafter created, with equal powers of the original thirteen States, succeeded to all the powers that were embraced in the English Parliament. That the judicial power was handed down by the people in the Constitution of the United States without limitation, or without restriction, and that Congress only had such powers as were granted it by the Constitution, and that the power to expend money for the reclamation of arid lands was not one of the powers given them either expressly or by implication in the Constitution, and that the petitions for intervention in this case would be denied.

Reasoning for this decision, holding illegal the most beneficial act of Congress, an act that would provide homes for millions of people, was that at the time of the adoption of the Constitution there were no such conditions existing as arid lands within the confines of the United States, and hence the wildest stretch of imagination could not include within that grant the right to reclaim such arid lands.

Apply this reasoning to trusts and monopolies that did not exist at that time, and where do we stand and in what position must we appear when we ask that the Supreme Court of the United States read into our Constitution amendments that could only be placed there by the sovereign power of our nation—that is, the people of the United States?

Let us go back to the first principles. I am willing, if necessary, to give to the Government of the United States all power to control and manage trusts and corporations, but it must be done in the proper manner by an amendment to the Constitution.

I am opposed to taking away from the States their police power of regulating the interstate matters and placing them in a jurisdiction whose actions are slow, burdensome and not such actions as are endorsed by the people of the various States.

For twelve years Oklahoma was appealing to the Interstate Commission for redress against transportation companies. It took twelve years for that ponderous body to send to Oklahoma a single representative to investigate, and then, upon hasty examination, said that the transporation companies, in twelve years, had stolen from the people of Oklahoma fifty-five million dollars, but they failed to show any way by which that money could be recovered. In other words, before as cumbersome a body as the Interstate Commerce Commission is can act or order the refund for the people, the statute of limitation will have expired, the stolen money will have been spent, and many of the persons from whom it was stolen will be dead and their estates settled in the Probate Courts.

Many words are spoken in condemnation of the thefts and monopolies in the United States, but not one word has been said regarding restitution to the people from whom the vast sums of money have been stolen. Any law that will permit the thief to retain the stolen goods is not very beneficial to the people of the United States. What cares the multimillionaire what laws are passed in the future regarding the trusts and monopolies if he is allowed to get away with the billions of money that he and his associates have wrongfully taken from the people? Our laws to be of any use must provide to follow up in the hands of the possessor the funds taken for his own use by the trustee, who represents the investors in the great industrial enterprises of the United States. Why punish the bank clerk who steals a few thousand dollars and give the "immunity bath" to the millionaire who steals millions? If you catch the burglar with the stolen silver in his possession you take it from him and restore it to the rightful owner. Why not do the same thing with the vast sums of money that, during the past forty years, have been taken from the millions of people?

The impossibility of the distribution of these funds may be appalling, but if you make your fines heavy enough this money will be turned into the Treasury of the United States for the benefit of all the people.

Before "Dr. Interstate Commerce Commission" can arrive at the bedside of the sick patient the patient will be dead and will not require the medical attendance. Rather give us the quick action of the country physician in each State, who is on the ground and can provide the remedy before the patient is dead.

MR. STEBBINS (Minnesota): Mr. Chairman—I did not expect to say a word upon this floor, but I represent the National Retail Hardware Men of the United States of America, and I want to say that while we have not had our bear killed yet by other people, yet we have had our difficulties, with only one experience, however, in the courts, and that happened in South Dakota against the editor of the Commercial News and against the South Dakota Hardware Association. It was brought, of course, under the Sherman Act, and, supposedly, we were acting in restraint of trade. The judge, however, decided in our favor. The conditions were something like this: The Commercial News had urged manufacturers and jobbers to refrain from selling certain mail-order houses, or, in other words, to keep the trade in legitimate channels, and the Hardware Association of South Dakota had contended for the same thing, but there was no effort of any combination; there had been no signed agreement, and Judge Garland, of that court, said that a hardware dealer had the right to purchase of whom he chose, and the manufacturer and the jobber had the right to dispose of his products to whom he chose. So that settled the question so far as the law was concerned. But we are in the same position as the other retailers who have spoken upon the floor before me, that we are liable, by reason of the action of some lawyer who has not the standing of those who have spoken to us at this session, entering a suit against us, and we being compelled to defend ourselves in court, as we were in South Dakota. We are simply organized for the purpose of trying to protect the little towns and villages throughout the length and breadth of this land, which are the life blood of this nation. We believe that if we go on and allow these mail-order houses to misrepresent their goods, to make false statements, to try and belittle the honest merchants throughout the towns, that we will soon have the grass growing in the streets of those towns, and it will be to the detriment of the commerce of this country.

MR. J. E. DEFEBAUGH: Mr. Chairman—I only rise to

cite a concrete case of the difficulties the business men are now encountering, in view of the activities of the law and the attempts that are being made to enforce it. The yellow pine manufacturers of the South are to-day powerless to save some of their number, at least, from bankruptcy, and others from great confusion, because it is impossible, by any coherent action, to lessen production and put themselves in position to maintain labor and their families in the communities they have built up continuously throughout this winter. There is a large overproduction, and the members of the fraternity have been charged with being a trust, which is not a fact, and which Mr. Smith, who spoke to us this morning, will be able to demonstrate very shortly; but the threat has been heard throughout the country and through the press that this lumber fraternity is about to be put into prison for conducting a lumber trust. Now, in the face of their present difficulties, a large overproduction, they are not able to write a letter, scarcely, suggesting the lessening of production, or to meet together to consider the subject, without being in danger and their interests hurt. All the theories we may discuss will not help the situation until we ask Congress to modify that law and allow reasonable, beneficient combinations not in restraint of trade.

What should be done can be done. This, I believe, is almost an axiom in practical affairs. There are recognized evils in our social organization which ought to be eradicated without, at the same time, destroying influences of recognized good.

In this endeavor to abolish the evils of business combinations we abolish the combinations themselves, and so wipe out the good in them—good which can be arrived at in no other way than by combination.

In practical affairs we often find a business organization used for social purposes, and the resources and organization of the individual business men utilized for the benefit of his employes. I have known sawmills to be run for months at a heavy loss, when to shut down would have been cheaper, simply that the men employed might earn a wage and that their families might have bread and butter.

The Sherman law declares illegal every combination for restraint of trade, and declares every person who shall engage in

any such combination guilty of a misdemeanor, punishable by fine or imprisonment, or both.

It assumes that the restraint of trade is, per se, wrongful.

This I deny, and I also deny that because most combinations in restraint of trade may be harmful to the interests of the people at large, that, therefore, in order to avoid harmful combinations, those that are harmless or even beneficent should be forbidden.

The so-called law of supply and demand has been set up as a fetish by many theorists, who have sacrificed to it life and the means of life.

Its unrestricted operation regulates by destroying. The fact that one line of business is overdone it would teach only through loss and suffering; yet the wise men tell us that we should learn from the experience of others as well as from our own.

But if we seek to gain this knowledge and act accordingly, if we associate ourselves together to learn certain facts relating to our business, and come to an agreement as to what these facts signify, and then proceed to apply the knowledge thus gained, we are accused of forming an illegal combination, and are threatened with punishment under the law.

If, instead of waiting for insolvency to overtake us, thus by personal experience demonstrating the facts of the situation, we discover that we, in a certain line of business, are making more goods than can be sold at a profitable price, and agree to reduce our product to the measure of demand, we are charged with violation of the law.

Common sense is paralyzed; exercise of the desire for knowledge and the disposition to benefit by it are condemned.

The law would have us go back to the commercial dark ages, when business was veritably a warfare, and when failure and extortionate profit, panic and insane prosperity succeeded each other in a whirlwind of conditions, out of which permanent success could be achieved only by the unscrupulous or the exceptionally strong.

I am particularly familiar with the lumber business. This is one of the great industries of our country and touches vitally as many of our population as probably any other. The farmer who complains of the price he has to pay for his lumber gets an enhanced price for his products, because of the demand of this industry, even if he does not sell directly to the

lumber camp, the sawmill boarding house or the employes of his lumber yard. While the lumber business supplies him with material for his stable, it also pays a fancy price for a horse of particular type he may raise.

This business is a peculiar one in some respects, for it is more individualized than most and less susceptible of effective combination. With 20,000 sawmills drawing their supplies of timber from 500,000 different owners, and shipping and distributing their products through 100,000 independent dealers, it has furnished a problem too great for the builder of combinations and trusts.

There have been, and are, some small or local combinations in the lumber business which, on a limited scale or within a narrow territory, have been of some effect; but I speak whereof I know when I say that there has never been, in the history of the lumber business of the United States, any effective combination embracing any considerable percentage of the business of covering any wide extent of territory but what has been ephemeral.

So thoroughly have they been taught by experience—for they have tried all the recipes for combination making—that lumbermen have given over hope of ever achieving the usual objects of trusts and combinations, namely, steady control of production and prices, and content themselves with small or temporary organizations, some of which are now declared unlawful.

Nevertheless the lumber business faces problems, not only of vital importance to itself, but of interest to the entire country, which nothing but combination can solve.

One of these is the occasional appearance of overproduction.

Such a condition is at hand in the South to-day. The mills are established, they have gathered around them their employes, and they must run or the owner will suffer serious loss and his employes be deprived of their means of livelihood.

Most of the sawmills of the United States, particularly in the South, are remote from centres of population and of labor supply. A lumberman buys a tract of timber, and in, or as near as possible to, that tract he builds his mill and the houses for his prospective employes, and gradually gathers around him and trains an efficient working force. Men go there with their families to live.

To shut down the mill means, so far as the employer is con-

cerned, the loss of the efforts of months, the loss of the interest on his investment, the loss of his trade connections; and to his employes it means the loss of their livelihood and compels removal to other places where, perchance, labor can be secured, though the conditions which confront their employer they are likely to find everywhere else within their own particular line of employment.

The employer and the employed are alike agreed that under such circumstances it is the proper thing not to stop operation entirely, but to continue at work on shorter hours or less days in the week, on the theory that a half a loaf is better than no bread.

But the individual operator cannot do this alone. He cannot shut down while others run. He cannot even restrict his output while others maintain theirs.

To attempt such independent action creates a financial problem which, in its working out, means ruin to him.

The inevitable and only solution then is to combine with his fellow operators—those operating under similar conditions and producing the same kind of product and seeking the same markets—and to agree on a uniform measure of reduction, and as a safeguard against selfishness to make that agreement as binding as possible.

Yet this, we are told, the law does not permit; and for fear of the Sherman Act such action recognized in the present emergency as wise, and even unselfish—wise from both an economic and social standpoint, and unselfish in that it has as much regard for the welfare of the employes as the employers—cannot be undertaken.

Do you object that, if combinations in such an emergency, with such good motives and toward such a desirable end, are permitted, that combinations for selfish ends and to the damage of the people must be permitted and would be effected?

Right there is where I call upon the legal talent of this country to devise some law that will permit these good things to be done while forbidding and preventing the formation and existence of evil and economically harmful combinations.

Those of you who are lawyers will probably tell me that the law can take no account of motives, but simply of acts and their results; that for the public good a condition which ordinarily results in evil must be forbidden, although sometimes it may result in good.

I admit my own perplexity, but when I see that certain acts in restriction of trade are necessary for the welfare of individuals, of large classes of the population and of the country at large, I insist that such acts should not be forbidden, that restraint of trade to that extent should be permitted, that the law should be framed so as to permit them, and that it can be so framed.

Are these acts forbidden? I have referred in the above to the claims that they are, and to the fear of lumbermen, felt by men in other lines of business also, that they may be so declared. I would protest against this uncertainty and demand that the laws not only permit the desirable combination for good purposes that I have spoken of above, but that they may be made so clear that there will be no chance for reasonable doubt as to their intent and effect.

It is difficult to adjust business methods to the rapid changes in the laws governing them.

Not long ago things were a matter of course that are now illegal. With such rapid changes in the letter of the law it is difficult to know what is or is not lawful to do. What was proper, and even laudable, a decade ago is criminal now. The difficulty is increased by the fact that the law is not always apparent in the statute, but is read into it by court decisions, and is post facto to the extent that the letter of the law apparent to the laymen, by which he endeavors to govern himself, may be almost entirely changed by interpretation, so that what he conscientiously believes to-day to be legal may tomorrow be declared illegal, and bring upon the involuntary delinquent the specified penalty for his unconscious violation.

There may be exceptions, but I feel myself warranted in saying that the average lumberman is anxious to obey the law, to fulfill its spirit as well as its letter, provided he can find out what it is.

But, having been taught that the law is codified common sense, he is apt to be misled on this very point, for, when common sense tells him that a thing is right and his investigations fail to reveal that it is in violation of the letter of the law, he proceeds in his chosen policy, to find in some cases that he is, in spite of himself, a law breaker.

It ought not to be possible for this to happen. The law should be so clear than any honest man of ordinary intelligence should not be thus misled.

I wish to point out also certain inequalities of law as between classes. Congress, in 1886, adopted an act to legalize the incorporation of national trades unions, in which the legal and beneficent objects of such organizations included "the regulation of their wages and their hours and conditions of labor." This act implies the right of a certain class of the citizenship to form combinations for the regulation of the price of its commodity. Such a regulation would seem to the layman to be in restraint of trade of that commodity.

I do not argue in this case against the labor union, nor the equitable right of its members to seek, through these organizations, a reasonable reward for their labor. But I would urge the widespread recognition of their rights, accorded also in national legislation, as another reason why combinations of other business men for reasonable and useful ends should be given equal recognition; otherwise the laws are not equal.

Equality in the eyes of the law is a basic principle of our system of jurisprudence. It seems to me to be flagrantly violated in our statutes relating to combinations in restraint of trade.

THE CHAIRMAN: Mr. S. W. Campbell, of Chicago, representing the Western Association of Shoe Wholesalers, has something to offer.

MR. S. W. CAMPBELL (Chicago): If there is no one else to speak in this open discussion, I have some resolutions I want to offer.

THE CHAIRMAN: Will you read your resolutions, Mr. Campbell?

MR. CAMPBELL: The resolutions are as follows:

Whereas, The rapid development of the trade and commerce of the nation has made it a necessity that representatives of various industries and lines of trade should organize themselves into associations for mutual information and protection in the correction of trade abuses.

Under the present interpretation of the Sherman Anti-Trust Law and the anti-trust laws of some of the States this cannot be done without the participants laying themselves liable to fine and imprisonment, or both. Various decisions of the Federal courts and of the State courts have sustained the validity of these laws, but minority opinions of some of these same courts indicate that there is a difference as to what constitutes an

agreement that amounts to a conspiracy and an agreement that will protect the parties thereto from unbridled competition.

Believing that such differences can be incorporated into amendments to these laws, the adoption of the following resolutions is earnestly requested:

Resolved, That the interpretation of the anti-trust laws of the nation and of some of the States is detrimental to the business interests of the country, and that such laws tend to stifle and prevent organization and co-operation in the form of trade associations, which seek only to preserve the commercial, economic and ethical existence of their members in the face of the efforts of powerful and selfish monopolies to gradually eliminate the individual dealer.

Resolved, That if the proper legal construction of such anti-trust laws embodies a prohibition of co-operation among business men, said laws are fundamentally wrong in their conception, enactment and operative effects, and therefore require amendment.

Resolved, That this body, in convention assembled, earnestly request that the next coming Congress so amend the Sherman law as to permit those engaged in legitimate trade to adopt ways and means for protecting themselves from competition and trade abuses calculated to ruin their business. And that such amendments be so constructed as to require the greatest publicity to all the acts of trade organizations of every kind.

THE CHAIRMAN: Gentlemen, the afternoon session will begin at 2:30 sharp, and at 4 o'clock the floor will again be thrown open for discussion. The time has now been consumed and we have now to listen to a very interesting address by the closing speaker of this morning.

MR. G. W. PERKINS (Illinois): Mr. Chairman, I ask leave to introduce a resolution.

THE CHAIRMAN: The resolution will be handed to the Committee on Resolutions.

Mr. G. W. Perkins then offered and read the following resolution:

Resolved, That the Sherman Anti-Trust Law and the Interstate Commerce Law should be amended so as to preclude any direct or indirect application of those laws to the organi-

zations, associations or unions of wage earners organized primarily to protect the wages, hours and conditions of employment of such wage earners.

THE CHAIRMAN: Are there any other resolutions to be presented here?

MR. GEORGE W. LATTIMER (Ohio): Mr. Chairman, being a delegate appointed by the Governor of Ohio, I have been requested to read this resolution, which, I believe, has been agreed upon by several of the State delegations.

Mr. Lattimer then offered and read the following resolution:

Resolved, That it is the sense of the delegates to this conference, appointed by Governors of States and commercial bodies, that the people and the Legislatures of the several States be urged to exercise a wise caution and conservatism in the enactment of State legislation for the regulation of industries and commerce.

THE CHAIRMAN: Gentlemen, I now take pleasure in introducing to you Mr. Herman Ridder, president of the American Newspaper Publishers' Association, who will address you upon the subject, "Newspapers, Their Relation to the Paper Trust and the Labor Trust."

MR. HERMAN RIDDER.

Mr. Chairman—It is not my purpose to tire you out by reading a long paper, but the paper which I will read to you has been prepared in a condensed form, and as it is one of the objects of our efforts to have the department indict these people criminally, and as we purpose to take action at the next session of Congress, I feel that I must follow the copy, which I will do as rapidly as possible. This situation certainly appears serious in the aspect in which I will put it to you.

MAGNITUDE OF PUBLISHING BUSINESS.

Government reports upon the condition of the printing and publishing business, as it was two years ago, show that it was the only large manufacturing industry which tended toward diffusion and away from consolidation or concentration. In the previous five years it had grown in greater proportion than any other industry, and it had taken first place among all the industries of the country in the number of establishments. Fur-

thermore, the number of printing establishments had shown a greater increase in the five years from 1900 to 1905 than in the previous ten years. Then, too, the per capita value of printing and publishing products had increased in greater proportion than those of any other industry. In fact, only three other industries had shown an absolute increase in products greater than that of the printing and publishing business. These facts become important and significant in any discussion dealing with the effects of combinations or trusts upon industrial progress.

Since those reports were compiled, the printing and publishing interest has been menaced and beset at every point by oppressive combinations. The cost of every article that it uses, including labor, has been subjected to an artificial stimulation, and it is doubtful if the splendid contrast that was then made by that unprotected industry with the coddled favorites of the tariff or with the trusteed industries, can now be maintained.

The leading manufacturing industries of the United States in 1905 ranked as follows:

First—Slaughtering and meat packing.
Second—Iron and steel.
Third—Foundries and machine shops.
Fourth—Flour and grist mills.
Fifth—Clothing.
Sixth—Lumber and timber.
Seventh—Printing and publishing.
Eighth—Cotton manufactures.
Ninth—Woolen manufactures.
Tenth—Boots and Shoes.

The printing and publishing interests then represented an annual product of one-half billion dollars, of which six cities contributed a quarter billion, and New York City alone contributed almost one-quarter of the great total. There were two great divisions of this vast business—book and job printing constituting one class, newspapers and periodicals the other class—the latter contributing over three-fifths of the output.

It is for the newspaper especially that I propose to speak. The newspapers and periodicals had a reported capital invested of two hundred and thirty-nine million dollars ($239,000,000), of which nearly one hundred millions ($100,000,000) represented machinery, tools and implements. They paid salaries and wages amounting to one hundred and six million dollars ($106,000,000) per annum to 160,000 workers. They paid fifty-eight million

dollars ($58,000,000) per annum for their principal article of use—white paper. They represented the intellectual growth of the country; they expressed its desires.

Yet so scrupulous were they in the subordination of their own and immediate interests to those of the varying constituencies which they represented, that they submitted without material protest to exactions and oppressions which no other interest would have tolerated. While all others were consolidating and planning to enrich themselves at the general expense, the publishing interests were maintaining a competition that reduced their subscription prices to the lowest limit. The newspapers of the country that reached the minimum in price had increased their average size from 5 7-10 pages in 1890 to 8 5-10 pages in 1905. They improved their product and extended their scope until the circulation of the daily newspaper averaged one copy per day to every four of the entire population of the country. But all the benefits arising from the introduction of type-setting machines, the perfection of the printing press and the cheapening of the cost of white paper by the use of mechanically ground wood and the improvement of fast-running paper-making machinery, were given to the public. In New York City, for instance, 90 per cent. of the total newspaper circulation is on the one-cent basis, and this percentage will apply in many parts of the country.

NEWSPAPERS GIVE MORE AND BETTER SERVICE AT LESS PRICE.

Within the five years from 1900 to 1905, capital to the extent of forty-seven million dollars ($47,000,000) had been added to the investment for newspapers and periodicals; but the product per thousand dollars ($1,000) invested had declined from $1,409 in 1900 to $1,288 in 1905. During that period the mechanical cost of output had increased about 30 per cent. For many newspapers the increase in size and the increase in circulation had not been attended by corresponding increase in profit. The tendency toward concentration and consolidation in every other direction has increased the cost of every article supplied to the newspaper, though it receives less than formerly for the article itself. Considering the care and attention and energy and ability bestowed upon it, the newspaper percentage of profit is less than that of any other manufacturing enterprise. Speaking generally, the newspapers have encountered large increases in

cost of production and enormous decreases in earning power with cuts in prices and cuts in advertising rates. To meet competition and save themselves, some of them have reduced their prices in sheer despair. The competition between themselves and the increases in output had been maintained to the advantage of the employee—not of the employer. This vast manufacturing industry, representing a greater number of establishments than any other one industry, thus finds itself the only one that is refused the protection of the Government. Unlike all the others, it has reached a point where it cannot readily pass along its burden to its customers, and it cannot restore the conditions which prevailed prior to the time when it gave away all of its gains and improved facilities to the public. More than that, it is loaded with the burdens arising from the protection of every interest with which it deals. Every machine that the publishers buy—and they have over one hundred million dollars invested in machinery—has a tariff on it whereby the manufacturer taxes them unduly. Every ounce of paper they buy has a protective tariff behind it to maintain prices. In New York City and elsewhere, the morning papers sell practically all of their product to a combination known as the American News Company. The newspapers obtain all their telegraphic news from a combination. They buy their type-setting machinery from the Mergenthaler Linotype Company. They buy their advertising type from a company formed by a combination of type foundries. In some cities they are confronted by combinations of advertisers which mark down the price per line that the newspapers can obtain for their advertising space. Substantially every mechanic whom they employ is protected by a self-constituted tariff in the form of a labor union, and to that species of combination they are paying the largest amount of tribute.

NEWSPAPERS AND THE LABOR UNIONS.

It should be understood that the American Newspaper Publishers' Association is a voluntary organization of 278 newspapers located in 141 cities. It has no power to compel any member to act outside of his own volition. Its national agreements with labor organizations are not labor contracts. They simply provide a way by which each individual publisher may secure arbitration without interruption to his business, the national labor organizations guaranteeing the performance of all

the contracts made by the local unions under their jurisdiction. In other words, the national organizations underwrite local agreements. These agreements have stood the practical test of time and of wide application under an extreme range of conditions.

Under that arrangement, both sides were bound to make an effort toward conciliation. If that failed, then they agreed to try local arbitration, and finally national arbitration. It is true that under the plan of arbitration neither side has obtained what it thought it was entitled to receive, but friendly relations were maintained. The employers had the opportunity to work uninterrupted by strike or lockout. Neither side has been subjected to the wasting effects of warfare. Both sides have been gainers. The principal gain of the employers is not in the troubles they have settled, but in those they have prevented. I know of no other group of employers which has succeeded in perfecting a great pact with the labor unions and in maintaining entirely satisfactory relations.

HISTORY OF TRADE AGREEMENTS.

In 1901 the newspaper publishers had accepted the idea of the closed shop and of the eight-hour day. They had decided to deal with labor representatives rather than with individuals, and thereby they increased the responsibility of the unions. They recognized the fact that the labor question was full of complications, and that the leaders of the unions must exercise great patience and tact in controlling the men who elected them to office. During six years, ending May 1, 1907, arbitration contracts had prevailed whereby the employers and employes arbitrated all differences arising over wages and hours in new scales. A new agreement, which went into operation on May 1, 1907, included "working conditions" within the scope of the arbitration, and also outlined a radical departure in the abandonment of the third man, or umpire, in the board of arbitration. Each side has an equal number of votes.

With the expiration of the old arrangement and the inauguration of the new plan the newspapers received an unusual number and variety of demands. Sufficient time has not elapsed to test thoroughly the merits of the later methods. Only partial returns of the present arbitration programme have been made to the association. Thus far, this year, the publishers and the

unions have discussed seventy-six new scales in fifty-five cities, with the following results:

Settled by conciliation (which means by concessions to the unions)	55
By arbitration	9
Under negotiation	12
Total	76

POLICY TOWARDS UNIONS INCREASES COST.

Regardless of these details, we find that the adoption of arbitration for the adjustment of labor disputes has tended to increase the stability of investment in newspaper property, and it has afforded a means for the settlement of minor contentions which formerly caused infinite trouble, often leading to destruction of property, enormous losses of wages and the engendering of passion. The payments they made for the maintenance of this arbitration arrangement and for the carrying out of the policies of conciliation were regarded by publishers as payments for industrial insurance, just as they paid for fire and accident insurance. It has been calculated that in New York City alone the newspapers pay $1,500,000 per annum as their tribute to the closed shop and to organized labor. Any attempt to estimate the aggregate paid by all the newspapers of the country would involve too many complexities to justify the effort. With each new concession to the unions, or each new award of arbitrators, the publishers ask how far this payment may be carried. There are limits beyond which they cannot go, even though they are well wishers of organized labor. They are approaching that limit where their necessities may force them to stop further concessions and allowances. They wish to emphasize the fact that they have no objections to unions. They believe that the unions, notwithstanding many faults, have accomplished excellent results for men who are not ambitious to rise above their employment. They believe the unions can do much that is useful in the future in the way of securing better terms for workers who deserve them. However, they have a right to complain of those unions which set up a selfish guild for individual profit and without regard for the rights of other labor. The unions have fallen into the habit of expecting more from a newspaper than any union could hope to obtain from any other employer. These unions are making demands upon the newspapers be-

cause of supposed friendliness of unions, and because of supposed helplessness of employers in resisting such exactions. A newspaper, to exist, must run all the time. It cannot wait to contest strikes or to resist demands.

EXACTIONS OF THE PAPER TRUST.

Serious as this labor trust may appear in some of its aspects, it does not compare in objectionable features with a paper combination, which is probably the most remarkable financial freak that we can find in a long list of combination monstrosities. The printing and publishing business as a whole turns over its capital in about ten months. Large department stores, that advertise energetically, will turn over their stocks about seven times a year, but the largest paper manufacturer in the world—the International Paper Company—with a capital exceeding sixty million dollars ($60,000,000), does a gross annual business of only twenty-one million dollars ($21,000,000), thus requiring three years to turn over its capital. It has watered itself until it has no more money to invest. It has borrowed upon everything it has. It cannot earn any more money unless it can do more business, and it cannot do more business because it has not the money with which to do it. Instead of accepting its responsibilities and extending its business to keep pace with the growth of its customers, the International Paper Company is producing less newsprint paper to-day than it turned out immediately after its organization. The available funds at its command, which should have been used for new paper machines, has gone toward the acquirement of 2,597 square miles of timber limits registered in one of the four land offices in the Province of Quebec, Canada. To maintain that concern and its allied combinations, with their oppressive weight of over-capitalization, and to provide a pretext for protecting the labor of 15,000 paper mill employes, receiving less than nine million dollars ($9,000,000) per annum, the publishing business has been subjected to a series of deliberately planned schemes of extortion. The first step was accomplished in the Dingley bill, so that publishers could not buy paper elsewhere. The next step was one that has just been consummated, whereby, through combinations made in defiance of the Federal courts, the supply has been brought below the demand, the market has been starved, the surplus has been exhausted, and the price for the present year has been advanced $12 per ton upon a consump-

tion of 900,000 tons, an addition of ten millon dollars within one year. Increased cost of manufacture does not justify such an advance. Aggravating that situation is a threat of another advance of $10 per ton next year, or nine million dollars more, a total of nineteen million dollars' advance in two years by an industry that pays an aggregate of less than nine million dollars a year to its labor, while clamoring to Congress for a continuance of its opportunities to combine and oppress publishers.

The newspapers insist that the paper manufacturers who induced Congress to protect them against competition from abroad are under obligations to provide for the present and prospective demands of consumers in this country. To repress manufacture, or to starve the market so that the paper maker is in position to create a famine and to stop the supply to any publisher, should rank as a crime. Many newspaper proprietors are unable to obtain any quotations for paper next year, and do not know where to obtain a supply. In all the history of crimes charged against combinations and trusts, such a situation is unprecedented. It demands immediate remedy.

MR. REYNOLDS: Hon. Henry W. Palmer has presented a paper entitled, "Federal Incorporation," which he desires to have read by title only and to appear in the proceedings of the conference. If there is no objection, it will be so ordered.

HON. HENRY W. PALMER.

Complaint is made that certain combinations of capital in the form of corporations chartered by different states and extensively engaged in transacting the manufacturing business of the country are exceeding their privileges by seeking a monopoly of the markets, and that the means used to effect this result are restraint of trade by various means and destruction of competition by destroying competitors.

It may be admitted that there is ground for complaint. The heavy hand of the so-called trusts has been laid upon individuals in all parts of the country, and the wail of the injured has arisen from every point of the compass.

Remedies may be proposed more or less effectual. They are generally repressive measures calculated to restrain the alleged evils growing out of this great and unusual industrial development.

Any one capable of comprehending the legal and economic relations of the subject cannot fail to be impressed with the

manifold difficulties that beset the path of the law makers at every step.

The dual nature of the government; the fact that the corporations called trusts are creations of the sovereign States and are mainly engaged in lawful business; that the power of Congress is inexorably limited by the grants of the Constitution, which as construed and defined by the Supreme Court forbids interference with manufacturing within a State; that a large part of the business of the country is now carried on by the so-called trusts and that their destruction or serious disturbance would involve loss of employment to millions of workmen, destruction to billions of value held by honest investors, and general conditions of general bankruptcy and ruin to the most prosperous people and nation of the earth, are all properly and necessarily to be considered by wise and prudent men who wish to do good and not evil.

One of the methods that is suggested by which the corporations may be brought under Federal control is to grant them Federal charters.

CAN CONGRESS CHARTER CORPORATIONS?

The first inquiry is, has Congress the right, under the powers conferred by the Constitution to regulate commerce, to charter business corporations for the purpose of manufacturing and selling goods which enter interstate and foreign commerce?

Second. If the power exists to incorporate such companies, would its exercise be expedient and beneficial to the people?

Reference to what has been done by Congress may assist in determining what may be done.

Under the authority to regulate commerce, the Act of 1890, commonly called the Sherman act, was passed. This act is entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies."

By its terms every contract in restraint of trade or commerce among the States is declared illegal, and every person making such a contract is guilty of a misdemeanor, punishable by fine or imprisonment.

The United States Courts are invested with jurisdiction to enforce the act, and the district attorneys directed to institute proceedings under the direction of the Attorney-General to enforce the act. The broadest powers are given to the Courts to

bring non-residents within the jurisdiction from any part of the United States or the Territories, when necessary. Property owned under any such illegal contract while in transportation from one State to another shall be seized, condemned and forfeited to the United States. Any person injured by any such contract, trust or corporation shall have the right to sue in any United States Court when the defendant can be found within its jurisdiction, without respect to the amount in controversy, and may receive three times the actual damage. The word "person" in the act includes all corporations and associations existing with or without the authority of the laws of the States.

SHERMAN ACT A STEP TOWARDS FEDERAL INCORPORATION.

This act pays no respect to State lines or State laws. Corporate rights obtained under charters from sovereign States are not considered. The vast bulk of goods and property which enter into interstate commerce are swept within the grasp and control of Federal law and made subject to the jurisdiction of the Federal Court. Such property may be seized, condemned and confiscated by the United States without respect to who owns or where made or to whom consigned. The rights of citizens of States, enjoyed since the foundation of the States, to be tried in the courts of their domicile is taken away and a citizen of South Carolina may be summoned before a United States Court in Maine, and there, by due process of law, be deprived of his liberty and property. No edict of emperor or ukase of czar can be found more drastic or sweeping in severity of penalty or facility for enforcement. The full power of the legal machinery of the Government is placed at the disposal of the injured person. He may summon the chief law officer of the United States and his subordinates to prosecute his grievance and exact from the defendant a three-fold damage.

This law has been adjudged to be within the power of Congress under the right to regulate commerce between the States. In no less than six cases the Supreme Court of the United States has maintained and enforced the law, viz., in the case of United States vs. Knight Company, 156 U. S. 1; United States vs. Trans Missouri Freight Association, 166 U. S. 290; United States vs. Joint Traffic Association, 171 U. S. 505; United States vs. Hopkins, 171 U. S. 578; Anderson vs. United States,

171 U. S. 604, and Addyston Pipe and Steel Company vs. United States, 175 U. S. 211.

Attorney General Knox summarized these cases as follows:

"In the Knight case there was involved an illegal monopoly in the production of sugar, commonly known as the 'Sugar Trust.' In the Freight Association and Joint Traffic Association cases, agreements among interstate railroads fix and maintain rates and fares; in the Hopkins and Anderson cases two live-stock exchanges, located in Kansas City, and the Addyston Pipe and Steel Company case a combination among competing shops located in different States, and engaged in making cast-iron pipe for gas, water and sewer purposes, to control prices by suppressing competition among themselves.

"In the Knight case the Court held that the creation of a monopoly in production does not necessarily and directly restrain commerce among the States. The Court drew the line between production and interstate commerce, the former being subject to the regulation of the State, the latter alone to that of Congress.

"In the Freight Association case the Court held that the anti-trust law applies to railroads, and that it prohibits all agreements in restraint of interstate commerce, whether the restraint be reasonable or unreasonable.

"This was followed by the Joint Traffic decision, the Court holding in addition that the anti-trust law is valid and constitutional, and that Congress has the power to say that a contract shall not be lawful which restrains trade or commerce among several States by stifling competition.

"In the Hopkins case it was held that the business of the members of the Kansas City Live Stock Exchange was not interstate commerce within the meaning of the anti-trust law, and therefore the agreement creating the Exchange did not operate to restrain trade or commerce within the several States.

"In the Anderson case the Court took the view that whether the members of the Traders' Live Stock Exchange of Kansas City were or were not engaged in interstate commerce, the agreement creating the exchange was not one in restraint of such trade.

"In the Addyston Pipe Company case the Court held that Congress may prohibit the performance of any contract between individuals or corporations where the natural and direct effect

is to regulate or restrain interstate commerce, and that a combination among formerly competing shops, which directly restrained not simply the manufacture but the sale of a commodity among the several States, comes within the anti-trust law."

The question whether Congress has plenary power over goods and property that enter into interstate commerce is therefore settled, and it is settled also that whoever engages in such commerce must do it subject to the rules and regulations provided by Federal laws.

The Congress of the United States has also exercised the power to grant Federal charters to carry on the business of banking in the States under which the sovereign power of the State to impose taxes has been limited; to construct railroads across the territories of States without their consent; to condemn land within the States in order to carry out the purposes of the powers vested in the Government by the Constitution, and to incorporate trades unions, with authority to exist in any and all States, and to hold such land as may be necessary for their business.

STEPS ALREADY TAKEN IN REGULATION OF COMMERCE.

In the execution of the power to regulate commerce, Congress has established ports of entry and delivery, divided the coast into collection districts, granted coasting licenses, excluded foreign built vessels from the coasting trade, expended money in surveying, sounding and chartering navigable rivers, cleaning out and improving channels, established custom houses, warehouses, scales, etc.; erected lighthouses, stationed light ships, denied the power of the States to tax freight transported from State to State or to discriminate against owners of goods brought into a State for sale, or to exact a license from persons dealing in foreign goods. Congress has taken private property in the exercise of the power to regulate commerce (148 U. S. 312), constructed railroads across States and Territories, exercised right of eminent domain and regulated fares and freights. (California vs. Central Pacific, 127 U. S.)

JUDICIAL INTERPRETATION OF THE COMMERCE CLAUSE.

The power to regulate commerce, like all others vested in Congress, is complete in itself, and has no limitation other than that prescribed by the Constitution (Gibbons vs. Ogden, 9 Wheat. 1).

The power to regulate interstate and foreign commerce, vested in Congress, is the power to prescribe rules by which it shall be governed; that is, the condition upon which it shall be conducted; to determine when it shall be free and when subject to duty and other exactions. (114 U. S. 196.)

The power of Congress extends to acts done on land which interfere with, obstruct, or prevent the due execution of the power to regulate commerce and navigation with foreign nations and among the States, and such acts may be punished by Congress (U. S. 2-12 Pet. 72.)

These things Congress has done. Has the limit of power been reached?

It may be of interest to inquire what commerce really is, as defined by the Supreme Court. Chief Justice Fuller in United States vs. Knight (156 U. S. 11), said:

"The Constitution does not provide that interstate commerce shall be free, but, by the grant of this exclusive power to regulate it, it was left free, except as Congress might impose restraints.

"No limitation has ever been fixed by the Supreme Court to the phrase, 'commerce among the States.' Its narrowest definition at least embraces the 'conduct of individuals,' in 'buying and selling or barter.'

"In argument in Gibbon vs. Ogden (9 Wheat.) it was claimed that navigation was not included within the meaning of the term; and the Court remarked, at page 190:

" 'The mind can scarcely conceive of a system for regulating commerce between the States) which shall . . . be confined to prescribing rules for the conduct of individuals in the actual employment of buying and selling or barter.'

"Other deliverances on the subject are as follows:

" 'Commerce is absolutely traffic. But it is also something more. It is intercourse.' (Gibbon vs. Ogden, 9 Wheat. 181.)

" 'Sale is the object of importation, and it is an essential element of commerce.' (Brown vs. Maryland, 12 Wheat. 419.)

" 'Commerce is intercourse; one of its most ordinary ingredients is traffic.' (Brown vs. Maryland, 12 Wheat. 446.)

" 'Commerce is a term of the largest import. It comprehends intercourse for the purpose of trade in any and all of its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens of our country and the citi-

zens of other countries, and between the citizens of different States.' (Welton vs. State of Missouri, 1 Otto 275.)

"'Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms, navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities.' (County of Mobile vs. Kimball, 102 U. S. 702).

"'The negotiations of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce." (Robbins vs. Shelby Taxing District, 120 U. S. 497, 1886.)

"'While the completely internal commerce of a State is reserved to the State itself, because never surrendered to the general government, commerce, the regulation of which is committed by the Constitution to Congress, comprehends traffic, navigation, and every species of commercial intercourse or trade between the United States, among the several States and the Indian Tribes.' (Interstate Commerce Commission vs. Brimson, 154 U. S. 447, 1894.)

"'Definitions as to what constitutes interstate commerce are not easily given, so that they shall clearly define the full meaning of the term. We know from the cases decided in this Court that it is a term of very large significance. It comprehends, as it is said, intercourse for the purposes of trade in any and all of its forms, including transportation, sale, purchase, and the exchange of commodities between the citizens of different States.' (Justice Peckham in Hopkins vs. United States, October 24, 1898, 171 U. S. 597.)

"(See United States vs. Addyston Pipe & Steel Co., 54 U. S., App. 723 et seq. Supreme Court decision December 4, 1899, 175 U. S. 211.")

Commerce, according to these definitions, in its narrowest definition embraces the "conduct of individuals in buying, selling, and barter." The power to regulate is not extended to prescribing the rules and regulations for the conduct of individuals in the actual employment of buying and selling or of barter; it is something more than traffic; it is intercourse for the purpose of trade in any and all its forms between citizens of different States and foreign countries. Over the subject of commerce and over the persons engaged in commerce the most plenary jurisdiction has been lawfully exercised by Congress.

THE CORPORATION AN INSTRUMENTALITY OF COMMERCE.

Among the instrumentalities by which commerce is carried on, and without which it cannot be successfully conducted, are corporations. May Congress create a necessary instrumentality by which and through which commerce may be conducted, viz., a corporation? The corporations now existing, except the Pacific railroads, engaged in the business of interstate commerce are creatures of the States. The right to exist depends on the State laws. Beyond the borders of the State of its paternity a corporation exists and does business only by permission of the sovereignty which it enters. By comity alone, not by right, the corporations of the several States transact business outside of their State of creation.

Any State may exclude the corporations of another State or admit them only on terms that would be prohibitory. The exclusion of the Standard Oil Company from the State of Texas is a case in point. The right to amend or repeal charters is reserved by many, if not by all the States of the Union. Of course the repeal of charters of all corporations engaged in interstate commerce is an unthinkable proposition, but the right to do it exists. Suppose the States of the Union saw fit to exercise this right. Commerce would languish and die. To meet this intolerable condition, should it arise, has Congress the power to grant charters to business corporations to engage in interstate commerce authorizing them to transact business in all the States and Territories of the United States? Having power to regulate, may Congress not provide an instrumentality necessary to the existence of the thing to be regulated? It is no answer to say, "There is no danger, the States will never perpetrate such an act of ineffable folly." The question is not whether the necessity will ever arise, but whether, if it should arise, the power exists in Congress to rescue from destruction, the commerce between the States, which it has the undeniable power to regulate.

We may, therefore, conclude that Congress, having the power to regulate commerce, has all necessary power to effectuate the purpose for which the right was conferred. The right to regulate commerce was surrendered by the States to the Federal Government for the purpose of preserving it free and unhampered by State restrictions. Perhaps no subject received more anxious consideration in the Convention that framed the Constitution. One of the chief reasons for calling the Convention

was to vest the power somewhere, free commerce from the intolerable restriction of the States, and secure the right to make commercial treaties with other countries. (See Hist. Const., Vol. 3).

The want of power to regulate commerce and make treaties with foreign countries was a chief source of trouble in the Confederation. It was the chief cause of calling the Convention that framed the Constitution. It was one of the profound subjects for debate, and one of the great factors in the action of the States in adopting the Constitution. In consideration of the concession of the power to Congress to regulate commerce, the Southern States inserted the condition that exports should not be taxed, that the slave trade should not be prohibited until 1808, and that two-thirds of all the slaves should be counted as the basis of representation.

No State has the right to exclude from is borders the trade of interstate commerce, although it may exclude a foreign corporation from entering. The original package may go everywhere, despite State laws. The agent negotiating the sale of goods, the subject of interstate commerce cannot be excluded from a State by the imposition of license fees imposed under the taxing power.

Both agents and goods must be admitted. So much has already been decided. Then why may not Congress authorize an agency in the form of a business corporation organized under Federal law to do business in any State or Territory, if deemed necessary or useful to effectuate the purpose in view when the power to regulate commerce was conferred? Of the necessity, Congress must be the sole judge. If the power exists the time and circumstances of its exercise must rest in Congress. Legislative discretion is not removable by any court.

IS FEDERAL INCORPORATION EXPEDIENT?

If the power exists would it be expedient and beneficial to the people to incorporate such companies?

Let the probable objections be considered.

First. Interference with the business of granting charters by the States.

Second. Federal control over such corporations would involve incidental control, and to some extent of the business of interstate corporations.

As to the first objection, the right of the State to grant charters of incorporation would not be affected. The financial injury that might result would be determined by the number of corporations that might seek Federal instead of State charters. The right to equally tax tangible property of such corporations doing business in a State would remain. Nothing would be lost but the right to tax the franchise. The extent of the financial injury that such an act would inflict is purely conjectural and not worth considering. What the States lost in that respect the United States would gain, and the people of each State would be proportionately benefited.

As to the second objection, no doubt there is a wide difference of opinion on the question of the expediency of any interference by the Government with the business of the country in any way, and no thoughtful person will contend that there is not good reason for such difference. Theoretically the functions of the Government are fully performed when the people are protected in their rights of life, liberty, reputation and the pursuit of happiness. Practically, as the conditions change and a nation emerges from a pastoral and bucolic state and engages extensively in manufacturing, transporting and selling goods in the markets of the world, when nearly all the active business passes out of the hands of individuals and into the control of corporations, upon the success of which a large proportion of the people are dependent for an opportunity to earn a living, and upon which in a large measure the general prosperity and happiness depend, when the power and influence of such corporate bodies become great enough to exercise influence over the people's Government in the great executive, legislative and judicial departments, we may at least be brought to consider whether the right of the individual to life, liberty and the pursuit of happiness will not be best conserved by laying a regulating hand on the instrumentalities of trade, commerce and manufacture, and by controlling any disposition on their part to usurp the functions of government, to monopolize the production and sale of the necessaries of life, or to unfairly use their power to hamper and destroy the competition of individuals.

SUPERVISION NECESSARY AND STATE LAWS INADEQUATE.

Assuming that no sane persons desire the destruction of the business corporations of the United States, large or small, the

question is whether, under present conditions, in view of the fact that they are necessary to the prosperity of the people, they should not be brought under some authority that can keep them in subjection and within the sphere of their rights. The power of the States is confessedly and notoriously inadequate. The Federal Government alone is able to successfully undertake the task.

After all, this is a government of the people; the Congress is their Congress. That there is an almost universal demand for some kind of restraint upon the vast aggregations of capital that have lately sprung into existence is evidence that such restraint is needed. Some of the clamor is no doubt born of hatred of success and envy of prosperity; some comes from those who believe property a crime and its owners criminals; some comes from people who have very positive opinions, but who never think; but far more is based upon a reasonable apprehension that combinations in restraint of trade have been formed; that corporations that intend to monopolize the production and sale of at least some of the necessaries of life do exist, and that well organized and successful efforts have been made by them to ruin competitors and destroy competition.

If all of these apprehensions are not well founded; if all the trusts are honestly pursuing lawful business in a lawful way, no act of Congress that is likely to be passed will disturb them or make them afraid.

ADVANTAGES OF FEDERAL CHARTERS.

If corporations engaged in interstate commerce do not desire incorporation under Federal charters they cannot be compelled to take them out. If, on the other hand, such corporations, in order to escape the limitations, exactions and annoyances imposed upon them by the States, are willing to submit themselves to the control of Congress, the opportunity would be given if a general Federal incorporation act could be enacted. If corporations engaged in interstate commerce accepted Federal charters, the question of adequate and proper regulation and control would be vastly simplified.

The experience of the greatest manufacturing and commercial country in the world ought to be of value in seeking a solution of the question as to the methods by which corporations may

be safely created and the extent of the power that may be properly intrusted to them.

The English Companies Act, passed originally in 1882, and amended in 1886 and 1890, furnishes the methods by which practically all corporations, except banks, may be incorporated. Under this law persons desiring to form a corporation may file a statement in the office of the registrar, setting forth minutely and in detail the kind, value and location of their property, the amount of capital stock, the number of shares into which it is divided, the names of the directors and shareholders and the nature of the business intended to be carried on, and the kind of liability assumed by the directors and shareholders.

Several kinds of business may be conducted by the same company; there is no limit to the number of kinds. The amount of capital or number of shares is unrestricted. Once formed the corporation may do business anywhere in the British Empire. New Jersey is not more liberal than Great Britain in granting charters of incorporation. The vast experience of this great manufacturing nation has eventually wrought the conclusion that the instrumentalities of business should be freely granted and as little hampered by vexatious conditions as possible. Always retaining the right to knowledge of the property and purposes of corporations, and reserving such supervision as will enable creditors to wind up and fairly distribute the assets of bankrupt concerns, the English law allows the largest liberty to carry on any kind of business at any place in the Kingdom or Empire.

FEDERAL CORPORATIONS IMPLY NO HOSTILITY TO REASONABLE BUSINESS ENTERPRISE.

A Federal charter should allow a corporation to transact business in any State or Territory of the United States, subject only to such regulations as Congress might prescribe and to such taxation as the States impose on similar business agencies chartered by themselves and no more. It may be assumed that Federal control over business corporations engaged in interstate commerce would be reasonable. The debate on the pending anti-trust regulations has not developed a disposition on the part of the most ferocious enemies of trusts to do anything hurtful to honest and legitimate business enterprises. It is the dishonest and illegitimate enterprises, brought into being for

the purpose of swindling the public by imposing upon it worthless stock and bonds, as well as those other combinations conceived for the purpose of monopolizing some line of business, stifling competition and restricting trade, against which indignation has been properly hurled. Perhaps the selection of concerns to be vituperated has not always been judicious, but abstractly, no one can or cares to defend the class of corporations named. The people are entitled to an honest and legitimate use of the special privileges conferred upon capital by the grant of corporate functions. They ought not to be turned into engines of oppression to competitors or of robbery of consumers.

Honest business honestly pursued need fear nothing from this or any succeeding Congress.

SECRETARY REYNOLDS: I am requested to read by title a paper on "The American Society of Equity and Its Need in Our Country," prepared by Mr. J. A. Everitt, President of the American Society of Equity.

MR. J. A. EVERITT.

Mr. Chairman—The object of the National Civic Federation is to organize the best brains of the nation in an educational movement toward the solution of some of the great problems related to social and industrial progress; to provide for study and discussion of questions of national import; to aid thus in the crystallization of the most enlightened public opinion, and, when desirable, to promote legislation in accordance therewith.

The object of the American Society of Equity is as broad as the above declaration and goes much further. For instance, it proposes not only to organize the best brains of the country, but the multitude of our citizens. It is an educational movement, but it does not stop there. It is building a machine for action. It does not aim to solve some of the great social and industrial problems, but all of them. It also boldly declares that it will compel legislation, in accordance with the most enlightened public opinion, when it is established. In other words, its purpose is to secure equity and fair dealings in all the business relations of human life.

You ask, What is this American Society of Equity that proposes to organize the multitude of our people; that is building a machine behind which will be this multitude of the people; that proposes to solve all our great social and industrial problems, and

not beg for legislation for the people, but demand and compel it? These are questions that the uninformed naturally ask.

THE AMERICAN SOCIETY OF EQUITY.

The American Society of Equity is primarily a farmers' organization. But it says in its constitution, where defining its membership, "and it shall consist of farmers and other persons who favor and are willing to assist in the accomplishment of the purposes of the society."

Farmers compose the greatest class of our people, numerically, and the most important class, industrially, and we might say that when the farmers are organized the people will be organized. This will be true as regards the majority, and the majority rules. Also it will be true industrially, because the farmers' products are the greatest economic factor of the nation.

The American Society of Equity is largely an educational and organizing society. But it is not exclusively so. It is incorporated without capital stock, yet it will direct the marketing of all the farm crops. To direct them it must come into control of them. This it will do through pledging, and it has been in control of some crops in the past, and directed the marketing to secure profitable prices of the producers' own making instead of often unprofitable prices of speculators' making. Thus, without a dollar of capital stock, the American Society of Equity will be the greatest industrial factor, or organization, the country ever knew. For you to understand how this will be possible without capital stock, I will say that the expense of organizing and maintaining the society is met through a small individual membership fee and small annual dues, but which, in the aggregate, make immense sums, while the expense of marketing is met by a small sum added to each pound, dozen, crate, bushel, bale or ton of produce pledged to the society, and which the society directs the marketing of, and the purchaser pays it. Thus, $2 each as membership fee amounts to $2,000,000 for a million members, and $2 a year dues amounts to $2,000,000 for each million members. Also, one cent per bushel on the principal grain crops, corn, wheat and oats, placed in the treasury of the society, or its department unions, in one year will amount to $28,000,000. If all the other crops would contribute in like portion the sum would be multiplied. It will not require an enormous sum to maintain the society and its marketing machinery, and it is not proposed to inflict any unnecessary tax on the consumers. The farmers will only

demand an equitable price, which will be a profitable price, and the expense of marketing their products. Farmers have always in the past paid the expense of marketing other people's products in the prices they paid, yet have often taken for their own goods prices less than cost of production.

BENEFITS TO ALL.

But you say, Will not the farmers' success in pricing their crops impose added burdens on consumers through higher prices?

Not necessarily so. Although this is primarily a society for farmers and for agriculture, yet everything that farmers do to benefit society and their business, and all that they can do with safety, must operate to benefit every class, every useful industry, every meritorious institution, and every person doing a legitimate business. For instance, if farmers are deprived of a fair share of the wealth they produce, all other industries will suffer in equal ratio. If, on the other hand, the farmers receive a fair reward, their gain will be reflected in the business done by merchants, bankers, professional men, laborers, etc., all down the line in the country, towns and cities.

FARMERS CAN ORGANIZE.

Farmers can organize, as they are largely organized into the American Society of Equity already; they will pledge all their crops to their society, as they have done for some crops already; and they can get profitable prices of their own setting, as they are doing it for important crops now. And who will deny them the right to do these things? This may make higher prices to consumers on some crops under the present conditions of marketing. But it is also proposed to change the marketing system, and here is where I answer your last question, "Will not the farmers' success in marketing their crops impose added burdens on consumers through higher prices?"

BOTH ENDS EXPLOITED BY THE MIDDLE.

Under the old system of marketing, farmers were paid too little and consumers were charged too much. The difference went into the pockets of the exploiters between. Thus, wheat that brought the producer 75 cents or less reached the purchaser in the form of flour and bran at a great advance, or by the route of

the bakery a hundred or more per cent. was added. Potatoes that brought the producer in Michigan 20 cents per bushel, cost the consumer 75 cents to over $1 in distant markets. Corn that brought the producer 35 to 40 cents in Iowa or Kansas sold to the cotton raisers in the South at 75 cents to $1. Eggs that were bought in the summer from the farmers at 12 cents, came out of the storehouses owned or controlled by people who have no hens, in winter, at 30 to 50 cents. The same way with poultry and butter. Apples that the buyers reluctantly paid 20 cents a bushel for in the fall sold at $1 to $1.50 in a few months, because only a part of the large crop was taken, even at the low price, and the balance left to freeze in orchards so those stored would command high prices.

And this way it has been going. As I have said, farmers can organize. They can price their goods and get the prices, because the other people, who have no farms, or orchards, or flocks, or herds, cannot do without the farmers' produce a single day. But when in this powerful position they will not be unmindful of consumers. On the contrary, the farmers, through their society, have declared as follows:

"Should organized consumers in any of the labor organizations decide to cultivate friendly and trade relations with the producing class—farmers—and for this purpose decide to establish agencies, exchanges, etc., or other means of directly meeting the producing classes and receiving their products at first hand, the American Society of Equity will be willing to co-operate to the end that consumers may secure the necessaries of life at equitable prices."

RECOGNIZED BY THE AMERICAN FEDERATION OF LABOR.

Already organized labor has recognized the benefits of co-operation with this society, and at the national meeting of the American Federation of Labor, held in Minneapolis in 1906, resolutions to co-operate with the American Society of Equity were passed. President Gompers, of the American Federation of Labor, and an officer of your body, in referring to the possibilities that opened up through such co-operation, voiced the sentiment of that large gathering when he said:

"The very presence of these representatives of the farmers of our country bodes the greatest good of our people. May it be the harbinger of a greater swiftness of the movement for the protection and uplifting of our common people."

And this co-operation will not be confined to organized laborers. It is the duty of farmers to produce for all the people, and they will gladly do it at equitable prices. Therefore, the same spirit of equity in dealing and fair play is extended to all consumers. Also, it is not the intention or expectation to eliminate the middlemen, except the unfair ones. The exploiters who cheat, wilfully misrepresent and designedly control all the storage space and prevent a liberal supply being held, will surely have to go, or reform. There is no doubt that the producers organized will have much, if not all, to say about what is a fair commission, and also what is a fair freight rate, etc. And when they have the organized co-operation of the consumers—and I hope they will have soon, as it looks to me as though the consumers must organize for their own protection—there will be a power created that will compel the middlemen to deal in equity with both classes. The farmers are as much interested in large markets as in profitable prices. Therefore, their products must reach the consumers in adequate quantities and at popular prices.

HOW IT WILL BE DONE.

We have seen many illustrations to prove that competition is the law of industrial death, and that co-operation is the law of industrial life. Also we have many evidences that unorganized people are powerless, and when organized they are all-powerful.

We have seen the transportation companies organize and bring certainty of rates and dividends in place of uncertainty. We have seen the steel trust, the harvester trust, the tobacco trust and others organize and control supply, make prices and compel definite dividends. We see practically everything the masses of the people produce and consume controlled by a combination or trust, while the masses are as yet only partially organized and exert their power only to a very limited extent.

More unions is what our country needs. When everything and everybody are organized, unionized and co-operating, then there will be no weak to be preyed upon by the strong, and we will have reached the millennium of our social, industrial and political existence. This is the object of the American Society of Equity. This is what will occur when the masses are organized into an American Society of Equity.

The American Society of Equity is probably the first institution that has come to you with the right civic spirit throughout,

to benefit all the people, and is not trying to help some of the people at the expense of others.

METHODS OF OPERATION.

The organized forms are local unions, county unions, district unions for some crops, State unions, section unions, department unions, and a national union.

When the society is completed there will be a local union at each important shipping town, and there may be others; a county union in each agricultural county; a State union for each State; a department union for crop or class of crops; a section union for groups of States, and the national union at the head of all. Each union has its officers. The local union is the "workshop of the society." It is made up of producers of the neighborhood. The individual producers report the crops they have to sell any day (or a few days in advance) to the secretary of the local. (Only the shipping parts are reported. Crops for home consumption or the local market are not included.) All the local unions in a county report daily to the county union, with the railroads the supplies are on. Thus the county union has a report of all the grain, cotton, fruit, vegetables, wool, hogs, cattle or any crops that are ready for market any day, or that will be ready on a certain day in the near future. All the county unions in a section will make their reports to the section union daily; consequently the section union will have a report of all the supply of whatever description in the section, and will know what railroads it is on.

The reporting will be done by telephone, or telegraph, or mail, as may be most convenient or necessary. Cypher telegraphy may be resorted to. To the person who has not figured the plan out this may look stupendous, and some will say "it is impracticable," but let us see.

It is proposed to divide the country into seven sections to facilitate reporting and directing marketing. The average number of counties to a section will be 430. But we will take what is called Section 2 and comprises the States of Illinois, Wisconsin, Michigan, Indiana, Ohio and Kentucky. In this section there are 653 counties. Therefore, it means 653 telephone or telegraph messages to get a complete report of all the crops ready for market, or to be ready soon, to the section headquarters, which will be at Chicago. There is nothing impossible or impracticable about this. There are many business houses that receive as many messages

daily, and it is nothing to compare with the messages and details necessary to keep a railroad system working.

True, this is only one part of the duty of the section union. The others are to receive reports of demand, and to direct the supply to meet the demand.

I have shown how simple and practicable it will be to report the supply down to the local and county unions in the section union. It will be just as simple and practicable to get reports of the demand. To explain:

The American Society of Equity will open offices in all the principal market cities, notify the handlers and consumers of the location of these offices, and wait for the demand to come to these offices. But, you say, "the demand may not come." Remember, the crops are pledged to the society to direct the marketing. Independent, or competitive, marketing is at an end. Hence, the only place to get supplies of farm products will be through the society and its representatives. You can imagine that the buyers cannot hold out long, and that it will not be necessary to canvass for orders. We must admit that the farmers have an advantage over all other classes of producers in the fact that their goods are absolutely essential. Therefore, if they tie them up for a definite, profitable, equitable price, and make their society their selling agent, the demand must seek that agent.

Each market representative will telegraph the report of demand from his market daily. Thus, the section union will have a complete report of all farm produce available for each day, know where it is and on what railroad it is. Likewise a report of the demand, and exactly where it is. This allows me to announce the following:

AXIOMATICAL TRUTHS.

When we know the supply and where it is, when we know the demand and where it is, what can be simpler than to direct the supply to equal the demand?

Then all markets will get what they need, and no more. Gluts and consequent losses, will be unknown. Maximum sales will be made.

Producers will get their price on all they sell, and no necessary handler will be dispensed with or business disturbed, but they will be required to serve the people on equitable terms, thus reducing the prices to consumers.

The directing of the supply by the section union will be just

the reverse of reporting the supplies through the county and local unions.

I have been thus explicit in describing the marketing machine of the American Society of Equity, while necessarily omitting some of the other details in this address, so as to establish the practicability of the plan, and convince my hearers that all we claim can be accomplished. To direct the marketing of all farm crops will not require as large, or as complicated, or as expensive a machine as some railroad systems have now, because we have the advantage that the farmers' goods cannot be done without for even a little while, while everything else can be done without for a time, and some of them all the time. I want to place the movement represented by the American Society of Equity before this body of people, representing practically all our industrial, social and political activities, so they may understand it, because it is the most significant event of the present generation, and no individual can afford to ignore it, and all should make calculations on its rise. It is a power now, and is a greater power as each month passes by. It is contesting in the fields economic and politic for recognition, not by brute force, but through its numerical strength, demanding equity and equal rights for all.

MR. JAMES F. TRATTMAN (Wisconsin): Mr. Chairman—I desire to offer some resolutions on the labor organizations and the relations of aggregate wealth to the individual.

MR. REYNOLDS—I would ask that the resolutions be read and submitted at once.

Mr. James F. Trattman then offered and read the following resolutions:

Resolved, That this convention hereby declares its sympathy with all earnest and honest effort which makes not only for equality in privilege, but also for actual equality among men, and that we commend the efforts of labor organizations throughout the country in their attempts to improve the moral, material and intellectual condition and surroundings of their fellow men.

Further Resolved, That we recognize these labor organizations, wherever they seek by righteous and lawful means to uplift their members and fellow-workers, as powerful agents for good in our economic, social and political development, but we deplore as harmful and dangerous to our republican institutions and to all citizens alike, every resort to violence or lawlessness

by these organizations, whether practised secretly or in open defiance of law; we therefore recommend this subject to the earnest consideration of Congress.

Further Resolved, That the unrestricted right of the individual, under the law, to acquire and own property without limit in amount or kind, is gathering the natural and created wealth of this country into the hands of the few, is establishing an oligarchy of wealth, is turning over our Government into the hands of the rich, is a menace to our free institutions, and should, if feasible and possible, be curtailed.

Therefore, Further Resolved, That we recommend to Congress the appointment of a suitable and impartial commission to investigate the subject of the right, under the law, to acquire, own and transmit, by will or under inheritance laws, lands and personality in unlimited quantities and kinds, and to report their recommendations and conclusions as to whether it is feasible and possible, without danger to our institutions or welfare, to limit or curtail this right, by preventing the acquiring of ownership by the individual of lands or personally beyond certain amounts, and by forbidding the transmission, by will or inheritance laws, of lands or personality in unlimited amounts to a single individual.

In response to the request that resolutions be handed to the secretary, the following were presented:

By Mr. P. J. Guerin (Massachusetts).

Resolved, That this conference, believing that the best interests of the public would be subserved by the Federal control of the railroads and transportation companies, desires to be recorded as in favor of that view of the question.

By Mr. J. E. Leavitt, on behalf of the Board of Trade of Lynn, Mass.

Resolved, That any combination or organization of individuals whose acts may control the price, production or traffic in any article of common use or necessity, whether labor, manufactured article or other product, in any State other than wherein it is organized, shall be required to incorporate under the Federal laws, and thus be amenable to the Federal Government for any abuse of its power.

By Mr. C. J. Traxler (Minnesota).

Whereas, The so-called Sherman Anti-Trust Act has been proven to be a detriment rather than benefit to the development of American industries; and

Whereas, The same operates more to restrain honest men and honest enterprises than to prevent or control monopolistic and harmful organizations; therefore be it

Resolved, That we petition and recommend our Senators and Representatives in Congress assembled to repeal Section 1 of said act, and to re-enact the same so that the gist of the offense shall be some harmful result to the public;

Resolved, That we recommend that no agreement, contract, combination or pool shall be deemed harmful, within the meaning of such act, that does not operate to the actual injury to the public, or that does not produce to the participants more than *10 per cent. net* on any sale or transaction.

By Hon. P. J. Grosscup (Illinois).

Resolved, That the corporate form of wielding the nation's industrial energies is a necessity of our times, and that it is time to quit its indiscriminate denunciation. We believe that, both from the standpoint of the political economist and of the statesman, the supreme corporate problem now before the country is not how to destroy the corporation, nor how to hamper it, but how to so reform and rebuild the corporation, that it may become a trustworthy medium through which the universal American instinct to have some individual part in the property of his country may find a way to work itself out. And to that end we ask the national government to take the lead.

By Hon. Avery C. Moore (Idaho).

Resolved, That this conference is in hearty accord with the trust policy of President Roosevelt.

By Mr. Allen Ripley Foote (Ohio).

Resolved, That the Congress of the United States be recommended to enact a law denying the privileges of interstate commerce to corporations, under the laws of whatever State incorporated, that own or hold the stock of other corporations.

By Prof. F. W. Taussig (Massachusetts).

Commend Federal administration for vigorous action. Public opinion endorses it unreservedly. Vindication of supremacy of law.

Commend Bureau of Corporations for skill, energy, successful uncovering of evils.

Commend Interstate Commerce Commission.

Recommend separation of trust and railway problems. Interstate Commerce Commission alone to supervise railways and

Interstate Commerce Commission Act alone to apply to them. Bureau of Corporations alone to deal with trusts.

Revision of Sherman Act necessary. Federal control of industrial trusts, requirement of publicity, regular reports, supervised accounting.

A commission at next session of Congress to investigate and to report detailed legislation.

By West End Business Men's League of St. Louis.

Whereas, We deeply deplore the antagonisms and controversies now existing between the United States and the several States over questions of interstate traffic; and

Whereas, We regret that there should be occasion for the people of the several States to thus quarrel and contend with themselves as the people of the United States; and

Whereas, We believe that the power and duty for the proper and happy solution of these controversies rests with the people themselves, and that such solution should be found at the earliest possible moment; and

Whereas, We further believe that such a result may be best and soonest brought about by the meeting of the people, through the agency of truly representative delegates, in a joint national and State convention; therefore

Resolved, We favor the calling and holding of a joint national and State convention, composed of delegates representative of nation and State, and of our various social, commercial and industrial interests, such convention to be called by and held under the auspices of the President of the United States and the Governors of the several States; and

Resolved, That we hereby respectfully petition the President and Governors to call and provide for the holding of such a convention at such a time and place and in such a manner as they may determine.

MR. REYNOLDS—I am requested to remind the gentlemen who are members of the Committee on Resolutions that the general committee will meet at 8 o'clock, Room 200, Hotel Stratford.

Upon motion, the conference was then adjourned until 2 p. m.

Eighth Session, October 24, 2:30 P. M.

The eighth session of the conference was called to order at 2:30 P. M. by Mr. Marcus M. Marks.

THE CHAIRMAN: The first speaker this afternoon will be Dr. F. W. Taussig, Professor of Economics in Harvard University, the title of whose paper is "What Next?"

PROF. F. W. TAUSSIG.

Mr. Chairman—The ground that was covered by Commissioner Smith in his address this morning is identically about the ground I propose to cover this afternoon. Perhaps fortunately for you, but unfortunately for me, the conclusions which the academic mind has reached upon the subject are almost identical with those which have been reached by the practical administrator. I therefore cannot offer anything new to you, and yet it is perhaps not without significance that the student of economics should come out just where the experienced administrator comes out.

ATTACKS ON TRUSTS HAVE BEEN USEFUL.

This is a period of attacks upon the trusts, or, to use the newspapers' phrase, of trust busting. Both the States and the Federal Government are moving upon the large combinations The Federal Government has carried through its attack on the railway combination in the Northwest and has secured the dissolution of the Northern Securities Company. It is moving upon the Oil Trust and on the Tobacco Trust and we can hardly doubt that proceedings against other combinations are in course of preparation. The States show no less activity in action toward the dissolution or expulsion of offending combinations.

All this is good, good certainly as far as it goes. It is a sign of an awakened public feeling, of a strong determination to grapple with the problem in earnest. The community is aroused. Not only the great mass of laborers and farmers press for action of some sort, but the middle classes, the merchants, manufacturers, business men, so far as they are not themselves interested in some form of combination, approve the general trend. This pressure is good not merely as a sign of awakened public

feeling—it is good also because it is a necessary stage in the progress of reform. Without some drastic action many of the great corporations themselves could not be brought to face squarely the new situation. Their leaders are so used to control, so intoxicated with power, so beset by megalomania, that nothing less than serious attack will accomplish anything. They talk glibly of reasonable regulation. They admit the principle of considering the rights of the public. They say they object to unreasonable regulation and to confiscation. In fact, they wish for no regulation at all. They wish the old conditions to last as long as possible and with as little disturbance as possible. They will quibble, evade, conceal, pretend to conform, profess ignorance of things which they must know, emasculate legislation, use every subterfuge and delay which the law allows. They often do this stupidly, with pretenses so obvious and affectation of ignorance so absurd as to forfeit any claim to considerate treatment. They need to be scared. Until they are thoroughly scared, little in the way of betterment in their policy or of faithful consideration of public rights can be expected. This is by no means true of all the great corporations; but it is true of many among them.

Not only this. Vigorous attack, proceedings for legislation, heavy fines and penalties seem to be the indispensable steps for getting light. Just what some of the great combinations have done, just what are the means by which they have obtained commanding control, just how great have been their profits, how far the profits have exceeded a reasonable return for capital and energy and risk—on all these essential questions we are often bare of information. That information it seems will not be given in most cases except under severe compulsion. Serious menace and some injury seem to be essential in order to secure needed information.

EFFECTS ON BUSINESS EXAGGERATED.

No doubt scaring the combinations is bad for business, or at least for some kinds of business. It does shake confidence in enterprises holding an important place in our industrial organization and it contributes to a feeling of uneasiness in financial quarters. Very likely it is a factor in leading to a decline in quotations of securities and to a possible halt in business activity. In my judgment, it is not the main factor or even a very important factor. There is a tendency to make the administra-

tion a scapegoat. The ups and downs in business succeed each other with little regard for legislative or administrative doings. Speculative activity such as we have had in the last three years is sure in any case to be succeeded by a pessimistic reaction.

All this serves to justify the course of the administration, of the Federal authorities, of the State Legislatures and Commissions. But it justifies their course only so far. It may seem paradoxical after what I have just said, but it is none the less true and consistent, that the present course of legislation in the community is not tenable and can lead to little permanent good. Rightly considered, it is only a provisional move. It is a reconnaissance in force, not a real attack on the problem.

COMBINATION IRRESISTIBLE IN CERTAIN LINES.

My ground for saying this is, to put it in a word, that the movement toward combination is in many directions irresistible. I do not believe it is inevitable and irresistable in all directions, nor do I look forward, as the Socialists do, to an industrial system in which all industries will be centralized under single management and control. Over the greater part of the activity of the community we shall continue to have independent and competing producers. But in a considerable number of industries, large scale production and large scale operation, huge plants and interrelated plants bring so great economy and efficiency that the great monopolistic combinations are bound to make their way.

To repeat, I would not press this reasoning too far. The advantages of large scale production are not without their limits. People often confound the true advantages of large scale production with the tactical advantages and the swelling profits which come from monopoly. In a great array of industries, such as textiles, boot and shoe manufacturing, wood working, metal working, a host of others, the stage of maximum efficiency is reached far short of all embracing combination. No hastening beyond this stage is desirable. Let us do all we can to keep development within this stage. Hence all measures for keeping the way clear for independent producers are good. Such is legislation promoting free competition, defining more rigidly unfair competition, proscribing mere browbeating; not least, a square deal by the railways, with equal rates and no favors or discriminations.

But after all this is done, there will still remain industries which will attain the stage of combination and of virtually complete monopoly. The great conspicuous example is the oil industry. Whatever may have been the artificial causes of the origin and early development of the oil monopoly, through the manipulation of railway rates and the helplessness of railways in competition with each other, the tendency toward single management and ownership seems to me to have become inevitable with the pipe line. Legislation may provide that pipe lines shall be common carriers, and rival pipe lines may be encouraged. Yet this stage in the mechanical development of the industry seems to me to make combination inevitable. Sooner or later rival pipe lines will combine, the industry necessarily will come under the control of those owning the unique transportation facilities, the common carrier provision will prove illusory. The lesson of gas supply in the cities seems to me conclusive. When once a great expensive plant of pipes is essential for the successful conduct of the business, and suffices for the conduct of the whole of the business, combination and monopoly are inevitable The hands of the clock cannot be made to go backward.

EFFORTS TO IMPEDE COMBINATION LARGELY FUTILE.

What follows? That prohibition, penalizing, dissolution, trust busting are hopeless as a permanent policy. The fact of combination and of monopoly tendency must be faced. The present drastic measures must be regarded as opening the way not to the restoration of competition or the final destruction of combinations, but to the co-operation of the combinations with the public. They should prepare the way for a better and higher plane of management for the combinations.

The proofs of the case are indicated by the railway situation. In one essential respect our policy toward the railways for the last twenty years has been wrong, and is admitted to have been wrong by the great majority of sober and serious students of railway problems. By the Interstate Commerce acts we prohibited pools and agreements, and by the Sherman Act of 1890 that prohibition was made even more drastic. We have tried to keep competition alive artificially. The result has been that we have maintained some of its unhealthy effects but have secured very few, if any, of its good effects. We have simply caused combination to take new forms, to conceal itself, and to become more difficult of supervision. We have not prevented—we

have simply driven it into hiding. That the prohibition of pooling in the Interstate Commerce Act was a mistake has now been repeatedly stated by the Interstate Commerce Commission itself. It has recommended that pooling be permitted under supervision. Let the railways be authorized to combine and co-operate, but let them do it in the open. Quite apart from the special consideration that this sort of common action will help in doing away with secret favors and rebates, it will facilitate general public supervision of railways, it will promote co-operation between the railways and public authority, will encourage good service and, not least, will give the dog his due.

Considering how the consolidation of railways has proceeded apace since 1887, it is often said that our legislation, while it has attempted to prevent railway combination, has in fact promoted it. I am by no means sure that as much as this can be made out. But certainly competition among the railways has not been made more effective. In the Northern Securities case, the Government won a tactical victory. The security holding corporation was dissolved. Substantially, nothing was accomplished. The unification of ownership and control remains precisely as it was before. But it is concealed, or at least takes place by methods which the law finds it virtually impossible to prevent; and it makes supervision not more easy, as it ought to do, but more difficult. The principles which are applicable to railway combinations are applicable to the trusts also. The mere act of combination should not be subject to legal penalty. Secret combination should be hounded down. Where there is concealment or mendacity, bring pressure to bear, by court proceedings, dissolution, criminal prosecution. But say to those that aim at large scale combinations—if you will do it in the open, we will not only let you combine but we will give you a firm legal basis and we will welcome co-operation with public authority.

SUGGESTIONS FOR A FUTURE POLICY.

A general policy of this sort calls, however, for wise consideration of details. To enter upon those details would go far beyond the scope of the present paper, and, indeed, in many respects, far beyond any competence I can pretend to. The main outlines on which it must proceed, however, seem to me obvious. They are somewhat as follows:

1. Federal incorporation and Federal regulation are indis-

pensable. The day has passed when the individual States can cope with the problems involved. The Federal Government must take hold. Whether we like it or not, we must look to a great enlargement of its scope and power.

2. We must have careful legislation and not slap-dash legislation. The Sherman Act of 1890 and most of the statutes passed by the several States may be fairly described as slap-dash legislation. The mere preparation of careful regulative legislation will call for a high legal skill and for extreme care as to details. It is always subject to emasculation by amendment at the hands of corrupt or semi-corrupt legislatures. One indispensable step to progress is that the people shall send to Congress Senators and Representatives who are trying to grapple with the problem in good faith.

3. Careful administration and continuity in administration are called for. The Bureau of Corporations has made an excellent beginning. Both this bureau and the Interstate Commerce Commission must be completely divorced from partisan politics and must be officered by able, upright and experienced men. The term of service should be irrespective of changes in the Presidential office, and the positions should be made dignified and attractive both in salary and in permanence of service.

4. Time and experience must be awaited. The precise mode of regulation, the extent of the publicity required, the mode in which the Government and the combinations shall co-operate—these things cannot be worked out in a year or in a decade. We must make up our minds that we have a long and difficult problem before us, that the ways and means of meeting it cannot be learned in advance. The public must learn to be patient.

5. Finally, the public must recognize the fact that money making is not necessarily bad. Large results are not to be achieved without large efforts and large risks, and the fact that a combination is profitable does not necessarily prove that it takes undue advantage. The community must accept the fact that something more than mere interest on capital is necessary to induce the taking of risks and to bring about the keenest exercise of business ability. Again, give the dog his due, even though we will no longer let him have more than his due.

THE CHAIRMAN: We shall now be addressed by a gentleman who can certainly be said to be a practical man, Mr. George

H. Barbour, President of the Michigan Stove Works, of Detroit, Michigan.

MR. GEORGE H. BARBOUR.

Mr. Chairman—Prior to last evening I had about come to the conclusion that we were to have but one side of the subject that was to be discussed, but after hearing Mr. Dawes I changed my opinion and decided the ball was open.

It was my privilege to attend the bankers' meeting at Atlantic City a few weeks ago, and among the speakers there, one of the most interesting whom I listened to, was the president of one of the leading railroads of this country, whose word had a great deal of weight. He made one or two statements, and one particular statement regarding the financial condition of this country, which I thought of a great deal of importance. He said the main cause, in his opinion, of the financial diffculty that we were having was because the American people had become so extravagant. He followed that statement by saying that during the last year (meaning the present year) there had been over $400,000,000 spent for automobiles in this country. That amount may seem very large to you; I thought so at the time, and knowing the gentleman, I saw him personally and asked him if he were not mistaken in that amount. He said he had given it very careful consideration, and with the amount of American automobiles and those of foreign make he thought he was very conservative.

BENEFITS OF COMBINATION.

You have been addressed principally by the learned profession, known as "lawyers," which I have the greatest respect for. At my home some of my warmest friends are lawyers and I respect them and hold them in the highest esteem, but on the general subjects of the day, those which confront us at the present time, I do not hesitate to say that I am not willing to give them or their opinion to exceed 50 per cent of the argument. There is a business side to the subjects that have been presented here. I am not so sure that the combination of interests is such a danger and presents so bad a condition of things as has been pictured. I take issue, and believe in many instances combination of interests have proven of inestimable value to many. I cite, if you please, the United States Steel combination which I have had personal dealings with, and I have made

comparison of the conditions before the United States Steel Corporation was in existence and since, and I say to you without fear of contradiction that their methods of doing business and results accomplished have been far more satisfactory than was the condition prior to their existence. Since their organization the material which they use largely of (iron and steel) has increased in price, they have paid to labor a high scale of wages, but with this condition their manufactured product has been sold at a fair price, and I do not hesitate to say at a lower price than if the individual concerns which they now control had continued as before the combination was formed. The question may be asked how were they able to do this. My answer is, by taking advantage of the large output they were able to control by regulating and having a steady market, a combination of circumstances that any one individual concern could not accomplish. Reference is often made to the Standard Oil Company methods. I am willing to admit they are a monopoly, if you choose to so consider them, but I believe, and always have believed that the consumers of their product have always been able to purchase the same at a reasonable price and at a lower price than if the business had been what is termed on an "open market." And why do I say this? As a manufacturer my experience has taught me that to make a success of any business you are engaged in, you must have volume, and here we come to the point of the small manufacturer doing a business, say of $500,000 against a competitor in the same line doing a business of $1,500,000. If the concern is doing a business of $500,000 and their general expenses are 15 per cent and I am able to do a business of $1,500,000 (three times the amount) do you for a moment think my expenses would be three times the amount, or 45 per cent? Nothing of the kind. I would come nearer doing my increased amount on 5 per cent, which is only one-third of the amount. This is where the consolidation of interests tells, bringing the fixed amount of expenses down to the minimum, which the volume of business enables them to do. By this consolidation who suffers? Does the manufacturer who purchases the product of the combination of interests? I say no. Do the employes suffer? No. Their condition is improved. Then who are the suffering ones? I know not of them. If you do, I would like you to name them. I am inclined to think that combinations of interests are many times misunderstood by the general public, by their coming to conclusions without a thorough knowledge

of the situation. I say to you, I have had general experience in dealing with combinations in the purchase of their product, and what I have said to you is based on this experience.

RAILROAD INVESTMENT SHOULD HAVE A FAIR RETURN.

Now a word concerning railroads. Is it not natural for all of us engaged in any business to do our best to get a reasonable profit from the business we are engaged in—does not the common law grant us this privilege, provided we conduct our business along business lines, represent our products honestly and treat those with whom we do business fairly and justly? In considering railroads, I care not whether steam or electric lines, they are entitled to a fair profit on their investment, provided they treat the public fairly.

At the present time the people of this country are demanding better service and better everything than in years gone by. We want to ride in luxurious cars, the track and roadbed must be first class, so that we can be transported from Chicago to New York in the fewest hours possible. What does this condition of affairs mean to a railroad? I say to you, it means a very large amount of money expended to accomplish all this. Has this not been accomplished by the leading roads of this country? I think you will agree with me that it has.

Admitting this condition, should we not be reasonable and be willing to give fair returns for what is demanded? The American people are exacting, they want the best and they are entitled to it; but let us at all times be reasonable and appreciate and give credit where it belongs. How true the statement, "easy to find fault but difficult to praise." I have always advocated in my own city so far as street car service was concerned (and we have had some ten years of agitation on this subject) that a low fare was not of so much importance as to have first-class service, and I am a believer in the saying that you cannot get something for nothing. A dollar should always be worth one hundred cents, and when we all come down to this way of thinking, I doubt very much if we would be inclined to find fault with many things that at the present time we are disposed to criticise somewhat unfavorably. I am optimistic in my nature—I want to see everybody successful. I want to see capital and labor go hand in hand. I want to see the man, or those that put their capital together, succeed and make money, if they transact their busi-

ness on honorable and just lines. I want to see labor get its just reward. I am pleased that the hours of the laboring man are reduced from what they were. Give him a little time for rest and recreation. He'll be all the better for it. His family will not suffer from such a condition. In conclusion, let us be just to each other, follow the Golden Rule—"Do unto others as you would have them do unto you." Be liberal and charitable and in the end we will be well repaid for the conditions that are sure to follow.

THE CHAIRMAN: Mr. Theodore Marburg, Chairman of the Finance Committee, desires to make a short statement.

MR. THEODORE MARBURG: I have a painful duty to perform, gentlemen. I come before you as a beggar. This conference has been subject to certain expenses. The rental of this hall for four days involves an outlay of some $900. If these proceedings are to be printed—and it is hoped they will be; that method has been followed heretofore by this great association with great advantage—that will involve an outlay of $1,500. The preliminary expenses have been $500, and stenographers' expenses will be considerable. So that we have got to appeal to you for a subscription of $3,500. Now we don't want to get this from one big corporation. It goes without saying they are falling over each other to pay it all, but we would rather it would come in small amounts from men who feel that this subject we are discussng is of sufficiently large public interest to call for private support. Mr. Lounsbury, at the secretary's desk at the rear of the hall, will receive subscriptions.

THE CHAIRMAN: The next speaker will be the attorney of the American Federation of Labor, Mr. Thomas C. Spelling, who will speak on "The Trust Question from the Labor Standpoint."

MR. THOMAS CARL SPELLING.

On what is known as the trust question, this is an era of profuse declamation, with scarcely any sober thought, and of dazzling illumination with little or no steady light. This is only in part due to the intricacy and novelty of the question. Popular delusions and perplexities are due largely to the fact that many pub-

licly uttered views are adulterated with self-interest or colored by partisan bias.

Labor has no peculiar or class interest in the subject. Whatever the benefits of capitalistic combination, they are enjoyed by wage-earners in common with others, and whatever its extortions and other evils, they are inflicted upon labor and upon the general public in equal measures, except that some are able to shift the burden successively until it finally rests upon those primarily engaged in production.

LABOR HAS NO SPECIAL INTEREST IN TRUST QUESTION.

Organized labor asks no special privileges or exemptions. To the charge which has been recklessly made from this platform that organized labor is a "trust" or is seeking to establish a "labor trust" little need be said for the consideration of those possessing the power to discriminate even in a moderate degree. Labor is neither an article of interstate commerce nor an article of commerce in any respect. Labor contracts are essentially of a personal and local character. Their subject matter does not require resort to a Federal court, and they are governed by the law of the place. And for this reason there can no more be a monopoly created in labor contracts than there could be in marriage contracts. And for the same reason, any attempt to hamper labor organizations or restrict their operations by State legislation would prove abortive. But I cannot refrain from remarking, before I pass from this topic, that what would be vain and reprehensible if sought to be done by statute has been done without hesitation by some of the courts through abuse of the power to issue writs of injunction. And if politicians and political parties desire to really interest organized labor in the next Presidential campaign let them make an issue upon the provisions of the Pearre Anti-Injunction bill.

If organized labor saw fit to specialize in condemnation of combination in restraint of trade or to suggest remedies, it could not be estopped by any interest or policy of its own. When, however, the question is asked why it does not propose remedies for the wrongs of monopoly, the answer is found in its general policy. The organization concerns itself with those matters which peculiarly affect the interests of its membership. In this respect it does not differ from other voluntary associations, such, for instance, as the manufacturers' associations, chambers of commerce and stock exchanges.

The trust question is political in a very important sense, and the labor organization, not being political, maintains a merely receptive and deliberative attitude toward this, as it does toward all policies and remedies proposed by political parties.

Having thus defined its attitude, I deem it fit and proper to assert that I am not, and cannot be, deceived by statements as to past performances of either of the two parties which have alternately been in power for thirty years or more, nor by the subterfuges of special representatives of corporations, nor by the insincere promises of politicians and the makeshifts and ineffective remedies proposed by them.

Until some really effective solution of the "trust" problem is proposed in good faith attempts to enlist labor's active interest in the subject will fail. In common with others of the plain people, wage earners rest in confidence that in due time a fair measure of relief will be proposed by proper authority.

COMMON LAW PRINCIPLES UPON RESTRAINT OF TRADE.

There is no common law principle inimical to mere monopoly. But there are common law limitations upon the power to contract. The importance of this distinction in any impartial consideration of the subject can scarcely be overestimated. The limitation upon the power to contract was first recognized and enforced for the protection of artisans, for their benefit, as well as for reasons of public policy. An artisan might contract away his right to pursue his calling in a given town, but could not make a valid contract not to pursue it at all anywhere in the kingdom. The limitation upon the broader contract was imposed because, first, it deprived the artisan of the means of earning a livelihood, and, secondly, it might not only deprive the community of his services but result in his and those dependent on him becoming a public charge. That principle is part of the common law but not of Federal cognizance, because the common law is no part of Federal jurisprudence. But there was then no court rule, statute or legal principle forbidding any one, whether a natural person or a corporation, buying up or otherwise becoming owner of all the resources of a particular kind in a section or in the nation and thereby monopolizing the supply. Nor is there to-day any Federal or State law in existence, nor any common law principle, recognized in this country or elsewhere to prevent it.

But while this is true, yet an application of common law principles alone has been found sufficient to destroy the combinations resting upon mutual agreements, called "trusts," without resort to statutory law, Federal or State; and this is true of those dissolved by the courts since, as well as before, the enactment of the Sherman Anti-Trust law. I do not overlook the fact that in the Trans-Missouri Freight case the Supreme Court construed that act to prohibit restrictive agreements between railroads engaged in interstate commerce, even though the restrictions might be deemed only reasonable. But this is all the Sherman act amounts to. It is merely a crystallization in Federal legislation of a common law principle, with that extension; and that extension has been lopped off by recent legislation, as I will presently show.

SHERMAN ACT IMPOTENT TO CHECK MONOPOLY.

But one of the earliest decisions under the act showed it to be inapplicable to any of that class of great monopolies of which the public complains and against which public complaint has been directed for a period reaching back to a date long prior to its passage. I refer to the case against the American Sugar Refineries Co., known as the Knight case, decided in 1897. It was there decided that although the Sugar Company owned or controlled 97 per cent of the sugar products of the country, yet that alone was no ground for interference by the Court. In other words, there is no law by which to reach any individual or corporation guilty of nothing more than acquiring and maintaining a monopoly, no matter how complete or oppressive; that something more is necessary; that there must be a restrictive contract between two or more. Not only so, but the restrictive agreement must refer to or immediately affect interstate commerce. To this last requisite I invite your special attention, because it has an important bearing bearing upon the question of remedial legislation. The first construction of the term "interstate commerce," as used in the Constitution, is found in the early case of Ogden vs. Gibbons, and has never been deviated from in any particular. It has a meaning distinct from the existence of persons or entities that may engage in interstate commerce; also distinct from the things constituting or forming the subject of interstate commerce. Interstate commerce is, in proper legal sense, an ideal thing. When an indi-

vidual transmits an article of smallest value across a State line, he creates this ideal thing. He may not do this oftener than once a year. A vast corporation may ship millions of dollars worth of value from State to State each day. But so far the Anti-Trust Act no more concerns the one than the other. The individual may, during the same period, be engaged in a competitive struggle in some small line of business, and the corporation may possess an undisputed monopoly in the production and sale of articles of prime necessity to most or all the people, and most or all its shipments may have to cross State lines to reach their destination; and yet no point has thus far been reached at which the Anti-Trust Act interposes. An agreement between two or more destructive of competition must be shown.

It may be well at this point to advise you that the purpose of this discourse is to demonstrate the utter worthlessness of the Sherman Anti-Trust Act as a remedy for the evils of monopoly.

Mr. Dawes, who addressed the conference yesterday, professes great fears for the honest business man from the enforcement of the Sherman law. He gave two supposable cases for illustration. One of them was that of an agreement to sell perishable goods at a lower price in one place than in others. The other was of an agreement not to sell below cost. I call your attention to the fact that neither of these agreements is within the spirit and I doubt if they are within the letter of the statute. Such agreements tend to promote, rather than to restrict trade. No really honest transaction is in any danger from the enforcement of the law.

There is not a phase of this question which was not fully discussed in the arguments and expounded by the court in the Knight case; and from the date of that decision to the present neither members of Congress, nor Senators, nor lawyers, nor politicians, nor Presidents, nor candidates for the Presidency, have had any excuse for the evasions and concealments practiced by them on the public. The full power of Congress over the subject is embodied in the Sherman Act and that Act contains practically no force or value as affording relief.

MONOPOLY WHICH DOES NOT AFFECT INTERSTATE COMMERCE NOT REACHED BY LAW.

It was recently said by an eminent authority that the courts have never construed the provision of the Act which makes it a

misdemeanor to monopolize or attempt to monopolize interstate commerce. Now, if the gentleman who made that statement had carefully examined the Knight and the Kansas City Stock Yard cases, he would have seen that the defendants were accused in both cases of both forms of offence described in the Act, that is to say, of forming a combination by agreement restrictive of interstate commerce, and of monopolizing interstate commerce. And the Court in both cases declared that so long as the way was open for competition there could be no case made out under the monopoly clause and that so long as there was no combination between two or more persons or corporations the means of acquiring a monopoly was immaterial, nor could the practices or methods of doing business be considered.

This view accords with both the language and the logic of other decisions.

Thus the inexorable logic of the decisions warrants the conclusion that one of these great industrial organizations could not be judically reached under the act, even though it had a complete monopoly of its products. This is due to the restricted meaning attached to the term "interstate commerce" before alluded to.

To make myself fully understood I will state the proposition in another form. As before stated, there is no Federal law inimical to, or which could be constitutionally applied to monopoly, unless such monopoly immediately involved interstate commerce. Now let us suppose that five men, each in a separate State, own all the pine timber of merchantable quality in the country. One of them may most assuredly buy out the others, or they may form a corporation in one of the States and all sell to it, taking stock for their respective interests. In either case, there is created a monopoly. The Sherman Act does not reach it, nor would any amount of oppression and evil practice on the part of the monopolists render them amenable to that law. Nor would Congress have constitutional power to deal with them though each took stock whose par value was worth ten times the market value of the property conveyed. I say this in passing for the benefit of those who are demanding Federal laws to prevent stock watering or over-capitalization.

The meaning of the term "interstate commerce" by the courts is so reasonable and so obviously conforms to the intentions of the framers of the Constitution, that any hope that there will ever be a more comprehensive construction is utterly vain; and

therefore vain is the hope of relief at the hands of Congress from industrial monopoly in the absence of an amendment of the Federal Constitution. So long as the States may create corporations and confer upon them unlimited powers, including the power to hold stocks of other corporations, the Federal Government is powerless to afford a remedy. And although schemes of Federal legislation in various forms have been suggested from time to time, the most that any of them promises is to *place limitations upon the operations of monopoly.* Not one of them would be effective to divest a single monopoly of its inherent monopolistic power. And in the nature of things, governmental supervision and constant interference with the business operations of institutions transacting a large percentage of the country's business is impracticable. But even if it were practicable, vast evils would flow from such constant interference, and be inflicted upon the public.

ANTI-TRUST ACT APPLICABLE CHIEFLY TO TRANSPORTATION.

The only kind of business to which the anti-trust act was found to be clearly applicable was interstate transportation.

I will not attempt a reference to the results of the enforcement of the act against carriers engaged in interstate transportation, but will call attention to the fact, referred to a moment ago, that the act has been practically nullified in its applicability to interstate railroads by the rulings of the Interstate Commerce Commission under the Hepburn Rate Act construing its provisions. The China and Japan Trading Company complained to the commission against a rate of 85 cents per hundred on cotton goods, agreed upon between the railroads from New England points to the Pacific Coast, while the rate from Southern points to the Pacific Coast was $1.25. The commissioners, on the first day of last July, upheld the 85-cent rate, and held that in doing so they were, in effect, establishing and fixing that as the legal rate. But they went further, and held that the fact that the making of the 85-cent rate was the result of a combination among the railroads was of no importance; that the commission having examined it and found it to be reasonable, its ruling was equivalent to an act of Congress of later date than the anti-trust act, and hence superseded it. An amendment of the anti-trust act to permit of pooling arrangements between interstate railroads, as proposed by the President, appears to be unnecessary. The same result seems to have been reached by the

enactment of the rate law and operations of the commission under it. And thus we see that the little that remained of the Sherman Act, all of it that was in any respect effective and vital, has been repealed, or, rather, superseded, by this subsequent legislation. And it is probably true, as has been charged, that, for this and other reasons, the railroads did not really oppose, but actively favored, the Hepburn Act.

NATION LACKS POWER TO EFFECTIVELY CONTROL CORPORATIONS.

In these remarks I have directed my effort to showing, and believe I have shown, that as respects what are known as industrial trusts their legal status is, insofar as Federal legislation has affected them, invulnerable and unassailable, and that as to interstate carriers, the effect of recent legislation has been to supersede and nullify all prior legislation on the subject. And until some honest and effective remedy is proposed all discussions on the subject of remedies for monopoly should be accepted by the people as mere claptrap; as efforts of politicians to confuse and mislead them and postpone the day of settlement.

My views have not been in any respect changed, but rather strengthened, by those who have already addressed the conference. Mr. Ellis, the Attorney-General of Ohio, proposes that the Federal Government shall, in some way which he omits to explain, take away the power of State corporations to hold stocks in other corporations. It is difficult, or rather impossible, to see, under what constitutional provision Congress derives any such power; certainly not under the interstate commerce clause. When a sovereign State empowers a corporation to use its capital or property, or even its credit to buy stocks, that power is as much a vested right as the power given a State corporation in its charter to borrow money and give its note, and Congress could no more interfere with the exercise of one right than with the other. His proposition does not pretend to cover the two or three hundred existing monopolies as to stocks already acquired under State authority. Each issue has involved the making of a contract. Surely neither Mr. Ellis nor any other sane lawyer would contend that there is any power anywhere to invalidate these contracts, or to deprive even a trust of the full benefit of their due observance.

The scheme of such judicial interpretation as will enlarge the powers of Congress under the Constitution is, of course, idle

and vain. Even if such a process were desirable or could be tolerated, it cannot be done unless the Supreme Court be changed; and to change it would be about as tedious and unsatisfactory a process as changing so many wooden images into images made of stone.

To the proposition to give the Federal Government more power by constitutional amendment, of course the sticklers for State rights object. For my own part, I know of nothing so absurd and worthless as this narrow, ingrained prejudice based upon the threadbare doctrine of State rights, a doctrine of no benefit to any individual on the face of the earth, a doctrine which has been a barrier to progress since the foundation of the Republic.

These conflicting views produce a fatal counter-balance, and the people stand divided and helpless while gradually they are impoverished and economically enslaved.

It is also proposed that Congressional sanction be given to combinations among the railroads by amending the Sherman Act. I have already shown that this was indirectly accomplished by the Hepburn Rate Act. I, for one, desire to enter a protest against this proposed amendment of the Sherman Act in the interest of monopoly. The railroads are already in unlawful combination against the people. Travel east, west, north and south, and you will find the rates non-competitive and exorbitant. Let me remind you of the fact that since the Hepburn law was passed there has been poorer service, more fatal accidents, slacker enforcement of safety appliance laws, an all around increase in freights and fares, increased earnings and increased dividends, despite the fact that more water has been added to the stocks on which they were paid. The Interstate Commerce Commission merely sits as an equalizing board, doing the work of traffic managers for the railroads, their salaries paid by the people, equalizing the rates always upward, never downward. What the public demands is better service and lower rates. To legalize combinations will be a step backward, and will postpone the legitimate demands of the people indefinitely. Very naturally Mr. Mather, who addressed you last evening, like other railroad presidents, prefers national to State regulation.

I have observed one feature in common in the views of a majority who have participated in this discussion. No matter how learnedly or to what thength they discuss the monopoly

problem, they generally agree upon the one point—either that nothing can be done, or that very little ought to be done.

I hope that the next conference held by the National Civic Federation will be called to consider amendments to the Federal Constitution. I, for one, think it should be amended in several particulars. Among others, so as to give Congress more power over existing and future corporations, providing for the election of United States Senators by popular vote, and better defining and limiting the jurisdiction of the Federal courts, and I hope the Federation will have the credit of calling and holding such a conference at an early date. If it delays it the credit will belong to others, because it cannot be long delayed.

THE CHAIRMAN: Gentlemen, the next speaker, representing the attitude of labor, is Mr. Warren S. Stone, Grand Chief of the International Brotherhood of Locomotive Engineers.

MR. WARREN S. STONE.

Mr. Chairman—I did not learn until since luncheon that I was going to be one of the speakers. Unfortunately I have not been able to attend any of the four meetings. I have not heard any of the speeches, and have only heard the one speech of Mr. Dawes last night, so I can say all I want to say to you in a few minutes. I am going to boil it down, as Finnegan did, when, sending in a report of a railroad collision, referring to one of the trains, he said: "Off again, on again, gone again, Finnegan!" I question very much why I should be called upon to speak on trusts, unless it should be considered that we are a labor trust, and, of course, we would deny that assertion at once. But in travelling to and fro over this great country of ours—and regardless of what may be said to the contrary, it is the best on earth—you don't have to go very far nor talk to a great many people until you learn that the whole nation is thoroughly aroused. Men are discussing questions to-day which have never been considered before, and it is out of this individuality of our people, of the many different opinions of our people, that the success of this country is due to a large extent. If you listen to some of the so-called labor leaders you would think this present condition of affairs was going to be wiped out.

VALUE OF LABOR ORGANIZATIONS.

I believe that labor organizations have come to stay. I realize that this is an age of big things in this country of ours. We

are crowding events of centuries into decades, and decades into single years. I believe it is necessary to have corporations. I have no objection whatever to trusts rightly managed; in fact, it would have been impossible to develop this country of ours without combinations of capital. The next thing is, what is the proper legislation to have? I could give you my idea of it in a very few words. Not long ago I was making a wage scale with a certain railroad president and he said: "Mr. Stone, we can't afford to pay it." I said: "I don't see why you can't. You paid 18 per cent. on your common stock last year, to say nothing about your preferred stock." "Yes," he said, "but you must remember that all represents real value. There is no water in it." I believe the great question is that we should have not so much more law, but better enforcement of the law; better respect for the law, and the same law applied to all sections of the country alike. I don't believe in these imaginary lines, or trying to array class against class. I believe in one country, under one flag, for all people, and the same law applying. I don't even want to go down South and try to fight out the race problem. I believe the people in the South are better able to settle that themselves. But, coming back to the trust question, it seems to me what we want is supervision of overcapitalization. I do not believe in buying a street railroad for $23,000 and pouring in two and one-half millions of water, as was done recently. It is not so much the water, although some trusts and corporations are so waterlogged they will not float. It is not water so much as it is dividends on the watered stock. Demands for dividends on watered stock are the curse of the laboring man of this country. Put a fair valuation and a fair profit on the real value of any of your big corporations or trusts, if you please, and we labor men will be satisfied and will recognize that capital is entitled to a fair share of remuneration. But when you come down to demanding 25, 30 or 40 per cent. because you have that much water—that is what hurts all of us, because we work for a living. The declaring of dividends that have not been earned on watered stock that has not a fair value is one of the abuses that should be remedied. This is something the law can reach; I don't care whether you call it the anti-trust or Sherman law, or what you call it. I don't suppose the time will ever come when labor and capital will agree on what is a fair division, because in the exchange of values between those who have something to sell and those who want to buy there is

always a difference, but I do believe the thing can be regulated so as to give each interest fair compensation and its fair share. I believe at times both labor and capital are unfair and unjust in their demands, but I do believe, if we meet the questions and settle them in a fair and equitable manner, we can meet the complex questions that may arise to-morrow and settle them, if we attempt to do so. I believe we are going to have trusts and corporations regardless of everything. It is necessary to have combinations of capital to do these big things; but the only plan, it seems to me, would be to regulate the over-capitalization of these many industries and stop paying or declaring unearned dividends on something that has never been earned. And now I am going to give way, because there are other speakers. This is my idea of the whole trust question, boiled down in a few words.

THE CHAIRMAN: The next speaker is the Hon. Avery C. Moore, of Idaho.

HON. AVERY C. MOORE.

Mr. Chairman—I am going to take a text for my few remarks: "Every man, no matter where he was born or what creed he professes, whether he is an employer or a wage-earner, is entitled to be judged on his worth as a man. In return he is bound in honor to give to every man a fair deal, for no man deserves more and no man should receive less." These words are from a recent public address of a prominent member of the Brotherhood of Locomotive Firemen, Theodore Roosevelt. And in passing, I would add I belong to the same union. It has been my privilege for a number of years to work alongside of men who toil for a living. During the years some of you who have been in the counting-room or the school, drinking at the fountain of classic literature, perhaps, I have been working shoulder to shoulder with the men who bear upon their backs the burdens of the world's industry; mingling not with the men of wealth, but those who create it; mingling with those not in authority.

THE CHAIRMAN: I hope I will not be considered out of order to ask the speaker to confine himself to the subject of the conference.

MR. MOORE: Very well. Mr. Dawes, the former Comptroller of the Currency, said last night—and I hope that that is in line with the purpose of the conference—that the Department

of Justice was playing to the galleries in prosecuting violators of law. In this instance the galleries are the American people, and they are very generous with their applause. The certain way for the trusts to prevent or to stop the applause from the galleries would be for the trust magnate to cease furnishing the Department of Justice with occasion to provoke the applause of the gallery. If there is one danger more than any other in this land of ours to-day, it is the disposition to ask immunity from laws that displease; and yet, it must be obvious that to encourage disrespect for some law very speedily will encourage disrespect for all law. The trouble with Mr. Dawes and those for whom he found it expedient to speak, is not that we are passing special laws against the rich, but that we are no longer employing that process in our governmental affairs which grants special immunity to the man behind the dollar.

Ours is a Government designed to establish man in the fullness of liberty. There are institutions in this land to-day primarily existing to defeat the large welfare of the American people by concentration of powers, powers in the hands of a few men. There is an exhibition of that power a little to the eastward in these days. It had its inception, however much it may have gotten away from the men who started it, in the desire to challenge the American people and call a halt in the attack of the American people upon predatory wealth and the bringing to the bar of justice of men who defy the people's law. That challenge received an answer from the American public yesterday morning, under Nashville date line, and Theodore Roosevelt said it. There is no desire upon the part of the people in my section of this nation of yours, to hammer the man who is going according to the orderly processes of law in the accumulation of capital; but we do demand that the law-breaker, wherever he be, in the palace or in the hovel, shall respect the statute law of this Republic, and they will, and we are powerful enough to see that they do. Shakespeare said, "It is excellent to have a giant's strength, but it is tenderness to use it like a giant." The people have been patient under the abuse of power. This power is the essence of the evil in the trust problem; but cowardice does not belong to the American character, and the American people fear no problems, present or impending. We are going to solve them in the spirit of justice, according to the light of reason. This is the day and this is the hour of reason. The day of physical conflict is over, in labor disputes

and all other realms of thought. The cause that cannot defend itself by reason has not any ground to stand upon. I bring in conclusion this word: That the people of the section where I live are, as your people, a law-loving, a liberty-loving people. They are not afraid either of the power of money or of alien foes. Hand in hand we want to walk down the pathway of the future and overcome these problems as they arise; hand in hand we are going to do that. We ask you to accept no threat from predatory wealth; no coercion in your walk of life, but to say that the mandates of the people must be supreme; and we are ready to back up the law-makers of this land and the Department of Justice in this country and the President of the United States, whether it be Roosevelt, a Republican, or Bryan, a Democrat, when he takes the oath of office of President of the United States. We are going to hold up his hands and say that the American people are equal to every problem that confronts them.

THE CHAIRMAN: The next speaker is Mr. H. Jennings, of Washington, D. C., who will speak to us about the "English Incorporation Act."

MR. HENNEN JENNINGS.

Mr. Chairman—I have prepared no speech, but the Hon. Herbert Knox Smith, in his remarks before the convention, touched briefly upon a subject which, I think, should receive the fullest consideration at the hands of this convention. I refer to the "Companies' Acts" of Great Britain. By reason of having worked under these laws, or modifications of them, as an engineer in the Transvaal for about ten years, and in London for about six years, in addition to an experience as a mining engineer in this country, I feel that I have had opportunities to observe the practical operation of such legislation.

The willingness of the American engineers to receive and utilize information from any and all sources is, I believe, one of the chief causes of their success. I see no reason why our law-makers should not do likewise, especially in view of the fact that our common law was received from Great Britain. The limited liability laws had their rise in England, the first act having been passed in 1862, and since that time some of the highest legal talent in that country has been engaged in perfecting the laws relating to corporations. This has resulted in revision upon revision and much new legislation, the company laws having been very greatly revised in 1900.

The basic feature of these laws is their more or less automatic enforcement. Every company must be registered and must furnish a memorandum of association and a prospectus, the promoters being criminally responsible for the statements appearing in these papers. The phraseology and form of the articles of association are largely discretionary with the promoters and directors, but the crown laws demand that certain vital facts be shown, such as the full intent and purposes of the company, the basis upon which capital is to be raised, precise particulars of any allotment of stock for other than a cash consideration, the names and addresses of vendors of any property purchased or acquired by the company, and a statement of all commissions paid for subscriptions, which must be authorized in the articles of association and disclosed in the prospectus. A part payment of the capitalization is required before the company is allowed to begin operations, and the shares are subject to further call up to their face value.

Directors are elected at the first general meeting of the stockholders, one-third retiring annually, subject to re-election. The directors are financially liable for funds improperly applied and for dividends paid out of capital not earned, and are also liable to two years' imprisonment for wilfully making a statement false in any material part, knowing it to be false. The stockholders annually appoint auditors at their general meetings, who are furnished with a list of all company books, to which they have access at all times. These men are usually chartered accountants and have to pass examinations as to competency.

The holders of one-tenth of the issued capital of the company can convene an extraordinary meeting by giving twenty-one days' notice, and demand information of the officers of the company. The list of stockholders is open to every individual member, and copies of such register and of articles of association can be purchased by any one for a nominal sum. In some articles of association the minority holders are protected by graded voting power of shares in favor of the small holders. At the general and extraordinary meetings reporters are allowed, and thus additional publicity is secured.

Although there have been few criminal prosecutions under the British laws and much perfunctory examination of accounts, etc., the fear of such prosecution has kept directors far more honest in dealing with the affairs of the company than would

the fear of fines and losses which would be paid by the company and by no means be synonymous with individual losses.

I heartily sympathize with Mr. Smith in his confessed bewilderment if he has endeavored to obtain an understanding of some of the complex and verbose articles of association and prospectuses which it has been my lot to examine. In most cases these documents are formed to cover every possible change or extension of the business of the company, and sometimes unnecessary words are used for the purpose of confusing and tiring the reader, but they cannot escape the requirement that the essential facts be included.

I am satisfied the British laws are conducive to publicity in the affairs of corporations and to honest administrations. Their effectiveness is secured, first, by universal registration under one law, and without registration the company is illegal; second, publicity, both in the articles of association and prospectuses and the meetings of stockholders; third, the power given the minority stockholders to investigate the acts of the majority; fourth, the criminal as well as financial responsibility of the promoters and directors.

I by no means recommend servile copying of the British system, but would plead that our lawmakers carefully examine it and see if there are not some features at least that could be adopted to advantage in this country.

THE CHAIRMAN: This morning I stated that at 4 o'clock the floor would take possession of the debate, and that will be carried out the moment the clock points at 4. In the meantime, there are two speakers who will make addresses. The first is a man who ought to be able to teach us a great deal on this subject—a professor of the University of Washington, a man who was commissioner, representing the United States in five international expositions—Mr. James H. Gore, of Washington, D. C., whose topic is "The Relation of Industrial Combinations to Export Trade."

MR. JAMES H. GORE.

Mr. Chairman—The manufacturer, in his efforts to develop an export trade, finds problems and difficulties that did not confront him when he sought wider markets at home. The longer time that intervenes between the soliciting of an order and its filling has unlimited possibilities for fluctuations in

prices of material, wages and transportation, and the delays in settlement lock up capital that might be utilized several times over if the consumer had been nearer the producer. Laws affecting import duties may be changed in the interim, contracts to purchase may be broken with the annoying difficulties that meet a foreigner in attempting to secure enforcement by legal processes, and strikes that could not be anticipated months in advance might embarrass the manufacturer or cause him to meet his obligation at a sacrifice.

Still, the advantages of an export trade to the producer, to the country and to the home consumer are so great that the dangers and difficulties just enumerated should be valiantly met by the manufacturer, who, in return for the benefits he bestows, ought to have the aid of his government and the encouragement of his fellow citizens.

ADVANTAGES OF FOREIGN TRADE.

The good features of foreign trade are so manifestly axiomatic that their enumeration carries with it their demonstration. First and foremost is the widening of the circle of exchange, making the money involved purchase before it completes its cycle a larger variety of articles to meet the needs of a greater number of persons; then we have the bringing into the country, in return for the goods sold abroad, large sums that pay for domestic materials and wages, which, in their ramifications, benefit countless multitudes; and finally, there is the greater elasticity of production that an export trade makes possible. It is under this last category that we find some of the unappreciated benefits that come to those who buy from world purveyors.

By elasticity is meant the wider range made possible for the productive agencies, so that the domestic demands in response to unexpected causes would not likely feel restricted. The concern that has created a foreign market can manufacture up to the predicted consumption at home and abroad, and in the event of greater demands from neighboring consumers there is the chance of meeting them by allowing a part of the foreign business to fall into the hands of near-by producers. Better still, such a concern is not held down to so close a margin above anticipated orders, knowing that the surplus can find sales across the seas. Then, too, great establishments can risk production on a scale that means maximum efficiency, confident that in case of tighter markets at home they can sell their output abroad at

prices low enough to catch the business without thereby fixing rates that could not be indefinitely maintained. From this greater efficiency the home consumer derives a permanent advantage, the foreign buyer an occasional gain, the factory avoids the loss incident to shutting down for a season, and laborers are given continuous employment. In the possible disposition of surplus even at a small profit, or at cost, rather than its consignment to the almost valueless scrap, we have risks and profits so distributed as to give to the domestic buyer advantages that he could not enjoy if he dealt with a concern having a more contracted patronage.

Of course, a part of the benefits here mentioned are not exclusively inherent in establishments blessed with an export trade —they are equally present in concerns whose trade is wholly domestic. But it must be recognized as true that the industries which have assumed proportions great enough to insure the advantages named have achieved these proportions in a great measure because of the widening circle of trade. However, a greater agency in extending these advantages is the possibility of disposing abroad of stock that becomes surplus because of changes in style, methods of operation, or results sought that made themselves felt locally before they could affect tastes or wants in distant lands. This might be conversely true. That is, the surplus of manufactures made for foreign consumption might, after the demand was met, be just the thing to satisfy a local want. To illustrate: Suppose there is a maker of harvesting implements whose resources of manufacture and distribution make it possible for him to send his machines into a narrow belt along which wheat ripens and must be cut within a fortnight. His output must be limited, and with even the maximum permissible ratio of surplus to predicted demands, there is a very narrow margin for extra demands made by a heavier harvest, and if this extra stock is consumed the added profits are insufficient to give a single purchaser an appreciable advantage. In contrast to this condition, let us think of a maker whose resources make it possible to cover the district from Central America to Canada. He has the wants of six weeks or more to meet, and can readily pass the glut of southern markets to fill the demands of northern farmers. Extend this field of activity until every clime is included, and the hungry reaper that finds no wheat upon the equator can go northward or southward, following the sun as it ripens the wheat, and every month

furnishes needy buyers. The improvements suggested by the experience in the earlier harvest are placed in the later sales, and the end of this late season is so near the beginning of a new season in another zone that the latter profits by the lessons learned in the former. And so, in cyclic measure, the leaves of the book of experience are turned, and each is its predecessor's debtor. Simply change the article to be marketed and modify slightly the causes for varying demands, and a fair picture will be presented of the advantages that accrue to each purchaser when the stall from which he buys is in the world's market.

For many years the energies of our people were expended in administering to the wants of one another, and our rapidly growing population absorbed the output of shop and factory. Money came from abroad to seek investment, and in staying here it became the purchasing power to meet wants which our prosperity engendered. High standards of living resulted from the ease with which desires were gratified, and the wages paid made it possible to meet the standard set. But it was not possible to beget wealth by trading with one another, and the interest due abroad for investments made here must be paid.

GROWTH OF AMERICAN FOREIGN TRADE.

It is not possible, nor is it necessary to our purpose, if possible, to point with definiteness to the causes that brought about a realization of the need to increase our foreign trade, but a study of statistics will show that the results of the awakening came within the decade 1890-1900, when our total exports of manufactured articles increased from $204,000,000 to $606,000,000, or per capita from $32 to $80, while our imports of merchandise of all sorts within the period named increased by only $60,000,000, with a decrease of $1.47 per capita annually.

It was in this decade that the strong plea was made for reciprocity—the word appearing in political platforms for the first time in the enunciation of Republican principles by the convention of 1892. It is true, the reciprocal arrangements were thought of primarily in connection with our intercourse with the countries of South America, but the benefits of such trade relations were specifically stated as tending to materially increase our sales abroad. In this platform are found the words: "We point to the success of the Republican policy of reciprocity, under which our export trade has vastly increased and new and enlarged markets have been opened for the products of our

farms and workshops * * * and claim that, executed by a Republican administration, our present laws will eventually give us control of the trade of the world."

In the Democratic convention of the same year it was deemed wise to endorse the principle of reciprocity, but to take from the opposing party any credit that might come for its inception and introduction.

The Republican convention of 1896 met the criticism that reciprocity juggled with the people's desire for enlarged foreign markets and freer exchanges by pretending to establish closer trade relations for a country whose articles of export are almost exclusively agricultural products with other countries that are also agricultural, while erecting a custom house barrier of prohibitive tariff taxes against the richest countries of the world that stand ready to take our entire surplus of products, and to exchange therefor commodities which are necessaries and comforts of life among our own people. The platform adopted declared that "protection and reciprocity are twin measures of Republican policy and go hand in hand—protection for what we produce, free admission for the necessities of life which we do not produce, reciprocity agreements of mutual interests which gain open markets for us in return for our open markets to others. Protection builds up domestic industry and trade and secures our own market for ourselves; reciprocity builds up foreign trade and finds an outlet for our surplus." In 1904 the extension of our export trade was emphasized as the end sought, with reciprocity as a means thereto.

This brief extract from political history is cited simply to show that conventions, seeking to reflect public opinion rather than create it, saw the extension that should be given to our trade, gave their endorsement and sought to claim some credit by pointing to legislation which within the period of our great commercial activity had been enacted.

Economists would suggest other causes for the rapid development of our foreign trade, and people arguing for or against industrial combinations will point to this extension as a confirmation of their contention.

EXPORTS OF MANUFACTURED PRODUCTS.

Whatever may have been the agency that called this trade into existence, diverse as may have been the instrumentalities that have promoted it, so far as the future is concerned, they

are valueless unless they can suggest means for its further growth, or at least check influences which threaten its retardation.

While there has been some fluctuations in our *total* exports, there has been a steady growth, with an increasing ratio of gain, in our export of manufactures from $7,000,000 in 1820 to $686,000,000 in 1906. Our ability to sell food stuffs depends upon conditions over which the producer has no control, and with the growing demands at home the surplus available for sale abroad must diminish unless more intensive farming is practised. This becomes especially apparent when we find that, while our population between 1890 and 1900 increased by 13,681,000, there were added within the same decade only 1,816,000 to the army of farm laborers of all classes. During the past year 1,245,000 immigrants came to our shores, who, knowing but little of our agricultural methods and landing remote from our farming districts, have become consumers of food rather than producers. In 1906 our production of wheat exceeded our consumption by 97,000,000 bushels, while in 1900 this excess, under crop conditions quite similar, was 186,000,000 bushels. This great difference can be understood when we find that the per capita consumption between the dates named grew from 4.74 bushels to 7.08 bushels. In the case of corn the excess of production over consumption between 1900 and 1906 suffered a loss of 74,000,000 bushels. To correct the impression that larger quantities of grain are year by year converted into meat and sold abroad as food products, only a glance is needed at the statistics of exports of all forms of meat and dairy products. They show that in 1900 we sold abroad products of this sort to the value of $184,000,000, while our sales for 1906 amounted to only $169,000,000.

This analysis must clearly show that our commercial prosperity can best be advanced by stimulating our manufactures, increasing the number of our factory hands and artisans, and feeding to them our present surplus of food products. In this way we send abroad the raw materials of mine and forest, worked into shape under the direction of American ingenuity and fashioned by men nourished by the products of our boundless farms.

Out of a total export during 1906 of $686,000,000 of manufactured goods, $608,000,000 came from establishments the major part of which might be characterized as trusts or industrial combinations. The relation, therefore, between concerns of this

sort and our export trade is worthy of most careful attention. A very important feature that must be considered is the question of labor. Taking the most recent data available, and assuming that concerns which engage in foreign trade employ in meeting that trade a number of workmen which bears to the total number employed the same ratio that their foreign business does to their total output, we find that 216,000 persons are engaged in producing articles for consumption abroad. If each wage earner supports three individuals—which is regarded as a fair estimate—three-quarters of a million people in this country are directly dependent for a living upon our export trade. To this number should be added 7,890 officers and salaried men, whose services are similarly engaged. Each of these, as a rule, is the head of a household supporting that number of homes. with their greater wants that must be met.

It is impossible to determine with any degree of precision the amount of capital invested in the concerns manufacturing for foreign markets, but the most authentic information places the aggregate between five and seven billions of dollars. The most casual consideration of these stupendous figures suggests that nothing hasty or ill-advised should be done that would jeopardize a trade which means so much to the nation as a bringer-in of money from abroad, which supports such a large army of workmen who are consumers of our farm products, which utilizes in the most profitable manner our wealth of raw materials, and upon whose profits so many stockholders, scattered over the land, rely for dividends.

This seems an opportune time for uttering a word of warning to stay the lynching spirit that animates legislatures to condemn corporations without indictment, and suppress them by enactments instead of trial; when States' Attorneys levy a species of blackmail by compromising claims for $3,000,000 with $200; when juries are exercising the right to define trusts, monopolies and restraint of trade and fixing the fine with the exigency of the public treasury in mind.

There are men who failed to see opportunities, or let them slip without seizing, and now, looking upon others' success, bewail their failures and appeal for aid under the guise of clamoring for the protection of their fellows. They seek to stop evolution by revolution, and ask Congress to stay progress by hasty and illy advised legislation.

To declare a corporation a trust is evidence of keen acumen;

to denounce it as a monopoly shows deep concern for the productive agencies without the pale; and to file an indictment for restraint of trade is proof positive of an unselfish interest in the welfare of consumers. In the legislature of nearly every State in the Union there are men who fully realize the value in prestige and votes of legislation aimed against the few who are successful, under the specious plea that they are responsible in some mysterious way for the incompetency of others, and so, to win praise for watchfulness and fearlessness, they introduce measures against restraint of trade which, as laws, become the efficient means for restricting commerce, and, acting as artificial checks, force the foremost in the industrial race to wait for the hindmost to catch up, thus enclosing trade within narrow walls.

LARGE CONCERNS NEEDED IN WORLD'S MARKET.

When the world is the market the business must be on equal magnitude. Co-operation of many men and the aggregation of their many small capitals are necessary to erect factories, to organize labor, and secure the best results by opening markets for the exchange of manufactured products among all peoples. Still, the field is open to all comers. New factories may be drawn into the association, but no monopoly is created, for new ones spring up to take their places. Combinations controlling millions of dollars, with the world for a market, do not have a tithe of the influence in controlling that market that the formation of a partnership by two grocers has in the market of a country town. If we are to extend our foreign trade, or even have it keep pace with our growing purchases from other lands, there must be a keener appreciation of the fact that the magnitude of industrial associations must correspond with the magnitude of the business done; that business cannot be kept within the artificial boundaries of countries and States, and that it is sheer madness to attempt to restrict business as that of a local manufactory may be restricted.

Past experience has revealed some of the abuses resulting from aggregations of capital. There have been many instances where monopolies exercised mercilessly powers granted to them. They were, in practically all cases, monopolies because of exclusive rights granted to them by the Government and made secure by force when necessary. Without such a grant or a basic patent under the Government's seal no association of men, no aggregation of capital can succeed in monopolizing

trade for more than a brief period of time. Thorold Rogers, in speaking of the reasons for the failure of the Dutch Indies Company, says: "They kept up prices, and so limited consumption. They strained every nerve, exhausted their credit in their effort to keep by main force other traders out of the field, experience proving that the only way one can check competition is by lowering prices. In the expectation of getting one large profit on each transaction they succeeded in making a small profit, or even loss, on their transactions put together, for it costs more to protect a designedly narrow trade than it would to establish and render permanent an intentionally wide one. In brief, they narrowed their market, and so narrowed their profit."

Every business association of the present day, formed for any other purpose than to avail itself of the economic benefits of association, by means of which it may be enabled to lower prices and to extend its market, has experienced, or will experience, the truth of the words just quoted.

INCREASED PRODUCTION BENEFITS CONSUMER.

The converse of this general proposition, mentioned once before, is equally true—the increase in production cheapens the cost to the consumer. It has been aptly said: "Wheat is raised in Dakota, milled in Minnesota, carried to Boston, and baked in the larger bakeries at a total cost of 3½ cents per pound. Yet inferior bread, baked in the small shops, is sold to the poor at 6 cents per pound. The cost is nearly doubled after capital has done its part. The cost of railway service does not amount to one-half cent per pound; the cost of retailing is five times that. The railroads carry meat from Kansas to New York for one cent per pound, but the added cost to the consumer after it leaves the railroad is five to ten times the railroad's charge. The country is convulsed by a slight rise in the price of coal, but the poor in our cities, who buy coal in small lots, pay 100 to 200 per cent. above wholesale prices." The economy of the future will be largely in the saving of waste in retailing, which averages 20 per cent. of the price the consumer pays. Aggregated capital may be used to advantage in this direction.

Small capital, business done on credit and high interest make low wages, inferior workmen and bad work. Just in proportion as industry is rightly organized, the necessary capital invested and a large trade sought by means of intelligence, economy and small profits, will this condition of affairs be improved.

Instead of aggregated capital being responsible for low wages and high prices, it promises the only remedy.

Of the wealth now produced, workingmen receive 90 per cent., so it is claimed, and of the 10 per cent. saved and set aside to become capital, workingmen save and own one-half. It is the remaining 5 per cent. in the hands of the few which makes millionaires and causes so much apparent inequality. The only hope for a better future is in the creation of a greater amount of wealth by means of the improved use of natural forces, more perfect machinery, more effective methods of manufacture and distribution, greater utilization of the present waste of time, labor and material, and in the aggregation of capital necessary for their utilization.

Great concentration of capital resulting from combination of the capital of several concerns is usually called a trust. This term is also applied to a consolidation, combine, pool or agreement of two or more concerns mutually competing, which establishes a limited monopoly, with power to fix prices or rates in any industry or group of industries. If its purpose is to monopolize an industry, fix the price of raw materials, restrict production and enhance the selling price of the product, its existence as a factor in our hold upon foreign trade cannot—would not—make amends for its pernicious methods.

TRUST FORMS ENABLE US TO COMPETE ABROAD.

The economies that are necessary in order to meet the cheaper labor abroad compel our industries to find locations that are most favorably situated with respect to raw material, power, facilities for distribution and many other elements that figure in the cost of production. A finished product may consist of parts most cheaply made in different localities and assembled in another, and it may happen that the various parts were, until recently, made by different concerns. Every principle of political economy and factory management would call for a consolidation of these various establishments because of the community of interests involved. If they should all be situated within a single State it would be a simple matter to combine in a joint stock company, but under our Federal Government an industrial corporation is the creature of the State in which it is organized. If permitted to do business other than commercial in another State, it is only by interstate comity, and may be excluded under the provisions of a State law, based

on antipathy to combinations, the color of the hair of its president or the grade of cigars he smokes. States are extremely jealous of foreign corporations. In some they are not allowed to hold real estate. In others they are discriminated against by taxation, the effort having been repeatedly made—sometimes with success—to tax foreign corporations doing business in a State upon the entire capital. This demand to consolidate, or to locate constituent elements of production in other States, with local stockholders and officers, suggested that the stockholders surrender their stock certificates into the hands of trustees, and take from them certificates showing the amount of interest thus surrendered. This method, first adopted about thirty years ago, called into use the term trust. If every share of stock in the constituent companies represented actual value, and if all shares were surrendered in return for certificates calling for the exact amount surrendered, the vicious attempts to control, with comparatively few shares, a number of concerns by holding a majority of shares of the trust would not have aroused such antagonism as to induce the half-dozen trusts that came into existence to voluntarily dissolve and be converted into large corporations. The war against trusts becomes a war against corporations, though in the public mind the former term will survive.

COMBINATIONS SHOULD BE LEGALIZED.

If it be admitted that business of a magnitude to overleap State boundaries and be commensurate with the nation is to be tolerated in the United States, then the industrial combination must also be tolerated, or the law must legalize some device to take its place.

When the rights of States were granted to us in our Constitution there was no dream of the present ramifications of commerce. Steam and electricity, in their economic utilization, must regard the boundaries of States as artificial as those which delimit a town or county. New Orleans and Seattle are as near to Chicago as were Danville and Peoria a half-century ago, and Federal license would be just as appropriate to-day as was a city charter when our industries were in their beginnings.

There is nothing inherently evil in trusts. Like all other business combinations, whether partnerships, associations or corporations, they are evil if organized and conducted for evil purposes, and beneficial if organized and conducted for legitimate

ends. Increased concentration of capital and commercial power finds its justification and warranty for existence in giving to the community better service, either in superior quality or inferior price of its product. Every attempt to ignore this principle has met with disaster, and each effort to exploit the community through higher prices, instead of exploiting nature through improved methods of production, administration and distribution, will spell ruin.

It is the community, made up of capitalist and laborer, that creates the wide demand, furnishing the greater consumption, which is the market that makes aggregation of capital profitable. A disregard of the obligations to the community in the attempt to lessen, because of the greater resources, the expense of production, and at the same time put up the price of the product through a control of the market, is responsible for the ill-repute into which some of the combinations have fallen and the suspicion under which the others rest.

EFFECTIVENESS OF PUBLICITY.

There is at hand an efficacious means for putting an end to this economic rapine. It needs no legislation to call it into existence, nor new machinery to make it effective. It lies in the extension of the functions of our very excellent Census Bureau, coupled with the Bureau of Statistics, Bureau of Corporations and Bureau of Manufactures, by which the American people, as consumers and potential producers, can be informed as to the price of materials, cost of production and selling prices demanded. If the difference between costs and prices assume undue proportions in the minds of those who know, two results will inevitably follow—a curtailing of consumption and the inducing of idle capital to embark upon a business that seems so promising.

Real, active competition does not have half the terror that probable, potential competition has. Money is now abundant, ordinary securities pay low rates, and capital, tempted by our prosperity, is ready for industrial ventures. However greedy a concern might be, self-preservation would be motive enough to induce it to keep the price, by the introduction of every possible improvement and economy, so steadily on the downward move that competitors would refrain from the attempt to undermine.

There is no fallacy so widespread and so provocative of nag-

ging legislation as the idea that industrial combinations seek through monopolistic control to fix costs and prices beneficial to themselves while harmful to the community. No one knows better, nor appreciates more keenly, than do the managers of great industries that safety rests in small margins and profits must come from large sales.

Paternalistic legislation is hurtful if it keeps in existence competition that is expensive because inefficient; it is reactionary if it, in suppressing large corporations, reverses our policy of industrial freedom, and, in demanding individual producers in lieu of corporate concerns, throws us back to the time of the hand loom, sickle and pushcart.

Resolve the railroad corporations into their integral concerns and we find ourselves in the midst of conditions that prevailed thirty years ago. Prohibit co-operative industries and we will see the farmer journey from woodworker to blacksmith shop and then to the painter to have made a plow which he can now buy with the time these journeys would cost. Restrict production to single lines, and we would find in scrapheaps waste materials that now meet the cost of production.

GROWTH OF TRADE FAVORS CONCENTRATION OF CAPITAL.

In our country's youth surplus capital was not available for the creation of great enterprises, and foreign money was slow to come so far for investment in precarious industries, so man associated himself with man, joined his small means to those of others, and in co-operation achieved results which, in older countries, might have rewarded individual efforts. Small concerns thus created paid the penalty of their success in seeing rivals come into the field, who, conscious of local conditions only, produced when demands were great and heartlessly discharged their workmen when markets were glutted. In the absence of widening markets profits were sought in cutting prices, with the accompanying result of failures and uncertain adjustments of supplies to demands. Stability required larger organization, and so small concerns merged into greater establishments, and more men became interested in their management. They were democratic organizations, suited to our democratic instincts. In the natural economic development, greater concentration of capital was needed to make possible a more minute differentiation of talent and a higher integration of industrial energy, until now we have a precision that means ac-

curate relation of supply to demand; organized employers treating with organized labor, insuring permanency in production, and elaborated means of distribution, reaching the uttermost parts of the earth and making the world our market.

The giant who is only a bully merits our contempt, and the great corporation that abuses its opportunity to benefit the community deserves our condemnation. Twenty centuries have placed an ever-strengthening seal of approval upon the injunction, "By their fruits ye shall know them." The least attractive blossom may give way to the most luscious fruit. Fire can burn and water drown, but rightly conjoined they form the living breath of the world's activities. Dynamite can wreck a home and kill the innocent, but it can likewise loosen the sculptor's marble or break down the miner's coal. Religion has been made a cloak for vice, faith has at times degenerated into bigotry, and charity sometimes promotes pauperism, but no one proposes that we dispense with religion, faith or charity.

There are dangers in concentrated capital and evils in industrial combinations, but the problem should be to eradicate all that is bad and curb everything that is threatening. The wounded soldier was killed before surgery came to amputate a lacerated limb and give to its owner life and usefulness.

The cobbler working at his bench must await his customer and to-days patch differs not a whit from yesterdays; the individual workman, with his one apprentice, can know at most the needs of his neighborhood, but his conception of style and quality is no larger than his sphere of activity; the employer of a score of workmen may become acquainted with the wants of his town, and in his leisure hours ascertain enough regarding the prices asked by his competitor to impel closer attention to economies in order to meet them; the head of a large concern sends his representatives throughout his State, and in seeking wider markets new materials may be found, or better styles and methods of manufacture discovered.

As productive methods become more and more specialized, expert management is more and more demanded, and the purchaser of the smallest fraction of the output reaps the benefits of this superior skill. When the market is world-wide we have the highest example of business acumen, for nothing less could search out unsuspected buyers; we have the most conservative management, for recklessness would be fatal when months intervene between orders and settlement; we have the closest study

of economies of production, for loss of trade has sharpened the wit of every competitor; and we have, through the greater elasticity of foreign trade, a more sure response to every demand.

The capital has grown from the dollar or two needed to buy the cobbler's awl and hammer to the millions required to engage the world's trade. These millions are giving us cheaper goods; they are widening our knowledge and broadening our sympathies; they are knitting peoples together through common wants; they are steadying economic conditions and deferring panics; they vouchsafe to labor remunerative employment; they take materials to waiting factories, transmute them into acceptable forms and set them down in every quarter of the globe where lips have framed a heart's desire.

In return for this, these millions deserve just returns, and as long as they ask that alone it will surely come. And we, the beneficiaries of all that results from this last stage in the economic development of our country, ask a cessation of the activities of those demagogues who, seeking to emulate others, ignorantly and evilly assail concentrated capital in periods of popular prejudice by grotesque legislation and hamper its usefulness by uneconomic laws.

THE SECRETARY: I desire to read by title a paper on "The Adjustment of Labor Problems and the Policy of Incorporating Unions," prepared for this conference by Mr. D. C. Seitz, of New York.

MR. D. C. SEITZ.

Mr. Chairman—During the War of the Rebellion Mr. Artemus Ward became weary of the constant refrain, "Who will care for mother now?" and plaintively asked if it was not about time somebody looked out for the old man.

This is rapidly becoming the attitude of a large number of people in the United States in regard to the labor and capital situation. Capital is an organization per se, necessarily so, and labor overcame much that was cruel and unjust, and fought its way to fairer conditions through the organization of unions. But it seems to me that success has spoiled both labor and capital, and changed what was planned to be beneficial and beneficent into extortion and oppression, and that it is time for the country to assert the old rules of a truly democratic community of equal rights and equal freedom for every dollar and every man.

The Emperor Alexander, who sighed for new worlds to conquer, has his prototype in the over-promoting of capital and the over-combination of corporations, and he has it again in the labor union, which, after success in securing proper wages, in enforcing reasonable hours, now tries to limit production and cut down working time to an absurd degree, heading, as it seems to me, toward ultimate socialism or some utopian basis, where all the work will be done by somebody else and all the wages be given to the workingman.

SCOPE AND SPIRIT OF LABOR UNIONS.

For the labor organization as a business institution I have entire respect, but it seems to me that the unions are fast going beyond it. When I read the letters of Mr. Gompers and other leaders or heads of labor organizations as sent to various labor conventions, they sound to me like the utterances of petty princes defying the community at large, and snapping their fingers at the laws and the Constitution, with its guarantee of equal rights, and demanding privileges that are denied others because they represent "organized" labor. Most of these letters use the word "brothers," but in the tribal, not the national sense. They frankly array themselves against the community. We have seen the same thing done by capital in trust and railway transactions, and we have seen the unorganized people rise and show their power of resentment and regulation. Shall we soon see the same thing against the labor trusts? I think so, unless wisdom and moderation take the place of existing policies in labor organizations. For, after all, organized labor is a very small proportion of the industrial community, just as organized capital represents a very small proportions of the aggregate wealth. In the case of capital, we are not called upon to have any special feelings of humanity. So far as the actual dollar is concerned it plays a very small part in business affairs. Credit does most of the business, and business never catches up with credit. In short, it is always in debt. Labor, however, is an actuality that must be met every Saturday night. If it ceases to create, it starves itself, and the community stands still. Therefore it is proper that we should give more thought and attention to the problem of labor than we should to the problem of the dollar, because, primarily, labor makes the dollar, and either saves or spends it. In any event, it falls into the open hopper of capital and makes the endless round back to labor

and again to capital, over and over and over again. When the labor question becomes oppressive it does more damage than when the dollar becomes oppressive. It not only does more damage to the community at large, but it damages itself.

The Civic Federation, as I understand it, is trying to solve the problem. I guess it is a problem that never will be solved until we get a patent new kind of a man, but I have a few thoughts on the subject, as every one should have, and I lay them down here.

LABOR UNIONS SHOULD NOT BE IRRESPONSIBLE.

If it were possible to place everybody in a community upon an equal plane of prosperity, such as the Socialists promise and plan, we might say the thing had been accomplished theoretically. As it is not possible, and might not be desirable, we will have to consider the case as it stands. When one set of men bind themselves together and say that they will only work under certain conditions, involving not only hours and wages, but the manner in which they shall work and the amount they shall produce, they become something apart from the community, and to an extent a menace. Their motive is, of course, laudable in its beginning. They wish to better themselves. But it is not brotherly and not patriotic. It is simply and purely selfish. Being, therefore, a selfish effort, it should be regulated as such, and the labor union should be compelled to put itself in the attitude of the ancient guild and become a corporation. Men of dollars cannot combine unless they incorporate and show a visible responsibility for their acts. It is only the workingman who is free to do as he pleases without any responsibility at all in the majority of our States. Thanks to a belief in the potency of labor politically, our politicians have had no courage in meeting the situation, and they have done harm to the interests of labor. Because unions are more or less unstable they break up. They indulge in ruinous strikes, and they bring hardship and injustice, but if they are incorporated and legally held responsible for their acts, leadership would improve and the standard of membership would be higher, and the respect of the community would be considerably enhanced. It is true that this would involve a financial liability, and the persons best able to bear it would have to share it, but this is true in corporations and in partnerships. If two men are in partnership, and one is rich and the other poor, the rich man must bear the

burden of the poorer man. If a corporation does anything that is wrong in a business or in any other way, it is legally responsible to the extent of its assets. But the labor union may be as wanton as it pleases, may break faith and men's heads with equal recklessness, and make the excuse that it is the union. This does not seem to me to be either American or right. It is not fair, and the unions show their weakness when they almost unanimously set their faces against incorporation. They do not want to be responsible for what they do. They want privileges over and above those of other people, and they wish to be free to act as badly as they may under any and all circumstances. When you read of a labor union making rules that its members must not belong to the State militia, which might be called upon to turn against their "brothers" in a labor riot, they cease to be American citizens, and they set themselves up as a tribe within our borders. They are like the Six Nations, dealt with outside the Constitution and outside the law. Why they insist upon maintaining this position is something I never could comprehend. The capitalists, who are so freely denounced, incorporate and meet the collective responsibility. We have heard much of late of lawless corporations. They have been lawless, and the law is reaching out and taking hold of them. But the lawless labor union continues to be immune except in the rarest instances, and these instances are bitterly resented. The campaign made by the labor unions against justice in the Haywood case is a sample. Here was a man who probably felt no moral responsibility at all. There was a war between labor and capital. Both sides forgot morals. Both forgot the commandment, "Thou shalt not kill." His organization was involved in many desperate affairs, and yet when he was placed upon trial consolidated labor throughout the country denounced in advance what turned out to be a most exemplary, orderly and just hearing, and Mr. Haywood was acquitted despite the clamor. So the institutions of the country stand in spite of the denunciation, and the institutions of the country will continue to stand. The things that go down will be the illegal, disorderly and unreliable labor unions.

STRIKES DISASTROUS.

There should be no strikes. Whether they succeed or fail they spell disaster. I believe it is always possible to win a just cause by agitation—patient, unrelenting agitation. I believe

that men should stay on their jobs and do their work, and not waste time and money in strikes. My experience with employers has taught me that, as a rule, they will always yield to public pressure. The corporation that is dealing with the public cannot afford to be unfair, when the facts are widely known, and a strike which involves the public, though against the same corporation, will almost always fail. We have seldom had successful transportation strikes, for example. In New York there is considerable resentment against the traction companies. But the last strike failed. People would not walk. If the money wasted by that union had been spent in agitation and in telling the people how unjust and mean this company was, it could not have stood the pressure three months. But when the public had to walk it promptly lost interest in the strike, as it always will.

I do not regard the telegraph operator as a laborer in any sense, but as a professional man. The telegraph strike was a costly affair to the men and to the companies, and public agitation, properly managed, would unquestionably have remedied all grievances within a quarter of a year. A strike has always seemed to me to be a species of fever that left the patient weaker than before.

EMPLOYERS SHOULD RECOGNIZE WELL-ORGANIZED UNIONS.

I say very frankly that I have no sympathy with employers who, having union labor, endeavor to evade the relationship. A good many rows have been started by the announcement of a chesty employer that he would only deal with his own men. Now, there are a good many perfectly sane reasons why an employer cannot be trusted to deal with his own men. Some employers are arrogant, arbitrary and revengeful, and they would be apt to blacklist the man or men who had the courage to meet them. This is especially true in large factories, where one man more or less does not count. This policy on the part of employers usually takes the following course: The agent of the union calls, and he will not be seen. He calls again and cannot get in. He calls a third or fourth time and gets in, and is told very loudly that the proprietor will deal only with his own workmen. Then a walking delegate, in order to demonstrate his fitness for his office, must necessarily make trouble, whereas, if the employer took the sane view that the men themselves have elected to put their affairs in the hands of an in-

dividual or committee, and have ceased to be individuals themselves, but a mass, he would get along much better. The members of the American Newspaper Publishers' Association adopted this line of policy more than five years ago, and have had singular success in getting along with their departments. This does not mean that we have been without friction, but strikes have been few, and, on the whole, the relationship has been agreeable. Moreover, many employers fail to read the rules of the labor organizations, and this ignorance leads to mix-ups. I have studied the rules of at least seven organizations, and I am bound to say that they are all framed equably and in the interests of both sides. The rights of the employers are almost always respected, while the rights of individuals are usually defined so clearly as to be in the interest of the employer. The men must obey, and this obedience is something the employer himself could hardly enforce with the same thoroughness as the union does. His only penalty is dismissal or suspension, whereas unions can make employment impossible for a disobedient member. My attitude, therefore, is that where unions prevail they should be dealt with according to union methods, and the unions should be compelled to carry out the responsibilities they assume.

This has not brought about a millennium by any means, but it has brought about a much better understanding, minimized trouble and enforced discipline. Some radical bodies either misinterpret or neglect their governing rules, and an appeal to the international body has usually brought regulation and correction. It is only natural that the walking delegate who is spurned and kicked out should feel revengeful, and, of course, the employer who says, "I want to run my own business in my own way," has a right to think so. But how many of us can run anything in our own way and as we want to? Is not the world such a complex organization as to make this next to impossible? If one is to have comfort, convenience and other desirable commodities of civilization he must have the help of others. If it is decided that they wish to convey this help in a certain way, will he not after all get the best results by accepting that way and make it serve his own? Moreover, human nature is to be considered. When a business agent undertakes to act for an employer as a representative, he must stand, to a certain extent, between the employer and the union, and if the agent is honest this is an advantage. If he is not honest he is easily

disposed of. Employers have sometimes felt that they were better off with a dishonest than with an honest agent, and this led to blackmail and scandal, for which the employer is not entitled to the slightest sympathy. The man who permits himself to be blackmailed to save trouble or expense is just as guilty as the blackmailer.

Personally, in a long experience with business agents, I never detected the slightest effort at personal advantage. This applies to the printing trades in every branch. I have made it a rule not to deal with our own men. This prevents frequent interruptions and the creation of trouble, and it strengthens the power of the business agents and officers of the unions. If you are to have government and discipline you must do this, and not go behind their backs. If a chapel feels that it can get away with the management it will do so in spite of union rules or anything else. It is wisest and safest to rely fully upon the union.

I have been talking about conditions as they are, and not as they ought to be, and I do not know why I should waste your time on ideals. When Mr. Seward said of slavery that it was an irrepressible conflict between opposing and contending forces, he wrote a phrase that applies with equal correctness to labor, capital and the community at large. I think we dwell too much upon the phrase capital and labor in this problem, because, after all, labor's relation with capital is not so large as labor's relation with the individual, with the multitude of family servants, the army of public workers, the little shops of the shoemaker, the barber, the carpenter and the tinker, where capital is practically not represented at all, and where the profits of the establishment barely exceed those of the average union laborer. Here is where the pinch comes, not against the great corporation with its ability to punish the public, but from people who are in such close competition that they have no remedy at all against a labor trust which feeds upon them through its relations with capital and the oppressions aforesaid—in the repair of a roof, in the fixing of a range, in the price of food and clothes, and in the mending of the plumbing.

I have often said that the worst enemy one can have is the little enemy, while a large enemy invites opprobrium and resentment, so that when labor extends itself into the small communities and works hardships against families, and encamps itself like a company of condottieri upon the community, the

community sooner or later is going to rise up and wipe it out.

A responsible corporation, well managed and financially strong, is a benefit to the community. A labor union, incorporated, conservative, industrious, and whose main object it should be to see that its members are competent, that they shall all be employed, and that they shall do their work well is an equal benefit to a community. A labor organization that is predatory, the prey of politicians, and a victim of designing officers and imported agitators, is a nuisance and ought to be displaced. Incorporation would bring this about, and the Civic Federation can perform no greater task than urging such a movement to completion.

THE CHAIRMAN: Gentlemen, the floor is yours on the general topic of the conference, "The Benefits of Trusts and Combination and Their Evils; How to Exterminate the Evils and Conserve the Benefits;" at least, such is my interpretation of the subject.

MR. BINGHAM (Indiana): Mr. Chairman—I have certainly been interested in the portion of this conference which I have heard to-day, and I have certainly acquired considerable information that I never before knew. I have learned that the druggists, wholesale and retail, only make about 3 per cent. profit. Now, when I used to dig gentian and sell it to the druggist and buy it back as something else—the Lord only knows what—I thought the profit was greater than that, and the same with red pepper and a good many articles that I could name.

But one thing has occurred to me as rather peculiar. It may be that I am a little dense, but it seemed to me that the theory of some of the gentlemen who spoke here to-day during the conference is that the danger is from the man who cuts the price; that there ought to be permission to have some sort of a combination whereby you can take the man by the throat who cuts the price and stop him; but there ought not to be any way by which the people could say the man who puts on the profit should be stopped anywhere. That strikes me as rather a peculiar view of this question, for I believe the man who puts on the profit is a more dangerous man than the man who cuts the price, so far as the people are concerned. The man who cuts the price will quit business in a little while, but the man who puts on the profit will keep on putting on the profit, and I am inclined to think, along with Mr. Smith, that there ought to be

some sort of supervision. I do not agree that the Sherman Law should be repealed. I think a fine of twenty-nine million dollars occasionally is pretty good. I think it has a pretty good effect. I do not believe prosecution will accomplish everything that ought to be accomplished, but it is a gentle reminder to have a statute of that kind on the books.

In Indiana we have a law that makes it a crime and an offense for a man to swear in public. Notwithstanding that law, as strange as it may seem, occasionally there is a man down there that does swear in public, but whenever a man makes a fool of himself and becomes objectionable to the public he is prosecuted under that law; and so with the Sherman Law.

Now, if I could assume, as the gentleman from Detroit did who read the paper, that profits were only reasonable and prices were only reasonable, and that they were always reasonable, then I could agree with that view. The Standard Oil Company was referred to. A man who studies the history of that institution, and knows that the States of this Union have been divided up into territory between two corporations owned by the Standard Oil Company, and that whenever an independent man undertook to go into business it was so arranged that the railroad company advised the Standard Oil Company, and the representative followed the tank of oil and went into the community and destroyed the price of oil, until the independent man was run out of business——

THE CHAIRMAN: I am sorry to interrupt the speaker, but his time is up.

MR. ALBERT HIBBERT (Massachusetts): Mr. Chairman —I am sent here by the courtesy of the Governor of the Commonwealth of Massachusetts because of my connection, I suppose, with the great textile trade of that State. I have been much interested in listening to the several papers read by economists and by other people here, and I was particularly impressed by the statement made by one of the professors, that at least one department in this country had determined that a uniform system of bookkeeping should be inaugurated for the purpose of giving an opportunity to whoever might desire to learn the true facts.

I was particularly reminded at that time of an occurrence that came under my personal observation in the city of Lowell some years ago. The textile workers were on strike, and we were in conference with the manufacturers trying to come to some amicable arrangement, and somebody suggested that in

order that the statements made by the manufacturers of that place could be verified, that an examination of the books take place, and this significant remark was made by the spokesman of the manufacturer, who said: "Gentlemen, the examination of our books would be of no value to you, because the art of bookkeeping nowadays is to conceal the fact rather than reveal it." Now, if that is the standard way of keeping books, probably a statute law that would eliminate that particular kind of art might be beneficial.

I heard with interest the complaint of the combination of druggists and furniture dealers this morning, and to a trade unionist it appears amusing. I think we all agree that the great majority of the people prefer to buy in the lowest market, and it would be idiotic on the part of any person to expect a woman of moderate means to go to a drug store and pay one dollar a bottle for some proprietary medicine when she could purchase the same article at sixty-five cents in a department store. If the druggist has any grievance at all it is not against the provisions of the Sherman Act, but against the proprietors of department stores. He is at liberty, if he sees fit, to go into the same kind of business that the department store does by combination. My personal opinion in regard to this conference is this: That if we can only succeed in adopting one resolution that will have for its object a better understanding and a more liberal enforcement of the provisions of the Sherman Act, we will have more than justified our existence.

MR. J. W. KINNEAR (Pennsylvania): Mr. Chairman—Had I known that my absence from home would have occasioned such a flurry in financial circles I would not have been here. We have had a practical illustration of one thing, and that is that honest men may differ on the same subject.

We have listened to all sides and phases of certain questions; every one has had a respectful attention and a fair share of applause; and this is as it should be in a meeting of this kind. I am not an advocate of the Sherman Law, but after listening to some of the addresses this morning I believe it is well to let the Sherman Law stand until we have something better to take its place. It has been stated here, with a great deal of truth, as we all know, that over-capitalization is one of the great evils that we have to contend with. In all our cities we have practical illustrations of this. We have corporations with capitals four or five times larger than is necessary to conduct and man-

age their business. Let me say to you that with a great part of this capital nothing was paid for, and I want to mention one thing that has been hinted at several times, and that I think would help greatly in the matter of capitalization. As you all know, the laws of every State presuppose that full value is to be given for stock issued, and you all know how easily this is overcome. Many of our States, and even some of our Western Territories, take pleasure in advertising that property and services may be exchanged for stock; property costing ten dollars is frequently put in at one thousand dollars, and thus property is put into the corporation that is actually worth nothing. Then comes the grinding down of labor and poor service in order to make dividends upon inflated capitalization. The laws presuppose full value. Why not compel and enforce full value for every share of stock that is issued? This can be done by supervision. The laws to-day contemplate it, but it is a mere mockery. Every State permits property and services to be given in exchange for stock. If the values of property were supervised, if anything except cash were supervised, and the corporations received full value, we would not have the over-capitalization that we have to-day.

MR. KARL MATHIE (Minnesota): Mr. Chairman—I would like to say something about what was brought out by one of the speakers this morning, Mr. Ridder, as the manager of a paper mill that knows nothing about the paper trust. The first thing that our friend brought out was the fact that the publishing business had increased enormously in the last five years; that there has been enormous demand for white paper in five years; that the increase in demand for white paper had been something like 70 per cent. Then he says the International Paper Company, which he calls the trust, is making less paper to-day than it did several years ago. That is true as to white paper for newspapers. They found some of their mills were not making money, and they closed them, or they made another grade of paper, just as a newspaper would close up its business if it did not pay; and he says that they cannot get bids from some paper mill. That is also true, and I will tell you why.

In Ohio there is a combination of all the daily newspapers, and in this State there is one. There is the Illinois Daily Press Association, or Daily Paper Association. They come in with about forty or eighty different requirements, and want one or two mills to bid on them, and, of course, at the same time they

say, in public, they are almost on the brink of financial ruin and want us to take chances. Another reason is this: I know one newspaper that got only one bid for its new contract of almost one-quarter of a million dollars, and why? Because of the treatment that newspaper publisher or manager gave the mill he dealt with.

He also spoke of the fact that they were up against a monopoly in getting their Associated Press dispatches, but why should he object? He is a member of that association. What is more, if I want to start a newspaper in Minneapolis I can't do it without asking the consent of the two Minneapolis papers. They have a monopoly of the news. What about that? If there is a trust it might be the International Paper Company, which has three-sevenths of the output—not enough to constitute a trust. But there may be a trust. You have read in the newspapers of Hammerstadt, who brought out the paper trust, to bring them into a combination. I am reliably informed that the Standard Oil Company is back of them; and wouldn't it be a beautiful case of justice if the Standard Oil Company could get hold of all their paper and bring it up to trust figures in return for the roastings of the newspapers!

MR. MARBURG (Maryland): Mr. Chairman—There is one point which it seems important for me to advance in view of the fact that we shall probably have some resolutions favoring laws regulating over-capitalization. It relates to the question propounded by Professor Jenks as to whether corporations should be allowed to capitalize the good will and earning power, patents and things of that sort. My answer to that is that they should be allowed none of these things; that capitalization should stand for actual values paid in. I mean by values, money and profit that any earning power, whether it comes from good will or comes from patronage or superior intelligence or reputation—any special privileges or advantages will show themselves at the price at which the promoters will be able to market that stock. If the power one hundred represents only the property, and the earning power is 50 per cent. of that, that stock will probably sell at four hundred. So that the men who promote the enterprise are not sufferers by such law. The stock will demand a premium according to its value, and there is no fundamental objection that follows the French practice that pertains to railways of limiting capitalization to property and value paid in. With respect to public service corporations,

if such a rule obtained you would very soon find out what the value of the franchise was. If $1,000,000 is put into a street railway and it is capitalized for $1,000,000, and its stock proceeds to sell for 400 or 500, the surplus will show what the cash price is and throw light upon the duty of the city or the State with respect to a proper tax upon it.

MR. M. N. KLINE (Pennsylvania): Mr. Chairman—I rise to say a few words in reply to two speeches that were made at the beginning of this discussion. I think it ought to be said in reply to the two gentlemen who referred to the down-trodden druggists, that there is another side to the question which each one, I hope, will consider. The gentleman representing the textile workers said that it went without saying that the consumer would buy from the lowest seller. Now, I want to know, and I would like him to answer, whether he, in his union, is willing to advocate that principle as applying to labor. And I want to know further, whether he has ever studied, as some of us have, the question of the time, of preparation, the number of hours of labor that the druggist, whom everybody sneers at because they think all his wares are all profit, puts in in connection with his work. Does he know, or do the people here know, that sixteen hours a day would constitute about a day's work of the man that supplies the medicine, and that 365 days, not 364, in every year, practically, have to be devoted to that, and when he knows that he is willing to get up and say that he ought to be subjected to the competition of the department stores, where these medicines are handed out without preparation, while the druggist is obliged to have four years' practical experience before he is ever permitted, under the laws of most of the States, to practice his profession, so far as it is a profession; where he is obliged to undergo that preparation before he can begin to hand out what the six-dollars-a-week girl in the department store hands out without a profit for the sake of advertising? I want to say to Mr. Bingham and the other gentleman that these are questions that ought to be considered when the whole question that has been touched upon by them is taken under consideration.

MR. HIBBERT (Massachusetts): May I reply to that question, Mr. Chairman?

THE CHAIRMAN: If there is no objection, you may have the floor to reply to that question.

MR. HIBBERT: In answer to the gentleman, I want to say when the time comes that labor unions can regulate the supply and demand, that will be the time for me to say that we will not go into the lowest market; but in my particular trade our people are compelled, from the fact that they receive very low wages and for ten and a half hours' work don't get half as much as the drug clerk—they are compelled to go into the lowest market. As to the particular part of the drug business that I referred to, namely, the proprietary medicines, in which the department store deals largely, I want to say that the twenty-five-cents-a-day boy who has any education at all can tell Peruna from some other patent medicine, and he can hand it out. I am not talking about people who put up prescriptions. The complaint was not made, as I understand it, that the particular grievance was the filling of prescriptions. The particular grievance was, as complained of, that the department stores were taking away from the drug stores their profits in the proprietary medicine business, and I venture to say that I can go into any department store or any drug store and give perfect satisfaction as a clerk if my whole duties are to hand out proprietary medicines called for.

PROF. J. H. GORE (District of Columbia): Mr. Chairman —There is one subject I hoped might be referred to. I feel some hesitancy about mentioning it, because it is in the nature of criticism in regard to the administration of affairs in my own city, the National Capital.

With the blanket form of the present Sherman Law, the uncertainty as to what it may be construed to mean, and what actions may at any time be brought under its provisions, you can realize that every one of the 344, according to some estimates, and 900, according to others, of establishments that might be classed as trusts or combinations in restraint of trade—any one of these, I say, may come under the ban of the Attorney-General. He may announce to-morrow, in the daily press, and have it telegraphed over the entire country, that he will at once proceed to bring suit against this, that or the other trust, and any business in which you are engaged or concerned may come under the ban to-morrow or the day after. If the Sherman Act were so modified, so brought down as to be of a specific character, there would be less of this danger. You realize at once how all this sort of stir that we have been having the last three or four months throws suspicion on the business of the country, and

influences the people to look with concern, with fear and distrusts upon concerns which are perfectly solvent, doing a legitimate business, and are beneficent in their operations.

MR. WESTERFIELD (Illinois): Mr. Chairman—A great deal has been said, both this forenoon and this afternoon, regarding the retail associations, and I believe it my duty, representing a class of retailers—in fact, the largest class in this country—to say something on their behalf—the Retail Grocers' Association—in order that no false impression might go forth. I have the honor to represent, perhaps, a class of small dealers, but in numbers a large class; a class with whose members you come in daily contact by sheer necessity; you cannot do without us whether you are sick or whether you are well. A great deal has been said about retail organizations being formed for the express purpose of forming agreements with the manufacturers or jobbers to boost prices. I want to be strictly understood that in the case of the retail grocers no such agreement has existed in the past, nor will exist in the future. We, individually and as an association, feel able amply to take care of our own interests for this reason—there are two reasons, in fact: I take into consideration in business, whether it is wholesale or retail, two factors—one, market conditions, and the other, expenses of doing business. We cannot get away from market conditions. Perhaps in some cases we may not have an even chance with very large purchasers, but upon the whole there are very slight variations between the purchase price of the average retail grocer and the purchase price which the department store has to pay. Another important item is the item of expense, and that is where we have the department store beaten to a frazzle. I have got it upon good authority from some department stores of this city that their expense of doing business is 21 per cent. of the business they do. I can answer for the retail grocers that their expense is only about 11, and in some cases about 12 per cent. Can you see the difference? Therefore, I want it to be understood that in our trade there has been no necessity, and I don't believe there ever will be any necessity, for forming combinations of manufacturers or jobbers for the purpose of boosting prices.

As far as the Sherman Act is concerned, I can see a great many instances where, perhaps, it prevents retailers from combining and regulating their affairs in a measure which would be beneficial to the country, but I am in favor of never repealing

the Sherman Anti-Trust Act until we have something better to replace it. I believe, whether it is a retailers' organization or a great trust, the minute you throw the gates wide open—what will you have? Worse conditions than those prevailing at the present time, and the Lord knows what would follow. I have only made these few remarks to take away the impression that the retail grocers might at some time combine and boost prices so that you could not afford to live any more.

SECRETARY REYNOLDS: I would like to ask any gentlemen who have prepared papers, and who, instead of reading the papers, spoke extemporaneously, to be sure to hand the paper to me or to the recording secretary, so that it can be printed in the proceedings of this convention.

The closing session of the convention will be held to-morrow morning. There is one more phase of the general subject before us for consideration, of which it would seem we should hear something before proceeding to the discussion of the resolutions. That is to say, the subject of the relation of the tariff and the trusts. The Committee on Program, therefore, asks that the delegates be here to-morrow morning at 10 o'clock. We have three speakers who are very well informed on this subject, and I am sure they can present both sides of the case to you in a form that will be interesting to you all—Mr. Byron Holt, Mr. Franklin Pierce, Mr. Wilbur F. Wakeman—and those gentlemen will have until 11 o'clock. At 11 o'clock sharp the meeting will hear the report of the Committee on Resolutions, and the rest of the forenoon will be spent as the conference may dictate, in the consideration of the resolutions. The speakers represent the Free Trade League and the Protective Tariff League, so that you will undoubtedly get a clear-cut and strong statement of each side of the case.

THE CHAIRMAN: Gentlemen, the floor is still yours if any one has anything further by way of discussion.

MR. JOHN F. HOGAN (Michigan): Mr. Chairman—There is one subject that has not been touched upon in the proceedings thus far; that is, our means of knowing what trusts are—whether they are good things to be helped along, or dangerous

things to be curbed. In all discussions of this kind we must understand both sides, and fair, intelligent Americans want to know both sides of the question, so that they may form intelligent conclusions; and it is only right and proper. Through the daily papers, which are undoubtedly the best medium of information, we have learned the side of the people. The other side, which concerns the trusts themselves, has not been given, and therefore we are here to-day to discuss what trusts are and their relation to the public welfare. The very fact that trust officials have not given their views, their reasons for existence, does not necessarily mean that trusts should be condemned; but rather we may ascribe the omission to the fact that trust officials do not know, nor do they to-day understand, the force of public opinion. Now, in relation to the information we get from the newspapers, as one who has been in that profession for many years, who knows something about it, and who is in it to-day, I wish to say that newspapers are not giving all sides of these questions to the public. Newspapers to-day are regulated by the business office. Formerly the editors of the papers controlled their policy. To-day, if an article appears in the paper, and by reason of it so appearing some subscriber sends in a stop order, that fact is immediately communicated to the business office, it is known to the advertiser; the advertiser, therefore, stops his advertisement, and the paper, as a consequence, is losing money. Now, this brings me to a point that I met with a few days ago in Cleveland, that I have seen many and many a time throughout the country, that I know is taking place in the city of Chicago. For instance, in Cleveland, as you all know, there is quite a lively political battle on. The people want to be educated on that, the main issue, that is the street car question; and yet one of the most influential papers there, most influential in its news columns, has positively and absolutely refused to publish any statement favorable to the other side. Furthermore, when the proposition was made to put the statement in as advertising matter, still the paper refused to give in. One of the speakers a short time ago, Mr. Bingham, of Indianapolis, I believe, and several others before him, took up the Standard Oil case, the twenty-nine-million-dollar fine. I know I am going to be very unpopular; nevertheless, I have never been afraid of unpopularity at any time, nor am I now. I want to say to you, gentlemen, that if all the facts in the case of the Standard Oil Company were made

known to you, as I have investigated myself and know what I am talking about, that instead of being found guilty the Standard Oil Company would be declared innocent and persecuted. It is a rather laughable thing to say, but this question is a part of this conference. Several months ago I came here to write it up, and shortly after starting to look up the records, going through all the stenographic report and taking days to do it, my work led me to the conclusion that the company was not getting that supposedly square deal.

DR. CHARLES W. NEEDHAM (District of Columbia): Mr. Chairman—When I came here I did not expect to hear a great many of the things I have heard. I did not think there was so much rascality in the country. I knew there was some, but I did not believe all the people who transacted business or had an interest in the great business of this country were tainted. And now the gentleman who has just taken his seat has taken that great vehicle in a blanket form, the newspapers, which convey to us a great deal of intelligence, both good and bad, that they, too, are tainted. It strikes me that this is all far-fetched. I believe in the great heart of the American people, and I don't believe the newspapers of this country, as a class, are crooked, and I don't believe that of the business men. I believe that we have sufficient law upon our statute books at this time, however, to correct evils if they exist. I have noticed in all the papers I have read that have been railing at the corporations and the trusts, doing the calamity act, that one important part of the Government has been overlooked, that of the Bureau of Corporations. Mr. Chairman, if I understand it correctly, that bureau, aside from the functions of the Department of Justice or that branch of the Government presided over by the Attorney-General, has power to cite and call into court, and make good, if you please, by publicity or by direction, by suit, by fine or imprisonment, corporations who have evaded the law and become criminal. And it struck me last night, when Mr. Dawes was talking, in his reference to the anti-trust law that bears the name of Senator Sherman, he said, going on to describe that portion of a crime: "I cannot believe that John Sherman, with all his brilliancy, and the men who were his colleagues in the lawmaking body at that time, were foolish enough to pass a law that did not furnish the remedy, notwithstanding that a good many people may think differently." I believe it is a good contention to set up, and I believe it will

stand, that in the making of the law—if it is a law to penalize violation by fine and imprisonment—that there is a maximum as well as a minimum penalty; and if there is any clause in that law, found upon indictment, submitted by proof to a jury of sane people, if that restraint was for the benefit of the common people there would be no conviction.

THE CHAIRMAN: I notice before me the Hon. Robert Taylor, of Richmond, Indiana, who is an expert on this subject, and I know you will all be glad to hear from Mr. Taylor if he will say a few words.

HON. ROBERT TAYLOR (Indiana): Mr. Chairman—I did not expect to be named, as they say about a member of Parliament who is reprimanded by the Speaker. I did have one thought in my mind that I thought I would like to express, if I could do it in five minutes, if the proper time came; but there has not been a proper time yet. However, I will express my thoughts, proper or improper time.

The labor unions are essential to the happiness, prosperity and perpetuity of this country. That we may be a happy and prosperous people, the laboring men, the working men of the country must make enough to live comfortably—comfortably according to the standard of to-day, and the higher standard of to-morrow, and the still higher standard of years to come. We cannot entrust these great interests to the employers alone. The working men must depend upon their organizations to secure justice for themselves and the prosperity of the community. I put this with all the emphasis that I can, because I am just going to say something on the other side of the question, and I do not want it to be forgotten that I say that the working men's unions of this country are essential to its existence and its prosperity. On the other hand, the conditions which the unions have brought upon us is one of war; it is social war between capital and labor. It is a war that is indispensable from the conditions of things. We tolerate this war because we realize, whether we say it or not—we realize that there is not in the law any adequate method of settling these questions, and until there is some adequate provision by law to determine these questions, we must let the parties fight it out. There is no other way; but society must keep its hand on the fight. Society must see to it that the war does not become so destructive of the interests of society that it is no

longer tolerable. And so, I say we can no more afford to give over to the labor unions control of all questions of hours and wages and all that than we can to the employers. So society must keep a restraining hand upon these controversies and see to it that the labor unions do not acquire too much power.

I have this illustration in my mind right now, because it comes right home to us. We are now suffering the inconvenience of a great strike of telegraph operators. They are demanding that their union shall be recognized by their employers. Society cannot afford to let that demand be granted. The country cannot afford to put a service of that kind into the uncontrolled power of the telegraphers' union; and so I say that it is indispensable for the country that that strike shall fail, so far as that point goes. Our friends across the water, in England, are to-day greatly disturbed by the process of a similar issue between the trades unions there and the railroads. The control of the business, the compelling of the recognition of the union everywhere by the employer is the end to which the unions have been striving for many years, and it is natural that they should do so—perfectly so. The railroad employes of England are attempting to form a union so strong that they shall absolutely control that business, and the question now is whether the railways shall recognize the union or not. The railways are standing out and refusing to do it, and refuse to communicate or discuss the question with the leaders of the workingmen's union, and they are right. That point cannot be given up. The war must go on. It must go on, and on, until we come to a point where we are wise enough and considerate enough to formulate some provisions of law by which these questions can be settled otherwise than by wager of battle. And when a strike comes on I say, "Go it!" I say, "Hurrah for both sides." I say to the strikers, "Fight out your battle; fight it out to the end with all the strength you have." I say to the employers, "Stand to your works and fight on, and fight on, as long as you can." It is by these continued struggles, and by this method alone, that we shall finally come to the point where we can provide sane and wise laws that shall control these subjects. That was my thought, and that is all there is of it, and I want to throw it into this conference as a fundamental proposition that fierce labor struggles are indispensable to progress

along the lines upon which we must make progress before we come to a condition of peace and prosperity.

MR. E. GAEDZIK (Secretary Baldwin Equipment and Supply Company, Chicago): Mr. Chairman—When a labor union, in making a contract, cannot control the individual and make him stick to the contract which their superiors have made, I do not see how they are entitled to make any contract at all. I do not believe they have any legal standing whatever, and they should be given such legal standing by chartering the unions in general. I have a resolution, which I believe it is now too late to hand in——

THE CHAIRMAN: The resolution committee has closed its acceptance of resolutions. They were called for this morning several times, and I am afraid it will be too late to put it in.

A DELEGATE: Can it not be accomplished by unanimous consent?

MR. BESSETTE (Chicago): I move that we ask for unanimous consent to allow the gentleman to present the resolution. This will come out in debate after the resolutions are presented, anyhow. I think we should have a chance to have it out on the floor and tell each other what we think of each other. I would like to see it come up before the resolutions committee. It is part and parcel of this, and it has been injected into every speech I have heard upon the floor.

THE CHAIRMAN: Is there any objection to the gentleman presenting the resolution? There being no objection, the resolution will be received.

MR. GAEDZIK: I will now present the resolution:

Whereas, The trades or labor union, as it exists to-day, essentially and materially enters into the successful life of our manufactures, commerce and business at large; and

Whereas, Its legal responsibility and standing is rather undefined; and

Whereas, It is justly doubted whether this combination, as such, can effectively control the individual for whom it enters into a contract; and

Whereas, The possibility of obtaining legal redress or pay-

ment of damages for overt or illegal acts from such bodies is largely problematical; and

Whereas, Its extent is not limited by State boundary lines; and

Whereas, Great havoc and damages have been caused by hasty or injudicious actions of such bodies, and possibilities for great disturbances to the detriment of the country at large certainly exist; therefore be it

Resolved, That Federal control be extended to include these combinations known as "trades" or "labor unions" at least to the following extent:

1. Charter all unions.

2. Cause them to deposit with the Commissioner of Labor a guarantee fund of, say, $5 or $10 per capita of their accredited membership, from which all finally adjudicated damages shall be paid, and to pay taxes upon such guarantee fund, thereby putting them upon an equal basis with the employer, at least as far as contracting power is concerned.

3. Uphold the sanctity of the contract, and eliminate, as distinctly un-American, all coercion as to the union alternative of "either become a member or quit the job."

4. Assess them with a small percentage of their wages for the purpose of maintaining institutions provided for taking care of the sick or disabled members thereof.

5. Withdraw charter and dissolve offending bodies.

MR. THOMAS C. SPELLING (New York): Mr. Chairman —I don't like to trespass on your time, in addition to the time I took upon the platform. I intended, though, to suggest the feasibility and the necessity for a conference of the people or representatives of the States or organizations to consider amendments to the Federal Constitution. You all noticed the evils of trusts and monopolies, to which attention was called by Mr. Kellogg, of the Department of Justice; also by Judge Grosscup. They were simply enormous and deplorable. The evils of trusts and monopolies seem to have been entirely lost sight of in this conference, although it is called a trust conference. Now, gentlemen, I desire to repeat what I said from the platform. There is no power in Congress, nor can Congress acquire any power save by amendment to the Constitution, to curb, or even regulate, the trusts in this country, as they are organized. Judge Grosscup called attention to the fact that when the Government succeeded in crushing and regulating

trusts in one form, the trusts came up in another form. One of them was incorporated in New Jersey for a billion dollars. The thing to do—and I think postponement is not only prejudicial but fatal to the welfare of the people—the thing to do is to amend the Federal Constitution and give the Federal Government more power, call it centralization or whatever you please. I will not detain you further, except to say this: I intended to suggest the propriety and the desirability of the National Civic Federation calling another conference at an early date to consider the question of amending the Constitution, and I throw out this suggestion. That is a matter that does not properly belong to anybody else. That step ought to be taken, and I would like you gentlemen to seriously consider it and communicate with that organization, or, if you cannot do any better, communicate with me at New York, and I will see that the matter is laid before them.

Upon motion, the conference adjourned until 10 o'clock A. M., Friday.

Ninth Session, Friday, October 25, 1907.

The conference was called to order by Hon. Seth Low, at 10:15 A. M., Friday.

THE CHAIRMAN: The subject arranged for discussion this morning by the Committee on Arrangements is "The Tariff and the Trusts." At 11 o'clock precisely the report of the Committee on Resolutions will be taken up for consideration, and a vote has to be taken upon that subject by 12 o'clock. It has been arranged, therefore, that Mr. Byron W. Holt, of the Reform Club, will speak for ten minutes on the free trade side; Mr. Wilbur F. Wakeman will then reply for ten minutes or thereabouts from the protective side. He will be followed by Mr. Franklin Pierce, of the American Free Trade League, for ten minutes, and Mr. Wakeman will have an opportunity to reply for ten minutes. That divides forty minutes available to the two sides. The chair understands that the debate is not between protection and free trade as a general or economic proposition, but it is the effect of the tariff on trusts and combinations which is the subject matter of this conference. I have now very great pleasure in presenting Mr. Byron W. Holt, of the Reform Club, who will speak on the question, "Is the Tariff the Mother of Trusts?"

MR. BYRON W. HOLT.

Mr. Chairman—Is the Tariff *the* mother of trusts? No; monopoly is. Is the Tariff *a* mother of trusts? Yes; a most prolific mother. Besides, it is a foster mother of nearly all of the trusts of which it is not the real mother. The home market monopoly, created by our present outrageously high Dingley tariff, has clearly given birth to and nourished and protected more vicious and monstrous trusts than have all other forms of monopoly in this country. The world never before saw so many huge, thieving, preying combinations as are now with us.

The arguments and evidence in support of these statements

are so strong and overwhelming that it ought not to be necessary to repeat them to an intelligent audience. I shall briefly enumerate some of them:

PROTECTION INVITES TRUSTS.

1. A protective tariff tends to restrict competition to the country protected. It stands to reason that it is easier to form a national than an international, or world, trust.

2. Protected countries have many trusts; free trade countries virtually none.

3. The number, size and effectiveness of the trusts in different countries varies, roughly, with the amount of protection afforded by tariff duties.

4. The era of trusts began in this country with the passage of the Dingley bill—the culmination of protection run mad.

5. No trust of consequence was formed under the relatively low protective tariff act called the Wilson bill.

The first proposition is axiomatic. It is clear that a tariff which keeps out foreign goods, and thus restricts the field of competition, not only invites, encourages and promotes the formation of industrial combinations, but fosters and protects them, after they are formed, and aids them in controlling prices. The smaller the territory circumscribed by a tariff wall the more likely it is that the competitors in an industry, inside this wall, will get together to control production and prices, within the wall, however free they leave themselves to cut prices in outside territory.

Fortunately for us, we do not have tariff walls around States, counties or cities. The rates of duty of the Dingley bill would be unbearable and would not be tolerated by the most patient people on earth, if applied to a very small country or to a single State. Under such conditions, our States would be overrun with trusts even more than they now are, and the sum total of the tariff graft, instead of being $1,500,000,000 a year, as now, would be two or three times as much. However, this country would not have attained its present great population and wealth had each of our States been surrounded by Dingley tariff walls. Its prosperity is largely due to the fact that, considering its internal commerce, it is the greatest free trade country on earth.

The second and third propositions are based on facts. Unquestionably there are more and stronger trusts in protected

than in free trade countries; in countries of high than in those of moderate protective duties.

Congressman Littlefield, of Maine, a stanch Republican and protectionist, published, in 1903, in the Congressional Record, a list of 793 trusts with a total capitalization of $14,000,000,000. Of these trusts 435, with over $9,000,000,000 of capital, were industrial combinations. Nothing like this number of trusts has ever been found in any other country.

BUT FEW TRUSTS IN ENGLAND.

The Industrial Commission, a Republican, partisan protectionist body of the most pronounced type, sent Professor J. W. Jenks to Europe to find as many trusts there as possible. He found thirty-five so-called trusts in England, with a total capital of $460,000,000, or less than one-third that of our pet steel trust. He quoted tables from Liefman's book showing that there had been 345 trusts in Germany, and that from 230 to 250 were in existence there in 1897. He stated that "in England the movement toward combination has not gone so far as in either Austria or Germany"—both highly protected countries. He stated that the English trusts have but little water in their capitalization as compared with American trusts; that the English trusts have had little or no effect in advancing prices, and that the (then) recent slight advance in prices was "due in good part to the increase in the prices of the raw materials." In Germany he found that many of the trusts, taking advantage of the high tariff duties, had advanced prices very much. This was particularly true of the iron and steel trusts and of the sugar trust, or cartel, both of which pattern after our much larger trusts and sell goods for export much below the home prices.

Other writers find even fewer trusts in England than did Professor Jenks. Mr. Wilhelm Berdrow, a German Economist, says in the May, 1899, Forum:

"As far as England is concerned, it must be admitted that the trust system has as yet found but tardy acceptance in that country. This is doubtless due in some degree to the thorough appreciation of the principle of free trade; for it is well known that the largest trusts are powerless unless their interests are secured by a protective tariff excluding from the whole market the product of foreign countries."

Mr. Thomas Scanlon, of Liverpool, writing of trusts in England, said:

"It cannot be said that we suffer in any appreciable degree from combinations of producers to keep up prices."

These and other authorities virtually agree that, instead of the price-raising, congress-controlling, law-defying, bulldozing and all-powerful tariff monsters with which we are familiar in this country, the so-called trusts of England are really only harmless syndicates, with little or no control over prices. They exist not because they have any monopoly, but because production can be carried on more economically on a large than on a small scale. If they attempt to control prices, as did the recently formed soap trust, they commit what, in England, is regarded as the unpardonable sin. The soap trust endured but a few short weeks. A really free people would not stand, for one month, the robbery of any one of our scores of plundering, tariff trusts.

The testimony is overwhelming that trusts do not flourish in free-trade England as they do in protected Austria, Germany and the United States. Nowhere, outside of the Republican Campaign Book and of the organs of protection, published by the organizations supported by the protected interests, is it even pretended that England has trusts comparable to those in this country. These organs brazenly disregard and defy all known facts. Thus the Republican Text Book of 1900 said:

"England has no tariff, and trusts exist and flourish in free-trade England—trusts more monstrous than any that we know anything about."

These monstrous trusts, it was said, "are solely, thoroughly and absolutely the product of Cobdenite Free Trade."

The American Economist, organ of the Protective Tariff League, on October 18, 1907, says:

"Former Governor Douglas says the only way to save this country from the trusts is to cut down the tariff. Douglas would have a terrible time telling the British people how they were to get out of the clutches of the trusts. They are in the clutches more than the people of the United States, and they have no tariff to cut down."

I hesitate to say that the writers of these statements knew them to be false and that they deliberately distort and falsify facts and figures in order to deceive the voters and to prolong our accursed tariff system. I prefer to credit such misrepresentations to the overzealous efforts of protection fanatics who

honestly believe that foreign trade and commerce is a curse and who would like to see each country surrounded by walls of fire.

DINGLEY BILL USHERED IN ERA OF TRUSTS.

While the truth of proposition four is well established by facts, it is also true that a few of our important trusts were formed under the auspices of the McKinley bill of 1890; three or four even antedating 1890.

Census Bulletin No. 22, issued, I believe, in 1900, contained information concerning 183 "industrial combinations," as they were modestly called, with a total authorized capital of $3,607,539,200. Of these 183 trusts, 7 were formed in 1897, 20 in 1898, 79 in 1899 and 13 in 1900, prior to June 30. Nearly two-thirds of these trusts were, therefore, formed in the three years following the passage of the Dingley act.

Mr. John Moody's, "The Truth About the Trusts," was published in March, 1904. It contains a list of 318 important active industrial trusts with a total outstanding capital of $7,246,342,533. Of these 318 trusts, 236, with a capitalization of $6,049,618,223, were formed since January, 1898. It thus appears that about three-fourths of the important trusts, in 1904, were formed since the passage of the Dingley bill and that the capitalization of these trusts was more than five-sixths of the total capitalization of all trusts.

NO IMPORTANT TRUSTS UNDER WILSON BILL.

Only fourteen of these trusts were formed while the Wilson bill was in force. Of these fourteen, two were formed before and were only reorganized during the Wilson bill period. One, the Borax Consolidated, Limited, was incorporated in England, and was the outgrowth of a most obnoxious American trust, born in 1890, I believe. Another, the Consolidated Lake Superior Company, was named in 1897, but did not really become a trust until 1901. There were, then, really but ten trusts, with a total capital of only $108,150,000, that can properly be credited to the Wilson bill period. Of these ten trusts The Virginia-Carolina Chemical Company, capitalized at $57,000,000, has since been reorganized. The remaining nine, having a capitalization of only $51,150,000, include several patent combinations and the Pure Oil Company, one of the most successful competitors of the Standard Oil Company.

The Wilson bill, then, was not the mother of a single successful trust of any consequence. This is a rather remarkable fact when it is considered that the Wilson bill rates were only slightly lower than those of the McKinley and Dingley bills. Its duties were, however, much less protective than those of the other bills. From these facts we may infer that moderate protection will not give birth to many important trusts and that inordinate protection is necessary to overcome the natural tendency of individual manufacturers to hang on to the businesses which they have built up. These facts are also suggestive to some of our mighty statesmen who are vainly trying to "bust" trusts by court proceedings, and without taking away from them the special tariff privilege which nourishes and sustains them. It is as if our nation should try to prevent drunkenness and its many evils by legislative enactments, while maintaining public saloons for the free distribution of whiskey and other alcoholic drinks.

It being, then, established that our Dingley tariff breeds trusts as naturally as a tropical swamp breeds mosquitoes, we are ready to consider another phase of the tariff-trust question.

TARIFFS, TRUSTS AND PRICES.

Not only did the Dingley act usher in an era of trusts, but it also ushered in an era of high prices. Professedly, a trust is formed to reduce the cost of production and to establish and maintain fair and stable prices. Actually, most trusts are formed to create a monopoly, to put prices as high as possible, to reduce wages, and, in general, to make profits.

The trust promoters "got busy" almost before the Dingley bill was signed by President McKinley. They made hay while the tariff sun was shining; they are still in the harvest field, though the hay is nearly all garnered—nearly every article of necessity, except farm products, being the product of some protected trust that fixes prices at the maximum profit point. The trusts lost no time in elevating prices—some 25 per cent, some 50 per cent and some 100 per cent. The price of wire nails was yanked up from $1.40 per keg, in July, 1898, to $2.45, in July, 1899, and to $3.30, in January, 1900. The price of barb wire was pulled up from $1.80 per hundred pounds, in July, 1898, to $3.30, in July, 1899, and to $4.13, in January, 1900. It having become evident to the presiding genius then at the head of the

American Steel and Wire Company that prices were so high that they were checking consumption, he promptly and precipitately lowered prices of wire and nails one cent a pound. The price of tin plate was lifted from $2.85 per hundred pounds, in July, 1898, to $4.05, in July, 1899, and to $4.84, in January, 1900. The price of steel beams was raised from $1.20, in 1897, to $2.40, in 1900. The price of plate glass rose 150 per cent from 1897 to 1900. The price of window glass was shoved up from $1.75, in April, 1897, to $4.80, in April, 1901. Similar advances were made in the prices of most of the other iron and steel products, lead, borax and of many other articles.

Since 1897, and especially since 1899, the prices of trust products have been maintained at extremely high points. Because of excellent crops, sold at good prices, this country has been prosperous since 1897. But the protected trusts have skimmed the cream of our prosperity and have left only the skimmed milk for workingmen and farmers. Money wages have risen, but tardily and slowly, and only about half as much as has the cost of living. The prices of farm products, until this year, had risen less than had the prices of most manufactured goods.

The average rise of prices is best shown by Dun's index numbers. These include the prices of 350 commodities and give each a weight in accordance with its importance in consumption. On July 1, 1897, Dun's index number was 72,455; on March 1, 1907, it was 109,913, showing an advance in average prices since 1897 of 51.7 per cent. By April 1, 1907, there had been a decline of about 2 per cent. For some reason, Dun's figures, which until then had been published regularly for thirty years, have not been published since April. It will be recalled that, because of the cold Spring, the prices of cotton, wheat, corn, oats, etc., rose rapidly during April. Possibly there was some connection between these two facts. Possibly the publication of these cost-of-living figures was "accelerating public sentiment" in the wrong direction—for the trusts. It is worth noting that one year previously the Department of Commerce and Labor, at Washington, suddenly ceased to publish Dun's tell-tale figures in its monthly reports. There was considerable of a "spread" between Dun's and the Government's figures of prices, and the spread was growing rapidly. These coincidences may have had nothing to do with the stoppage of the most

scientifically constructed cost-of-living figures ever published. Regardless of economic or political consequences, we earnestly hope that Dun's Review will soon continue to give the world the benefit of its price tables.

Bradstreet's less scientifically constructed figures show an increase in wholesale prices of 56 per cent from July 1, 1898, to March 1, 1907. The figures of the Labor Bureau at Washington show that wholesale prices averaged 40.6 per cent higher in 1906 than in 1897. They show that retail prices of food averaged 15.7 per cent higher, in 1906 than for the ten years from 1890 to 1899. These government figures are very unsatisfactory and are evidently made to order. Almost any kind, and almost all kinds, of retail prices can be obtained, even on different streets of the same city. They afford excellent opportunities for trick juggling. It is fair to assume that these opportunities have been utilized. We know that the statistics of the census, so far as they relate to wages and manufactures—especially in the protected industries—are juggled so that they are almost worthless.

It is reasonably certain that the price level in this country is now between 50 per cent and 60 per cent higher than it was ten years ago. It is not pretended that all of this advance should be credited to the Dingley tariff and its brood of trusts. The Labor Bureau report of last Spring suggested that "internal revenue and tariff acts have in a marked degree affected prices by helping them to move upward." This is undoubtedly true. About how much of the advance should be credited to the tariff and trusts can be learned from a comparison of our price figures with those of England, where there are no protective duties and no tariff trusts.

Sauerbeck's index numbers advanced 35.1 per cent from July, 1896, to March, 1907—from 59.2 per cent to 80 per cent. The index number of the London Economist advanced 37.6 per cent from the end of 1897 to March, 1907. Since March last it has declined rapidly and is now only 30 per cent higher than in 1897. Its figures in 1897 were 1,890, and on October 1, 1907, 2.457.

It is evident from these figures that during the last ten years prices have risen about 55 per cent in this country and 35 per cent in England. The 35 per cent advance is undoubtedly due to the depreciation of gold. A similar advance has occurred in

all countries. The greater advance in this country, Canada and Japan can fairly be credited to the higher tariffs of these countires and to the protected trusts.

AMOUNT OF TARIFF GRAFT.

To be perfectly safe, suppose we credit only 15 per cent of this rise in prices to our tariff and tariff trusts. What an awful charge against them! We probably consume about $14,000,000,000 worth of goods in a year. Fifteen per cent of $14,000,000,000 is $2,100,000,000—the amount of the tariff-trust graft. Estimated in other ways, and especially by considering the tariff duties on each item and the difference between foreign and domestic prices, it appears that the tariff graft is fully $1,500,000,000.

This graft is far greater than any possible graft from railroad rebates or overcharges, of which we have heard so much lately. It is almost equal to the total gross receipts of all of our railroads—slightly more than $2,000,000,000. It is more than twice the net earnings of all of our railroads.

It is this tariff-trust graft that is most largely responsible for the swollen fortunes that have caused our President such grave concern. He suggests inheritance taxes to lessen somewhat the rapidity of the growth of these tariff swellings. How inconsistent! If he wants not only to stop the growth of but to reduce these abnoxious swellings why does he not try to stop the cause of the swellings? Why does he not attack the tariff walls behind which the trusts and the predatory wealth are entrenched? Are our tariff schedules sacred? Is there any other way to "bust" the trusts so that they will stay "busted," than to "bust" the tariff schedules that shelter the trusts? What does it benefit the common people to have a trust illegalized if its products are sold at higher prices after it is under the ban of our courts? If, by high tariff duties, we license the trusts to prey upon us, can we hope to stop their depredations by the warning fingers of our courts? If we turn the hogs into the garden can we expect them to refrain from eating the good things there? Is it not clear that the real remedy for trusts is to cut the tap root from which they derive nourishment—the tariff? Is any other remedy half as easy to give or half as certain in its results?

Take the greatest of all trusts—the United States Steel Cor-

poration! It is as clearly a trust and as clearly illegal as was the Standard Oil Trust when it was declared illegal. But does any one suppose that the Steel Trust would pay any more attention to court decisions—so far as prices are concerned—than did the Standard Oil Trust? The tariff graft of the Steel Trust is between $50,000,000 and $100,000,000 a year. To-day it holds the keys to the tariff situation at Washington. It controls the Finance Committee of the Senate and the Ways and Means and Rules committees of the House. It lets nothing get by it in the tariff line. It is the chief of stand-patters—at $75,000,000 a year. It will not give up its tariff keys without a desperate struggle. Those who think otherwise do not know the tariff situation at Washington and do not appreciate the power of the billion-dollar tariff-trust graft.

Other trusts have been "knocked out" by our courts, but are still doing business at the old stands and are charging higher prices than ever. Some of these are the sugar, beef, coal, pipe and paper trusts. What do these trusts care for court decisions? In no instance have the consumers benefited by anti-trust action. Why is the farce continued? Is it to throw voters off the trail? Why not cease barking up the wrong tree? The real remedy for most trusts lies in the removal of the tariff that protects them. This action will not injure the good trusts—those that produce cheaply, sell at fair prices and charge Americans no more than foreigners for their goods. It will, however, cure most of the evils of big industrial combinations. It will stop them from fattening on the life blood of the nation.

TARIFF CONTRACT VIOLATED.

It is not generally known that protective tariff laws got on our statute books through false pretences. They were put there with an understanding, amounting to an implied contract, that they would be removed should the protected interests at any time combine to stifle competition and to put up prices above a reasonable basis. Here is what Senator John Sherman said in 1899:

"The primary object of a protective tariff is to secure the fullest competition by individuals and corporations in domestic production. If such individuals or corporations combine to advance the price of the domestic product, and to prevent the free result of open and fair competition, I would, without a

moment's hesitation, reduce the duties of foreign goods competing with them in order to break down the combination."

Mr. Blaine, in his "Twenty Years of Congress," says:

"Protection in the perfection of its design does not invite competition from abroad, but is based on the contrary principle that competition at home will always prevent monopoly on the part of the capitalists, assure good wages to the laboring man and defend the consumers against the evil of extortion."

Mr. Andrew Carnegie is quoted, in the American Manufacturer, of Pittsburg, under date of July 25, 1884, as saying:

"We are the creatures of the tariff, and if ever the steel manufacturers here attempt to control or have any general understanding among them the tariff would not exist one session of Congress. The theory of protection is that home competition will soon reduce the price of the product so it will yield only the usual profit; any understanding among us would simply attempt to defeat this. There never has been nor ever will be such an understanding."

Notwithstanding the statements of these eminent protectionists, the protected interests have taken full advantage of their tariff monopoly privileges and have combined and put up prices. Moreover, the tariff has existed through several sessions of Congress since these trust conditions have been known. The protected interests have broken their contracts. Why has the tariff not been taken away from them? When will Congress do its duty? When will it protect the people in the only way that they can be protected from the protected trusts?

THE CHAIRMAN: We will now hear from Mr. Wilbur F. Wakeman, representing the American Protective Tariff League.

MR. WILBUR F. WAKEMAN.

Mr. Chairman—I have never heretofore had the pleasure of being introduced by the former president of Columbia University, one of the greatest factors in education in this country, the greatest and best Mayor any city has ever had, Hon. Seth Low. I shall have to epitomize what I want to say. I have the honor of a rejoinder by a very able man, Mr. Franklin Pierce, and I will only now define my position, except in one thing. I was out there in the wings and heard the first speaker say that the tariff is the mother of trusts. I think every man before me will remember that Mr. Havemeyer said the same thing. The father of the Sugar Trust said the tariff is the mother of trusts and was

organized under a free trade period. Right in that line of thought I want to call attention to a little trust that came to my attention a short time ago regarding plate glass, wherein the fellows on the other side met in Paris on the first of the month and the next month in Berlin, the next in Berne and the next in London and regulated the prices for the Continent. The preceding speaker did not refer to that. We have trusts here and we have trusts in other countries. As I said, I first want to define my position. Now I think that is the only point that I care to refer to in the remarks of my predecessor. I am a protectionist, first, last and all the time, and I believe that protection is the keystone of patriotism. Patriotism means the love of country, but patriotism must be coupled with your love of your fellow man, and love of your fellow man means employment. Protection furnishes the job. Now let us start right— and this is all I am going to say at this moment. First, what is a tariff in international commerce? It is a tax. It is a tax collected upon merchandise entering one country from another country. To illustrate, the American tariff on lithograph prints—and here in Chicago you are one of the greatest producers of them—from any nation in the world to this country is twenty cents a pound. Again, the tariff on tea in Great Britain is ten cents a pound. That is a fair statement. That is the tariff, isn't it? Second, what is a protective tariff, with direct reference to American practice? A protective tariff, according to my understanding, is a duty or a tax or a tariff collected upon foreign merchandise entering the United States, equal to the difference in cost of production, plus a reasonable profit. Is that right? To illustrate: Suppose it cost 100, as a matter of illustration, to produce a given article in a foreign country, and it costs 150 here. I should say then the duty ought to be 55 per cent. That illustrates my idea of protective tariff. Then, what is free trade or revenue tariff? No civilized nation practices absolute free trade. Am I right? Which would mean no duties, no taxes, no tariff on merchandise entering one country from another. Great Britain has a revenue tariff which, in my judgment, should be called a free trade tariff. Great Britain collects duties, or a tariff, upon non-competitive products, and perhaps you will be surprised when I tell you that the per capita collection of duties in Great Britain is greater than in the United States. If I am wrong I stand ready to be corrected. Last year in Great Britain

tariff duties were collected by eighty-two cents per capita more than in the United States. Now, you have your definition of the free trade proposition.

We have had, during the last eleven years, a protective tariff, and what has happened? The greatest prosperity in the world. What has happened? Savings bank deposits, practically stationary from 1893 to 1896, $1,750,000,000; and what has happened during these few short years? That has increased to over four billions of dollars. Reconcile that proposition with the remarks which have preceded me.

THE CHAIRMAN: Mr. Franklin Pierce is the next speaker.

MR. FRANKLIN PIERCE.

Mr. Chairman—It seems to me that it will be necessary to return to the question, for I have not come here, although I may be able to discuss the general question of the tariff, with any other intent than to discuss the question whether the tariff is the mother of the trusts. Now, I say that the essence of a tariff is to limit production to a certain area, your own country, for instance; that the essence of a trust is to reduce the number of persons manufacturing a product. Let us see. Take the City of Chicago. Suppose you have duties, as we have in the United States, averaging an ad valorem duty of 45 or 50 per cent. Suppose the State of Illinois should impose duties upon every product that came into this city of 45 or 50 per cent. Why, the result would be that the whole manufacturing interests of the City of Chicago would be in the hands of a trust, and you have no doubt about it. You will all agree with me there. You can see in a moment that if you restricted competition in so small an area you would get trusts. Now, extend it. Suppose the State of Illinois limited competition to the State of Illinois, as many of the States did before the Constitution. Our State of New York did. Well, it was terrible, and we are all ashamed of it now; but we imposed duties upon the goods of Connecticut and New Jersey, and then we put on duties upon foreign products and made Connecticut and New Jersey contribute to our support to the amount of about 50,000 pounds a year. Now, suppose we limit it to the State of Illinois, and put duties on all goods coming into Illinois of 45 or 50 per cent. Why, you would have all your manufacturing in the hands of a few men. You would have the trust, because competition would be limited. Extend it to the United States, and you will admit that it is easier to form a trust in the

United States than it would be a world-wide trust, because you would limit competition to this country.

TARIFFS AND TRUSTS.

It seems to me to be evident that protective tariffs aid in the establishments of trusts. They do not make all the trusts by any means. The Anthracite Coal combine have all the anthracite coal of this country, and they can form trusts very easily. You can form a trust in petroleum, quick silver, iodine, diamonds. Whenever any body of men get absolute control of a product they can form a combination, tariff or no tariff. But, gentlemen, right in connection with the tariff comes the law which aids the trust, and it was gotten up to make avail of the tariff. In 1885, Andrew Carnegie, in the American Manufacturer, said that—

"We are the children of the tariff, and if we ever take advantage of the tariff to form combinations it will not exist through a single session of Congress."

And what has occurred? They are all taking advantage of the tariff to form combinations and to keep out the foreign manufacturer.

If the duty was down, in would flow the foreign product, and you could not maintain your trust unless it was the anthracite coal trust or some other trust of that kind. But that is not all. The tariff shuts out not only importation, but it shuts in your own products and you get a surplus, more than you can sell, and then you look around and put your heads together to see how you can keep down the surplus and put up the price.

Do you have any doubt that a protective tariff, when it shuts out foreign products, shuts in home products; when it destroys importation it destroys exportation?

Why, Mr. Chairman, more than seventy-five years ago a Massachusetts Yankee put the whole problem in a single sentence. It was on the tariff of 1824, and they were going to put a duty on molasses from the West India Islands, and this Massachusetts yankee said, through his nose: "We up in Massachusetts don't want a duty on molasses. We trade our fish for molasses, and if you shut out molasses you shut in fish." And there is the whole problem. And, gentlemen, when you shut out foreign products you shut in home products you create a surplus, and then you gentlemen, at least some of you who have

been prosecuted, who have had something to do with it, must know that.

Now, gentlemen, let us see another phase of this question. If you keep a surplus, if you have a large surplus of products, you are sure to form trusts, if you can, and the law comes in to help you. Now let me tell you about that law. (Turning to the Chairman.) We are both New Yorkers, and do you know where that law came from under which the trusts are being formed in New York? In about 1882, the first State in the Union went to Albany and passed a law imposing terrible penalties upon trusts, I think a fine of $5,000 and a year's imprisonment, and at the same Legislature they passed another law allowing every corporation to use its assets in the purchase of the stock of any other corporation. So they took care of the manufacturer by allowing the holding companies to be formed, and at the same Legislature they passed a law imposing a penalty, on conviction, of $5,000 and one year's imprisonment upon those who formed a combination; and out of that law the holding by a corporation of the stocks of another corporation originated the modern trust.

But, gentlemen, there is another reason; and now I want to tell you the most important reason for trusts. You base your industries upon the natural law of exchange and you have got a foundation as firm and as steady as the earth itself. You base it upon an artificial condition, base industries upon laws enacted by the caprice of man and change from time to time, and, frequently, because we are crazy on the subject of passing laws in this country: Everything from a wooden leg up to unrequited affection is cured by law. They vomit them forth like shot from a gatling gun, and law is a sovereign specific for every evil. Base your industries upon law and you have got an unstable foundation, always changing, resulting in gluts, accumulation of surplus, in bankruptcy, in unstable conditions, as unstable as the ocean itself. Put a bandage on that arm tight enough and you shut off the flow of blood. Put bandages or apply quack remedies to trade and you stop circulation of trade. The natural law of exchange is the law that keeps things steady and firm.

If Congress adjourned for twenty years and not another law was passed on any subject affecting your business, and if it could have the steadiness which comes from the natural exchange of

products, you would grow rich and you would have no apprehension and you would stop doing some of the things that are being done in our day. We need in this country, with our wonderful resources, to do away with law-making affecting industries.

Gentlemen, I will not take up the whole subject. I am not here to speak to a theory. I am neither Republican nor Democrat. I am an American citizen. The Mayor of New York is a Republican. In fact I never voted for but one Tammany Mayor in New York, although I am regarded as a Democrat; but as an American citizen I ask for justice. Why, yesterday I heard a man in this audience say he was from Oklahoma, and he said he did not represent manufacturing; he represented the consumers, and I said in my heart, "God bless that fellow from Oklahoma." Now, I am here for the consumer, and I am here because I want justice for the consumer.

For fifty years, gentlemen, I have seen passing before me the vision of millions of families, mothers, fathers and children, all passing on, ghastly pallid, poor, each paying his tribute to this monstrous evil of protection; and gentlemen, I want to see the burden lifted from them; and in that vision I see another sight, and that, gentlemen, is that little knot of great magnates, one of them Mr. Baer, who said, "We are the gentlemen whom God has put in possession of the industries of the country." Why, the Almighty supervises a great many things that I would not want to touch with a grappling hook, if that is so.

MR. WAKEMAN: Mr. Chairman and gentlemen, I confess my inability to represent Hon. Charles Warren Laporte, former Governor of Rhode Island, who would have been with you today except for serious illness. I see very little in what has been said, and I think I will cut my time short to answer the last speaker. He referred to anthracite coal, and I presume you all know there is no duty upon anthracite coal. He did not refer to the Standard Oil. He did not refer to the fact that there is no duty upon oil, crude or refined.

MR. PIERCE: There is a duty on it.

MR. WAKEMAN: I will give you part of my time if you wish it. I wish to say this: That we have trusts and combinations in this country; we have many of them. We have the International Harvester Company here in Chicago, and there is a duty on such machines as they manufacture coming into this

country. But how is that formed? What is the reason for it? It is, under the patent laws of this country, extended to civilized nations. Am I right? You run along down the line. I care not what combinations you refer to, whether it be the International Harvester or the United States Shoe Machinery Company, or almost any of them; there may be some exceptions. Be honest, be truthful in every statement you make; but as a rule the combinations of this country and in the countries which recognize the patent laws the combinations are based upon the patent laws of those countries. Am I right or am I wrong? Name those that are not formed that way. Gentlemen, I am awfully glad to be with you, and I am especially glad to have had the honor of delivering a body blow to the referee. I thank you very much for your attention, and I will give the remainder of my time to Mr. Pierce.

THE CHAIRMAN: I am happy to announce that the referee survives the body blow. By the arrangement of the Committee on Arrangements, the time has now come to receive the report of the Committee on Resolutions. As I understand the rules laid down by the Committee on Arrangements, the vote will be had upon these resolutions not later than 12 o'clock. Each one speaking to the resolutions will be allowed three minutes, and no one is to be permitted to speak to the same subject more than once, and the time, under the conditions prevailing, cannot be extended in favor of any one speaker. I have now the pleasure of calling upon Mr. Albert Shaw, the chairman of the Committee on Resolutions.

MR. ALBERT SHAW: Mr. Chairman and gentlemen of the Conference, your Committee on Resolutions consisted of an appointee from each State represented here, selected by the representatives from the particular States, and those State representatives were about forty in number. In addition to the forty, fifteen were appointed at large from the conference, by the chair. The total committee, therefore, was a committee of fifty-five gentlemen. The members of your committee met at the hour announced from this platform for organization, and having selected a chairman, they authorized the appointment of a subcommittee, which should take in hand the resolutions offered from this platform or resolutions presented in some other way

by the members of the conference. The sub-committee, which was a committee of nine, received at the earliest possible hour all the material offered by the conference, considered everything with patience and with care, to my knowledge, spent many hours in going over the material which seemed to them germane to the work of this conference; found it necessary, in order to reach any basis of agreements at all, to exclude strictly everything which they regarded as not absolutely germane. You can easily understand that there are a great many topics that were closely related; there are a great many matters which have bearing upon the subject of this conference, but that, in a body like this, called to consider topics of a particular sort, it would be impossible to adopt resolutions unless the matters considered in the resolutions were held down to somewhat severe limits as to subject matter. The sub-committee, therefore, ruled in that way and were upheld in that ruling unanimously by your large and representative committee of fifty-five. The sub-committee, after many hours of labor, succeeded in agreeing with entire harmony, upon a statement which covers, as well as they found it feasible to do, for purposes of agreement, the matters which it seemed possible to them to present to this conference, with the hope that they might be acceptable to all of you. Now, the large committee of fifty-five, a very able body of men whom you selected to represent you, met last evening and were in session three or four hours, a body of men in full possession of their faculties and in full possession of their opinions, and every line of the report that the sub-committee presented was subjected to very careful and very alert scrutiny, with very ample discussion. I am happy to be able to report that this large committee, representing the States and Territories assembled here, and representing different bodies of organizations, of commerce and of labor, represented here, were able, at the conclusion of things, to agree without a dissenting voice, in perfect temper and spirit upon the adoption of the report that the sub-committee had presented, with various modifications which the able gentlemen of the larger committee suggested, and which were gladly accepted by the sub-committee. The spirit of compromise and harmony that prevailed in the large committee, I feel, is likely to prevail here, because you all know the inherent difficulties in preparing any form of resolution that shall express any sort of opinion and obtain the consent of a large body of active men, an independent body of men, to it, and obtain any-

thing like the harmony we desire. The only thing we can vote upon is something like an irreducible minimum, those things we agree on and allow to go by, those things which we ourselves would prefer. There are many things I would personally be glad to see in the resolutions, but they are not there. I could not get them there because, if I had urged that they be put there, I should not have been able to get an agreement. There are many things which you might like to see in the resolutions which are not there. The reason is not that the members of the committee were not friendly or unfavorable to them, but because under the circumstances we could not go as far as we wanted to go to put forth some kind of expression of this conference. So on behalf of the committee, I appeal to your good temper and to your spirit of compromise, and I feel confident of the result. I shall ask Dr. Talcott Williams, on behalf of the committee at large and the sub-committee, to present the resolutions as drafted and as agreed upon, and after he has read them I shall ask permission to move their adoption. Then the whole subject will be before you under the limitations announced by the chair, those limitations being that we are expected to come to a vote as soon as we can, and not later than 12 o'clock, as announced. Dr. Talcott Williams will now represent the committee in the presentation of the report.

DR. TALCOTT WILLIAMS, presenting the report of the Committee on Resolutions, said:

Mr. Chairman and gentlemen of the convention, I am here as the mouthpiece of the chairman of the Committee on Resolutions, to whose tact, force and leadership we are indebted for the unanimous conclusion by the sub-committee of your committee on resolutions and by your Committee on Resolutions, in the adoption by both of them, without a dissenting voice, with every possible interest represented on this floor present at the meetings of those two committees, and the declaration of principles and of action which I now have the honor to read, which it was thought desirable should express both the reasons for the action and the action which is proposed, and I am now simply to read what the chairman of the committee will later move to adopt. I have the honor to read to you now this declaration.

RESOLUTIONS.

The report of the Committee on Resolutions was as follows:

After twenty years of federal legislation as interpreted by the

courts, directed against the evils of trusts and combinations, and against railroad rebates, beginning with the interstate commerce act of 1887 and the anti-trust act of 1890, a general and just conviction exists that the experience gained in enforcing these federal acts and others succeeding them demonstrates the necessity of legislation which shall render more secure the benefits already gained and better meet the changed conditions which have arisen during a long period of active progress, both in the enforcement of statute law and in the removal of grave abuses in the management of railroads and corporations. These changes now demanded are:

First—Immediate legislation is required, following the recommendation of President Roosevelt and the Interstate Commerce Commission, permitting agreements between railroad corporations on reasonable freight and passenger rates, subject in all respects to the approval, supervision and action of the Interstate Commerce Commission.

Second—The enforcement of the Sherman act and the proceedings under it during the administrations of Presidents Harrison, Cleveland, McKinley and Roosevelt have accomplished great national results in awakening the moral sense of the American people and in asserting the supremacy and majesty of the law, thus effectually refuting the impression that great wealth and large corporations were too powerful for the impartial execution of law. This great advance has rendered more secure all property rights, resting, as they must, under a popular government, on universal respect for and obedience to law. But now that this work is accomplished, it has revealed the necessity for legislation which shall maintain all that the Sherman act was intended to secure and safeguard interests it was never expected to affect.

As the next step in executing the determination of the American people to secure in all industrial and commercial relations justice and equality of opportunity for all, with full sympathy and loyal support for every effort to enforce the laws in the past, we urge upon Congress without delay to pass legislation providing for a non-partisan commission, in which the interests of capital, of labor and of the general public shall be represented. This commission, like a similar commission, which proved most successful in Germany in 1870, shall consider the entire subject of business and industrial combinations and report such pro-

posals as to the formation, capitalization, management and regulation of corporations (so far as the same may be subject to federal jurisdiction) as shall preserve individual initiative, competition, and the free exercise of a free contract in all business and industrial relations. Any proposed legislation should also include modification of the prohibition now existing upon combinations on the following subjects:

1. National and local organizations of labor and their trade agreements with employers relating to wages, hours of labor, and conditions of employment.

2. Associations made up of farmers, intended to secure a stable and equitable market for the products of the soil free from fluctuations due to speculation.

3. Business and industrial agreements or combinations whose objects are in the public interest as distinguished from objects determined to be contrary to the public interest.

4. Such commission should make a thorough inquiry into the advisability of inaugurating a system of federal license or incorporation as a condition for the entrance of certain classes of corporations upon interstate commerce and also into the relation to the public interest of the purchase by one corporation of the franchises or corporate stock of another.

On no one of these subjects must what has been gained be sacrificed until something better appears for enactment. On each, this conference recognizes differences between good men. On all, it asks a national non-partisan commission to be appointed next Winter to consider the question and report at the second session of the approaching Congress for such action as the national legislature, in the light of this full investigation, may enact.

Third—The examination, inspection and supervision of great producing and manufacturing corporations, already begun by the Department of Commerce and Labor and accepted by these corporations, should be enlarged by legislation requiring, through the appropriate bureaus of the Department of Commerce and Labor, complete publicity in the capitalization, accounts, operations, transportation charges paid, and selling prices of all such producing and manufacturing corporations whose operations are large enough to have a monopolistic influence. This should be determined and decided by some rule and classification to be devised by the commission already proposed.

Fourth—The conflicts between State and Federal authorities raised in many States over railroad rates being now under adjudication and under way to a final and ultimate decision by the Federal Supreme Court, this conference deems the expression of an opinion on these issues unfitting, and confidently leaves this great issue to a tribunal which for 118 years has successfully preserved the balance between an indissoluble union and indestructible States, defining the supreme and national powers of the one and protecting the sovereign and individual powers of the other.

ALBERT SHAW, New York, Chairman.
JOHN H. GRAY, Minnesota, Secretary.

DR. ALBERT SHAW: Mr. Chairman—On behalf of the Committee on Resolutions, I beg to move the adoption of the report which has just been read by the chairman of the subcommittee.

Motion seconded.

THE CHAIRMAN: The report of the committee is now open for discussion. May I ask that each speaker, as he rises, will state his name and the State from which he comes?

DR. SHAW: I, as the mover of the adoption of the report, have no statement whatsoever to make, and will await the discussion from the floor.

MR. EDWARD E. BESSETTE (International Typographical Union): Mr. Chairman, and gentlemen, there is one statement here that I can't go along with conscientiously, while I like the report as a whole, in the second section, where it says:

"Thus effectually refuting the impression that great wealth and large corporations were too powerful for the impartial execution of law."

Mr. Chairman, during the debate, since the opening of this morning's session, I have heard numerous speakers on the floor state that the majesty of the law was one of our standards that must be maintained. I fully agree with them, but when it comes to the impartial execution of the law, Mr. Chairman, I wish to deny that statement, from personal experiences.

Mr. Chairman, and gentlemen, when a workingman goes into the courts, when he is cited into court for the violation of an injunction secured by some of these big corporate interests, what chance has he got for his liberty? He is brought in on affidavits issued in the Court of Chancery. They issue an in-

junction citing a workingman to come into court. They prove Bill Jones, Dick Smith or somebody else did violate that injunction, and the man on trial does not know anything about what Bill Jones or Dick Smith did. They prove a case against some imaginary man or detective hired for the purpose, and they prove that the defendant, the workingman haled into court, lives in the same town with Bill Jones or Dick Smith, and hence he is a co-conspirator with him to violate the injunction. They deny that man his constitutional right of trial by jury, his constitutional right of trial for his liberty. Consequently the judges, sometimes elected by money paid into campaign funds, deny men the right of trial by jury, and the judge makes himself judge, sentencer and executioner; the judge puts that man into jail without the right of trial by jury. Have they put any trust officials into jail for anything of that kind? Not in this vicinity. Yesterday a gentleman from the State of Indiana got up and took a slam against organized labor. He said they were a very good thing, but they were a very bad thing——

THE CHAIRMAN: I am sorry to interrupt the gentleman, but his time is up.

MR. BESSETTE: I will say, Mr. Chairman, that I have stated my opinion, and I am glad of that opportunity, limited as it was.

A DELEGATE: Mr. Chairman, in perusing the resolutions presented to this convention, you will find that these commissioners are to be appointed to see that the workmen are justified in what they are doing. That is what we are up against. We should be reasonable with the workingman as well as the trusts.

MR. SAMUEL GOMPERS: I think that I am fully aware of the point that Delegate Bessette undertook to make, and made it well. It must be borne in mind, however, that among the matters with which this report deals is the petition to Congress for the appointment of a commission made up of representatives of capital, of labor and of the general public for the purpose of inquiring into and making reports upon certain questions of the kind Mr. Bessette raised, the denial of the right of trial by jury, the invoking of an extraordinary writ never intended to be applied to the cases to which he refers.

THE CHAIRMAN: The resolutions are still open for discussion.

MR. D. P. MARUM (Oklahoma): Mr. Chairman—In sup-

port of the adoption of that second clause of the resolution I wish to state again, representing Oklahoma, listening to what has taken place, as the gentleman from Chicago has said, it is impossible for that condition to exist in Oklahoma. In Oklahoma a man adjudged in contempt of court is entitled to a trial by jury unless the contempt is committed in the direct presence of the court.

THE CHAIRMAN: The resolutions are still open for discussion.

MR. MARCUS M. MARKS (New York): Mr. Chairman—I should like to ask whether there is not an error in printing in this connection, or whether it is the intention to have this phraseology stand, in sections 1, 2 and 3. First, labor organizations; second, farmers' organizations, and third, commercial organizations. Speaking of labor organizations, it says:

"National and local organizations of labor and their trade agreements with employers relating to wages, hours of labor and conditions of employment."

Does it not mean *in* their trade agreements? If it does not it is not impartial as compared with 2 and 3. Secondly, you, in these resolutions, put a specific condition which relates only to commercial organizations, which I am here to represent, when you say they must do nothing which is contrary to the public interest. How about the labor organizations on that point? How about the farmers' organizations? I do not know what the committee had in view, but it seems to me, if the public interests are to be considered that they should be considered in all three of these classes of our society; and particularly the phraseology of No. 1. which excludes national and local organizations altogether, unless you put the word *in* as a substitute for *and*, so that it shall read "*in* their trade agreements," with which I am heartily in accord; but when you say "and trade agreements," it makes it quite different.

THE CHAIRMAN: Mr. Williams will answer for the committee.

MR. TALCOTT WILLIAMS: Mr. Chairman—I do not look upon the precise point as to "in" and "and" as material or making any difference. You will notice what is proposed is that there are four classes which are to be referred to this commission. The first of these classes is the general working of labor organizations; the second is the general working of farmers' as-

sociations; the third relates to combinations and agreements of commercial and trade organizations.

All these are subject to the basis that they shall preserve individual initiative competition and free exercise of free contract in all business and industrial relations; but it is necessary, for reasons which will present and suggest themselves to my friend who has just spoken, where popular doubt exists, that there should be a distinction drawn in the expression of these resolutions, but it does not in the least follow that there is any distinction in the general lack of law on the subject. As my friend knows perfectly well, no court, no law would sanction —and if there were the Constitution would make it impossible— any attempt to make it any different with reference to any of the organizations of interest to the public, to men in labor organizations, to farmers or to business organizations. All are equal before the law, but where there has been through many years a constant agitation, some of it bad by selfish intent, and some of it pure and seeking the highest interests of the country, the latter in the overwhelming proportion, it is wise to guard against criticisms by drawing attention in the case of business and commercial agreements to the fact that public interest is to be considered in deciding what restraints of trade shall be permitted, and what restraints of trade shall be forbidden. And I hope this explanation that I make to my friend will be clear to him, that what we are doing is not drawing a law or giving a legal definition, but to meet public and popular definitions in expressing what, on the whole, should be done.

MR. MARKS: Mr. Chairman, I rise to say that the explanation is to me very satisfactory.

MR. THOMAS CARL SPELLING: Mr. Chairman, I do not rise to make any speech, but I do not feel that I should be satisfied if I did not enter my protest as an individual against one recommendation of the committee which has been mostly discussed here, especially by one side, and I suppose it is deemed the most important. That is that in case railroads cannot agree upon rates they shall go into effect merely if the Interstate Commerce Commission gives them its sanction. Gentlemen, I fear that you have not fully considered the full import and the consequence of such a law. The Interstate Commerce Commission now has absolutely no standard for the fixing of rates. It has fixed no rate, it has lowered no rate, and I have the

authority of Mr. Mather from the platform, and he is certainly well posted on this subject, it has no power in that respect, under the Hepburn Bill, which was lost sight of by this committee, except absolutely arbitrary power. I do not believe that it is safe, and I think it is extremely dangerous, to give to a commission the arbitrary power to ratify agreements made between the railroad monopolies of this country, made in secret for all that the resolution provides, merely if they secure the ratification of a small commission, a commission responsible to no one, using and exercising arbitrary power. There is one thing that might have been recommended in connection with that, and as a condition granting such extraordinary and dangerous power. That is to provide for a valuation of railroad property. These commissioners, in public utterances all over this country, have said that the railroads are not overcapitalized. Why do they say it and how do they reason it out? They simply point to earning power. What is that? The railroads have capitalized the element of sovereignty; they have capitalized the sovereignty of the people that has been granted to them, which constitutes two-thirds of their capitalization to-day. Now, gentlemen, is a commission, without responsibilities, to have more power than the Government of the United States, under the Constitution, more power than all the people together can exercise? Gentlemen, I simply object to it. I do not suppose what I say will have any influence, but I want to go on record as objecting to it.

MR. J. H. WALLACE (Iowa): Mr. Chairman, I have no objections to make, but this strikes me as rather humorous in this connection:

"Any proposed legislation should also include modification of the prohibition now existing upon combinations on the following subjects: 'National and local organizations of labor and their trade agreements with employers relating to wages, hours of labor and conditions of employment. Associations made up of farmers intended to secure a stable and equitable market for the products of the soil, free from fluctuations due to speculation.'"

The farmers of the West have been prosperous simply because in the very nature of things they cannot enter into any trust. No trust can possibly exist unless it can control raw material, and the raw material of the farmer is God's sunshine and rainfall, which are given to him year after year, according to the Sovereign Will of the Almighty, and that measures his pros-

perity. Hence there is no trust of the farmers, because they have not gone into the trusts and combinations, and another reason is that they cannot control competition. The farmer is in competition with all the world, and for that reason it is utterly impossible and foolish to talk about any farmers' combinations and farmers' trusts. The great blessing the Lord has given the farmer is that it has been made impossible for him to form a trust.

MR. M'KINLEY (United Brotherhood of Carpenters):—I do not wish to say anything in behalf of the organization I represent unless it be this: That after hearing the speeches of yesterday in regard to the action on the subject of organizations and trusts and the Sherman Anti-Trust Act, we, as an organization, have not been affected very much by it, because we have been closely living up to the law. In regard to the resolutions just proposed, I do not object to them in any way. I would like to have had them go a little further. I have had an idea all along during this conference that a very vital spot has not been touched, or scarcely touched, by any of the speakers. Whenever I hear such resolutions in regard to new laws and amendments to present laws there comes to my mind a few words I read some few years ago by an author of past years, I believe Charles Kingsley, who said, in discussing economic questions, that every new law was the parent of greater scandals; and I think conditions have not changed to-day from what they were at that time. Mr. Low made the remark during his address that what was wanted was a higher sense of honor among business men of the country. That, to my mind, came nearer the vital spot. Another gentleman from Ohio, night before last, I think, believed, or hoped that the day would come when we would have such a high sense of honor and duty among the business men of the country that there would be no need for such laws as those. He believed that such would in time come to be the condition, and indeed I hope it should. Now, as I said in the beginning, I would like it if the resolutions had gone further and made some provision or some effort to provide for a higher sense of honor on the part of the business men of this country.

MR. P. J. GUERIN (V. P. Franklin Typographical Society, Massachusetts): Gentlemen, I do not desire to detain you more than one-half minute. I am not out of sympathy with these resolutions, but it was explained by the chairman of the

committee, and this impression is made upon my mind, that there is a misapprehension in the public mind concerning certain provisions that ought to be made as to the use of the money of the corporations, and as to the public interests and the labor unions we should apply the same rule, and in order to get a uniform report we had to concede something in favor of one that we could not concede in favor of the other. To my mind there is a principle that we ought to look at very carefully. I do not think we should give the sanction of this conference to anything of this nature, that there is need to concede something to public prejudice in favor of one section of the country or one set of organizations over another. I think that is a misfortune, and that the same rules should apply to money, to public interests and to labor unions uniformly.

MR. TOMPKINS (North Carolina): There seems to be a misapprehension here. This report does not undertake to come to final conclusions on any of these subjects. If it accomplishes anything it will be the formation of a commission to take these subjects under further consideration, and perhaps give years to the solution of questions which the gentlemen think ought to be settled here now. Any one who does not think that the questions to go before the commission can be settled, according to their definitions, ought to get consolation out of the fact that under the commission they may be enlarged, diminished or otherwise considered, and that everybody will have ample time and opportunity to appear before the commission, with infinite opportunity to discuss the proposed new issues, enlargements and definitions. This report simply defines how this subject is to be pursued in the future, in an official manner and without injury to anybody. I do not think the apprehensions are justified. The subject may not be elaborate enough, but it need not concern them because it does provide that they shall have ample opportunity to take them up.

MR. MEREDITH (Virginia): On behalf of the committee I desire to say, in addition to what my friend from North Carolina has said, that this whole subject should be taken up by the most prudent and competent experts we have on the subject and be threshed out. The first clause on the subject of agreements, I would say to my friend, is, like everything else, subject to the action of future legislation, and whatever is necessary to safeguard anything about which he may have doubt, in regard to the secret promulgation of those rates, for instance,

he will have, as all other American citizens will have, an opportunity to express those views before any legislation takes place. As to my friend who is seated on the stage, we congratulate, and the committee feels like congratulating him and the agricultural interests for whom he spoke, that nature has protected them from trusts and combinations. But there is one class of farmers in this country who produce in wealth more than the combined production of any other two products, and those are the cotton planters of the South, who have realized within the last few years that if the effort to continue speculative prices upon their products is not stopped their market will be seriously imperiled. It is not against the legitimate purchase of futures in cotton or anything else required by the manufacturer, but it is to attack that speculative movement which destroys trade, commerce or anything else that this action is proposed.

MR. PRIEST (Bricklayers' Union): I want to say, Mr. Chairman, after listening to this discussion, that I have no objection to the resolutions, but being a tariff believer myself for some years, and I am to-day, I hope this commission will not overlook the people of the country. When I say the people of the country I mean organized and unorganized labor. But we do want, and we will be willing to concede to the organizations of other industries, and we will all be tariff believers, probably all Republicans, if you please—if you so desire, we care not what you call us, providing that you will leave the tariff law as high in the protection of the laborer, organized and unorganized, as you do against that which he produces. If you will say to the man who comes into our country—and the males I am speaking about, not the females, though we want all of them; we have lots of room for them—but all males who come into this country, whatever vocation they may follow, that they shall pay to the Government the same per cent on each dollar they earn at their vocation as the charge upon the product that is manufactured on the other side, into the general Government, until he becomes a citizen five years hence.

A DELEGATE: I think the gentlemen from New York and Massachusetts should not worry about this commission, because we have before us the history of the Industrial Commission, and I believe about the greatest thing that it did accomplish is the fact that its reports are now weighing down shelves in buildings in various parts of the United States. The gentleman from New York seemed agitated on that subject. I will call attention to the

fact that as Congress is now constituted, he need have but very little worry, because there are plenty of gentlemen in the Sixtieth Congress who would agree on a law to put me in jail because I did not agree with them on hours of work, and if I did agree with them they would put me in jail anyway; so I desire to say to the gentleman that he need have no fear of the bugaboo that a man might be able to write a trade agreement somewhere else in the country.

THE CHAIRMAN: Gentlemen, there remain ten minutes longer for discussion. The chair does not wish to deprive any one of an opportunity to speak.

The resolutions as presented by the chairman of the Committee on Resolutions were then put to a viva voce vote and unanimously adopted.

MR. MEAD (New York): Mr. Chairman, I desire to offer a resolution at this time, which I will read:

"Resolved that the Committee on Finance and Publication be charged with the duty of compiling, printing and distributing to the delegates, and to the organizations which they represent, a record of the proceedings of this convention.

"Provided, however, that the funds necessary to defray the expense thereof be contributed; and be it

"Resolved, That said committee is hereby authorized to receive funds for this purpose, and that the organizations represented in this body are invited to contribute thereto."

The resolution was unanimously adopted.

MR. MARCUS M. MARKS: Gentlemen, I propose that we give a rising vote of thanks to the Committee on Resolutions.

A rising vote of thanks was then tendered the Committee on Resolutions.

DR. ALBERT SHAW: In behalf of the committee, gentlemen, we appreciate very much your unanimous vote of thanks. The large committee last night suggested that possibly this conference would desire to have these resolutions presented to Congress in some manner, directly from this conference. Would it be your wish that the sub-committee should present these reso-

lutions to Congress, or are you satisfied to have them given to the press for publication, and in that way find their way to Congress and public opinion?

MR. MARUM (Oklahoma): I move that the chair appoint as a committee to present the resolutions to Congress the gentlemen who so ably performed the duties of a sub-committee of our general committee.

MR. MEAD: I would offer an amendment to the motion to include the presenting of the resolutions to the President of the United States.

MR. TOMPKINS (N. C.): I hope the gentleman from Oklahoma will accept the amendment, that the committee have the power to add to its number.

MR. GORE (D. C.): The amendment offered by Mr. Tompkins is the identical one I had in mind.

THE CHAIRMAN: The chair understands the proposition in its present shape, with the amendments offered and accepted by the mover to be that the chairman of this meeting is requested to appoint the sub-committee on resolutions as a committee to present the resolutions to the Congress and to the President of the United States, and that that committee have power to add to its number.

Motion carried.

THE CHAIRMAN: Acting in accordance with that request and those instructions, I take pleasure in naming the sub-committee to perform that duty.

MR. C. J. WOODBURY (Boston): Mr. Chairman, I move that the thanks of the conference be given to the presiding officers and to the secretary for the efficient manner in which they have attended to their respective duties.

MR. GORE: I think we should include the National Civic Federation, which inaugurated the entire movement.

MR. WOODBURY: I accept the amendment.

Motion carried and a rising vote of thanks was extended in accordance therewith.

Upon motion, the conference adjourned sine die.

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