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the Author*



TRUSTS AND PUBLIC WELFARE

BY
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AN ADDRESS

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ADDRESS

MR. PRESIDENT, LADIES AND GENTLEMEN—Usage often gives new meanings to old words. In this way a “trust” has come to mean a business organization or arrangement, which is designed to suppress competition in whole or in part. Monopolies of one sort or another now control many, if not most, of the necessities of life. A man’s shoes are of leather which has been made by a trust. His clothes, if of domestic goods, are of trust-made woolens, and are sewed with trust-made thread. He lights his fire with a match sold by a trust, and gets the morning light through a window made by the glass trust. His morning journal is printed on paper from the paper trust, with ink from the printing ink trust. His linen is starched with the product of the starch trust, and the clothes-line on which it hung in the laundry was manufactured by the cordage trust. The house is heated with coal from the anthracite coal trust, and supplied with water and gas from companies which have monopolies of the business. At the breakfast table his meat, sugar, salt, crackers, ice, vin-

egar, baking powder and flour are probably all from combinations that we know as trusts.

His house may be of brick from the pressed brick trust. Its nails and screws are from one trust and the paint contains lead and linseed oil from other trusts; the walls are decorated with the product of the wall paper trust. The plumbing and gas-fitting materials are alike from trusts. His glass, tin and silverware are the product of trusts, no less than his lamp oil, his bicycle and sewing machine.

Going down town he traverses a street paved by the asphalt trust, or, if he takes a car, the track is made by one trust, the trolley wire by another, and the car itself may even be built by one of the car trusts. The electrical machinery is furnished by an electrical trust.

At his office the steam-heating apparatus is furnished by a trust and the neighboring building is being constructed of steel manufactured by a trust. If he has children attending school, they use desks built by the school furniture trust, and study books printed by the school book trust. If he attends the play he probably finds the theater operated by a trust, or if he goes to church he may sit in a trust-made pew.

Who is wise enough to know the extent to which such combinations will take place? He would have been a bold man who, one year ago, would have predicted the formation of the steel trust, with its billion dollars of capital.

The hostility of the Anglo-Saxon race to monopoly, as set forth in the principles of the common law, is historic, and thoughtful men are filled with grave concern as to the influence of trusts upon public welfare.

The strongest ground taken by defenders of trusts is that they are a normal development—a business evolution, natural and inevitable. The advantages of trusts, it is said, are so great as to make such combinations a business necessity.

What evidence is offered to prove that their formation is a normal business development? The history of England and the United States affords no such proof. It has always been natural and necessary for men to form combinations and to unite their capital in order to carry on business. But with the exception of patents for inventions and of copyrights, monopoly has heretofore been deemed abnormal—not a healthy growth, but a dangerous disease.

The trust problem is not one of the ordinary and usual combinations of capital, but of the tendency for business to organize itself into monopolies. Nor is the present problem merely the combination of individuals for the purpose of monopoly, acting in their personal capacity. It is chiefly the formation of corporations which are to monopolize business. Unincorporated combinations of individuals are temporary and limited in their operation. Human life is too short for them to be very effective. Experience shows that these

voluntary monopoly agreements between individuals, invalid at common law, do not long endure. There is not a single monopoly trust in this country, of commanding importance, which is composed of individuals associated together in their private capacity, and independent of all corporate organization. In every instance of moment the monopoly is in the hands of a corporation.

The problem of monopoly in the hands of private individuals is very different from the problem of corporate monopoly, and may receive a quite different solution. If the state attempts to unduly limit the right of men to combine as individuals, as for instance in trade unions, it is confronted with embarrassing questions of personal freedom, of individual liberty. The state has the right to punish monopoly even by individuals, but considerations of public policy make it difficult to do this. Fortunately the evil of individual monopoly is so far unimportant, and contains within itself natural guarantees of self-correction.

But while much may justly be said in behalf of the natural right of men to combine as individuals, no one claims that men have a natural right to form a corporation. Never in the history of the race has the right to form a corporation been enumerated as one of the liberties of a citizen. Corporations can not be formed except by particular grant of authority from the state itself. Whether or not the government shall authorize

the formation of an artificial person called a corporation, is a matter to be determined by considerations of public welfare. The state may refuse the privilege entirely, or, if granted, it may be upon conditions.

Corporations were never intended for the creation of monopolies, but as instruments for the conduct of ordinary business as we knew it before the formation of trusts was begun.

If trusts are the normal result of ordinary corporation laws, why is it that no important corporate trusts have been organized in Indiana? Our factories, by the score, have been absorbed by monster corporate monopolies, but in not one instance, so far as I know, has the absorbing corporation been the creature of Indiana law.

If corporate trusts are a normal business evolution, how is it that the principle of evolution seems to work in the state of New Jersey, and not in the state of New York? Is there some magic power in the waters of the Hudson river which arrests and turns back this normal principle of business evolution? What is there in the climate and soil of New Jersey and Delaware which makes this normal business evolution flourish, while it languishes throughout all the other states of the Union? Is it possible that business in New Jersey has qualities and principles, has a nature and a substance different from business elsewhere? Still more singular is it that this so-called normal development of modern business

flourishes in New Jersey only so far as to form the corporation there, while its actual business, whether manufacturing or selling, mining, milling or transportation, is conducted outside of New Jersey.

Is this a normal development of business, for the industries of Indiana to resort to New Jersey and Delaware for corporate charters, and having there obtained grants of power and privilege which the state of Indiana denied to them, return here and conduct business as foreign corporations? This is a perversion and abuse of corporations.

But trust defenders say that if the so-called evolution has not worked in Indiana so as to secure the enactment of statutes authorizing the formation of trusts, this is not only our fault but our misfortune, and that Indiana might very well follow the example of New Jersey in this respect.

Well, why should we not authorize the formation of corporations with all the powers to do business which an individual possesses, as New Jersey does? Why should there be any restriction limiting the corporation to any particular line of business or to any particular place, or length of time for doing business? A man may engage in any and all kinds of business; why should not a corporation, an artificial person, have the same privileges of a natural person as in the New Jersey plan?

The answer is found in the very nature of corpora-

tions. Their root idea is an application to the state for permission to form the corporation and a grant by the state of that privilege.

If there were to be no restrictions upon corporations, no limits as to their powers, why should an application to the state be necessary at all? Why should not men be permitted to form corporations just as they are permitted to form partnerships, without statute, or charter, but simply by contract? If this were wise, does it not seem strange that the Anglo-Saxon race has always been wrong on this question, when a statute of two lines would have repealed the whole common law on the subject of corporations and have taken them out of the hands of legislatures forever?

Our fathers had fundamental reasons for the state's firm grasp upon the creation of corporations. A corporation member has important privileges which an individual does not have. He is exempt from personal liability. He may transfer his interest without interrupting the business. The concern does not cease with his death; his shares pass by descent or will without stopping the wheels of the factory, without closing the store, without balancing books. None of these special privileges apply to individuals. They must pay their debts with the last dollar of their property. They can with difficulty assign their interests in a going concern. Their financial failure suspends their business and death usually destroys it.

Since members of corporations have these business advantages not possessed by individuals generally, it is just and necessary that the state should in granting these extraordinary privileges, impose such conditions and limitations upon corporations as to prevent injury to the commonwealth. Men should be permitted to form business corporations, but only with powers so limited and restricted that no harm can be done by them to the people from whom the grant of privilege has been obtained. It is a matter of bargain between the state and the corporation, in which public interest is paramount. When the state of New Jersey grants these charters to corporations without limitations or restrictions upon their power, she creates a privileged class of persons, with special advantages not enjoyed by the people at large. Let us take as an illustration the charter of the steel trust.

The United States Steel Company is organized to manufacture iron, steel, manganese, coke, copper, lumber and other materials and all articles made from them in whole or in part; to own and use lands, containing coal, iron, manganese, stone, or other ores, or oil, and any woodlands or other lands. To mine or otherwise remove coal, ores, stone and other minerals and timber. To buy and sell these articles or any product composed of them in whole or in part. To construct bridges, buildings, machinery, ships, boats, engines, cars, railroads, docks, elevators, water works, gas works, elec-

tric works, viaducts, aqueducts, canals, and other means of transportation, except that the company shall not maintain any railroad or canal in New Jersey. Besides this, the corporation is to buy and sell trade-marks, patents, inventions, to engage in any other manufacturing, mining, construction or transportation business of any kind; to buy and sell stocks, bonds, rights and property of every kind, but not to exercise the power of eminent domain in New Jersey. It may conduct its business in other states and territories, in foreign countries, and keep its books outside the state of New Jersey. Finally, the charter provides as follows: "Without in any particular limiting any of the objects and powers of the corporation, it is hereby expressly declared * * * that the company shall have power to do any and all other acts and things and to exercise any and all of the powers which a copartnership or natural person could do and exercise." Its life is to be perpetual, its capital is unlimited.

As far as New Jersey could do so, she has given this monster corporation the corporate power to acquire all industries in this country.

Such powers are an absolute abuse of the corporation idea. The state of New Jersey has imposed no restrictions upon this imperial grant of special privileges to the members of the United States Steel Company. The whole people of the United States are put at a disadvantage as against this and other trusts because their

members have special privileges obtained from the government, which the people at large do not possess.

Among these the greatest is the privilege of monopoly. While we do not read in this charter the express grant of power to form an industrial monopoly, the grant is there just the same, because without such charter granted by the state, no man or men, acting as individuals or partners, can organize or maintain such a monopoly as that of the steel trust.

Some one may ask, since corporation laws are general, why does not every one form his business into a corporation and obtain the same privileges which their members have? What reason is there to say that members of corporations have any peculiar privilege since the laws are open to all to form corporations if they like? The answer is that a large part of the business of society can not be organized into corporations. The great majority of men earn their living by daily toil. They have no other capital and unfortunately this can not be organized into a corporation. They can not get the privileges of membership in a corporation which exempt them from personal liability for debt. Laborers, small tradesmen, mechanics, small farmers, must pay their debts with their last dollar. When the steel trust buys material or borrows money, its members have no liability for the debt. But when the day laborer buys his raw material, the food, clothing and shelter which sustain life and give him strength for labor, he

can not buy without being responsible to the corner grocery for every dollar. He backs his obligation with his entire property, present or future, over and above his \$600 exemption, if he has one.

But the trust defenders say: Let the people buy stock in the trusts, and get the benefit of these special privileges. Such advice is but mockery. What proportion of the people have the means to buy? Mechanics, small tradesmen and farmers—in a word, the vast majority of people, have no free capital to invest. On the contrary, the very effect of monopoly is to still further decrease the purchasing power of the people.

The defenders of trusts say that the *economic* advantages of the trust are so great that the public benefit outweighs all other considerations. They say monopoly avoids the wastes of competition and enables production to take place at lower cost. This is true of some trusts, but not of all. In many cases, the operating expenses of trusts are so high, on account of extravagant salaries and bad management, that the cost of production is greater than it was with individual proprietors. The public have no effective guaranty of cheaper production.

But assuming that there are trusts which do produce more economically than competitive corporations; assuming that the steel trust, owning both iron and coal mines, both steamships and railroads, as well as mills, furnaces and coke ovens, does thereby reduce the cost

of manufacture, does such a fact justify the commonwealth in licensing the monopoly? *That depends on whether the price to the consumer is raised or lowered.* Some men believe trusts permanently reduce prices to the public. Is it not strange for any sensible man to believe that monopoly makes lower prices than competition? Are patented articles sold at lower prices than if no monopoly had been granted? Is it not true that when patents expire the price of patented articles always falls unless supported by a new monopoly? The very object of granting patents is to secure to inventors and promoters increased prices by preventing competition. It would seem that the plainest common sense would teach every man that the effect of monopoly is usually an increase of price to the consumer, and not a decrease of price. I admit there are limitations even to monopoly, beyond which prices can not be raised. If the price is put too high the public will not purchase, or will, if possible, use a cheaper substitute. But these natural limitations also apply to patented articles, and we know by experience that articles protected by patents do bring higher prices on account of the monopoly, notwithstanding there are some natural limitations.

We are not left to theory. The effect of trusts on prices has been investigated by Professor Jenks, of Cornell University. His tables of prices show that in the cases of sugar, oil, tinplate, steel and whiskey, since

the organization of those trusts, the margin between the cost of the raw material and the selling price to the consumer has generally been increased. The only important exceptions are where competition has temporarily arisen, as in the case of the Arbuckle sugar refinery.

The question in which the public is interested is not whether a trust can produce more cheaply than it could if there were no monopoly, but what becomes of the fund arising from the savings of cheaper production? Will this fund be taken by the corporation itself for the benefit of its stockholders, or will it go to employes in the form of higher wages, or will it go to the people in the form of reduced prices?

Professor Jenks says: "The actual disposition of the fund will be arranged by struggle." (The Trust Problem, p. 180.)* And so it will be. The trust will keep all of its profits if it can. If the labor unions are strong enough to compel the trust to divide with them, then a part of the fund will go to increased wages, and not otherwise. But the only hope of the general public to secure lower prices is conceded by Professor Jenks to be actual or threatened competition. If, after all, the economic advantages of the trust are not enjoyed by the general public unless as a result of actual or threatened competition, what advantage has the public

* "How Trusts Affect Prices." North American Review, June, 1900.

gained by permitting the formation of the trust? We have authorized a monopoly to be created because we were told it would benefit the people by cheapening production, but now it turns out we get higher and not lower prices. Our only defense against extortion by the monopoly is our old friend, actual or threatened competition. But we have made it hard, perhaps impossible, to secure competition, which before the monopoly trust was organized was to be had readily. Few dare engage in the battle. The trust, with its mighty resources, entrenched behind a monopoly of the market, is enabled to make ruinously low prices, to incur intentional losses, in order to destroy competition. We know many cases where the bravest competitors have been forced to surrender to the monopoly, and when competition was destroyed, high prices to the consumer once more prevailed.

What fear of competition, actual or threatened, will hold those trusts in check, which monopolize the supply of raw materials? If the copper trust owns all discovered supplies of copper ore, how can we have competition in the manufacture of copper? If the Standard Oil Company monopolizes every oil field as soon as discovered, how is there to be competition in the collection, refining and sale of oil?

Economy of production is of no benefit to the public if it is to be exploited by a monopoly, unless, indeed, the monopoly belongs to the state. The argument in

defense of trusts can not stop short of state socialism, in which the whole people not merely grant the license for monopoly, but the whole people reap the profits of monopoly. All modern socialists rejoice in the formation of trusts as tending toward socialism. Should not conservative business men be warned by this fact?

A popular orator in the last campaign was reported as saying that the invention of trusts resembles the invention of labor-saving machinery, both being for the purpose of saving unnecessary labor. He declared that a self-binding harvester was a mechanical trust.

This is a good type of the argument used by the defenders of trusts. It is true that both trusts and mechanical inventions often save labor, but here the resemblance ends. A monopoly trust, being the only buyer, usually forces down the price of raw materials, but labor-saving machines increase the price of raw materials by increasing the demand for them. On the other hand, a monopoly trust increases the price to the consumer, whereas a labor-saving machine reduces prices to the public because it increases the supply of articles to be sold. This same orator declared that there were good trusts and bad trusts, just as there were good men and bad men. In my judgment, whoever affirms that industrial monopolies are sometimes good for us, affirms a contradiction. It is as if he were to say: There are good evils and bad evils in the world.

It is said by their defenders that trusts contain within themselves the seeds of their own decay and dissolution. But I take it that this means simply that they are overcapitalized or badly managed, and that they will fail and their securities be partially wiped out. It by no means appears that the financial failure of a trust will destroy its unity. Railroads have failed innumerable times, securities have been wiped out, receivers have been appointed and mortgages foreclosed. Yet the result of railway failure and reorganization has by no means been the disintegration of great railroad systems. On the contrary, the railway consolidations always emerge from a failure a consolidated unit, larger and healthier than before the failure. So with industrial trusts. In 1893 the cordage trust and the cotton oil trust both failed, passed into the hands of receivers, and were reorganized as trusts, just as before the failure. Monopoly was just as much of an object to the reorganizers as to the original promoters. The business did not fall back into the hands of individual proprietors throughout the country. It is much easier to reorganize an industry as a unit which has once been consolidated than it was to make the original consolidation.

Let us turn now to consider the objections which may fairly and without passion be made to that public policy by which the state gives authority, in granting

corporation charters, for monopoly trusts to be formed.

To my mind the supreme danger of trusts lies in the concentrated control of industry and capital. This centralization of power is, I think, the root of the evil.

In all ages there have been efforts on the part of a few to consolidate and appropriate power to themselves. It makes but little difference under what guise this concentration of power is hidden. In any case the few rule the many. Closely connected with the concentration of power has always been the concentration of the control of property. Of this the greatest illustration in history is the rise of the feudal system. A thousand years ago most of the wealth of Europe consisted of land and improvements thereon. There was but little personal property in existence. In those unsettled times society was disorganized and had no leadership. The private citizen was continually exposed to danger of robbery and violence. Then it was that men, sometimes willingly, at other times unwillingly, surrendered the title to their lands to some overlord or landlord. This lord, from his castle on the hill, exercised control over all the lands of his tenants, requiring from them military services, and financial assistance. The tenants held their lands on the condition of complying with these obligations. Thus it was that the concentration of the control of land and its allied industries in the hands of the feudal lord gave to society a comparatively settled and orderly

aspect. The lord gave protection to his tenants in return for their surrender of control over their property. But in securing protection and a settled order of society, men had lost their freedom, never to regain it unless through centuries of revolution.

In these days land is not the only property. There has come into existence a vast mass of other wealth, the control of which gives quite as much power to its masters as did the control of land to the feudal lord.

For the first time men are face to face with the problem of the concentrated control of personal property and of its allied industries. Thus the steel trust has twenty-one directors, who absolutely control the company, with over a billion dollars of capital, which, according to Russell Sage, amounts to one-seventieth of the wealth of the United States. We may search in vain to find a greater concentration of power in the hands of a few men than we have here. No feudal lord ever equaled the president of the steel trust in his power over the property and industry of men.

It is said that the bonds and stock of the steel trust may belong to a vast number of people. So, also, did the land of Europe, under the feudal system. It was the centralized control of land which gave the feudal lord such power, and it is the centralized control of industry and of its invested capital in a few directors which is at once the power and danger of the trust.

The concentration of property is a different thing

from the concentration of the control of property. We sometimes regard with apprehension the concentration of property in the hands of extremely rich individuals. We are not now concerned with that question, except to say that the greatest fortunes are the result of corporate monopolies. If we were to make corporate monopoly impossible, if we were to stop giving public grants of corporation privileges, in such form as to authorize monopoly, we would arrest the growth of the majority of vast individual fortunes. But the evil of accumulation of vast properties in the hands of individuals is of inferior importance to the concentration of the control of property in corporations. By means of corporations with unlimited power to issue bonds and stocks, property of far greater value than any individual possesses is drawn to it and placed under the permanent control of its executive officers. Men die, their estates are divided or wasted, but the trust corporation is perpetual. Individual fortunes disappear, but the concentrated control of capital in the hands of a monster monopoly corporation continues to be exercised by a few directors from generation to generation. As long as the monopoly is maintained, the control of industry and of capital invested therein continues unbroken, and is no more affected by a change in the personnel of the directorate than is Russian despotism affected by the death of a czar. As in the case of the feudal system, so in the trust system the property

and industry of millions of people are controlled, for good or evil, by the few men at the head of the corporation.

A stockholder in the steel trust has no control over the affairs of the corporation, except to vote for one-third of the directors each year. At the annual stockholders' meeting of the United States Steel Company, what will govern stockholders in the selection of directors? They will select men whom they believe will make the most money for the corporation, who are best fitted to keep down expenses and to raise the price of goods; to secure advantages from government in the form of tariffs and franchises and to resist oppressive taxation, and unfriendly legislation in any state or country. These directors will not be chosen for their benevolence. If any director should be known to have advocated raising the price to be paid for raw material, or reducing the price of goods to the public out of motives of benevolence, and at the expense of profits of the corporation, he would be justly criticised. He would not be re-elected to office because the stockholders would say to him: "You are here charged with a trust for business purposes only! You are not to exercise benevolence at our expense; you may give away your own money if you like, but the profits of the corporation may not be disposed of in that manner."

The injury to the public is not confined to the mere matter of price. I can produce a hundred witnesses in

this city who have had dealings with trusts, to the effect that even if the monopoly price can be endured, the arbitrary methods of the monopolist in respect to time of delivery of goods, route by which goods are shipped, correction of mistakes in bills, refusal to fill subsequent orders until all prior disputes are settled according to the monopolist's view, the preference of one customer over another, even to the latter's financial ruin, and in a thousand other ways, inflict injury upon the public.

Take the case of the employe. If the laboring man expects trusts to pay higher wages because they make more money, let him not be deceived. If a trust have an industrial monopoly, partial or complete, if it is the only employer of certain kinds of skilled labor, how can the employe reasonably expect a benevolent raise of wages from the monopoly? When two employers run after one man, wages rise, and when two men run after one employer, wages fall. But what happens if all men in any industry are forced to run after a single employer? The formation of trusts means that the laboring men of this country must make organizations compared to which all previous trade unions are but insignificant. The consolidated strike is the shadow of the consolidated trust.

The danger to the laboring man is not confined to the subject of wages. It extends to all sorts of exactions, injustice and oppression. It means that a man

discharged by the monopoly can not go to another employer for work in which he is skilled. There is no other employer. Competition among employers has greatly helped labor, but when that help is withdrawn the trade union is the only protection left for employees.

But the trade union is not a complete protection to labor and never can be. It may prevent competition between laborers in the sale of their labor, but it never can prevent competition between laborers in the purchase of their individual supplies. Nature makes every man a competitor with every other man in the purchase of the necessities of life. The competition between men in the purchase of food, clothing, shelter and the like, raises and sustains the prices of all necessities. On the other hand, the steel trust, the copper trust and the Standard Oil Company not only suppress competition in the sale of their products, but, by monopolizing the supply of raw material, by making themselves the only purchasers of raw materials, they are relieved of competition in their purchases.

While the trust can secure a monopoly and force down the price of raw material, which it purchases, labor unions have no such monopoly of life's necessities and always force up the price by competitive demand. Hence the trust and its members have an inevitable advantage over united labor, and that advantage is the result of the corporation charter, granted by the state.

The case of the farmer is even more distressing. He is by turns a seller of goods and a purchaser of supplies. When he sells his corn, wheat, hogs or sugar, competition with other sellers hurts him by keeping the price of these articles down. But on the other hand, free competition among buyers helps him, tending to raise the price, so that, under the law of nature, a rough justice is done him. If a monopoly be formed so as to become the only buyer, the farmer is left open to that competition from other sellers, which hurts him, but is deprived of the benefit of competition among buyers because the monopoly is the only purchaser. Again, when the farmer comes to buy his supplies, his agricultural implements, his nails, his sugar and coffee, he is hurt by competition with other buyers, which tends to raise the price of these articles, but under the operation of free natural law, he is helped by competition among sellers which tends to keep the price down. But if a monopoly is formed, the farmer is left to suffer from competition with other buyers of the things which he needs, but he is deprived of the benefit of competition among sellers, which would otherwise help him, because the monopoly is the only seller. If monopoly could relieve the farmer of all competition, both the kind which hurts and the kind which helps, the situation would be quite different. But he is left to suffer all the injuries of competition and is deprived of all of its benefits, so that when the state interferes with

the free course of natural law by creating a corporation with powers which make it capable of acquiring a monopoly, the state thereby withdraws a few favorite people, who are members of the monopoly, from the law of competition, but leaves the vast mass of mankind, who are necessarily outside the monopoly, subject to all the burdens, dangers and wastes of competition, and deprived of all of its benefits. The whole theory of trusts, the whole doctrine of the advantage of suppressing competition, is against nature. It is an attempt to relieve a few favorite members of society from the burdens, risk and waste of competition at the expense of the rest of mankind.

Mr. Dill, the greatest legal authority in the United States on the organization of monopoly trusts, makes an important witness with respect to the danger of the monopolistic control of capital in the hands of a few directors. He says:

"If it be possible for any one man or body of men controlling as officers any industrial corporation, to close any factory or number of factories, to throw out of employment, either temporarily or permanently, large numbers of men; if it be possible that this may be done for the mere purpose of stock speculation, then it certainly follows that there is just cause for fearing grave disaffection."*

*"Corporations and Public Welfare," p. 110. New York, 1900.

Our memories are fresh with respect to the case of one trust of which the president and executive committee reduced the price of the manufactured article one-third, and closed down the factories, in order to break the price of the stock; it fell to a ruinous figure, enabling the persons who promoted that infamous transaction to buy it at far below value and make millions of dollars.

Again the consolidated control of monopolized industries in the hands of a few men gives those men a dangerous power with respect to government. Trust managers have such vast revenues at their disposal as to give them alarming influence by the use of money in the choice of candidates for office. Political parties need money, which is often difficult to raise. Which is the more likely to be chosen as a method for raising funds, the collection of small contributions from the masses of the party, with its trouble, its notoriety, its inadequate results, or the offer by one man of a single mammoth private contribution, adequate to carry on the campaign? Will this not affect the policy of the successful party? Will not monopoly trusts, with their enormous resources, their thousands of employes, more than ever dependent because of the growth of monopoly, exercise an unwholesome influence upon elections? Will not orders be issued from headquarters to defeat candidates who have shown a disposition to oppose trusts? May not this influence become suffi-

ciently great to affect the choice of members of the judiciary, that last bulwark of popular rights and free institutions?

Nor are we safer with regard to the influence of trusts upon government in respect to our foreign relations. The South African war is not free from the suspicion that it was instigated by the small group of capitalists controlling the diamond fields and gold mines of the Transvaal. May not trusts acquire a similar influence in this country? It was an unfortunate sequence of events which recently took place at Washington. The administration imposed a countervailing duty of 20 per cent. upon Russian beet sugar which came in competition with the product of the sugar trust. On the 18th day of February, 1901, the Russian government retaliated by imposing 50 per cent. duty on American steel, which was a blow at the steel trust. On the 19th day of February our government notified China that under no circumstances should China enter into any secret treaty with other nations at the present time. It was announced from Washington that this applied to all nations, but it has since developed that the only secret treaty which was then pending was the so-called Manchurian treaty with Russia. We have no just reason for supposing that the note to China was actually sent, either in whole or in part, as a retaliation upon Russia for her attack on our steel trust, but the incident is at least suggestive of the

influence which a few men at the head of billion-dollar trusts might exercise in respect to our foreign affairs.

In answer to those who think we are compelled to rely upon the voluntary benevolence of managers of monopoly trusts, to exercise their great power in the interest of the whole people, I venture to quote from one of General Harrison's latest public utterances, made, it is true, in discussing another subject, but applicable as a general principle to popular government. He said :

"The man whose protection from wrong rests wholly upon the benevolence of another man or of a congress, is a slave—a man without rights."

What, then, shall we do?

The anti-trust laws passed by congress and various legislatures, which prohibit the formation of combinations and monopolies, and punish the same with fine and imprisonment, are largely failures, because these laws have simply driven combinations of individuals into single corporations. The anti-pooling provisions of the interstate commerce law and the federal anti-trust law have done more to precipitate railroad consolidations than any other one thing in the history of the business. The attempted remedy made the evil worse than before. Better to have an illegal railway pool, as at common law, with occasional rate wars, than for railroad owners to form giant continental monopoly corporations.

Again, these laws have been too broad. They have interfered with the liberty of the individual. They have not distinguished between permanent corporate monopoly and temporary individual monopoly. Their punishments are too heavy for small monopolists and too light for great ones. It is foolish to apply the same remedy to a local combination of ice dealers or druggists or grocers, and to the great steel trust. We can not catch whales and minnows with the same net ; bird shot will not do for bears, nor cannon balls for quails. Combinations of individuals, unconnected with corporations, are small evils. Men die, partnerships dissolve, dealers fall out with each other, but the corporate monopoly continues in spite of the shortness of human life, in spite of changes in its membership, to carry on its single policy of suppressing competition. We need not subject to fine and imprisonment every citizen who makes an invalid agreement with his neighbor about the price of goods, labor or rent. It would be sufficient to fix on him a civil liability for damages at suit of injured parties.

Any legislation against trusts must not only be directed against the evil, but it must be right and just in itself. We must not do wrong that good may come of it. A law which suppresses trusts, but at the same time does injustice to other persons whose acts fall within its scope, is a bad law. On the other hand, a law to prevent monopoly is greatly strengthened if we find

that the law will produce good results in its operation, independently of the trust question.

Before we begin to legislate we should adopt for our guidance some general principle, the correctness of which has been demonstrated by experience. The trust evil does not require the discovery of any new principle, nor a return to arbitrary methods of government. The remedy is naturally suggested by the nature of the disease. It is the application of the old rule *that grants of power to private corporations must be restricted so that they shall not become injurious to the commonwealth*. The state has exclusive control over the formation of corporations, and the powers which are granted to them. Public welfare requires restrictions upon corporations which will prevent their perversion to the base interests of monopoly. The courts of England and America have always given a strict construction to corporation charters, and have resolutely defended the doctrine that corporations can exercise only the powers granted to them, and that it is exclusively a question of public policy as to what powers shall be granted to a corporation. The growth of trusts has not arisen from any lack of courage or deviation from principle on the part of our courts. It is the legislatures which are in fault. Grants of unrestricted corporate power under which the trusts are organized, make the doctrine of *ultra vires* useless.

Time forbids an extended discussion of the subject, but a few examples of what might be done are offered:

1. In the first place the issue of stock and bonds by Indiana corporations is authorized without limit and without restriction. Every kind of corporation is permitted to issue any quantity of bonds and any quantity of stock and to sell them at any discount which it may see fit. In organizing an Indiana corporation, whether for railroad, manufacturing, mining or mercantile business, you may turn the Atlantic ocean into its securities, and all by the express permission of the people of Indiana.

The evil of stock watering is notorious, and has always one object—to make the stock sell better. If corporations were capitalized only on the cash invested, promoters would have to offer stock at a premium. This would put the public on its guard, and the stuff would not sell.

The power to force water into issues of stocks and bonds plays a more important part in the organization of monopoly trusts than in the ordinary corporation. The business of forming trusts, of uniting widely separated establishments in the interest of monopoly, is a profession. One firm in Chicago is said to have promoted twenty-nine distinct trusts and to have made \$20,000,000 out of the business in the last eight years. The secret is that in consolidating properties so as to form a trust, stocks and bonds are issued, not as

against actual cash value, but as against the possible earning power of the corporation. This fictitious increase in securities provides a fund out of which the promoter is able to take a large amount for himself as payment for his exertions, and this promoter's profit is the immediate producing cause of most of the monopoly trusts. Furthermore, the trust usually requires a market for its securities. Its formation is the work of the financier. If no water were admitted to its bonds and stock, they would sell less readily, if at all. Banks, trust companies and capitalists generally would no longer underwrite trust securities, and the formation of trusts would undergo a serious check.

I believe that whenever a corporation desires to issue stock or bonds in payment for property or services, instead of cash, either directly or indirectly, it should be required to make a showing to the circuit court of the county in which it is located, asking for authority so to do, and the amount of securities authorized by the court to be issued in payment for the property or services described ought not to exceed their fair cash value.

If stockholders of corporations were subjected to a liability over and above their stock to an amount equal to the par value, as in the case of national banks, this would have an important bearing on the financiering of trusts. It would operate to check the sale of stocks as well as to make banks cautious in lending on the

same as collateral, and would powerfully restrain the watering of stocks and bonds.

2. Another illustration. The consolidation of corporations, and the sale or lease of their entire business or property, should have the strictest supervision by the state. It should not be permitted except on application to the circuit court, and after showing to the court's satisfaction that such consolidation, sale or lease will not tend to promote monopoly. When the state of Indiana grants a charter to a manufacturing corporation, it is entirely proper to require that the articles state the place where the factory is to be located. The removal of the factory to another place may be forbidden until it has been shown to the satisfaction of the circuit court that such a removal will not aid in the establishment of monopoly, and is not made for that purpose. Manufacturing companies should not have the unrestricted power to sell out their entire plant to foreign corporations and go out of business. Public welfare is not promoted by permitting our incorporated industries to abandon their corporation here and sell out to foreign monopolies. The railroads of this state have never had the power to sell or lease their properties. If railroads can get along for half a century without it, manufacturing, mining and mercantile corporations do not need it. There is a natural reason inherent in the railroad business for the consolidation of interstate railroads so as to afford the

continuous handling of freight and passengers, which does not exist in mining, manufacturing and mercantile operations.

There is no sound reason why public welfare of this commonwealth is promoted by permitting factories of Indiana to be sold to New Jersey corporations, which own similar factories in other states. There is no economic or political reason why gas works in a score of cities and a dozen states should be permitted to sell out to one New Jersey corporation. Nor should it be lawful for the stock of domestic corporations to be transferred to any person or corporation, with the object or result of forming a monopoly.

There are domestic corporations, such as railroads, telegraphs, telephones, which possess natural monopolies—that is, monopolies arising from the nature of the business in which they are engaged. As to these the state has two distinct and in fact opposite means of control. Of course, one is the resort to competition, which is nature's cure for monopoly. Many railroads in this state have been built for the purpose of resisting unreasonable monopoly, and the local aid railroad laws on the statute books of this state are valuable if for no other purpose, because they are a continual threat of competition if existing monopolies become burdensome. So in the telephone business. The exactions of the Bell telephone monopoly have been met by resistance in this state through the formation of in-

dependent competing companies which have reduced the prices of telephones. People may often help themselves if they encourage and defend new competitors of an old monopoly as long as they show themselves worthy of public support.

But competition can not always be had as a protection against natural monopoly. To fit that case the state has one beneficent power—the power to regulate prices; I mean the power of the state to regulate railroad fares, telephone charges, telegraph tolls, water rentals, and the like. This power, when exercised, is hostile to competition because as profits decline, competition is less likely to enter the business. Legislatures and city councils are not properly constituted to directly exercise the power of regulating these prices to the public, but a state commission of officers chosen for the particular duty, might, after studying the facts of any particular case, be safely trusted with the power to reasonably regulate prices, so as to protect the public from the evils of natural monopoly.

But whatever evils flourish in the corporations of Indiana, our laws have not been attractive to monopolists. They have sought the marshes of New Jersey as the place best adapted for the birth and rearing of the beasts of monopoly. We should, therefore, not only rewrite the laws of Indiana relating to domestic corporations, but we should impose terms upon foreign corporations doing business here. The interests of the

people demand that no foreign corporation shall be admitted to do business in this state which does not conduct its principal business in the state of its creation. It is an evil for New Jersey to set up corporations which are never intended to do business in the state of New Jersey. Comity between the states does not go to the extent that New Jersey shall be permitted to supply us with corporations and determine what powers they are to possess.

No foreign corporation should be permitted to issue bonds or stock against Indiana property except to an amount equal to its fair cash value, and such corporations should be restricted in the state of Indiana to one general line of business. Mining, manufacturing and transportation should be in the hands of separate concerns. If a foreign corporation acquires or holds a manufacturing plant in this state, its sale, removal, consolidation or lease should be permitted only after application has been made to the circuit court of the county, and it has been shown to the court that it is not done to assist a monopoly.

The federal government possesses constitutional powers of the greatest importance for suppression of the trust evil. It has been abundantly demonstrated that a great factor in the growth of monopoly and the suppression of competition is the preference which railroads give to certain customers over their rivals. The federal govern-

ment has power to extinguish this injustice, just as much as the state has the power to prevent murder. The interstate commerce law has proved to be defective, but there is no valid excuse for the adjournment of any congress without making scientific improvements in that law. If it were made impossible for the Standard Oil Company or the steel trust, and similar corporations, by threats, bribes or other means, to secure preferences over others engaged in the same business, one of the principal sources of the trust evil would be dried up at its fountain head. Again, the interstate commerce commission should be given power to fix railroad rates whenever it is shown that the corporation is abusing the power which the people have given it to fix its own rates. I do not think that the railroads and other natural monopolies should belong to the state, but I do believe that they should receive scientific regulation and control. Finally, if the present constitutional powers of congress are inadequate, I favor an amendment to the federal constitution, giving congress authority to regulate corporations which do business or whose products are manufactured or used outside of the state of their creation, so far as may be necessary to

For myself, I am not unfriendly to corporations. I have no sympathy with that kind of prejudice against corporations which manifests itself in jury rooms, in speeches of demagogical candidates for public office, and in legislative bills introduced to bleed corporations.

Therefore, it is that I feel more free to speak in favor of a reform of corporation law. If the corporation laws of this country are not reformed and rewritten by conservative men who are friendly to capital and yet consider the public interest to be paramount, they may be rewritten by radicals.

Let us attack this disease by conservative, just and scientific methods. Let us neither belittle the evil nor fail in our respect to the rights of property. The task is difficult, but unless it can be accomplished, unless the drift of capital toward concentrated control can be arrested so as to check the growth of monopoly, the time may come when the people will break through all the tangled technicalities of law which have been woven about them, and assert once more the natural and inalienable rights of man as a creature of God. Let us avoid such a crisis, because history has for it but a single name, and that name is *Revolution*.

YOUNG GENTLEMEN OF THE CLASS OF 1901 OF THE INDIANA LAW SCHOOL—You have worthily completed the course of study prescribed for its students by the Indiana Law School. You have been faithfully instructed in the principles of the science and the arts of the practice of law. You have devoted your energies to preparing yourselves for a noble profession, to the end that you may be able to give sound advice to your clients, and may worthily present their causes in the courts of your country.

The thought which I would leave with you in these closing hours is that a lawyer is chargeable, not only with private duties toward his clients, but with public duties toward the commonwealth. It is true that every citizen owes a duty to the state, but lawyers are laid under peculiar responsibilities.

Popular government can be preserved and protected only through frequent law reforms. "A legislature," said Ralph Waldo Emerson, "is a standing insurrection." And so, in a sense, it is. Our system of government provides for constant reform and improvement in the systems of laws under which we live. My observation has taught me that successful law reforms can, for the most part, be carried out only under the leadership of lawyers. Everybody can recognize an existing evil, but it is the lawyer alone who has sufficient technical knowledge to know where existing laws are defective. It is the lawyer who alone has sufficient skill to formulate a new statute, apt and effective for the purpose for which it is designed. Hence it is that if lawyers are slothful and indifferent to public duty, if they permit themselves to be restrained and embarrassed in the performance of public duty by their private and professional relations, the cause of reform, no matter how urgent, can not and will not go forward.

In this parting hour I wish to awaken in you a sense of your high responsibilities in your relations to public questions. You know as well as I do that the people

at large do not understand the intricacies of corporation laws. If evils grow up through unjust, imperfect and unscientific statutes relating to the formation of corporations, the people at large are not skilled so as to formulate and agree upon the necessary remedies. They must look to an honest, able and fearless bar for the proposal of scientific remedies for existing evils. Should trusts be permitted to grow to such proportions as to inflict real and lasting injury upon the people of this republic, the responsibility will rest nowhere so heavily as upon the members of the legal profession. All existing corporation laws have been drafted by lawyers and their imperfections must be corrected by lawyers.

On the other hand, while our citizens generally have not the requisite technical skill to formulate needed legislation, they have sound judgment with regard to any proposition when it has once been put in shape and submitted to them. The hope of the republic lies largely in the fact that when expert and professional minds have wrought out remedial legislation and have laid it before the people, the popular judgment, after thorough discussion, is sound. The history of the Indiana legislature in the last fifteen years, the great reforms which it has made in our election and tax laws, and in city, county and township government, show how readily sound propositions of legal reform receive the support of good men.

In a surprisingly short time the members of this class will find themselves members of the legislature, attorneys for counties and townships, judges of their circuits, or holding other positions of responsibility where they can have a direct and important influence upon the laws of their state. The cause of reform must always be committed to young men, and particularly to young lawyers. Your elders at the bar have, to a large extent, lost enthusiasm for that kind of public service, of which I am speaking. Moreover, they are often embarrassed and restrained by their clientage from participating in popular legal reforms. With you it is different; your careers are yet to be made, your abilities are untried, your enthusiasm unquenched and you are unembarrassed by an interested clientage. The world is before you and the harvest is white. Let me urge upon you, not that you think less of your private professional duties, but that you think more of your public duties. It is from you, and such as you, that the trust problem must receive its solution.

As you go forth to-night to the larger duties of life, permit me to wish you health, happiness and success in every good undertaking.