

# THE CONTROL OF TRUSTS

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## Preface.

This small work has incorporated into itself one that is older and still smaller. It is a joint production, in that one of its two authors has contributed the earlier work, the other has contributed most of the new material, and both have participated in the revisions demanded by rapid and recent changes in the business world.

The purpose of the work is entirely constructive, since it advocates a positive policy for controlling trusts. It aims to show that certain measures having this end in view are in harmony with modern tendencies and are well within the power of the legislator and the executive official, and that they give promise of ensuring what the public needs, namely protection against abnormal prices, continued increase in production and improvement in the conditions of labor.

Most of the measures proposed for the regulation of trusts fall into one or the other of two classes, of which the first consists of those which would merely destroy monopoly and make competition free, while the other includes measures that would relinquish such attempts, surrender to the principle of monopoly and protect the public by regulating prices through official bodies. This plan means trying to do in industry what we have partially succeeded in doing in transportation.

This book advocates a third course; namely, regulating competition. It would cut off entirely an abnormal type of it by forbidding and repressing the cutthroat operations by which the trusts often crush their rivals. Further, it would remove the special inducement to such measures and thus create a condition in which competition of a tolerant kind would rule business life. It gives reasons for believing that this result can be reached with no disruption of the business system.

When the first edition of this work was issued, so called *potential* competition had shown its power to control prices. Whenever mills in a combination had raised their prices greatly, they had caused new mills to be built, and the fear of further cases of this kind was holding prices within bounds. The limits thus established were not rigid, but elastic, and the companies soon discovered their own power to crush audacious rivals when they appeared. In a number of ways, which are now well known and are discussed in this volume, they could club a competitor whenever he should show himself in an active way. They so often did this that their evident power to do it had its effect in advance, and deterred competitors from appearing. The potentiality of unfair attacks by the trust tended to destroy the potentiality of competition. Under these conditions it was and is clearly necessary to disarm the trusts—to deprive them of the special weapons with which they deal their unfair blows. It is necessary to repress the specific practices referred to and so to enable every competitor who, by reason of productive efficiency, has a right to stay in the field, to retain his place and render his service to the public.

Twenty years ago even this enforcing of rules of the ring seemed radical to many persons. It now seems to be more nearly a matter of course and an obvious beginning of a consistent policy in dealing with great

combinations. It is an encouraging fact that the adopting and amplifying of this policy is quite generally demanded and that various laws for this purpose have been proposed. It is desirable to test provisions from various bills that have the attention of the country by comparison with economic principles and recent business developments. As between a few leading plans, based on continued competition, the differences are secondary; while between all plans of this class and those based on the surrender of competition and the acceptance of monopoly, the difference is world-wide. The practical effects of the two classes of plans would differ as widely as an industrial system instinct with the principle of progress would differ from one in which that vital force should be stifled. The plan here advocated has more in view than merely meeting an exigency and correcting overcharges for goods produced by monopolistic companies. It aims primarily at securing a continual increase in the power of production, a perpetual enlargement of the social income, and a capacity to pay constantly rising wages without trenching on the legitimate gains of capital. It aims to make a broad demarcation between capital that is honest and independent and that which is monopolistic, though in the former class it includes much productive wealth held by great corporations. In the effort to repress monopoly the whole of the fund of honest capital is the natural ally of honest labor, organized or unorganized. In the adjustment of wages, employer and employed always have their differing interests, but there is in this, no necessity for enmity or destructive conflict. The line across which, in the field of economics, a great moral battle is now waging is the one which separates the powers which make for the welfare of society from those which prey upon it.

Even here, however, the true plan of action is not to destroy offenders but to reform them and make them to be *nolens volens* the servants of society. It is to make honesty to be the only practicable policy on the part of great corporations.

## Chapter One: The People and the Problem.

Of the practical problems which the American people have now to solve, the greatest is that of the control of vast corporations. Have the trusts come to stay; and if so, will they put an end to independent production? Will the smaller establishment be generally driven from the field and new ones, great and small, be kept out of it? If so, we shall have either to let the monster-like corporations have full possession of many departments of industry or turn over these departments to the State. It is a choice between the devil of private monopoly and the deep sea of state socialism; and with the alternative in this shape, many a reasonable man will be ready to take his chance under so much of socialism as nationalizing these industries involves. Meanwhile our law calls for something which is neither private monopoly nor nationalization. What the Sherman Anti-trust Law demands is that competition shall continue, and we have to find out whether it can do so. The whole momentous problem of dealing with trusts hinges on whether economic law will permit this federal statute to accomplish what is intended. Does the civil law have economic law on its side, or does it not? If it does, we can avoid revolutionary changes of any kind. We can remove the greatest evils from our business system, we can preserve the productive power which in various ways we have gained and, what is most important of all, we can keep alive the principle of progress. While removing oppressions and injustices, we can ensure the continuance of the mechanical inventions, the chemical discoveries, and the various other technical gains that have caused each year of the past century to make its addition to our power over nature and so to afford the first condition of increasing returns for labor. It cannot be said too early or too emphatically that the supreme test of measures for regulating trusts is that which tells us whether they will accelerate technical progress or retard it—whether they will make the world as a whole grow richer or poorer, and so better able or less able to afford good pay to its workers.

We know to-day that we *can* dissolve the trusts— that we can break up the big corporations into smaller ones—and this is distinctly more than we once knew. We had supposed that the Sherman Anti-trust Law would be enforced only sporadically, and that while a few suits at law were dragging their slow length along, all the trusts, scarcely excepting those immediately affected, would be having their own way. That, in effect was what actually happened. Moreover, we had not a settled conviction that multiplying and expediting the suits was desirable. It might do a balance of harm. In the first place, breaking up too many corporations at once would be highly disturbing in the realm of business; and in the second place, it would lead to results that were not at all certain to be good. Would the smaller corporations created by dividing the larger ones renew at once the cut-throat competition which existed before the combinations were formed? The general belief is that price warfare of a ruinous sort was almost unavoidable. It once prevailed, and the combinations offered a way of deliverance which, at first, was not altogether unwelcome, even to the public. So long as mere pools or contracts to control prices were depended on they were not as menacing as the later

forms of union became; and they did at least allay a warfare that involved much evil. In doing this they made their contribution to general prosperity, and the modest price of this was something to which the public reconciled itself, though it did not make the payment altogether willingly. It was the appearance of consolidations that were firmer and more complete that caused the menacing shadow of general monopoly to deepen.

What will happen if we decide that the trusts are monopolies and proceed to break them up? Can anything happen, if that is done, but a repetition of the former experience—cut-throat competition, ruinous losses, followed either by bankruptcies or by secret agreements which may put an end to the war? Moreover, if the government were relentless in its continued pursuit of combinations and were able to set up an inquisition that would detect and break up the secret agreements, would there then be any escape from a further price warfare that would spell ruin for many of those engaged? Can anything else result from competition between powerful rivals, left without check or hindrance? In short, shall we have again the anarchic struggle of recent and unhappy memory—a thing which, to many minds, seems almost as bad as monopoly itself? Yet for that genuine article—for what may accurately be described as complete private monopoly—there are no good words to be said: the public antipathy for it is fully justified. However unsuccessful our law may be in breaking it up, the tenacity with which the people hold to that law indicates a perfectly sound instinct, and we are led to the conclusion that a thing unendurably bad appears to have become almost a necessity. If there is no escape from the ruinous competition except by combination, a referendum as to which of the two we shall have would at least bring out a strong vote in favor of the combination.

In advance of the argument on this point, we may say that there can be great consolidation without monopoly, and also that there can be competition between powerful producers, that does not run into ruinous warfare. We can let some trusts continue without suffering because of their presence, and we can break up some trusts and still, in all probability, avoid the old anarchic kind of competition. Our choice is between what looks like a devil and what looks like a deep sea, but neither of them is actually what it seems; or at the worst, the devil can be exorcised and the sea safely navigated. The great corporations, which have made all the trouble, can be rendered not merely tolerable but, if we can believe it, even beneficent.

Great general prosperity has certainly come under a regime of consolidation. This single fact carries on its face an evidence that the unions we have had have not been complete monopolies, for in that case they would have been hostile to general prosperity. For a long time almost all kinds of business have been profitable and the employment of labor has, in the main, been steadier years, agriculture has been “booming.” For the two decades before the year 1891, farmers were in a depressed state, while for the two decades since 1891 they have been growing better and better off. Moreover, this prosperity has followed the loss of an old and principal source of wealth. Through our entire history America has made its principal gain by continually extending its settlements and occupying, every year, a new area of fertile land. There were farms for us all, if we chose to take them; and if we did not seriously think that that would be true to the end of time, we did expect it to continue as long a time as we cared to look forward to. Each year our people occupied and brought into a state of production a new zone of agricultural land. They built villages and cities and saw them grow with gourd-like rapidity. Occupying land, tilling it and creating industries on parts of it, imparted value to the land itself; and this value, the so-called “unearned increment,” was nowhere monopolized, but diffused itself throughout the community. The man who bought and sold land received some of it, and men who refrained from doing this did so because their earnings, in their several occupations, were such that they preferred to remain in them. Great returns came from all productive employments, and the scale of production and of the total returns from it became greater and greater as the occupied area became larger and larger.

Toward the close of the last century not a few men looked with some anxiety toward the time when this



territorial expansion should cease. They had learned that the public lands were not inexhaustible; and at the beginning of the twentieth century they knew at last that the available supply of good land within the limits of the United States was practically exhausted. There were ways of somewhat increasing it, by irrigation and otherwise, but the day was past when a quarter-section of rich prairie land could be had for the asking. Beyond the Canadian border the expansion was still going on at a rapid rate, but it afforded no such outlet for American labor as was available so long as the frontier of settlement was marching steadily westward and north-westward through the great valley of the Mississippi. Our citizens can redeem land that is too dry, too wet or too rocky; they can develop mineral resources; they can begin to reforest the mountains, and they can migrate to Canada; but that is not comparable to what they could do when "prairie schooners," by the myriads, were every spring carrying our empire farther and farther toward the west. With this movement at an end, what could happen but the beginning of congestion? How could we avoid "diminishing returns" in agriculture and, from indirect causes, in manufacture and in commerce? Yet the period since 1891 has been anything but one of impoverishment; and it is no uncertain guess which assigns a reason for this general prosperity. It has been due to two causes, acting together; and both of them must continue to act, if we are destined to escape disaster. The first is production on a vast scale, carrying with it a corresponding increase of efficiency; and the second is improvement in productive method—the brilliant succession of mechanical inventions and other devices which, in every field of industry, have accomplished again and again what is called "making two blades of grass grow where one grew before." In manufacture, in transporting, and in agriculture itself, we have multiplied and again multiplied by a surprisingly large factor the product of human labor. Technical improvement is simply indispensable.

Without it, and with our increasing population, life on our planet would be unendurable. Stop the succession of inventions that add to our power over nature and you will bring labor soon to a starvation limit. Merely check the rapidity of this technical progress and you will cause grievous hardship. Given more and more millions of people to be maintained, and no technical betterments, and you have world-crowding going on until it reaches the fixed barrier of starvation itself. The ultimate limit on the congestion will be set by the cruel checks on the growth of population which the Malthusian studies describe. When we pass the starvation point, the mortality and the diminished birth rate may afford some relief for those who survive; but this means that the "iron law of wages" will operate in full rigor. Though the earnings of labor cannot long be less than what is necessary to keep the men alive, they cannot under such conditions long be very much greater.

Against all this, our first resource has been the seemingly endless amount of new land ready for occupation, and the second our inventive genius, which has given us not only machinery for tilling land, but countless devices for transforming raw materials into finished goods and carrying them everywhere at a minimum cost. From prehistoric times, humanity has depended upon improvements in production, not only for means of living comfortably, but for means of living at all. After rude hunting tribes had become large enough to exhaust the game supply, they were forced to fight each other for available hunting grounds. The breeding of cattle and sheep afforded a resource which greatly multiplied the number of persons who could live within a given area; and when the same thing happened again and grazing lands became scarce, the new resources of agriculture afforded a greater relief. Maintaining fixed abodes and raising crops made it possible to feed a hundred persons, more or less, where one could live by very primitive methods.

It was the limited area which brought populations to starvation, so long as they followed one mode of gaining sustenance. If the available area had been as elastic as was ours while the first occupation of our continent was in progress, that in itself would have furnished the needed relief; but without that resource, a change in the mode of food production was the sole protection against starvation. This fact typifies the

whole history of human life. We need more, better and again better means of production if our growing population shall be kept above the level of want.

Now what has happened within a third of a century has been such a multiplying and improving of instrumentalities of production and, secondly, the utilizing of them on a vast scale. Big mills where little ones stood, and groups of big mills under one management, have added enormously to the productiveness of machinery. But we have come to a time when progress of one kind is in danger of nullifying progress of another kind. When the companies which use the machinery become big enough to be monopolies, we may count with certainty on a checking of the rapidity with which the machinery improves; and it would not take much retarding of this kind to start wages downward. This, be it ever remembered, is far and away the greatest evil monopoly can do. With humanity depending for comfort and for life itself on the outcome of the race between multiplying and improving instrumentalities, on the one hand, and growing numbers, on the other, it would be absolutely fatal to put clogs on improvement. Taxing the public by high prices is certainly bad but it is not comparable for badness with paralyzing the power to keep its resources for creating income always ahead of its growing numbers.

The alarm which the trusts have caused has chiefly been due to the smaller of the two evils which they are capable of causing. We have thought of them chiefly as taxing us by the high prices of their products. When we look for further evils we usually find them in the shape of the low prices which they are supposed to pay for raw materials. Of their influence on wages most of us have thought with a mental interrogation point. Some of them have paid their own employees at the market rate with a slight addition, and it has not always been perceived that their influence has been to reduce wages in fields of employment other than the one which they control. In all these connections a monopoly manipulates values. It produces an effect in distribution rather than in production. What it does is to lessen somewhat the shares which many of us get of what is annually produced. In doing this, however, these agents are capable of doing also something worse, though it has thus far disturbed us less, namely, reducing the amount of income that is annually brought into existence.

We do not here retract anything that has been said as to the economy of large production. That, we know, does figure in the case. The trusts have saved wastes and added to the productive power of labor and capital; but whenever they have curtailed their own output as a means of exacting a high price for it, they have lessened the sum total of production. They have turned labor and capital away from the fields in which they might have been employed most profitably. These have been forced to seek employment elsewhere, and even though they may have found it, they cannot do as well, for themselves or for the public, as if they had remained in their proper fields. But the paramount injury, as we have already said, is a check on the improvements of the future and on the enlarging income which these ensure. A monopoly makes no proper use of that invaluable agent of progress, the junk heap. It uses old appliances when, if competitors were in the field, it would discard them and get better ones. A few corporations, taking this unenterprising course, injure chiefly themselves; but very many, by doing it, might put a blight on civilization.

The mere size of the consolidations which have recently appeared is enough to startle those who saw them in the making. If the carboniferous age had returned and the earth had repopled itself with dinosaurs, the change made in animal life would have scarcely seemed greater than that which has been made in the business world by these monster-like corporations. At first their size was about all we were absolutely sure of concerning them. Whether the dinosaurs of business would be kind or fierce we could scarcely tell with certainty, though they looked fierce enough and much too powerful for taming. In our law-making, we have acted on this impression and tried to exterminate them.

After a first alarm the feeling of the people was somewhat reassured. When it was found that the

seemingly predatory corporations were not doing their worst, that something was holding them in check, and that they neither raised prices or depressed wages as it had been feared they would do, people came to look more tolerantly on them; but they never gave them a license to continue. They had been put on trial before the highest court—the people themselves; the trial is still going on, and they must accept the verdict which the public will finally pronounce. The evidence is much more ample than it originally was; for by their actions since they first appeared the trusts have done much to reveal their real nature. Technicalities will not shield them in such a trial; for as soon as the nation knows what it wants, it will have its way, and it is now nearer to this knowledge than it has been.

If we go back to the last days of the nineteenth century—let us say to September of 1899—we can determine fairly well the attitude of different classes and sections of the American people at that date. A conference on the subject of trusts was then held in Chicago and the members of it represented many sections and many interests. The addresses which were delivered afford means of perceiving how the people of this country then thought and were inclined to act in relation to vast corporations. They reveal that uncertainty of which we have spoken concerning the actions of the trusts. The parties in the conference were divided about as they probably were in the country and there were a few friends of the trusts, more enemies, and still more inquirers who were wailing for light.

The most encouraging fact, however, which was revealed was the existence of a vast amount of moral earnestness—a feeling of antagonism to real monopoly—which united people, particularly in the South and the West, in a crusade which somewhat resembled the anti-slavery movement. Toward monopoly there was no uncertainty of feeling but an overwhelming hostility, and the problem was to what extent the trusts were at that time real monopolies. If it should prove that they were so and could not be reformed, then almost everyone would have favored drastic prohibitions with plentiful penalties attached to them. The whole conduct of the people depended, as it depends now, on the question whether the trusts were, in a true sense, monopolies and destined to continue so.

The statute books of various states bristled with laws against the trusts, enacted without much study of their real nature; and from the point of view of many a legislator, the law was best that was severest. This zeal was not according to knowledge, for it acted in advance of a careful inquiry as to what can be done with these great corporations short of destroying them. It was, nevertheless, based on a true instinct—antipathy to the monopolistic principle. Over the portal of every department of business it wrote in flaming letters, “Monopoly Enters at its Peril”; but the error lay in convicting the trusts of being monopolies without an adequate trial.

Though the zeal in behalf of a free competitive system was greatest in the South and West, it was not confined to those sections, for honest capital is everywhere in favor of it, as is honest labor. The two would suffer together if monopoly were allowed to become firmly seated in the business world; and fortunate it is that the country as a whole is still to be counted on as relentlessly hostile to it and as having no possible use for any political party which accepts an “entangling alliance” with it. Success in elections can be had only under the old banner of economic freedom.

Aside from a few people who might be supposed to favor real monopolies because they personally thrive by them, there is only one class who are steadily their friends. Pronounced Socialists favor them, on grounds of what they believe to be the public interest. Let them multiply and grow till they absorb the whole field of industry, and the government may then step in and absorb them. The trusts make it easier to nationalize the different departments of business.

Some laborers are at times attached to trusts by momentary and precarious interests. They hope that, if the companies exact high prices from the purchasing public, they can be made to share benefits with their

workmen; and a really dangerous trust which has public opinion strongly against it may form an alliance with its workmen, or with important classes of its workmen, against the people at large. "Give us high wages and charge them to the public with a profit for yourselves," is the demand made by these laborers. That an alliance so made will last is not at all sure. While their battle with the people is going on the corporations do not want a fire in the rear; but if they win the larger conflict, it may not be necessary for the companies to continue to bid for laborers' support; and in that case, employees of the trusts as well as the great remainder of the working class will be injured by these consolidations. The people at large are and will certainly continue to be so injured.

The vitally important fact is that we are not practically dealing with corporations that have been proved to be necessarily monopolies. We are dealing with consolidations as we know them—great corporations of which we may be sure, first, that they have not a *complete* monopolistic power, though many of them have a certain power to repress competition. Can the monopolistic element which they do contain be taken out of them? This is the vital question and our whole policy depends on it. The answer will tell us whether we can tame our dinosaurs and convert them into draught animals or can do nothing with them except to kill them.

With the monopolistic power taken away, they will be highly productive and, in their methods, they will be progressive. Under their regime we may expect that the production of wealth will go on multiplying and that this will bring with it the possibility of higher and higher wages. If this power cannot be taken away—if the evils which flow from their partially monopolistic character grow greater and greater—then we must treat them as outlaws and have done with them. Dissolution is what they require. It is not worth while trying to domesticate a genuine "octopus." One may even say that the plan of letting them all grow and then making the government seize them, will become, for the first time, a more or less reasonable plan of action. We shall then find much to say in favor of Socialism; and if we are not ready to go to that length, we shall find something to say in favor of a half-way plan, by which the government, without taking possession of these industries, shall dictate the prices at which they shall sell their products. Of that program of action we shall find something to say later. It is not one to be commended.

There is a resource which has already been mentioned, and utilizing it for all it is worth is the reasonable present course of action. The assumption that trusts are hopeless monopolies is not only unproved but untrue, since we can take much of the evil element out of them. We can preserve the good that is in them and cast away the bad—which means that we can save all the productive energy which vast capital insures and make ourselves triumphant in the competition of the world, possessing our own markets and selling much in foreign markets, not because our workmen will take low wages but because, thanks to automatic machines and big shops, they can create a large product.

America is the natural home of the trusts; but if we can draw the fangs of the monster and train it to good uses, we can get therefrom an advantage over other nations and realize all the benefits it is possible to get out of material civilization. We can be leaders in progress and win the prizes that leadership brings; namely abundant wealth, honestly gained, widely dispersed among the people and ensuring a high level of life, intellectual and moral as well as physical.

Momentous beyond the power of language to express is the question how far centralization may be allowed to go without fastening on the people the intolerable burden of monopoly. The light that has come to us within the last dozen years goes far toward enabling us to answer the question, and it is safe now to say that centralization can go far enough to give us a maximum of productivity without destroying freedom of individual action, competition and the right of contract, and without destroying the incentives offered to inventive genius or putting any check on the progress that has given to civilization its vast productive power. We must abandon the hope, if it is a hope, of restoring the old system of production with its myriad of small

shops, and still be confident that we shall get out of the troubles and dangers that the great shops cause. We can keep our optimism without looking forward to the seizing of all capital by the state. If the vision of an economic millennium comes to cheer us, it will not depend on the keeping of a common purse and the sharing of everything on a totally new plan.

What we shall see before us is endless progress ensured by forces that, in themselves, are old and familiar. We shall see the wealth-creating power of the social organism always growing, wages always rising and capital indeed often massed in enormous amounts, but with the ownership of much of it scattered in a myriad of little holdings among the people. We shall see workers gradually acquiring capital, while earning wages in the mill; we may see business operations moving so steadily that bonds and even the stocks of industrial companies may be made common and safe forms of investment of workers' savings. It is a happy feature of the outlook that the sharp line of demarcation between the capitalist class and the laboring class will be blurred and, in many cases, obliterated—since men who work will have a participatory interest in the tools they use and a share in what the tools produce. The Socialist is not the only man who can have beatific visions, for the picture of a manly development for the laborer with a perpetual rise in wages and increase in savings, a picture of harmony, personal independence and culture comes before everyone who sees what competition is capable of doing.

Every party that is worth considering now demands that a “laissez faire” policy be abandoned; it has no friends and, in present conditions, deserves none. To advocate it is to convict oneself of being either a hopeless reactionary or a lunatic. The practical thing to be decided, then, is what a state can do to open the rift between centralization and monopoly and keep the one while suppressing the other. If we can accomplish this, we shall get the benefits from great establishments, put a stop to the extortion which they sometimes practise, and ward off the greater extortion that they would practise if they dared. We shall ensure progress in the methods of production and make over the chief benefits from it to the people.

It is from a very thorny and dangerous bush that we shall have to pluck the flower of industrial and commercial success. To advocate a mode of doing it is the main purpose of this small book. We have to see which of the plans that have been proposed would work ill and what one affords a promise of working well. The key to success is afforded by the natural forces that even now put a strong curb on the great corporations. We have to strengthen that curb, and in this we shall only act according to nature. We shall do what a skillful physician does when he helps his patient to get well by removing the obstructions that prevent vital forces from healing him.

Great corporations would seldom be monopolies if competition were not fettered by altogether abnormal means—if the independent producer had a fair field and no favor. It was in the eighties of the last century that trusts went through a hard experience, which proved instructive to them and should be illuminating to those who are seeking a way out of the dangers that they have caused; and since this bit of history was enacted, certain fundamental facts are so well known that we encounter them continually in discussions of the problem of trusts. When prices are raised beyond a certain point, owing to the too grasping policy of some trusts, the thing still happens which happened more frequently in the early history of combinations. As a rule new competitors appear in the field.

Capital is seeking outlets, and it is not altogether easy to find those which are both profitable and safe. The hope of a sufficient profit will cause it to brave a certain amount of danger. In the early days new mills were built readily and almost recklessly wherever consolidated companies did not know enough to proceed on a conservative plan. Now they are less easily lured into existence, since the risk they encounter is greater than it was; but it is true even now, in most departments of industry, that if a combination of producers raises its prices beyond *a certain limit*, it encounters the old check, which comes, not by any act of the government,



but from the new mills which spring into existence and bring the prices down. It is the fear of these new mills that still is effective enough to keep prices from rising beyond a certain height, although this fear alone cannot usually keep them from becoming somewhat extortionate. The mill that has never been built, but is ready to be built under certain conditions, is still a controlling power, though at present it holds the trusts with too long a leash and allows them too wide a range within which to work their will. The real difficulty is that the influence of this latent competition cannot be trusted as it could in earlier days. Even in the eighties there was a certain range within which the trusts could have raised their prices without calling the latent competition into positive activity. That range has since been increased, because the possible competitor does not become an actual one as promptly as he should. The trouble is that he has not a fair chance for his life when he appears on the scene. He is in danger of being crushed by the trust, and that too, not in any natural way, but by certain entirely abnormal things that the trust is able to do. If the great company could not do these things, the competitor would be comparatively safe, and in many departments of industry he would appear promptly whenever profits should become high enough to make his presence desirable. Under such conditions the mere possibility of his coming would hold prices almost at a natural level. The trust would benefit the people by its economies and would not greatly trouble them by its exactions.

While experience has proved in hundreds of cases, within the short period during which modern trusts have existed, that potential competition is a real force, it has also shown that it is a force which can be easily obstructed. It is a proverb that capital is timid, and yet it now has to be bold in order to do what the public needs to have it do. The men who built mills "to fight trusts" always took some risk; but of late they have had to take more, and the solution of the whole problem depends on first removing this abnormal risk. When it is gone we shall have this condition—first, that potential competition will be effective, and secondly, that much actual competition will be found in the field. Between them, they will be able to do much of the necessary regulating, and—what is better still—they will ensure progress in productive power.

Overgrown capitals can now bully small ones. The big company has a right to beat the little one in an honest race for cheapness in making and selling goods; but it has no right to foul and disable its competitor. This is exactly what trusts are doing; and under these conditions, potential competition cannot well become active in response to a small inducement. The state needs to make sure that the latent competitive force is always ready to spring into activity. At this point the industrial mechanism is delicate, and the agent that is depended on is highly sensitive to injuries; and yet clumsy laws and clumsier policing allow it to receive rough handling when it comes into the field, and the knowledge of this so terrorizes it in advance that often it does not come into the field at all.

Trusts have long been permitted to do with impunity things that are out of harmony with the spirit of the law—things that they could not have done if the law had accomplished the single task which even a narrow Spencerian policy demands of it, namely, the protection of property. There are actions that have in them the essence of roguery, though they have seldom been defined and forbidden by statutes. It is clear that they are not outside of the scope of common law, nor are they beyond the field of action of the Sherman Anti-trust Law, as now understood; but these laws are still inadequate to cope with the growing problem which these unfair practices present. We shall see what these actions are and what policy they call for. We shall see how, by preventing them, we can make very large corporations legitimate and safely avail ourselves of their productive power. The government can use insight, discover how nature is already working, be guided to the right experiment and try it promptly. It can liberate the competitive forces that even now, trammled as they are, make our state enduring, and it can enable them to develop their full influence and make the condition comfortable and encouraging. It can do this while fostering and not repressing general prosperity, and while increasing and not lessening our chance of success in the fierce economic rivalries into which nations are entering.

## Chapter Two: Combination Versus Monopoly.

Some centralization grows by mere efficiency. The better shops distance their rivals and take their trade. The survival of the fittest is hard for the unfit but good for the world. But there is another sort of centralization, and we have had much experience with it. It has a very different color from that which comes by efficient service to society and by surpassing rivals in a race for excellence. It exterminates competitors in ways that are not dependent on its own excellence and their inefficiency, and the exterminating is very far from benefiting society. The trust may crush rivals that, within the spheres where they operate, serve society better than it does. When a producer of this kind is forced out of his field he is not a vicarious sacrifice for the good of the public as a whole; he and the public are both victims and the sacrificing of him works as ill as possible for everyone except the trust. It must be stopped if society shall avoid graver evils than have recently come upon it from any economic cause.

Mere size is credited with giving to a corporation more power than it actually does give. Does it enable a trust to have the market to itself and charge what it will for its goods? Does it make it practicable for the combination to shut up as many of its mills and discharge as many of its laborers as it pleases, without seeing rivals entering the field and beginning to furnish the goods which the trust has ceased to supply? If it does all this, the situation is so intolerable that no treatment is unjustifiable to which the state may be forced to resort in order to rid itself of the evil. Under some conditions the trust can do these things; under others it cannot, and the state can create these other conditions.

When we look at a big corporation and see how helpless a little one would be in trying to rival it, we are in danger of concluding at once that competition is dead; but there are very great powers latent in the business world that can be called into activity, and that are able to accomplish what we desire. It is commonly supposed that mere size nearly always gives a corporation a decisive advantage in legitimate competition with smaller ones. This, however, is an inaccurate supposition. It is in competition of a very abnormal kind that bigness gives fighting power. If all its prices are cut, the great company stands to lose vastly more than the smaller one would lose from a similar reduction. A concern with a capital of \$100,000,000 cannot lose \$5,000,000 a year any more safely than one with a capital of \$100,000 can lose \$5,000 a year. In a war between the two fairly conducted the small company might hold out as long as the big one. If the losses that a corporation sustains by cut-throat competition are in proportion to the amount of its capital, it is not necessarily a dangerous competitor.

It is a fact of experience that a new mill, equipped with the latest and the best machinery, is often a stronger competitor than a trust which is encumbered with antiquated plants. If legitimate rivalry in cheapening production were all that were to be feared, it would be safe to build a good mill and try to get patronage for it.

Wholly intolerable, however, will our condition soon become if the trust can continue to use every *unfair* advantage which its size gives to it. If it can follow a newcomer who enters its field as a rival and underbid him in his special territory, while keeping up its prices everywhere else, it has an advantage which is very decisive. Even though the competitor may greatly excel the trust in the economy with which he makes goods, he may be forced out of business by this predatory policy. A producer, who found himself in this position, once called on the manager of the trust that was driving him to the wall, and was received with a brusque admonition that he had "better get out of the business." "But do you not see," said the independent producer, "that, in my territory, I can produce more cheaply than you can?" "Do you not see," was the reply, "that, if we lose money in the twenty cities where you are operating, and make money in the two hundred other cities where we are operating, we come out ahead?" Such local discrimination is a strategic measure that is often irresistible.

Again, discriminations may be made, not between different localities, but between different grades of goods on the general price scale. The trust may make many varieties of one general kind of merchandise, while the competitor may make only one. In that case, even though he may operate in many sections of the country, the trust may pursue and destroy him. It may reduce the price of his type of goods below cost, while keeping all other prices at the original high level.

Thirdly, the trust may refuse to sell goods at all under certain conditions. It may boycott merchants who do not comply with its regulations; and one of its requirements may be that the merchants, in turn, shall boycott all independent producers. This is the basis of the "factors' agreement," whereby a trust which, within the wide variety of its products, has a number of things that are essential for a merchant's business, either refuses to sell him anything or refuses to give him necessary discounts, if the merchant buys goods of any description from a competing establishment.

An important point in this connection is that, if a rival knows in advance that this is what will happen to him as soon as he builds a mill, he will not build it. The danger resulting from discriminating prices made by the trust is sufficient not only to drive him out of his field, after he enters it, but to keep him out in advance of any effort to enter.

How much, then, will potential competition be able to accomplish under the most favorable conditions which we can create? Suppose we take away all the trust's clubs, and force it when it crushes rivals, to do so only by serving all its customers better than they serve theirs. This would make efficient service to the public the sole test of survival. How much, then, would the monopoly amount to? We can form some idea by supposing that in many industries producers had joined forces till competition of the old type should have entirely ceased, while at the same time capital and labor were left ideally free and able to move in perfect security to any point where gains are to be made by the movement. One would then picture to himself a world entirely free from the overt struggle which large numbers of competitors have at times maintained against each other. A department of business would no longer be represented by one hundred mills of one kind, working independently of each other and struggling desperately to get away each other's patrons. What one would see would be a condition in which it would not be necessary for private producers to pull bewildered purchasers this way and that, by the eloquence of traveling salesmen, by the enticing statements of newspaper advertisements and by the allurements that are offered by art and eloquence as these are combined in the decorations of American roadways, street railway cars and available wall spaces. There would be very great economy in a condition in which, in every department of industry, there should be one great corporation working without friction; and if only it were compelled to give to the public the full benefit of the economy, the situation would be, in its way, ideal. This last is a crucial point however, for the monopolizing of the field will take place wherever opportunity for it is offered, and a considerable economy



will result from it, but it will take a struggle to secure for the people a due share of the benefits. Of course in making potential competition available and so getting for the public a measure of benefit from consolidation, mere publicity will afford enormous help. Among the things that the public must know for its guidance in buying industrial securities is the earning capacity of the plants a trust owns. If this is large, the inducement for other capital to enter the same field is proportionately large. It is clear, however, that such publicity is far from accomplishing all that the consuming public wishes to have accomplished. It is conceivable that the investor in trust shares may be made safe, while the competitor, to whom the large profits are an attraction, may be sacrificed, so that the consumer and laborer may then find their interests in great danger; and the more difficult problem for the people to solve is the one which they have all along been trying to solve: that of protecting these latter classes.

What would a monopoly do if it were perfectly secure in its position of power? If it were the only source from which, in this country, goods of a certain kind could be had, what would be its rule for fixing prices? In a general way it is not difficult to answer this question. It will charge those prices which afford the largest sum total of net profit. Whatever rates will pay interest on all the real capital employed and wages on all kinds of labor and a maximum of gain besides, will be adopted.

Of course, this maximum of net profit depends partly on the volume of business done, and if prices are raised so much as to make the business very small, there may be no profit at all over and above wages and interest. It is only up to a certain point that prices can be raised with advantage to the monopoly. Indeed, the price raising operation might conceivably be carried to such a point that interest itself and even the wages of labor could not be paid. If charges for the goods produced go up in a tentative way, it will be found that every rise lessens the sales, though it increases the *rate* of profit on each article sold. For a time this increase of the rate more than offsets the diminution of the volume of the business and the total amount of gain grows steadily larger. After a certain point is reached it will be found that the opposite is the case and that the shrinkage in the amount of business done reduces the total gains more than the profit on each article increases them. No, monopoly is interested in raising prices beyond the point at which its total profits begin to dwindle.<sup>1</sup>

### The effect of monopoly on the wages of labor.

Monopoly is unfavorable to the welfare of laborers, as well as to that of consumers, and yet one of the paradoxes of the present situation is that consolidated corporations often make large claims as to what they are doing for the working class. They claim that if they pay *their own workmen* somewhat more than other workmen get, they exercise a beneficent influence in a labor market. This fact may help to make their own employees friendly to them, but it is very far from deciding in their favor the case in equity between them and the working class generally. If we wish to find out whether labor owes a debt of gratitude to the trusts, a most unintelligent way of ascertaining this is simply to look at the scale of wages which they pay to their own men. The condition of the men whom they turn off when they close plants and restrict production is to be considered, and the effect which the exclusion of these men will have on the general market for labor is the final and decisive test of the trust's claim.

At the time of its organization a trust almost invariably finds that, from its own point of view, there is "over-production" in its particular line of business and proceeds to shut up some of its mills. In doing this it naturally selects the poorer ones and it may somewhat increase the output of the better ones; but on the whole, it relieves what it terms over-production at the cost of turning a certain number of men out of the business. These men go into the labor market and find employment as best they can, and their presence means a slight depression of the rate of wages generally paid.<sup>2</sup>

The over-production that is alleged, as a reason for discharging the men, may or may not be properly so called. The output may be too large to permit a very high rate of profit to be realized, but not too large to benefit the public. It may be excessive in the view of those who want high prices but not at all so in the view of those who prefer lower prices and a fuller supply of necessities and comforts.

Even an organization of workers themselves may do its part in reducing the general rate of pay, while raising its own special rate. Wherever it says to its employer, "Give us more pay and charge the cost of it to the public," it impels the employer to the course just described. He can give the extra pay to a reduced force, since that means a reduced product and a higher price for it. A labor organization may thrive somewhat by this means. It is a partnership in gains wrested from the public, and is brought about by a certain compounding of monopolies. The union will try to keep independent labor out of its field as the employing companies will try to keep out independent capital.

A secure monopoly can set its own price for raw material although, if the same material is available for other uses, the price is not entirely under the one buyer's control. This fact however does not make it impossible to state the principle which will govern his conduct in buying his share of it. He will pay the lowest price which will cause the necessary amount to be produced. In some cases the monopoly is so large a user of the raw material that its action very nearly controls the price. The less it pays, the lower the price goes, and here is a further incentive for curtailing its product.

This question has its complexities, and for our purposes it is not necessary to go into them. The general fact is that the profits which a monopoly realizes by curtailing the amount of its output are due partly to the lower price at which it can buy materials and partly to the higher price at which it can sell its product. Owing, however, to the fact that the material which it buys is very often available for other uses, it is not usually able to reduce the price of this as much as it raises the price of what it has to sell.

For instance what power would a linseed oil trust have over the price of the flax seed which is its raw material? The seed itself is limited to this one use, and could have no effective market except through the trust, but on the other hand the fibre of the flax itself could be sold in markets unaffected by the trust. Flax could be grown for the sake of the fibre, even though the seed would then have to be sacrificed. In this situation it appears likely: (1) That the trust could lower the price of flax seed at its will, and (2) that the harm done to the grower of flax would be mitigated by the fact that the seed is an alternative product, and the burden might be ultimately shifted in part, at least, to the buyers of flax fibre. But the fibre itself enters into so many finished products that there is no immediate prospect of a monopoly large enough to include them all, and a monopoly of any one product could not control the price of flax to the great damage of the producers of it.

Or we might take an illustration from the tobacco industry. A trust in cigarettes alone, or in plug tobacco alone, may be viewed by the growers with unconcern, but let it extend to cigarettes, cigars, plug tobacco and snuff, and Kentucky swarms with armed "night-riders" in the attempt to enforce a growers' counter-monopoly and so to fight fire with fire.

Again: a monopoly of all iron and steel manufacture would control the iron ores, and the independent mine-owner might see his royalties completely swallowed up. On the other hand, a monopoly in the making of shoes would not be able so to manipulate the price of leather, since that is used for harness, for belting and for many other purposes. Its action, however, might to some extent depress the price of leather *and if so this would be one factor in its gains.*

Another factor which is of great importance in protecting the public from the worst consequences of monopoly is the fact that if a single great consolidation controlled the output of many kinds of products, it would not find it desirable to raise prices as much as a single monopoly, making one product only, would

naturally raise them. If we can for a moment suppose that the dream of some Socialists were realized and that an all-embracing trust had been formed which should control the output of every product put upon the market, it would not be for its interest to curtail its product at all. If taxing consumers were in view, a single man, living-Crusoe-like and producing everything that he consumed could harm nobody but himself by producing little instead of much; and if we regard a consolidated trust as virtually in the same position, it could only impoverish itself by pursuing the same policy. If there were not a single consolidated company, but many, each of which had completely monopolized one particular product, then any product curtailing operations which they might undertake would only impoverish each other and any effective pooling or any effective secret understanding would prevent them from resorting to it. If a cotton trust, a woolen trust, a steel trust, a sugar trust, a tobacco trust, a whisky trust, and so on through the list, were one and all reducing their products, they would be preying upon each other and the interests of all would demand that they should stop it.

NOTE. (This is a bit of pure theory and even so is only very partially stated. In a regime in which trusts were universal there would be very grave and highly intricate questions arising between employers and employed. Moreover the pools that the trusts would try to form with each other, would encounter much graver difficulties than would pools between independent producers of a single article—such pools as we actually find in the market. It would affect the employers disastrously to curtail the output of cheap and necessary goods while leaving the output of articles of luxury unaffected. The entire relation of employers and employed would be one of almost insuperable difficulty under such circumstances, which fortunately are in no great danger of being realized.)

The whole importance of introducing such a wild supposition as that of a single trust producing everything, or a pool of distinct trusts doing so, arises from the fact that the gains accruing to a large number of real monopolies from turning off employees and shutting up mills cannot be as large as can the gains accruing to a few trusts from the same policy. When there is a large public to plunder, the gains are great, and when there is a small public, the gains are small. It is a case of one shearer with a flock of sheep versus a flock of shearers with one sheep. On the other hand it goes without saying that the state of the sheep grows worse and worse as the shearers multiply. The policy that needs to be adopted should keep us many leagues on the hither side of such an evil as a general regime of monopoly, and we do not need to think of its coming as anything but a very remote contingency; but what is important is that every step we take in that direction makes the condition of the public worse, although the *rate* of gain made by each one of the multiplying monopolies grows somewhat smaller as their number increases.

## Chapter Three: How Not to Deal with Trusts.

The legal treatment of trusts has seemed to be inspired by the maxim “when in doubt, hang the prisoner.” Fierce prohibitions have abounded in the legislation of our states concerning these combinations, while only in a few cases have the specific acts which make them outlaws been defined and forbidden.

Meanwhile a general belief prevailed that such laws would not be executed and there was no positive proof that if they were so, the result would be good for the public welfare. The country took its chance of what would happen as a result of the enactments, and administrations made a merit of the effort to enforce them. The Montana verdict, that a man deserved hanging for shooting another by accident, inasmuch as “in such matters a man should know his own mind” seems to be applicable here, for a country should know its own mind before destroying an institution.

There is one not wholly unintelligent reason for a wavering course of action, and that is the very belief which has just been stated that the drastic laws will not work. It is safer to turn our guns on the supposed enemy if they are loaded with blank cartridges than it is if they are loaded with ball cartridges, and it is this fact which explains, in part, the light hearted way in which Americans have put upon statute books laws which aim to crush the great consolidations. They may have done one important work before they were enacted, when they were nothing but planks in political platforms. Severe measures have at least been good for the parties that promised them, and so long as it was probable that they would not be workable, there was no great danger of enacting them into laws. Political platforms have required prohibitive statutes with pains and penalties attached to them.

It now appears that one law, at least, namely the Sherman Act, is not a dummy; and if it were ever an intelligent policy to enact a measure which we had no expectation of enforcing, it is highly unintelligent to keep it on the books unless we now mean to enforce it.

Of the measures which it is possible to take in dealing with trusts, some have only to be stated to be rejected and among these is the immediate acquirement by the Federal Government of the plants belonging to them and the management of their business in the name of the people. The party which regards this as an ultimate ideal cannot be disregarded, but very few are actually working for the immediate execution of such a sweeping measure. Into the question of the ultimate claims of complete Socialism we do not need to enter.

The policy of letting the trusts alone and allowing them to work their will has far smaller support than that of making their business over to the government. The latter has support from a certain number of reasonable people, but it is not imminent; and this book has space only for what conceivably may be so.

There is another list of measures which have more support, and within this list, it is well to apply a rule of exclusion. Some of the measures will almost certainly not be adopted and, by eliminating these at once, we can save thought and effort for policies that have more in their favor.

### The Treatment of Protective Duties.

There is a small party which favors a sweeping abolition of all protective duties and would like to bring it about at the earliest practicable moment. They believe in this measure on grounds that are independent of its effect on monopoly; but this effect has lent them a new and powerful argument in favor of their general policy. To abolish all duties on goods produced by trusts would be a long step in the direction of completely free trade. It would be necessary to reduce duties on a very extensive scale in order to accomplish the purpose of an anti-trust measure. To expose some combinations to the full force of foreign competition and continue to protect others would be so far from solving the problem that the gain thus made would scarcely be worth the disturbance and the risk it would cost. Totally to abolish very many duties, on the other hand, would seem to people generally like taking a hazardous leap into a gulf of uncertainties; and then, if it should turn out that some of the duties sustained, not merely trusts, but industries themselves—if, after the abolition of the duties, the making of the articles should become unprofitable—a very costly reconstruction of the business of the country would have to be made. Without going into the question of whether, if this were done, it would ultimately give us a better system or a worse one, we can decide at once that whatever crushes out a number of departments of business, destroying much capital and throwing much labor into idleness, will cost too much to be justifiable in view of any future and uncertain gain. There is much to be said against the wisdom of allowing a protective system to grow up at all; but when it has once grown up, there is not much to be said in favor of abolishing it immediately and completely. The industries that are still in some degree dependent on it have a certain right to be considered; and experience shows that they have no difficulty in securing all the consideration which they are entitled to. Saying this, however, is as far as possible from denying that important changes in our system of import duties are eminently desirable. The question is, on what principle shall the changes be made? And if we define duties as bad whenever, to a majority of people, they seem unreasonable, we shall find that the definition gives us very much to abolish. There is very much of our protective system that appeals to almost every unprejudiced person as utterly unreasonable. There is no justifying a duty imposed on the ground of the cheaper labor of Europe but amounting to more than the total cost of labor anywhere. Americans have become weary of paying much more for our own manufactures than Europeans pay for them, and they find it a costly mode of subsidizing export trade. There is something to be said for a policy which charges high prices at home and low prices in foreign countries; but there are limits beyond which this policy carries on its face the proof of unreasonableness.

It is beginning to seem, on *prima facie* grounds, unreasonable to try to win foreign markets for our own goods, while refusing to admit foreign goods in exchange for them. It goes without saying that exports are paid for mainly by imports, and we cannot long send away our goods in exchange for nothing but money and securities. If traffic began in this way, it would soon reach a point at which selling goods would have to mean buying goods; and this fact should make us lop off now one and now another feature of the protective system. It has already caused manufacturers to look with favor on reciprocity treaties.

There is a scientific way of dealing with import duties, and we cannot expect to find and adopt it without making sure of the relation of the tariff to the problem of monopoly. Duties do something for the trust that exists within an industry; but they also do something for the independent producers who, with the trust, constitute the industrial group as a whole. They likewise affect the potential producers, the men who are not yet in the field but will be so if inducements enough are offered. As the independent producer and the potential one are both factors in the solution of the trust problem, the tariff problem is bound up with that of dealing with monopolistic corporations.

Without letting ourselves be carried as far afield as a study of the problem of protection would carry us, we may put down a few principles as nearly self evident.

(1) Wherever there is a trust, there is an independent producer also to be considered. He may be now in the field or he may merely stand ready to enter it, provided that he can so secure a return for his capital and labor.

(2) This independent producer should be subjected to fair competition, but not to unfair and predatory attacks by his powerful rivals.

(3) If he is shielded from this, his presence or a prospect of it affords an important protection for the public.

(4) If the public shall protect itself by thus keeping competition alive, it can make changes in the tariff in the wisest way.

(5) The wise changes would not proceed with a view to crippling the business of the monopoly. The business itself is worth preserving and would be preserved if there were no trusts in existence. It is possible, while reducing duties, to avoid crippling the business and yet to render an essential service to the public and assist in solving the problem of monopoly.

(6) Duties can be so gauged as to exclude the foreigner so long as the price of the American product is reasonable and call the foreigner in when the American price becomes extortionate. *This is by far the best way of establishing a rule of maximum prices.*

(7) If there is potential competition supplemented by a fairly large amount of actual competition, it is safe to expect that the American prices will be thus reasonable and that a moderate amount of protection will give to the American products their own market.

(8) With duties at the moderate rate which permits foreign competition whenever the American price becomes extortionate, the trust has a much smaller incentive for crushing independent rivals. It cannot recoup itself for the cost incurred in the price cutting warfare by the extravagant profits which it can make, if the foreigner is altogether excluded.

### Conclusion.

An adjustment of protective duties is the most practicable, as it is the most scientific measure for establishing maximum prices. They may be so adjusted as to protect the independent producer, lend efficiency to potential competition and so accomplish what is the first essential in dealing with trusts. They may keep prices below an extravagant level without exposing the public to the risks and to certain unendurable evils which, as we shall see, would attend the direct regulation of general prices by the government itself.

The truth of these propositions will appear as the argument proceeds. What they signify is that it is of vital importance to keep competition alive, if we are to deal in a right way with our protective system, and that proper adjustment of protection will, in turn, help us to keep competition alive. We can solve the problem of monopoly without instantly changing the tariff, but when we do make such changes as are called for, we shall both make the solution more complete and get more general advantages. The reductions would do good in themselves if no monopolies existed. Control the trusts, then, and take the monopolistic element out of them. Reform the tariff as soon as you can, and this will make the control of the trusts more easy and complete. It will afford the best method of putting a limit on the raising of prices.



### Summary.

What, now, are the present facts? The country is full of great corporations, some of which have much genuinely monopolistic power. They are sheltered by a tariff that enables them to put on American consumers the "fixed charges" of their business, and thus to sell goods to foreigners more cheaply than they sell them at home. These companies virtually collect from their customers in this country a subsidy for the maintenance of an export trade. Inevitably a demand is made that duties which enable them to do this shall be entirely repealed. If this demand were complied with, we should find ourselves without protection for a great variety of manufactured articles, but *with protection for raw materials*. It would reverse the traditional plan, of building up manufacturing business, and would be a kind of tariff reform that would injure, not merely the trusts, as menacing powers within their several industries, but the industries themselves, including the independent producers whom we need to encourage. Such a proposal would cause a struggle of classes in which this independent producer, who is the natural friend and protector of the public, would be on the side of the combination and against the reformers. Success in the movement could be gained only by the use of enough crude force to overpower monopolist and free competitor alike.

Abolish all duties on trust-made articles and in a few cases you will produce no permanent evil effects for the country as a whole. Some branches of manufacturing have undoubtedly reached a stage in which, with no protection, the American makers, while getting fair returns, can hold their markets against foreigners. No foreign competition can force such producers to reduce prices to the profit-annihilating point. This, moreover, is the situation, not of exceptional and highly favored manufacturers, but of the majority in some trades. Does any one suppose that the production of steel, for instance, would be much reduced in America even if that product were made quite duty free? If the price could be held just below the importing point, and still yield normal dividends on the real capital invested, then this business would still thrive and render the largest possible service to the country.

From this condition of fortunate independence industries shade off into varying degrees of dependence on protective duties. In some branches the most efficient shops could hold their own against foreigners, while others, less efficient, would have to retire from the field. In few cases would all the establishments be crushed, but in many cases there would be a large mortality, and some shops that are now fighting their way toward success might find their career abruptly ended. Possibilities of this kind are clearly enough before the public mind to prevent the abolition of all protection on articles that really need it. There are few measures against which the country is safer than it is against a sweeping abolition of import duties.

If costs were uniform, steady and quite ascertainable, there would be a simple rule for tariff reduction. It would be entirely reasonable and also practicable to reduce each duty to an amount that just equals or barely exceeds the difference in cost between the American and the foreign article. Find out accurately how much the owner of an American mill has to spend in creating his product, ascertain with the same accuracy how much the European spends for his and make the duty on the completed article about equal to the difference between the two sums. To favor the home producer the duty might be a shade more than this difference, since the European can, even then, place his goods on the American market at an outlay which, when duties are paid, does not much exceed the outlay incurred by his American rival. The two will then be nearly on an equal footing, and success will come to the one who improves his processes most rapidly and combines economy in making goods with effectiveness in advertising and selling them. The public will get the benefit of the rivalry in economical production, and will buy its goods at the maximum of cheapness. The adjustment will, moreover, favor the American maker; for, if the costs of production on the two sides of the Atlantic decline together, the *difference between the costs* will grow less. When the American goods cost, in the making, little more than the European there will be a larger margin of gain in selling them at the Euro-

pean cost plus the duty. A reformed tariff is entirely consistent with prosperity for American mills.

At the beginning it is necessary to allow a margin of profit to be made by every highly efficient producer.

The costs in America and in Europe cannot be ascertained with perfect exactness; and if the duty is intended surely to cover the difference between them, it must be fixed at a slightly larger figure than the one that expresses the apparent difference. Moreover, costs vary in different shops; and in practice the most economical one in this country would certainly not be taken as the standard for comparison. To do that might sacrifice a less efficient man. If this latter producer is hopelessly outdone in the race for cheapness, he should be thus sacrificed, since in the end he is certain to fail as a result of normal competition with American rivals. It is far from being for the public good to tax consumers for the support of an establishment that will run forever in a wasteful way. The only establishment that is entitled to consideration is the one which has before it the *prospect* of increasing success, but has not yet attained it—the one which is well equipped, but has not, as yet, used its appliances most effectively or won a market for its goods. Possibly its internal organization has not been perfected, though it is showing improvement. Many a new establishment goes through a period in which technical experimenting is inevitable and costly; and that potential producer, to whom we have before referred as the agent who puts a curb on the exactions of the trust, has before him, whenever he plans to enter the field as an actual competitor, the prospect of facing such initial difficulties. An adjustment that takes the potential competitor into consideration will be apt to leave enough of the present duty on his product to cover the difference, not merely between the costs that he *will incur when his efficiency shall be fully developed* and those incurred by a European rival, but also the difference between his earlier and somewhat larger outlay and the European standard.

On all accounts the calculation of the present excess of costs incurred by Americans over those incurred by foreigners needs to be made on a more or less liberal scale. Without retaining the absurd duties that now protect the American, a policy which takes the situation as we find it and tries to change it in a reasonable way, will leave enough of the duty untouched to protect the establishments which are now running with a fair degree of economy. This policy would be a desirable one, if there were no trusts in existence; and it may be even more desirable, in view of the growth of these monopolistic companies.

*The chance of actually carrying out this policy will be much greater than it now is after we have succeeded in regulating trusts by a different set of measures.* If we take away their chance of monopolizing the home market and see to it that they have effective rivalry here, their prices will reach a reasonable level and they will have nothing to fear from a reduction of duties to a like reasonable standard. The smaller duty will exclude the foreigner, who will no longer have the lure of an exorbitant American price, and the American manufacturer will join in the demand for a reduction of duties on raw materials and on products which he does not make.

After a long period, during which very little tariff reform of any kind has been obtainable, we find ourselves where two contrasted types of it present themselves as possibilities. There is, first, the abolition of the duties on finished goods and the retention of those on raw materials. This is simply an anti-monopoly measure, which takes grave risks for the sake of curbing the power of great corporations. There is, again, the policy of reciprocity, which admits with low duties or none at all many products of foreign countries, for the sake of making markets for our own exportable goods. This plan would certainly insure a sound commercial expansion. Will the general public favor it? If monopolies can be curbed without changes in the tariff, the probable answer is, Yes—much reciprocity can be secured if prices of products made in the United States are kept within bounds in the way that has so long been relied on, namely, by competition in the home market.



If a corporation can exact a really monopolistic price for goods that it sells at home, it may treat its export business as of secondary consequence. It may prefer to accept reduced orders from abroad, rather than accept lower prices for the goods sold at home. There may be larger gains to be had from high prices in the home trade than from any practicable expansion of the volume of the foreign trade. The trust will then oppose any reduction of the duties that enable it to maintain here the unnaturally high prices.

A monopoly will demand all the protection it can get, since this will enable it to maintain exorbitant prices without fear of foreign rivals; and American rivals are already disposed of. What will it do if, in ways that are independent of the tariff, its monopolistic power is broken? If competition still acts at home and brings prices to their normal level, will there be any motive for fighting against a reasonable reduction of duties? On the contrary, a sound policy will favor it. With monopoly profits on the sales made at home definitely lost, the foreign markets will then be of greater importance, and a policy of reciprocity that will gain admission to them for the goods that are coming in such abundance from our own mills will be lucrative. Gains will come from large sales at natural prices, rather than from small sales at unnatural ones. Trusts can thrive on the plan that will gain larger markets for them and can well afford to accept a reduction of duties on their own products whenever foreigners will make similar concessions.

Our manufacturers never wish to meet foreign competition in America; but the country has fostered their business in the hope they can ultimately do it, and most of them can certainly do it with the aid of the limited protection that has been described above. Inventions may be made and organization perfected till the foreigner can be safely met, first here and then even on his own territory; and he can then certainly be met on much neutral territory. Lower duties on raw materials and efficient competition in our own country will afford conditions of a great expansion of industry.

Among the possibilities of the near future is a status in which trusts shall be displaced from their vantage ground of monopoly and the prices of their goods shall be brought to a natural level. They will then be safe against foreign rivalry and anxious for foreign outlets. They cannot rely on excessive prices for their products sold in America, as in effect affording a subsidy on the foreign part of their business, and therefore all economies will be important to them and they will welcome reductions of duties, if only these apply to raw materials as well as to finished products. If the trusts should continue to be quasi-monopolies, they might contest every foot of progress toward freer trade; but if they lose the monopolistic position, they will be likely to use their vast power in promoting it.

Of the utmost importance, then, is the rescuing of competition from extinction; for not only does this create the conditions for healthy progress in all the practical arts, but it also affords the key to success in solving problems of commercial expansion. Inventions will follow each other in brilliant succession, new forces of nature will be pressed into service and the earning power of labor will go steadily upward, provided only that an effective competition shall be kept alive. On the farmers, in particular, would the pressure of a monopolistic power rest heavily, and the rescuing of competition in manufactures means an assured gain for agriculture. The same means will rescue and extend foreign trade.

With the preservation of competition is bound up that general progress in things economic on which hang the hopes of every class of men.

## Chapter Four: Monopolies and the Law.

In dealing with this problem, it might be expected that theory would be bold and practice conservative. In fact, however, actual law-making began by going to the extreme of boldness, while economic theory held the more moderate way. The law is apparently about to take the latter course. Making laws, however, is not “practice” in the full sense; and in fact, the more drastic the laws have been the less has been done in enforcing them. The statutes have registered a crude notion of what ought to be done; but the action they have called for has been of the over-bold kind, while, for a time, the action that was taken was more nearly *nil*. The Sherman Act interpreted “in the light of reason” calls for a policy that it is certainly possible to carry out; and we shall try to show that it is the general course indicated by economic principles.

The policy of the future is well in sight; and it involves supplementing the recent procedure under the Sherman Law in a very important way without, however, engaging in indiscriminate attacks on big business as such. Because of this it should receive strong support as soon as its effectiveness shall be generally realized, since the people will never recede from their demand for the suppression of real monopoly.

In the making of laws we shall incidentally do what is undeniably important—that is, improve the organization of the trust itself, and especially give protection to investors. In most trusts there are internal evils that require attention. There is far too much centralizing of power within the corporations themselves and the real owners may be victims of a policy pursued by the managers. We can help to protect the public by ensuring to the trust a sounder organization, for it should not be overlooked that it is at present a very imperfect thing. It is composed of a body of stockholders, a few of whom are promoters and directors, and in theory all of its proceedings are for the benefit of the stockholders. If this were the practical fact, the great issue would lie between the trust as a whole and the public. As it is, however, there is a more immediate issue between the manipulators and the stockholders. The investor is, at present, in some danger of being the most conspicuous of all the trust’s victims, and measures for the protection of the honest and innocent men whose money is lured out of safe places into perilous ones should come early in the order of time, as they do in point of importance.

It happens, fortunately, that the very things which will protect the share holder will injure neither consumers, nor laborers, nor producers of raw material, but will contribute toward the protection of all these classes. In this, there is complete harmony between the policy that stands guard over honest capital which is attracted to a position of danger, and the policy that protects the general public.

There is one institution, a bad product of recent development, for which no good words should be said, and very few are said. It is the “holding company” so called, and is diabolically perfect as a means, first, of concentrating the control of many corporations in a single one and, secondly, of concentrating the control of that single company in a small minority of the real owners of the capital and the business over which they

have sway. It sometimes puts property belonging to a vast number of owners at the disposal of a very insignificant minority and because of its bad perfection in creating monopolies, which injure consumers, and in building up little oligarchies within the monopolistic corporations, and so injuring honest capitalists, it finds few so mean as to do it reverence.

It is not long since legislators looked askance at all corporations and chartered them with reluctance. If they had foreseen that artificial persons of this kind would ultimately be created to control large groups of other artificial persons and the fortunes of a myriad of investors, they would have waited long before assenting at all to the creation of incorporated companies. In view of the jealous regard which the founders of the republic had for the rights of states, the constitutions of American commonwealths would have contained provisions against the creation by any one of them of companies able to play reckless games with capital belonging to citizens of the others. As it is, some states have specialized in the making of charters which are virtually letters of marque and authorize quasi-piracy carried on in other states. The interstate tariff wars, against which the federal constitution became a barrier, would not, in principle, violate the spirit of that document more clearly than do some of these corporations.

The relation of the holding companies to the country as a whole is fully as objectionable as is the relation of the promoters and directors of them to investors, and this affords an equally decisive motive for bringing their existence to an end as soon as this can be done without unduly disrupting business. Nothing is simpler than this means of uniting rival corporations under one control and then excluding the great body of owners from all power over them. First, inflate the capital of the original and constituent companies until the common stock is mostly water; then organize a new corporation to buy the majority of that water, and the thing is done. How much real money does the water cost? That determines the amount that the holding company requires. It may be secured, however, by floating bonds; and if so, the holders of a bare majority of the shares of its own common stock will have the control of the entire property of the original corporations. Of any law that is framed to create holding companies, that may be said which was said by an English gentleman of the roast beef which was served at his table; "It is as bad as bad can be; ill bought, ill fed, ill killed, ill cooked, ill dressed!" No argument is needed to make a case against it; and it is sufficient here to point out the fact that the incentive for forming such companies would be removed if it were enacted that the shares of industrial companies owned by holding companies should have no voting power. It would doubtless suffice for the end immediately in view if all the shares held by such a company were counted as a single share for voting purposes. The holding company then could be many times outvoted by other stockholders. Of the constitutional questions which the entire policy of trust regulation presents it is not the province of this small treatise to speak; but the adoption of some rule akin to those suggested could be insisted upon before either a federal charter or a federal license should be issued to a corporation doing an interstate business. There is a further weakness of consolidated companies which comes from their great size and the diversity of the establishments which they control. An overgrown trust is not as efficient as one of more manageable size. An early impression was that a majority of our trusts were thus overgrown and would fail from inferior management. This impression no longer exists; and yet it is probably true that an efficient independent producer can often excel the trust in management. The great corporation resembles the wolf in the Russian story. As members of a pack of forty were shot one at a time by the occupants of the sleigh they were pursuing, each victim was devoured by his comrades; and when the number was reduced to one, the survivor had virtually eaten his thirty-nine mates. It was not necessary to shoot him since he wobbled in his gait, and fell out of the race, A trust that, as the saying goes, has "swallowed" thirty-nine competitors, cannot be in the most healthy condition, unless its powers of digestion and assimilation are nearly unlimited. Its plants include all kinds, the decrepit and badly placed together with those well-located and up-to-date. Its

management is often inferior, not only to that of an efficient independent company, but to that of some of the companies which were absorbed by it.

A promoter is not usually a good manager, either by experience or by interest. His purpose is attained when he has formed the consolidation, received his pay and his slice of the stock and realized on this in the market. He probably could not manage it if he would, but pretty surely he would not if he could; and having formed the combination he is apt to leave it mainly to its own devices. He has great facilities for manipulating the value of stock in the companies he controls, and he can always utilize the machinery of the stock exchange in gathering in the profits so made. When making and selling goods does not pay, "milking" the stock market may do so; and in the case of directors who are bold enough and bad enough to wreck the corporations, this operation sometimes overtops all others in profitableness to themselves; but alas for investors, not only in this corporation but in others, since the example of quick profits gained by bad means is only too contagious.

What the stockholder in a trust needs before all things is security. He wants to have the corporation make money by producing goods and selling them for more than they cost. The public also wants efficient production and when a trust makes money the public is interested in seeing that money go to owners and not to managers at the cost of owners; for when the gains go to the owners it may be in consequence of something that is good and not bad for the public. It may come through the technical excellence of the product which is turned out or the efficient machinery which is used in making it. There is the sharpest line of division between all legitimate interests and those of the speculative director who finds his account in manipulating the stocks of his own corporation.

When there are so many persons demanding sound business management of corporations, and no one openly opposing it, there ought not to be any difficulty in securing whatever legislation gives promise of securing the desired result; and moreover one measure would assuredly contribute to the success of such an effort, namely publicity. The trusts must stand the turning of light on their internal affairs. The public must know what plants they own, what they gave for them, what they are worth at present, for how much they can be duplicated, what appliances they contain, whether antiquated or modern; in short, what is the substantial basis of the stocks and bonds that the companies place on the market. Even this knowledge is, at present, inaccessible and the investor who puts his money into the trust must guess, as best he can, what property he is getting. The guess is apt to be a bad one for him, and the publishing of such business facts as have just been specified would not only remove the greatest evils from stock watering, but would put an important check on the manipulating of values. An investor who knows that there is only one dollar of property back of five dollars of stocks and bonds may be able to buy the securities at a discount from par that will make him safe. In any case he will buy them, if at all, with his eyes open to the essential facts. Publicity here is the key to success.

When, however, the investor shall have been, if not protected, at least placed where he can protect himself the graver difficulties connected with the regulation of trusts will begin. It is not for the harm that they do to the men who own them, even though these men may pay too much for the ownership, that monopolies are chiefly dreaded. It is for the harm that they threaten to do the consuming public, the farmer and the laborer. Consumers are in danger from high prices; all laborers who are not subsidized by the trusts are in danger from reduced wages, and large classes of agriculturists are in danger from depressed returns for products which are raw materials of manufacture. The trust may pay its own operatives well; but it may close mills and force some employees into other occupations, and it may compel some farmers to sell what they produce in a restricted and unfavorable market. There are, indeed, four parties who have a common interest in curbing monopolies, namely, the independent producer, the consumer, the unprotected laborer

and the farmer. To protect the first of these four is to protect them all. If the rival producer cannot be crushed, the consumer, the laborer and the farmer are far better off. Moreover, as laborers and farmers are also consumers, they get double benefits. Both have something to sell and something to buy; and they can get better terms in both operations if independent production goes on freely and, at need, can go on more freely. When this is true the farmer will no longer be made to take low prices for the raw materials that he has to sell, and the laborer who is not tied in interest to the trust itself, will no longer suffer with the rest through a reduction of his pay. No one will suffer by artificially high prices for the necessities and comforts of life. All this may be realized, and the approaches to it will be realized in proportion as these consolidations lose the monopolistic power that, to some extent, they now possess.

The key to the solution of the grave problems that are thus presented lies in the fact just cited—that the independent producer is the natural protector of all the other threatened interests. If the trust cannot crush him, it can neither tax consumers nor mulct farmers nor depress the general rate of pay for labor. Goods will be produced at normal prices, and all who help to make them will get normal returns, so long as competition is kept alive and efficient.

But it is not easy to keep competition in vigorous life. The great company, as has been shown, has ways of clubbing the men who are bold enough to enter the arena with it. This is not done by the old and familiar plan of reducing costs and underbidding the inefficient producers. That is a part of an old and established order of things. The economic organism has become efficient as it is because capable producers have survived and others have perished. The process has, indeed, had its serious hardships. We have been appalled by the inexorable fate which hangs over every employer who cannot get out of labor and capital as large a product as his rivals are getting; but for society as a whole there is gain from displacing him. The hope of an endless increase of productive power—of a perpetual rise in the level of economic life—lies in the continued action of this law of survival, by which only the best servants of mankind are retained.

At present the situation is the reverse of this. The interests of the public itself are now threatened by the destruction of competing producers. This is because *it is no longer the inefficient only who are in danger of being crushed*. It is often not the unfit, but the particularly fit that fail to survive. The competing power that threatens to destroy them depends, as we have said, not on economy in production, but on special and unfair fighting powers which great size gives. The really efficient producer, the man who can make goods even more cheaply than the trust can make them, is now in peril; and it is this man who must at all hazards be kept in the field. We, the people, must use the law to protect him, as he uses his economic power to protect us.

Now, the country has rightly acted on the supposition that the first thing to be done, in thus guarding our guardian, is to secure for him fair treatment by railroads. If the trust gets a rebate which he cannot get, it has him at its mercy. It may ruin him, even though he may be able to make goods more cheaply than any producer in the country. Moreover, it is the prohibition of pooling by the railroads themselves that subjects them to the temptation to make the discriminating charges. In a pool they would have no reason for trying to lure away from each other the traffic of the large shippers.

It recently seemed to be true that the attempt to preserve competition among common carriers had gone far toward extinguishing it among manufacturers. Competing railroads, a struggle for the business of large producers, secret rebates to such producers, the extinction of small rivals and an approach to monopoly in many branches of production—this is the series of phenomena that we have witnessed. Railroads in tolerated pools, regulated charges and a fair field for the small producers—this is the alternative series; and it is the one that we have partially realized and must realize more completely unless we are driven to a much bolder course, namely, the giving over of railroads to the government.

An exceptional functionary is the common carrier, and we shall be forced to deal with him as we shall



not deal with others. His position is strategic, and we cannot long allow it to be used in a way that creates monopoly in the remainder of the economic field. Without pretending in this small work to deal to any extent with the problems of transportation, we record the belief that within any period that we can now take account of, they will be settled, not through government ownership, but rather by government regulation.

In what respects does our present scheme of regulation fall short of complete effectiveness? The most obvious and generally recognized defect in it is the anti-pooling regulation, which persists apparently out of regard for the strong popular feeling against all forms of monopoly. But this feeling, sound though it be, *is* misdirected in the present case, for it has long been established that competition of railroad carriers leads to monopolies among shippers, through the discriminations which it causes. Whatever of competition still survives—whatever effort the roads still make to lure traffic from one another—still affords them an incentive for secret rebates to shippers strong enough or shrewd enough to command them, on threat of turning their shipments to rival roads. The stringent penalties now in force have apparently stamped out most of the simpler forms of rebating, but this need not obscure the fact that violation of the law would be less profitable, and subtle evasions less prevalent, if the roads were allowed of their own accord to end the competition which is the source and motive of it all. In the early days when roads were still able to pool their earnings from competitive traffic, there was nothing to be made by rebates, and stringent legal penalties were, in such cases, superfluous.

If we were ready to let competition thus end itself by means of pools, we should then have to protect the public against charges that, in an all-around way, might be too high. Indeed, we are confronted with the preliminary symptoms of such a condition even now, but pooling would probably bring it upon us more quickly. The issue will be clearly drawn, as was shown in the recent legal battle over the concerted rate-increases of the railroads covering the whole north-central region of this country. It may take a supreme effort to prescribe and enforce fair rates, but the outcome of this first engagement seems to show that the government has enough power and also is disposed not to be tyrannical in exercising it. In governmental regulation of the general level of prices one chief danger lies in the limiting of earnings to a hard-and-fast percentage on capital invested, with the result of removing the incentive to that increase of efficiency from which both operators and public might make mutual gains. It is refreshing to note that our officials seem to be avoiding this rule-of-thumb pitfall, and recognizing the fact that, in the last analysis, “A reasonable return is one which under honest accounting and responsible management will attract the amount of investors’ money needed for the development of our railroad facilities.”<sup>3</sup>

With all the problems which this doctrine involves, it still offers a simpler task than that of forcing competing lines to treat all shippers alike. The law can protect the whole public against a generally high scale of charges more easily than it can protect a small shipper against special favors accorded to his powerful rival.

However, competition of carriers is not the only source of favoritism. Another that is coming into more and more prominence is the fact that carriers compete with their own customers, and wherever that occurs there is the strongest possible motive to take some form of unfair advantage. A coal road owning mines that sell their coal in competition with independent miners, an ore road owned by a steel corporation over which its competitors also ship ore, a pipe-line belonging to one oil refiner and on which competing refiners depend to carry their oil, a private car-line owned by a large packing-house: to expect any and all of these to do their whole duty as common carriers is to demand too much of human nature. The opportunity for gaining a subtle advantage is too great, the temptation too overwhelming.

If the line is congested and some one’s cars must be delayed, who will be first to suffer? If cars are scarce, who will get first chance at the available supply? If a pipe-line does not want to act as a common

carrier for all producers alike, are laws and commissions strong enough to compel it to render genuinely equal services to all? In fixing rates, which the company may, as a carrier, demand alike from itself as a shipper, and from the independents, will those rates be fixed as low as if the road were merely interested in developing the traffic on its line? If, by the simple device of shifting money from one pocket to the other, the road can exact unreasonable tribute from such independents on all their shipments, is it human to refrain? The rates might not be so excessively high that they could be proved unreasonable before commissions or courts, and yet be, in reality, a discrimination of substantial effect against the unfortunate outsider.

This is a problem which our laws have not yet settled, although a beginning has been made in the much-interpreted "commodities clause" of the Hepburn Act of 1906. This act attempts to prevent any railroad from carrying, in competition with independents, articles "in which it may have any interest, direct or indirect." By the judicial construction of the act, however, they may hold stock in the corporations which own coal, lumber or other commodities. A great majority of such stock may apparently be held, if only they avoid common boards of directors and other features which would convince the court that their separate corporate existence is a mere sham. As thus construed, the act has so far failed to carry out the purpose of its framers. To accomplish this purpose completely, the holding of considerable blocks of stock in such outside corporations would have to be forbidden, as most people, including the federal circuit court, supposed they had been forbidden by the law of 1906. This prohibition might be held to be unconstitutional—indeed the Circuit Court has already so held it—and in that case some other way must be found to reach the goal. The Supreme Court has made us stop for second thought and to look for another way out, but meanwhile the same condition still confronts us. And it is not clear that there is any other effective way to remove all those communities of interest between carriers and certain of their customers which now furnish a more insidious motive to favoritism than the mere competition of carriers with each other.

Such favoritism is unusually hard to prevent by mere laws against discrimination, because it can be effected without the crude methods of rebating, or of charging different people at the same place different rates for the same service. "Personal discrimination" is easy to define and forbid; but if the persons ship from different stations, and especially if they use slightly different routes, the same result may be gotten under a more innocent guise. Local differentials are reasonable and are needed to allow for many different circumstances of traffic and operation, and such differentials may conceal a vast deal of undue personal advantage, without reaching such a point that the real motive and effect could be clearly proved to a commission or a court. The conditions in the carriage of petroleum products revealed by the report of the Commissioner of Corporations in 1905 are such as to drive home this fact most forcibly to the least prejudiced mind. The problem of the alliance between manufacturers and carriers is still unsolved.

Equally unsolved is the problem of the relation between railroads and water routes. Water carriage, unlike the railroad business, is naturally competitive, for the high seas and all navigable waters are free to all. But without the use of docks this freedom is but an empty phrase, and it is being borne in upon the public mind that he who owns the terminals need not bother to acquire title to the sea, just as in the arid country one who should own the water need not care who owned the land. Moreover, boat-lines must be "fed"; they must get most of their traffic from the railways, and if the roads choose not to feed any but their own children, they can make the lot of the independent boat-line a hard one indeed. As a result, the control of railroads over the water routes has reached such a growth that the people are being roused to strenuous opposition, and we hear of proposals that the Panama Canal should charge a higher rate of toll to vessels operated in the railroads' interests, in order that this route at least may not be monopolized.

Water competition should be preserved wherever possible, though the vengeful method just suggested is hardly the one best suited to the needs of the case. Competition in waterways does not bring the same

tendency to discrimination that is seen in railway competition. In fact, the chief kind of discrimination to which water carriers are liable is the sort that is caused by a community of interest between the carrier and some outside business venture. Such favoritism is the fruit of monopoly, and competition between carriers by water, far from increasing it, is the best of safeguards against it.

The crux of the problem lies in the attempt to secure to all the independent boat-lines the advantages of connections with their natural railroad feeders, on perfectly equal terms, irrespective of ownership. Toward this goal we seem to be making rapid progress, for the law already requires switch connections to be furnished when the traffic justifies it,<sup>4</sup> and gives to the Interstate Commerce Commission power to prescribe through routes and joint rates even when one of the carriers is a boat-line.<sup>5</sup>

However, no railroad can, under this act, be forced to include in such a through-route "substantially less than the entire length of its road or of any intermediate road under its control." If a railroad boat-line were held to be an extension of the railroad itself, this provision would fail of its effect in supporting water competition, for the railroad could then refuse to turn traffic from its own boat-line to that of a competitor and thus would still be able to extend its "natural monopoly" over water as well as land. Moreover the mere making of a joint rate is no guarantee of fairness, unless it be also made sure that, in dividing the rate between the two interested parties, the boat-line gets its fair share. And the dividing of joint rates is a matter of great complexity, in which the exact sum that should go to each company is very difficult for an outside arbitrator to determine with perfect accuracy.

However, if the railroads were compelled to extend spur tracks and make joint rates to all on equal terms and to divide the joint rates fairly, without subterfuge of any kind, and if equal docking facilities were assured to all, then the chief handicap would be removed, and the railroad boat-lines would stand or fall by the efficiency of their service and the cheapness of their rates. Then we should find no need of subsidizing independent lines through discriminating canal tolls or other such costly devices, having given them a fair field and no favor.

However, the exact methods we shall follow in settling our many transportation problems is a thing none may presume to predict. The one thing that is certain is that the unequal treatment of different shippers is an evil so great that it must and will be suppressed. When that is done, we shall find ourselves at the beginning of more serious work. There will remain in the hands of the trust weapons by means of which it can destroy its rivals. To take away all of them may not be easy. Though the solution of the railroad problem is hard, the solution of the remaining part of the problem of monopoly may prove harder; but recent events have shown that it is well within the power of the people, if that power be used with zeal and intelligence.



## Chapter Five: Monopolies and the Law: — Destructive Competition.

There are, as we have seen, certain ways, nearly all now well known, in which a trust can crush an efficient competitor—the man who is producing goods cheaply and who normally ought to survive. It may make use of the “factors’ agreement,” by which it gives a special rebate to those merchants who handle only its own goods. It may resort, secondly, to the familiar plan of cutting prices locally—entering its rival’s special territory and selling goods there below the cost of producing them, while sustaining itself by means of higher prices charged in other portions of its field. Again, the trust may depend on the cutting of the price of some one variety of goods which a rival producer makes, in order to ruin him while it sustains itself by means of the high prices which it gets for goods of other kinds. These three things alone are enough to make the position of a competitor perilous, and they are such important features of monopolistic strategy that the suppression of them would go far toward rescuing competition, protecting the public and insuring to it a large share of the benefit that comes from economies in production. Independent mills would continue to be built and would be equipped with machinery so efficient that a trust would have to be forever on the alert in keeping abreast of them. There is no conceivable condition in which both consumers and laborers would find their interests, present and future, so well fostered as one in which corporations should be allowed to grow to great size without let or hindrance, but in which the prices of their goods should be forced continually downward by the necessity for meeting both possible and actual rivalry. It is not difficult to see what is needed in order to make the independent competitors thus secure. In a fair contest for survival the efficient ones can protect themselves. In such a rivalry everything depends on mere economy in production, and with that ensured they may well be subjected to the full force of the struggle. When efficient production no longer saves them, it is time for the state to intervene; and it needs to do this if it would carry out the very end for which it was originally established—the protection of property itself—by the suppression of refined forms of robbery.

The factors’ agreement, the local cut in prices and the illegitimate breaking of a general scale of prices must, then, in some way be stopped. If laws were self-executing, it would be easy to stop them. These unfair acts could all be defined and forbidden; but few laws would encounter more opposition both in the making and the enforcing than would these. To forbid the factors’ agreement is virtually to order the trust to sell goods to any customer who tenders payment for them; such an order would certainly not be welcome and it might remain a dead letter after being enacted, while merely prohibiting local discriminations in prices might have no better result.

Both of these things, when done by a “combination” in a successful campaign to repress competition,

are now unlawful, since they tend to create an “unreasonable restraint of trade”; but no one would claim that the practices do not anywhere survive.

There are two weaknesses in the situation thus created. In the first place, the courts have not had time to form a body of decisions that would clearly show just what sort of competitive practice they will regard as unreasonable and where the line will be drawn. Legal precedents grow slowly, one decision contradicting another, and although these practices have been in evidence for two or three decades—indeed some of our commonwealths had statutes aimed at predatory price cutting twenty years ago—still our body of doctrine on this point is far from being consistent or complete.

In the second place these acts are not made illegal in themselves, but only when a monopolistic combination commits them. The Sherman Law is not invoked until it is believed that the trust has already achieved a position of monopoly. Then its past history is probed, and if it be found to have waged “ruthless war” rather than legitimate competition, that fact is contributory evidence making condemnation more certain. But this usually comes too late to help the former rivals over whose dead bodies its bad eminence has been attained. Their case is often comparable to that of the philosophical anarchist, Ferrer, whom the Spanish authorities recently exonerated after a rehearing of his case. He was clearly entitled to damages, and could no doubt have collected them, but for the fact that he had been dead for more than two years. It was a lucky independent who survived long enough to recover damages from the American Tobacco Company, after that corporation had been condemned by the Supreme Court.

The situation demands that such acts be made illegal in themselves, whether or not they have been carried so far as to result in monopoly. This would be no new experiment. With regard to local price-cutting, Australia and New Zealand have laws to protect their own industries against the “dumping” policy of foreign producers, while fifteen of our own states have laws aimed to prevent the predatory cutting of prices, as distinguished from fair competition. Of these fifteen states, some attack discrimination, some forbid the cutting of prices unduly low, and some make both practices illegal. Twelve<sup>6</sup> of them forbid discrimination between places when made for the purpose of destroying competition, and one<sup>7</sup> attacks general discrimination by coal and coke dealers. One of these states, North Dakota, carries the anti-discrimination idea to its logical conclusion by compelling, in such cases, the sale of goods to all persons who want to buy, and who comply with reasonable regulations. Tennessee goes so far as to forbid the sale of goods at a price below the cost of manufacture for the purpose of driving out competition, and Idaho forbids the sale of any article for this purpose at less than its fair market or customary value. Three other states<sup>8</sup> not only forbid local discriminations but also forbid the cutting of prices below cost, or below a fair level, for the purpose of driving out competition. These latter clauses would seem hard to enforce, as they virtually amount to the fixing of minimum prices. Possibly they may be explained by the fact that a law which forbids discrimination in any given state would not prevent a trust from selling throughout the state at cut prices, while keeping its charges up over the rest of the country, over which the state in question has no control. A federal law would be free from this difficulty, and could gain the end in view without entering the field of price regulation.

One thing noticeable about these state laws is that none of them go to the full length of forbidding all discriminations and so compelling the sale of all goods at one price, with allowance for costs of carriage. One and all, they make the offense hinge on the purpose to destroy competition, and so lay on the courts, in one more class of cases, that most difficult of tasks, the judging of the presence or absence of malicious intent.

Though it may be that “intention is the gist of every crime,” still it is always a clear gain when the act can be forbidden, regardless of the shades of sentiment and motive that may have actuated the man who did

it. And in this case the very intention itself, which would be made the test of offense, is one which is, in a limited sense, perfectly legitimate. It is natural to want to take away a competitor's business, all of it if possible, and so long as this is done by fair means it benefits society. No amount of pity for the unfortunate will make us take up the burden of protecting those who cannot hold their customers in any rivalry that is fair in the sense that the best man wins. The victory of the efficient is something society cannot afford to do without, however much it might wish to spare the vanquished. So that in this case it is, after all, the means used and not the purpose that tilts the scale of judgment from approval to condemnation, and "unfair competition" comes to mean, virtually, any practice whose natural result is to make survival depend on other qualities than industrial efficiency.

There is another reason for forbidding price-discriminations unconditionally which must be mentioned here, though it will be more fully developed in a later chapter. Even when discriminations are not used by a would-be monopoly to crush a small rival, even between equals, they tend to produce the condition of cutthroat competition, in which prices go below cost of production, so that combination must be sought as a refuge. This condition may occur without any predatory purpose and would not be touched under the prevalent form of the law, and yet it is just as important to prevent cutthroat competition between equals as to protect the struggling minor rivals from being unceremoniously sandbagged. Both things are equally fatal to the attempt to create such healthy conditions as will give the competitive system a new lease of life.

If "the state of nature is a state of war," as Hobbes conjectured, then even despotism may be preferable; and if we believe that industrial warfare is the natural outcome of modern competition, we may come to believe in monopoly and price-fixing, as Hobbes believed in absolute monarchy, by force of necessity. If we are to avoid this radical experiment, we must bend all our energies to the constructive task of making competition tolerable, and in this task the one-price principle bids fair to play a leading part.

For if we propose to forbid all discrimination, there is only one system that will be adequate, namely, to charge one price for each article, no matter who buys it. This price would have to be quoted at the factory, the purchaser paying the freight-rate, otherwise there would be undue favor shown to distant markets. However, certain exceptions could well be made. In the case of light and valuable goods the transportation charge is a very small part of the final price, and might be disregarded. This system would also need to allow for wholesale prices lower than those charged for retail sales, while discounts might be allowed "to the trade" and to customers paying cash, so long as these discounts were uniform and were published as are railway rates, to be known and used by all on equal terms. But the principle of receiving the same price at the factory on all sales of the same article would necessarily furnish the basis of the new clubless competition.

This has been objected to on the ground that, if strictly applied, it would mean that each producer would have full possession of the markets nearest him, competition would be active only on the frontiers and we should lose one of the foremost features of modern business in losing the equal competition of all large producers over very wide areas. If two mills were competing with each other, there would be one place between them, and only one, where goods from either factory would cost the customer the same amount, including the price and the freight rate. If we move from this economic midpoint toward either of the factories, one freight rate would increase as the other diminished and the balance would be destroyed.<sup>9</sup>

This objection, however, is not as serious as it might at first appear. In the first place, it has force only in regard to goods whose value, in proportion to their weight, is so low that the freight rate forms a considerable item. And even in such cases, it does not necessarily follow that any such hard-and-fast partitioning markets would take place. Since customers are won by being convinced of the quality of goods, and not by price alone, there are comparatively few goods so perfectly graded and standardized that a few score miles of freight carriage, more or less, would be absolutely decisive. What retailer would hesitate to pay a few

cents extra per hundred pounds for an order of spool silk or dress goods, if convinced that the goods were appreciably better than the rival brands, and would sell faster? On most manufactured articles the freight charges for the haul from the factory to the dealer are an insignificant part of the final price. To quote from Mr. L. G. McPherson's excellent study on this point:<sup>10</sup> "An axe made in the Pittsburg district that retails in St. Louis for \$1 will have paid the railroads one and one-fourth cents. At Kansas City that same axe will have paid freight of a fraction over four cents and at Denver, where the retail price will have advanced to \$1.30, it will have paid 14 cents freight. A padlock retailing in St. Louis at 50 cents will have paid the railroads a little more than one-half cent; at Kansas City it will have paid one cent, and at Denver, where the retail price advances to 75 cents, it will have paid two cents to the railroads. ... A stove that weighs two hundred pounds and retails in St. Louis for \$18 will, in carload lots, pay 44 cents to Kansas City or Omaha, and retail there for \$22; \$1.48 to Denver and retail there for \$25; \$2.50 to Seattle, and retail there for \$30. When a housewife of St. Louis buys a dozen clothes-pins she has paid the railroad five ten thousandths of a cent. If she buys a washboard at 50 cents she has paid the railroad forty-two one hundredths of a cent. In Denver she would pay for that washboard 60 cents, of which the railroad would have received two cents." In such cases, one factory will be able to sell goods, even with the added burden of the freight rate, under the very walls of the rival mill, if there are any customers so firmly convinced of the superior qualities of his goods that they are willing to pay a slightly higher price rather than accept a substitute. There will be no very sharp geographical divisions of the field in selling goods of this kind, but competition may be expected to go on much as it does now, though with less danger of abuses. Of course there are some goods so heavy or bulky in proportion to their weight that the freight rates would make a big impression on the selling price, and there are other goods whose qualities are so well known and standardized that competition centres in price almost solely, and the small difference due to railway rates might be decisive.

To make possible widespread competition in such cases, the rule of one price F. O. B. at the factory might be relaxed, and instead the producer might be allowed to divide his territory into districts and charge all customers in a given district the same price. The divisions of the market should be based on transportation costs, and each consumer should pay, in addition to a uniform price for the goods alone, a further sum big enough to cover the average cost of delivering the goods in his particular district. This rule would be in many ways simpler than to require one price F. O. B. Within every district, one price to all customers; and differentials between the districts to cover approximately the costs of carriage; such a rule would hamper no one in any legitimate competitive endeavor. In the case of light and valuable articles, on whose price the transport charges would make little impression, the country could well be divided into a few large zones. Perhaps in extreme cases one zone might cover practically the whole market and costs of carriage be disregarded, as has already been suggested.

In administering such a plan, an executive commission would be necessary, but if we had such a body, the details could be left to its judgment and experience. The producer could probably be left free to choose which system he would follow, being merely required to file all prices, and the boundaries of all districts, with the commission. These records would then be at hand in case the commission had reason to suspect that, through a process of commercial gerrymandering, or departure from published rates, or in any other way, the scheme was being used as a cloak for discriminatory practices. The situation would be closely parallel to that of the Interstate Commerce Commission, and the experience of that body would be of inestimable value in framing the details of the new machinery. Indeed, it would hardly seem like new machinery at all, so nearly does it approximate to our present form of railroad control.

Another thing that would ease the operation of the new plan is the practice of the railroads in making freight rates. Wherever the system of blanket rates prevails, wherever zones are established in which all

stations get the same rate from producing centres or from other zones, there it is possible for competitors to be on even terms over the whole area of the zone, even if both must fix one price at the factory and make the customer pay the freight. This rate practice is widespread; the country is dotted with groups of "common points." The larger part of Texas forms a zone of equal charges for shipments from a distance; New England is treated in the same way on much of its long-haul traffic; while on westbound transcontinental shipments the whole region east of Chicago is treated as a unit. Thus any two manufacturers east of the Mississippi, if they made the same price at their respective factories, would also be able to sell on even terms anywhere on the Pacific slope; and if two producers, wherever located, made such prices that they could compete with each other in any single part of the Texas common-point territory, they would be equally able to compete at every point, since every point in this territory gets the same rate as every other point on shipments from considerable distances.

With manufacturers under a one-price rule, the railroads would be under some pressure to extend the "blanket" principle even further than they do at present, in order to widen the market of the producers on their lines, and in so doing they would widen the areas of equal competition. When two mills are rivals for an intermediate territory, each, in enlarging its sales, does its best to secure the cooperation of the railroad over which it ships its goods, to the benefit of railroad and shipper alike. The railroad that takes the initiative in this has sometimes gone so far as to charge less for long hauls than for shorter ones, because otherwise its producers could not sell goods at all in the more distant markets. A more reasonable way of securing the same result, however, is for the roads from both directions to make blanket rates covering a considerable area, and giving every point in that area the same rate as every other point.<sup>11</sup>

But if this were difficult to bring about, it would be quite simple to relax the one-price rule itself, as already suggested, letting producers, if they chose, divide their markets into zones and charge one price throughout each zone, basing this price approximately on the average cost of carriage to the various points in each area.

For all these reasons, then, we need have little fear that a one-price system would seriously lessen the sphere of competition. This would not be true of goods of high value in proportion to their bulk, for in such cases the transportation charge is negligible. Nor could it be true of other goods whose quality varies and is the decisive element in selling them, nor would it be true for any goods in those large territories which the railways cover with blanket rates. And, finally, if in spite of all these facts competition should be unduly narrowed in any case, the system itself can be relaxed and an elastic zone system introduced. And if even under this system some producers have a decisive advantage over all competitors in the nearby markets, still this is only because they are forced to give those markets actually *lower* prices than are paid by those who have the advantage of active competition. Surely no such producers could have just cause for complaint. The purchasers at A and B, in the diagram, may not have competing producers to choose from, but they get their goods at prices actually lower than are charged in the region P-Q, where active competition is enjoyed.

Competition will be altered and the shock cushioned by such a system, but that is a much needed change. We have too often seen unrestricted price-cutting lead to cut-throat warfare and it is just that condition that we are trying to prevent. We do not want competition to be as fierce as it has been in the past, for that kind never lasts long, and while it lasts it does more harm than good. The more moderate rivalry that would be set up in the way just proposed offers at least some probability of permanence, so that we should be likely to have more competition left after twenty years than after twenty years of the present attempts to preserve "free" warfare.

In passing, we may mention that the present system has other drawbacks beside the danger of throat-cutting. When factories compete on even terms over wide areas, taking on themselves the customers' burden



of freight rates, we have a certain amount of unnecessary carriage done, in moving goods from a distant factory when a near one would have gotten the business if the freight rates had been figured in the price. There are those who think it not an unmixed blessing that shoes are shipped from Boston to Chicago, and other shoes from Chicago to Boston, at a time when railroads are complaining of the difficulty of getting capital to provide for their growing traffic.

Thus, even conceding that markets will be divided into local spheres of influence, there seemed to be no serious dangers involved. In the enforcing of such a system, a practical difficulty will arise from the fact that merchandise seldom has those qualities which, in connection with money, have been termed "homogeneity" and "cognizability." The goods vary in quality, and it is not always possible for a purchaser to tell of what quality they are. If a trust wished to crush a competitor in Minnesota, by selling within that state certain goods at less than it cost to make them, it might try to accomplish its purpose, by making a special type of goods and offering it exclusively in the market of Minnesota. It might create an entirely new brand of goods and offer it nowhere except in this one state; and there it might offer it at a price that no competitor could meet.

Under the supposed law, however, the trust would be obliged to sell goods of this special brand to consumers in other states at the same price at which it sold them in Minnesota; and if orders should come promptly and freely from the other states, its attempt to ruin its competitors might prove costly and unsuccessful. Sooner or later the orders would doubtless come, and the strategy of the trust would no longer serve its purpose. However, an independent producer might not hold out long enough to get the relief thus afforded. During an interval the trust would secure high prices in every state but one; and in that single state it could afford to stand a loss for the sake of ruining its competitor.

It is true, indeed, that this particular club, which would be very effective in braining a single small competitor, would be of no use in simultaneously attacking a number of small producers making, in their various shops, as complete an assortment of goods as is made by the trust itself. If, however, they were assailed one at a time, they could be successively crushed, unless they formed a pool of their own for resisting such assaults. If they did this they could fight fire with fire. The cut on one article made by the big corporation could be met by a similar cut on that same article made in one of the shops controlled by the pool; and this affords one reason for raising the question whether the permanent policy of this country will or will not be hostile to such pools. In foreign countries they are treated with toleration, if not with friendliness; and for defensive purposes in wars against vast corporations they may have a function to perform here.

If the law is to offer relief from this baffling situation, and from others like it, it must be done under some general statute embodying the spirit of the special ones against unfair competition, and preferably strengthened by the creation of a commission to aid in its enforcement, as the Interstate Commerce Commission enforces the broad and general provisions of the Act to Regulate Commerce. A liberal interpretation of the Sherman Act would accomplish much, for surely all unfair competition is an "unreasonable restraint of trade," but statutes can make assurance surer.

If it could be proved that a reduction in the price of some one type of goods were not justified by changes in the conditions of production and that it could not be permanent, this would be one evidence that the cut was made for a predatory purpose. If the price of the particular grade of goods were first put down and then put up again, and if rivals were crushed in the interval, this would be conclusive proof of the fact. Sharp penalties enforced in a few cases might make the policy too dangerous to be practised. It is no longer to be supposed that statutes for the suppression of wars of extermination, such as a trust can now wage against its rivals, are powerless, if the people continue to be in as determined a mood as they are in at present and if they maintain a fierce watchfulness over their officers.

Statutes, of course, are not a sure reliance, so long as a type of lawyer can gauge his skill in his profession by his ability to “drive a coach and four through them.” The technicalities of law usually favor offenders and are the bread and meat of the lawyers whose business consists in securing immunity for criminals. In any statute which defines and forbids certain predatory acts the first essential is a provision that other acts having a like purpose should not, by any implication, be permitted. Common law is more general than statutes and efficient action in curbing trusts can be taken under it. It forbids monopoly in a sweeping way and no statute must be allowed, by implications or otherwise, to weaken this prohibition. A work of definition must be accomplished, but not in a way that will cut down the scope of the state’s action in an important field.

There is some advantage in continuing to use the old phrase “restraint of trade,” and if this is done definitions will evolve, and any statutory definitions that are useful will have to be in harmony with such an evolution. How, for scientific purposes, can a monopolistic corporation be formally defined? Must it be the only one from which an article can be procured in order to come within the definition? If so, there are scarcely any monopolies now in existence. In nearly every industry there is a fringe of independent life remaining. The trust takes the centre of the field and lets a few small rivals operate on the outskirts. If these are in the trust’s power and compelled to do its bidding, the monopoly is essentially complete. If, then, new and strong competitors are precluded from appearing, the position of the monopoly will continue to be secure; for it has nothing to fear on the economic side. Just here, therefore, its danger on the legal side ought to begin; for it is the banishing, not merely of the actual, but of the potential, competitor that enables it to do the oppressive things which brand it as an outlaw. If the state will take it effectively in hand at the point where competition ceases to restrain it, the first step in a successful public policy will be taken. It needs no treatment till its power reaches that point.

If we propose to enforce either the common law or the Sherman Law as interpreted “in the light of reason,” there are several economic distinctions that will have to win recognition before the course of legal proceedings can be clear. We must, first, recognize potential competition as one regulator and note the means used by trusts to destroy its power.

To dominate weak rivals and to prevent strong ones from appearing, is to perform the act and to take on the character of a monopoly. A merely possible mill which as yet does not exist may forestall and prevent monopolistic acts. If the way is quite open for it to appear, the trust may refrain from keeping prices at a high level. The test of the question whether the great corporation is or is not a *complete* monopoly is applied by determining whether the way is or is not open for the competitor to appear. If the new mill can be built with no danger that the trust will close it by means of some of its illegitimate practices, the great corporation is shorn of its dangerous power and may then be a beneficent institution. It may produce goods economically, accumulate capital and help in giving to our country an industrial dominance in the world. The only sure evidence that rival mills can be built and run with safety is the fact that some of them have been built and are running. If none have appeared when prices have been very high, this is a proof that they have been terrorized.

Size, then, need not in itself make a monopoly. Conceivably a corporation might make all the goods of a given class and yet be held in check, for a time at least, and prevented from doing its worst by merely potential competitors. Practically, in some departments of industry, an approach to this condition has existed and this has made the state of society a startling one, indeed, but still tolerable. The power for evil that goes with size when laws are lax has not, in these cases, been fully used. Such cases are rarer than they once were. The evil power is far too often possessed and utilized, and whenever it is used, the predatory work begins. Monopoly is that monopoly does; and the typical act that identifies the unlawful power is the crushing of

rivals by the means above described. Advancing rapidly is the time when to every highly developed state there will be presented a sharp practical alternative. It is between keeping alive the power of competition and not doing so. Without competition the government must control prices of products and possibly wages and prices of raw materials. This is an alarming program; and yet a state cannot leave its citizens in the power of the “octopus” of popular rhetoric. Nothing but competitive power of some kind can relieve the state of the duty of entering the market rough shod and forcibly dictating values of many kinds. Competition can save us from that difficult and perilous necessity. It can take from monster-like consolidations of capital their power to do evil, while leaving to them both their power to do good and a motive for exercising it.

Discouragement and the demand for drastic and dangerous action by the state begin when the potential competitor does not promptly materialize as he is needed. In proportion as the prospect of his coming shades off into a bare possibility and then into an impossibility, the evil qualities of the combination grow and the good ones gradually vanish. Size without any predatory power makes a corporation beneficent; but size with this evil endowment makes it a menace to freedom; and the power to work harm depends on special practices by which the trust often crushes rivals. *The prospect that it will resort to them terrorizes the rival in advance and prevents him from appearing.* The trust has but to brandish its clubs when the rival producer is taking his preliminary survey of the field. It will not need to use them, for the rival will vanish; and this statement describes what has latterly become a frequent rule in industry.

There are, then, at least two potentialities that have to be taken into account if the present situation is to be understood and a future policy is to be wisely determined. If new competition is sure to spring up in case prices are raised, they will not be raised beyond a moderate limit. They will continue to be held down by a *possible* producing agent, and not merely by those competitors that are present and acting. This is potentiality number one. It may be that the new competitor will not dare to appear, because the trust will use its clubs in case he does so. This is potentiality number two, which neutralizes the first one and leaves the monopoly unchecked. The certainty that a competitor will be ruined, if he appears, takes away all probability of his appearing; and this probability affords the only natural check of any importance on the action of the monopoly.

What is wanted is a third potentiality, such as the law alone can afford. It needs to be made sure that, if the trust uses its clubs on the competitor, the law will use its own clubs on the trust. This will preclude the crushing of the new producers. The second potentiality, the bad one in the case, will then be removed, while the first and good one will be restored. If the trust has much to dread from the civil power in case it ruins competitors unfairly, it will give them the freedom of the field. This is all they need, and with this assured, they will appear promptly whenever prices are raised to the level necessary for ensuring to them due returns. An extortionate rise will not take place; from this the potential competitor will protect the public. A potency residing in the law annihilates the trust’s power to destroy him when he becomes active.

From every point of approach we are led to the conclusion that the law must disarm the trusts—it must take away the special weapons which are available only for evil. The railroad problem must first be fully enough solved to secure fair treatment for all shippers. Personal discriminations of the direct and the indirect kind must be prevented. Then factors’ agreements, the local cutting of prices and the predatory breaking of a scale of prices must be suppressed, and so must every other practice which can be identified as monopolistic. There must be a real force behind these prohibitions, and it must be capable of prompt action.

Since the efficiency of the Sherman Act has been revealed there is, for the first time, reason for considering all these things as within reach. Evidence of predatory conduct is not lacking. Mere size gives to a corporation a dangerous power and the raising of prices and shutting down of mills show that the power is used against the consumer. The treatment that rivals often receive is evidence that the power is used against



them, and it is not impossible to discover when a trust is clubbing competitors, in one or more of the familiar ways. Suppress all such practices and you give to potential competition a regulative power that it has never attained or approached. The half visible leash which it has placed on the monsters of industry will become strong enough to hold and, in no small degree, tame them.

They will need still more taming before they become docile draught animals. The actual present situation is one in which a hundred great corporations would have become unrestrained monopolies if they had not been under the restraint of potential competition. That restraint is not all that is needed. The monsters tug at the leash and, now and again, strain and break it. Unless we can make it stronger we shall have to reconcile ourselves to a limited exercise of the evil power of monopoly. There is evil for the consuming public and for laborers, and there is positive peril for the state in this toleration of the abuse, and it will strengthen decisively the growing demand that the government shall take industries into its own hands and manage them for the public welfare.

When we shall have made each one of the abnormal practices by which competitors are terrorized legal evidence of the existence of a monopoly, and shall condemn corporations that afford this evidence, we shall have made a very large beginning of a scientific and permanently effective policy in dealing with trusts.

## Chapter Six: What More Is Needed.

When the first edition of this book was published, appearances gave ground for hoping that the solution of the problem of trusts was well in sight, and that it would require no forcible dissolution of these bodies. What, in the preceding chapter, we have characterized as the beginning of an effective policy seemed likely to suffice for the whole of it. If only we could repress monopoly we might accept and welcome a great amount of centralization. We might allow mills and shops to grow large and to combine with each other, for the sake of the economy which this growth insures; but we must put a stop on predatory uses of the power thus gained. Such a policy promised to preclude monopoly while ensuring efficient production, fair prices and fair wages. It seemed that, in any case, abundant wealth would come by means of it; and perhaps harmony and even fraternity, which are worth more than crude abundance, might come also. To the country that should, at an early date, unite in this way collective prosperity with internal harmony, there seemed to be offered a position of economic leadership. It would have over other countries the same advantage which a man has over other men when he precedes them in the use of efficient machinery. Consolidation, in itself, was and is a means of enormously enlarging the general income, and the country that gets the benefit of it early has an advantage over its rivals. To reap the full benefit from this strategic position, a country that is utilizing the power of the trust for good must put the strongest curb on its power for evil, and it must now be admitted that somewhat more than was at first proposed appears to be necessary. When predatory acts shall have been forbidden there will remain something further to be done.

As a practical fact it is safe to say that the Sherman Law will be retained and that the people will rely on it to help in stopping "unreasonable restraint of trade." For the purpose of this book that phrase means monopoly and describes what exists whenever a consolidation, after putting an end to such competition as once existed among its constituent members, has (1) taken unfair action against new competitors and (2), for the sake of profits, put a check on the amount of goods produced and sold. Without these two practices the mere ending of competition between the parties in the combination would not necessarily lead to any evil. These practices must be prevented, even though, in some cases, a drastic law has to be invoked to accomplish it.

In this statement there is an implied admission that something more may need to be done than to define, forbid and repress those particular acts of the trust which are essential parts of its predatory tactics. It is clear that, besides the competition which is only potential, there needs to be a goodly amount of it which is active. The condition in which society will be quite safe is not one in which an overgrown company possesses most of the field and an obscure remnant of independent production is here and there found. Under such conditions there is no evidence than even the possibility of a really efficient competition survives. The trust may have clubbed its principal rivals and may have its weapon in hand ready for new ones. The only

sure evidence that competitors *can* come into the field is the fact that *they do so* when prices are high enough to furnish the lure.

Furthermore, the potential rival of the trust, to be capable of competing actively and effectively, must know the business, must have had experience in securing capital and a skilled labor force, and in making and marketing the goods in question. If our David be not expert with his sling before he goes out to meet Goliath, he will have little time to practise afterward. If all active competition were absorbed, how long should we keep that splendid body of managers, men of resource as well as of specialized trade knowledge, schooled in the hard knocks of active competition, who can be relied on to seize the first opportunity afforded by high prices? A decade would see them dwindling in number and losing their cunning; in two decades they would be forgotten. A sufficient amount of active competition is what the people wanted when the Sherman Law was passed and it is what they are now demanding when they insist that it shall be retained and enforced.

Plans for dealing with trusts presuppose that, at least in its essentials, the Sherman Law will stand. The prominent plans for regulating trusts fall into two classes, of which one includes measures which lead to a regulation of prices by the government, and the other, those which involve keeping the consolidated companies from reaching such a size that no adequate amount of competition will survive. In cases in which the corporations have reached that state, the plan requires that they should be divided. It will be necessary to test the claims of these two classes of measures; but in advance of the test, it is clear that regulating prices by a governmental commission or other public agency implies a failure to secure regulation of the natural kind—that which till recently has been secured by competition. When there are rival producers enough to make prices normal few persons think of asking the State to take charge of them. The two classes of measures, therefore, may be defined as those which abandon their faith in competition and those which retain that faith. Yet both contemplate acting under the law that was passed for the express purpose of keeping competition alive.

We shall try to see whether it is true that competition is dead or so enfeebled as to be past restoring. In the meanwhile it is clear that the measures that would give competition every possible chance to regain its vigor are in order even under the program which implies an expectation that they will fail. Those who think that we shall have to come to the policy of fixing prices by official authority should prove the correctness of their claim by first giving competition a fair chance to do its work and seeing whether the expected failure ensues. Nothing could be more irrational in theory or more disastrous in practice than to act on the supposition that competition is defunct when we know that it is tied by bands which we can cut. “What will it do when it is liberated?” is the question a reasonable being will ask, even though he thinks that it has lost too much vitality to do very much. On the answer to this question the policy of the government hinges.

Back of the question what measures will bring us to our goal is the question what is that goal? Assuming that we are able to steer our industrial “ship of state,” to what port shall we sail? The best we can hope for, one might suppose, is fruitful industry yielding a large general income and distributing it according to an honest principle. It is often supposed that the indictment against the trusts is altogether on the ground of their extortionate prices and that on the side of production there is no fault to be found with them. It is assumed that they create their products with a maximum of economy but cheat the people out of their fair share of the gains therefrom. This does, in fact, describe what within the short period of their existence they have done; and yet, if they should become secure monopolies, they would do something much worse. *It is not a large present social income that is the chief desideratum but a constantly enlarging income.* Progress is in itself the *summum bonum* in economics, and that society is essentially the best which improves the fastest. No state can be good if it is stationary, or fundamentally bad if it is now advancing at a satisfactory rate. It is the direction and the rate of social progress which afford the supreme test of the quality of an economic system.

Methods must forever improve or the increasing population of the world will not be able to live as well as it now does; and they must improve rapidly if it can hope to live better and better. Machinery must become more deft and automatic and take on itself more and more of the processes that are now done by the hands of laborers. New motive powers must be secured and new raw materials discovered, and the vital forces of nature must be more fully utilized for securing food. Competition always insures such a general forward movement. Our plan proposes to keep it alive, first, as the immediate protector of consumers, farmers and laborers. We wish it so to act that no one of these classes can be plundered; but we cannot keep it alive for this purpose without getting the benefit of its more important service—that of stimulating invention and of spurring producers to greater and greater efficiency.

Try to regulate trusts by a crude method and you are likely to see them putting a damper on inventive genius. This is the natural result of a policy of regulating prices by the action of public officers. We shall see that it would furnish a motive for suppressing improvements in order to use old machinery the longer. Regulate them solely by the power of competition, and you will force them to be forever on the alert in devising and using new machinery, lest they suffer the fate that has always awaited the tardy and unenterprising. A small shop with good appliances may undersell a big shop with poor ones, and may end by itself becoming big, while its rival dwindles. The size of an unenterprising company will afford no immunity from the law that writes over the door of every business house permission to live, on the sole condition that it shall forever increase its efficiency. For the sake of future progress far more than for the sake of present relief must we rely on keeping alive the rivalry of different producers. In the outlook that is opened to a country which shall combine high centralization with effective competition, there are features which in this small book we cannot take the time to discuss. In the proposed new regime there is a probability of greater steadiness in the general economic movement. “Booms” and depressions may not succeed each other as they have done, and the commercial crisis may become a less frequent and dangerous phenomenon. So far as these are stimulated by the methods of speculative “high finance” we may confidently expect a change for the better as more conservative methods are introduced. So far as they are aggravated by a faulty banking system we should gain hope from the present prospects of banking reform. And so far as crises are due to maladjusted production springing from business men’s ignorance of the true relations of supply and demand, the evil should be greatly lessened by the free publicity of business doings which will be one of the features of the new competition.

There may also be afforded an enlarged field for secure investments. The bonds of industrial companies should, in the end, become a safe form of property for even poor men to hold, and with such an improvement in the mode of investing savings, there should be an increase in the amount of the savings themselves. High wages, with safe depositories for the unconsumed portion of them, should result in larger accumulations made by laborers, and cause the true proletariat, in so far as it shall survive, to become only a remnant of the present wage-earning class. The majority of those who labor may ultimately possess capital and the additional comfort and influence which it brings. The stake which nearly all will have in the social order may bring about a steady upward trend of the level of political life. Such a compounding of benefits is as well worth working for as anything that has ever been offered to men, and should call forth the heroic effort which overcomes every difficulty and does what is seemingly impossible.

That the society of the future will combine economy with progress, and that it will do this by retaining the force which has ensured it in the past, is made nearly certain by the nature of the other courses which are possible. If we allow prohibitions to be unenforced and let monopolies act as they will, we shall soon reach an unendurable state. It will leave in the hands of the consolidations, a vast power for evil and a strong motive for using it; and it will offer to them a greatly lessened incentive for doing good. This would put a

permanent blight on the development of our country and transfer to others the place of leadership which is now offered to us. The result in the country itself would probably be state socialism. Beyond a moderate distance the toleration of private monopoly will never go. Rather than go farther the state would probably take possession of all industries that assume a monopolistic form.

It is possible to reach the goal of general prosperity without resorting to this perilous step, if only we can maintain a normal type of competition, in spite of inevitable consolidation. We shall see what course of action affords the most promising route to this goal.

## Chapter Seven: Constructive Competition.

When doctors disagree, the patient needs a strong enough constitution to get well in spite of them, and our industrial and legislative practitioners have never seemed more hopelessly divided than over this great disease of the body economic which they are now called on to treat. But on closer study, the situation simplifies itself somewhat, for if we can get the right diagnosis of the disease, we shall not go fatally wrong in the treatment, and there are only two diagnoses from which to choose. Among those who approach the question fairly and intelligently, there are two kinds of plans proposed, springing from two views of the fundamental nature of the ills that now beset us.

The first, and perhaps the most widely held among business men, is that in large-scale business competition has failed completely and monopoly has come to stay. The large plant is more efficient than the small one, the combination is more efficient than the independent, competition is wasteful and unnatural and monopoly the inevitable outcome. Such businesses are in a true sense “natural monopolies.”

To one who holds this belief, the general plan of action is obvious. We already have a considerable class of businesses recognized as being natural monopolies, and we call them “public utilities” and the corporations that operate them “public service corporations.” The businesses that supply water, gas and electricity are the typical examples in this class, while telegraphs, telephones and railroads belong in the same family. Here monopoly is a practical necessity, and yet monopoly power in private hands is a thing we will not generally endure. Why else are we justified in speaking of these businesses and treating them as things apart? Is it because the services they render are of general use, are necessities? How much more so are those of the butcher, the weaver and the miller of flour! Is it because some of them (not all) deal with communication, and so are essential to the growth of strong public opinion, national unity and all the bonds of sympathy and cooperation that are so vital to the nation? But why then include the making of gas and electricity, and neglect such moulders of public opinion as books, magazines and newspapers? The bottom economic fact is that these businesses are naturally non-competitive, and for that reason need public control. If competition worked well in the gas business, we should not subject it to any special regulation, while on the other hand, if weaving and flour-milling become as clearly and unavoidably monopolistic as the supplying of gas now is, they will become by that fact public services just as truly; for monopoly power is always a public concern.

For the recognized public utility industries, our policy is settled and well-defined. We cease trying to compel competition, recognize combination, and regulate the prices that result, usually through commissions; and those who believe that the industrial trusts furnish the same problem must logically seek the same remedy. If they have their way they will legalize monopoly, and in place of free competition as the regulator of prices, they will place the decrees of a public commission.



The other way of attacking the problem starts from a widely different diagnosis. It rests on the belief, deep rooted in the minds of the masses of our people, that competition is not yet dead, that the monopolistic powers of the trusts are accidental and not inevitable, that they are built upon privileges that can be removed, powers that can be withdrawn and predatory acts that can be forbidden. Those who hold such a view naturally wish first to forbid every form of unfair advantage which one competitor may take over his rivals, and further to forbid combination, in whatever guise, when it goes beyond the point at which effective competition can survive. The latter problem we shall now take up.

Acting under such a policy we may attack the various forms of combined control, as we have done in the past; but like the sorcerer in the story they take new shapes and elude us. We have driven them from pools to trusteeships, from trusteeships to holding corporations, to huge consolidated corporations and to informal communities of interest. We cannot forbid all forms of combination, for we cannot live without it. Without some way of massing separate capitals modern industry would collapse, for its tools have grown in size beyond the means of individuals to supply them. And whatever form of combination we do permit may be swollen to the proportions of monopoly without changing the form that has been sanctioned. The corporation itself is a combination and it may grow almost indefinitely without changing its shape. The difference between a corporation that we should call a trust, and another corporation that we should call an independent may be a difference of size alone. Obviously, we cannot afford to abolish all corporations merely because some of them may grow to monopolistic size; and yet, short of that, it is hard to see how we can succeed in preventing monopoly, unless we choose some other point of attack than the mere form in which monopolists organize their undertakings.

To gain the end desired, the thing that must be prevented, whatever form it takes, is the unified ownership or control of so much of the capital in a business that competition is extinguished as a result. The attempt to preserve active competition leads, then, to the need of setting some limit on the amount, or proportion, of capital that any one person or organized group of persons can control in any one business, by whatever method this control is exercised. It is to this policy that the enforcement of the Sherman Act is leading us.

Thus we have two radically different methods before us. Both seek the same ends; industrial efficiency, progress and justice, but they differ fundamentally as to method. The former policy will appeal to those who believe that in limiting size to prevent monopoly, we shall hamper efficiency as well; while the latter will be preferred by those who hold that a good independent can be as efficient as the trust, and that competition furnishes an invaluable incentive to progress, which monopoly and price-fixing would destroy.

In either case we shall build on what we now have, rather than raze the foundations and start anew. At present we are trying to reestablish competition, with results that so far satisfy no one completely. As the case stands, when a combination is proved guilty of restraining competition by unreasonable methods and with monopolistic effects, that combination must be broken up and reorganized, under the courts' direction, in such shape that the pieces shall be independent of each other and in a position to begin competing. But in the actual reorganizations the one most salient fact is that the pieces have not been completely separated. Without going into a maze of details, the principal and characteristic basis of the reorganizations is the dividing of the shares of the subsidiary companies *pro rata* among the stockholders of the holding company. In the simplest case, that of the Standard Oil Co., any man who had held 8% of the stock of the old company received 8% of the stock of each of the new ones, and any group of men who between them had held 51% of the stock of the old company, would now hold between them 51% of the stock of every one of the fledgeling independents. That is, we have dissolved the form of combination known as a "holding company," to substitute the form of combination known as a "community of interest." We have forbidden the usual methods of

unified action, while leaving the motive for it as strong as before and a way to secure it open. The original owner of an independent refinery, after selling out to the Standard for stock, became, of course a minority holder of insignificant importance in the larger company. After the dissolution, far from getting his own plant back, he becomes an insignificant minority holder in the corporation which controls it, as well as in many others in which he has no personal interest. He is a stranger in his own house, without even a strong enough foothold on which to base an effective protest.

In the case of the Tobacco Company, it is true, voting power was given to the former holders of preferred stock that had had no vote, with the result that the twenty-nine men who had commanded the combination no longer held a controlling interest. But this merely enlarges the community without destroying its common interest, and does not alter the fact that the same names are found on the stockholders' lists of all the new corporations.

Again, it is true that in the Tobacco and Powder dissolutions it was arranged that in some of the new companies the former common stockholders should be in a majority and the former preferred stockholders in a minority, while in others of the new companies the former preferred stockholders should be "in control" and the former common stockholders be reduced to minority holders. That is as if, out of a corporation which we will call the Smith-Jones Company, we were to make two new companies; the Smith Company and the Jones Company arranged so that in the former, Smith holds 60% of the voting stock and Jones 40%, while in the latter, Jones holds 62% and Smith 38%. Having done this, we order them, with the utmost solemnity, to compete, but not too fiercely!

It is also true that the new corporations cannot have common officers or directors, or otherwise openly violate the intention of the law. This suggests the question whether, if one citizen had become the owner of all the water-power sites available for the use of a certain town, that town could protect itself by telling him to appoint separate agents to manage each of them, so that they should compete with each other. Does not this whole plan of reorganization overemphasize the importance of mere agents and agencies, and underestimate the authority of the master's voice?

We cannot afford to be blindly guided by the theory of law, which holds that a corporation is an "artificial legal person," if this leads us to forget or to ignore the plain fact of business, that a corporation is a real association of real persons, the stockholders. They are the corporation, and it makes no essential difference how many corporate agencies they may choose through which to work their common will. It has been well said that the legal theory of a human institution, based as it is on the precedents of past times, seldom or never agrees exactly with the real nature of that institution as it grows in meeting new conditions; and this is nowhere more strikingly illustrated than by the idea that a corporation is an artificial legal personality, separate from those of the stockholders who compose it.

This issue has been squarely raised in the fight for the control of the Waters-Pierce Oil Company, a former subsidiary of the Standard, by the original Waters-Pierce interests, which refused to accept the votes of the Rockefeller stocks. Meanwhile the whole matter of the control of the former subsidiary companies is under investigation. It is hard to see how it can be logically settled save by refusing to allow any one group of persons to vote a controlling interest in the several newly separated concerns, so clearly does this seem to violate the spirit of the order which requires genuine independence and competition between them. Here lies the crux of the problem. We have allowed the separate corporations to have common stockholders, but can we afford to let those stockholders choose their officers and direct their policies, even within the limitations the court has set? In the opening legal skirmish of the Waters-Pierce case the court, by a temporary injunction, forbade Mr. Rockefeller and others to exercise the voting power of their stock holdings for the directors of their choice. If we are to apply this principle at all, can we do less than apply it throughout, and refuse to

allow any stockholder to exercise voting power in more than one company in a given business? This is similar to the suggestion already made for dealing with the problem of the holding company by letting one corporation hold the stocks of others as investments, but not allowing it to exercise its voting power to control them.

It might be objected that if very much stock were held in this way, it would result in the control of corporations by the minority rather than by the majority. Each company might be controlled by the small number of the owners who hold stock in no other. The answer to this is simple, for in this respect nothing can be worse than the present system, by which one corporation can issue bonds carrying no voting power, and with the proceeds buy a controlling interest in the common stock of another corporation—stock which itself often represents but little capital actually invested. This machine for getting control of other people's capital needs to be abolished, and the method proposed furnishes a fair prospect of success. It would not of itself prevent combination by the out-and-out method of buying up the property of rival plants or merging two corporations in a single one; but it would prevent combination from taking that other most subtle and pervasive form, in which those who have put in the majority of the capital are completely shut out from control.

By way of illustration, it is a significant fact that while the total issues of stocks of our railways are nearly equal to the bonds in amount, yet when the holdings of corporations are subtracted, and the amounts held by individuals are found, little more than one third consists of stock and the rest of bonds and similar obligations. The corporations, when they buy securities, buy chiefly for control, and hence select the stocks that give them controlling power. In 1910, over 43% of our railway stocks were held by railway corporations, and of the other 57%, a considerable amount was in such scattered minority holdings as the controlling corporations had not seen fit to buy up, and represented not the slightest voice in the management. Of the capital furnished to our railroad system, then, only a generous third is represented by voting stock, while a great deal of this is nullified so far as control is concerned, by being outvoted by solid blocks of other stock (not counted in the one third because not owned by individuals) held by corporations and controlled, through these corporations, by an inner circle of shareholders. It seems clear that less than a third, probably not more than a quarter, of the capital of our railways is represented by any effective voice in their management. Two billion dollars, if invested in just the right stocks, could rule the railways of the United States, with their more than fourteen billions of net capitalization. Thus we already see minorities controlling majorities to an appalling extent, and the proposed change would be one step in advance toward a more democratic condition.

A further question has been raised whether this is not confiscation—taking the value of the stock without compensation. But the ownership of property never involves the right to use it illegally, and the proposed rule would take nothing away save the right to use the stock to do an illegal thing;—to establish and maintain monopolistic control of an industry, a condition which the law prohibits. Such a regulation as is here proposed, and as is foreshadowed by the current course of events, would not prevent anyone from investing in competing corporations if he chose, or take his investment from him if already made; it would merely prevent him from having voice in the government of more than one such company at once, a thing clearly necessary wherever the spirit of the Sherman Law requires corporations to be separate in interest and control.

The position of the directors and responsible heads of competing corporations furnishes an added difficulty. If these officials hold large blocks of stock in rival companies and receive dividends from the earnings of rival businesses, we can hardly expect them to compete vigorously, even if they are not allowed to vote such stock in the annual meetings. Particularly if a director held as much stock outside his own company as he did within it, he could hardly be expected to act as a bona fide independent. If we impose

upon stockholders' voting power the limitation already suggested, we can hardly fail also to prohibit the choosing of directors who have any considerable interest in other companies from which their own is required by law to be completely separate in policy and management. Perhaps our courts in enforcing dissolutions will apply these principles of their own motion. If so, there would be no disadvantage in having them written clearly on the statute books to be known of all, and uniformly applied to all cases. And if not, then the enforcement of the Sherman Act is in so far imperfect.

Supposing that we succeed in our present plan of action and bring about complete separation, what will be the outcome? Can our managers, after once knowing what it is to pocket the dividends of combination, be expected to return to the lean and uncertain living of competition, or will they find ways to act together in spite of anything we can do? Can they not make secret agreements to maintain prices, and thus be as well off as before? It is probable that secret agreements cannot be prevented, and it is certain that informal understandings will exist, as they exist now in many businesses; but it is also probable that under proper conditions these tactics need give us no great alarm. The mere agreement to maintain a scale of prices is proverbially weak and unstable, for it lies at the mercy of a single insurgent within the group or a single invader from outside.

Such agreements may prevent cut-throat competition such as would drive prices below the cost of production, and to that extent be good for all concerned. But if they do much more than this, the temptation to break them is usually too great to be withstood. If an unreasonably high price is set, someone can cut just under this price, secretly or openly, and make deep inroads on his rival's business at a handsome profit to himself. Whoever among the group is in most pressing immediate need of funds will be liable to do this, even though he knows that there will be retaliation, since the game is such as more than one can play. And there is usually at least one such financially weak confederate in every industrial group.

But if the group itself can be controlled, there is still the outsider to reckon with. Capital is persistent in its search for the most profitable fields for investment, and this is a more significant fact in determining prices than any temporary agreement between existing producers. To fix prices at a monopoly level the supply of goods must be limited, and this cannot be done if outside capital has free entrance to the field. By its very nature the "gentleman's agreement" offers little chance for the regular tactics of clubbing; indeed, so long as the price scale is maintained, that very fact affords competitors protection from such attacks. Under these circumstances no loose agreement can fix truly monopolistic prices, or it will fall of its own weight.

Will it be possible for the companies to form closer unions, secret pools, and so defeat the ends of regulation? If they could do this, they would be in some ways better off than if they had remained together, for they could carry on predatory price-cutting with less danger of legal interference. One of the complaints against the Atlantic shipping combine was that it chose certain vessels to act as "fighting ships," to carry on cut-throat competition against any independent, the owners being, of course, repaid out of the profits of the pool. Without such payments the thing would be impossible; for, if one member were required to bankrupt himself for the benefit of the rest, even a fairly close community of interest would fail to meet the test. Of course, if the community of interest were complete and none of the stock ever changed hands, so that the same community could be perpetuated, one corporation might be so sacrificed, by devoting it to the task of extinguishing competition wherever it might appear. In choosing the company to be so used, it would be well to pick one that had little or no bonded debt, else the proceedings might be abruptly ended by a receivership which would operate the business in the bondholders' interest and put a stop to the throat-cutting.

But such a condition is, broadly speaking, beyond the bounds of practical possibility, and the question at issue reduces itself to this: could the pooling of earnings, and mutual payments, go on between corporations situated as these would be? But newly separated, they are jealously watched for the first signs of

recombining. Could common funds and large intercorporate payments remain secret under a suspicious and skillful scrutiny? If it were suspected, and not proved, that such things existed, it would require but little increase in our machinery of publicity to furnish conclusive evidence. It would not require a tenth of the illumination now turned upon the accounts of railways to make such things impossible to hide. We have power enough, if we will use it, to bring about a condition which will very seriously interfere with attempts on the part of the companies either to form binding unions among themselves or to use the ordinary clubbing tactics with full effect.

It has been prominently suggested that, instead of trying to stamp out agreements wherever found, we should recognize and legalize them, within limits. This belongs in the general class of plans which go on the basis that free competition is a failure, and such plans, as has been already shown, lead inevitably to the public regulation of prices; for any agreement which has power to fix prices at will, has power to restrain trade unduly. And any such legalized agreement is bound to have power over prices beyond what is possessed by the outlawed "gentlemen's agreements" of to-day. Hence if the government proposes to prevent undue restraint of trade, its obvious duty is to make sure that where the restraint takes the shape of agreements on prices, the prices so agreed on are not unduly high.

Some public body, preferably a commission, must have the same power over these businesses that our public service commissions exercise over gas, electric light and other public utilities; must regulate their rates.

Against this plan there are serious objections. Have we found the task so simple and solved it so perfectly in the railroad, express and telephone businesses that we should hasten to take up a similar burden for all of our great national industries? Effective regulation of the general level of prices in any business implies valuation of the property engaged in it. Must we have recurrent valuations of the larger part of the industrial capital of the nation? One shrinks from the vastness of the task.

We are still young in experience of the effects of such price-regulation, and perhaps some of them have still to make themselves felt. The nation has regulated railway rates somewhat for nearly twenty-five years, but in all that time we have been occupied chiefly with questions of discrimination, relying largely on competition to keep down the general level of rates. It is only since 1906 that the Interstate Commerce Commission has had the rate-fixing power; it is only within the last two or three years that any important results have been gained in regulating the level of charges apart from questions of discrimination, and it is only within the past year that a decision has been rendered which seriously affected the general level of charges over a wide area. Some of the state public utilities commissions have had more experience of this particular kind, but on the whole the country is little practiced in the issues and problems that such a policy would raise.

In particular, there is one grave danger that must be avoided. We cannot afford to remove or seriously reduce the incentive to improvements. Any change involves risk, and capital takes no chances unless lured by hope of rewards above the safe interest on gilt-edged investments. This hope would suffer a fatal blight if prices were to be regulated by a mechanical rule based on a fixed percentage return to the capital actually invested. And yet it is not easy to suggest any other guide which an impartial board could safely follow, and our commissions have not yet completely solved the problem of stimulating progress and preventing extortion at the same time. In some places they have undertaken to order companies to improve their plants when these have fallen below the recognized standard of efficiency and were inadequate to the demands on them. But progress calls for more than this. We must experiment with the unknown, spend capital on untried devices, make new departures in installation which no commission can require by order, because it does not know whether they will work or not. We can hardly expect this to be done, at the risk of wasting the time and



money if the results are disappointing, unless success holds out some prospect of reward—certainly not if the earnings must go on at the same dead level, year in and year out, alike to mediocrity or genius. Probably the nearest approach to a solution of this difficulty lies in the method of the sliding scale. In this plan a scale of prices is first fixed which will ensure a reasonable return, and any company making improvements which result in cheapening production is allowed to make higher profits on the condition that they share the gains with the consumers in the shape of lower prices. Such an arrangement must run for a considerable term of years without change in the terms of it, and it is, of course, useful only if we have a complete monopoly consolidated into a unit. When we come to regulate the prices fixed by pools or agreements of separate producers, with different plants, costs and earnings, we could not transplant the scheme without important changes. The prices that yield net earnings of six per cent on the investment of one producer may yield eight or ten per cent to one rival and only three or four per cent or less, to another. We cannot fix prices that will yield a fair return to the most efficient only, nor can we protect inefficiency by guaranteeing a profit to the worst equipped company. We must do something between these two extremes; we must in the last analysis decide which plants are necessary and which superfluous, and guarantee returns to standard ones only, but not to the superfluous and inefficient.

Where draw the line? It seems an impossible question, yet it will have to be answered in one way or another if we are to follow this line of attack at all. After this has been done the most progressive companies will still be earning large returns, and the more they can reduce their expenses, the larger their returns will be. It may be that in practice this will afford incentive enough to improvement if there are a considerable number of producers in the field. If the price that can legally be charged by all is gauged according to the costs in the mediocre establishment, then anyone can increase his earnings if only he cheapens production faster than the rest do. The great and crucial step in the whole operation is, of course, that of deciding which plants are necessary and which are superfluous and not up to standard efficiency. That is, we must virtually decide how much of every trust-made article the country really needs, or rather, since need is an elastic thing we must decide which needs shall be satisfied and which shall not. How would it feel to be a member of the regulating board? Atlas had a hard task and a responsible one, but at least it had the merit of simplicity.

When a price had been fixed, all who could not produce at that price, would be forced out of the business, and the available supply would be determined by the producing capacity of those who were left. This implies an extremely nice adjustment. The thing to be done is to estimate supply and demand so accurately that the amount the market would buy at the legal price would be just equal to the normal output of all those mills which could produce at that price.

This is the thing that is done, roughly to be sure but automatically, under competition. To try, in some branch of industry, to secure the same result by direct public regulation would be an interesting experiment. Possibly the nearest thing to it in present-day experience is the policy of the Steel Trust in “steading the market” so that prices shall be as stable as possible, regardless of temporary fluctuations in demand. As a result of this, demand has at times outrun supply so that would-be purchasers had to wait for their orders to be filled, though many would have willingly paid a higher price for prompt service. And at other times, when demand is slack, the output of the mills falls far below their capacity, a condition that involves hardship for laborers and would mean great loss of efficiency if it were to become chronic. In the case of the steel industry the situation is relieved by the occasional “open market” for steel products, which occurs when supply and demand are so far from equal that the trust price can no longer be maintained. This means that the price of steel is determined by forces in which competition plays an active part at times, and in which the possibility of it is always present. Such a safety valve could hardly be expected to work in the case of a legalized monopoly, and those who fixed the legal price would bear the full responsibility, the magnitude of



which might well give pause to those who lightly advocate a general regime of regulated prices.

Thus during the past year<sup>12</sup> the prices of steel products were “steadied” at so high a level that few purchasers were found, and business, which had not yet recovered from the panic of 1907, showed all the symptoms of reaction and continued depression. Then followed an “open market,” prices were sharply cut, and the orders poured in until the mills were started into active operation, while this fact of itself stood for an increased activity in other lines of business, the making of extensions and undertaking of new enterprises. For the steel business, being the largest producer of the things that investors buy, is in a peculiarly vital relation to the expansion or stagnation of the general business world. This experience illustrates the unfortunate results of prices that are controlled and “steadied” and the relief that even intermittent competition affords in a business not wholly dominated by a trust.

People often speak of the steadying of prices and of production, as if the two things went together, and this bit of experience should be a valuable object-lesson of the truth that they not only do not go together, but are absolutely inconsistent with each other. To keep prices steady when the demand fluctuates, the output must vary, being curtailed as demand falls off and increased as demand revives. But one of the results of this process is that rigid prices postpone the revival of demand itself while it can be hastened by concessions from the former price level. Far from mitigating the effects of panic, such a “steadying” system actually retards the natural process of recovery.

Enough has been said to show that the general regulating of prices is a task far more complicated and delicate than most people imagine, and is not a thing to be rushed into lightly. Rather we should reserve it as a last resort for the control of those few industries in which all efforts to preserve competition shall prove unavailing. We shall take no sudden leap into the darkness of untried responsibilities, by undertaking to regulate prices in many industries, and in no single case shall we take the step until we have first given a thorough trial to plans of a less radical kind. And, within any period for which we need now to plan, there will be but few cases in which price regulation will become a necessity.

We shall do our utmost to find whether it be not possible to reestablish some form of competition; not just the old form perhaps, but something that will bring the same results. Some are already convinced that this is impossible; that the great cause of the movement to consolidation has been the fact that under modern conditions industrial competition cannot possibly act as a moderate and tolerable governor of production. When the modern Titans war against each other, they no longer stop when prices reach the level of cost, but go on, locked in the struggle by the great stake which they have wagered and which they cannot withdraw, forcing prices below cost for all producers till the only end is in bankruptcy, or combination.

Our trust movement was born of the need of escaping these intolerable conditions, and if the trusts are broken up,—really broken up, so that no community of interest remains—shall we have done anything save to turn the clock backward and return to a condition from which we have escaped once,” and must needs escape again? According to this view, the only free competition that can work in a “live and let live” fashion is between many small producers, and this type disappears, never to return, with the coming of the hundred-million-dollar corporation.

This view has much to justify it, and any plan for restoring competition in monopolized industries must needs take it into account. Unless a tolerant and healthy competition between great corporations is possible, then our regulative policy is going in the wrong direction, and the sooner we reverse it the better. But if competition, though working badly in many cases, can be made to work better—if the source of the trouble can be found and removed—then we may still succeed in our attempt to check monopoly by restoring healthy business rivalry as a regulating agent.

What are the causes of “cut-throat” competition, as it appears in modern “big business?” Some are

inclined to attribute it to a changed personal attitude of business men; to the growth of a vaulting ambition; to greed of monopoly power. Perhaps, too, the stake in the new game is more alluring, for only a few financial lives stand between the efficient man and the ultimate prize, the undisputed possession of his field. The prospect of such power cannot fail to be compelling to a man of spirit, and might well lead him to suffer losses cheerfully in the preliminary struggle.

If this were the only motive, then anything that made monopoly impossible would, by the same act, put an end to the cut-throat wars that have their source in monopolistic ambition. But there are other reasons why sharp large-scale rivalries work badly, reasons that have nothing to do with the hope of future monopoly gains but are part of the new situation in which competitors find themselves.

One secret of an automatic fixing of prices lies in having the producing power adjusted accurately to the demand, in employing all the capital that can earn the current rate of return, no more, and no less. And this nice adjustment is far easier to secure through competition in small-scale industries than in those businesses that require large and highly specialized plants. If too many grocery stores have been started in a city of some size, so that earnings are below their normal level, a few of the more unsuccessful dealers drop out, and earnings are quickly restored with little disturbance. Little or no capital is lost, little or no labor walks the streets, little or no change in prices is evident. In such a business there is no great overproduction when new competitors come in, no cataclysm when superfluous ones are forced out; and this is made possible by three things.

First, the capital comes and goes in small installments. If there are thirty firms of about equal size in the business now, and one more is one too many, still its coming demoralizes the business less than if there were only ten such firms, or five.<sup>13</sup> In the second place, starting in the grocery business takes little time compared to that required for the building and equipping of a huge factory or steel plant, so that the business man who builds to-day to satisfy the appetites of to-morrow, is less likely to be ruinously mistaken in his calculations. Finally the "plant" can be adapted for other purposes with little or no loss, and so is not likely to go on being used in the grocery business if that becomes less profitable than others.

In large-scale manufactures the would-be competitor travels a thornier path. He must spy out the land farther in advance and prepare to conquer a larger territory, or fall. He enters with no small party, one eye on the way of retreat, but in full force, burning his bridges behind him. To drop the figure, he must build a big plant or none at all, and he must rely on the demand of decades to come to buy his products at profitable prices. If he is disappointed in his estimate of the future demand, if the market which he thought strong enough to take annually twenty thousand tons of steel rails from his mills turns out to want, at living prices only ten thousand tons, he has no recourse. His plant is there and there to stay, even though it is clearly a source of overproduction.

We might become much cleverer at judging the future than we have ever been in the past, without removing this danger. Perhaps the present market is strong enough to take ten thousand more tons each year at living prices, and yet, if a new mill is built it must be of twice that capacity or be hopelessly inefficient. In such a case, it is likely that the new mill will be built, relying on the expected growth of the demand to make it profitable. The promoter of such an enterprise must build for the market of two years, ten years, twenty years hence, and must stand or fall by his decision, for his plant is a specialized one.

All of these facts lead to the result that such industries are more likely to find themselves equipped with power to produce more goods than the market will take at a living price, even to the most efficient. The results of this condition are familiar enough, for it frequently leads to a fierce struggle for business that is not limited by the ordinary rules of cost. For a large part of the outlay of such a business is made up of general or "overhead" expenses, which are incurred for the business as a whole and cannot be traced to single orders

of goods.

With the mills running at part capacity, these general outlays must still be met, and any new business that contributes to this is so much gain, however small the contribution be. The prices that have to be made to bring in the new business may be such as would bankrupt the company if applied to the whole output, but this makes no difference. So long as they furnish anything at all above the direct or prime cost of making the goods, they afford so much clear gain. As a result, there begins a cutting of prices to special groups of customers, a policy of “dumping” surplus products at prices below the average cost of manufacture but still large enough to add something over the direct cost of making.

But this is a perilous experiment. If the goods are being sold in several markets which are thoroughly separated from one another, then it may work without disastrous consequences. American manufacturers can thus dump surplus products in Europe, knowing that the tariff prevents their own goods from being returned to spoil the prices in the home market, and equally prevents the foreigner from spoiling them by returning the compliment in kind. But in markets so closely connected as the different sections of the United States, forming as they do practically one market for many articles, the case is far different. In such a field it is soon found that dumping is a game that more than one can play. The other companies are in the same situation and have the same incentives, while they are spurred to aggressive action by seeing their established market taken from them by the belligerent tactics of their neighbor. So, first, there comes retaliation and reprisal until a form of guerilla warfare takes the place of reasonable competition, and finally, the ruinously low prices spread over the whole market and profits are turned into losses everywhere. From this condition some way of escape must be found, and the simplest is by agreement or combination.

Now the first cause of this condition is something we must accept as bound to occur from time to time in large-scale industry, namely, that there is more capital invested than the market will support, and that it cannot get out, without great loss. Another cause, however, may be seen in the fact that at the start the price-cutting covers only part of a firm’s customers, and only when other producers begin to retaliate does it spread to the whole. That is, it starts with discrimination. If this were not possible, if any cut prices had to cover all customers or none at all, would not a manager think twice before offering his whole output below cost? Would he do it at all?

Many American manufactures can be bought more cheaply in Germany than in the city where they are made, and in many cases the foreign prices, if they applied to the whole business, would bring the manufacturer to bankruptcy in short order. This means, for the Germans, cut-throat competition, and if our tariff were not so high, we might find them retaliating in kind, especially in times of depression. But if our manufacturers were compelled to charge the same price to all customers, American, German or Chinese, would not the cut-throat feature be quickly removed and the “dumping” cease?

Another thing that is more important than many realize is the kind of accounting system used and the check which it may exercise on the policy of the selling department. The science of cost-accounting is in its infancy, so far as regards businesses of large capital, and most managers have no very accurate idea of the real outlay caused by the various different products of their mills and shops. They know the cost of each article in wages and materials, and some have methods of charging the time of machines occupied. But usually the systems are crude and leave a wide margin, a sort of twilight zone, within which the managers must use their judgment in fixing prices, so as to bring in the largest returns. That is, there is too much room left for the policy of discrimination, and of “dumping” part of the output at prices that could not yield living returns if applied to the business as a whole; these practices that, as we have seen, lead to retaliations and ultimate demoralization of the market.

But there is gradually growing up a more searching type of cost-keeping, dedicated to the proposition

that every outlay of the establishment shall be brought home to the goods turned out. One system divides the plant, as it were, into separate little shops, and each of these is debited with rent for floor-space, for machinery used and for the power it takes from the general system of shafts and belt-connections. Thus the work of each division of the shop must pay its share of rent of land, interest, repairs and depreciation of the building, of the working machines, and even of the central power plant and the transmitting mechanism. Beside this is added a share of the other expenses not yet covered, as the expenses of general offices and the whole cost of the selling department. Some of these items can be quite definitely traced, others have to be more or less arbitrarily divided as seems best for the guidance of the sales managers; but the net result is a statement of unit costs for the different types of work done, which can be used as a guide in the making of prices in a way that exercises a strong check on the competitive tactics just described. A corporation following such a system would probably lose some chances to make sales that would bring in immediate profits, since it would be reluctant ever to make large concessions from a regular price; but it would avoid at the same time the reprisals which such tactics provoke, and would promote a more tolerant and stable form of competition. Probably the movement for more accurate cost-accounting is partly the result of a feeling that men have taken business from their rivals at prices that made it really unprofitable, and that this would be checked by more scientific bookkeeping. Certain it is that, so far as such a movement gains ground, it must exert a powerful influence against irresponsible cutting of particular prices in a way that ends by sending them all below the level of cost.

Another thing that might have a similar effect is increased publicity of the terms on which sales are being made. The business community is often very much afraid of such publicity, having the idea that it would tell competitors too much. But to the disinterested observer it seems that in this matter, suspicion bred of ignorance does more to disturb fair dealings than knowledge could possibly do. It is not like war, in which, by cleverly masked manoeuvres, a weak army may outflank and defeat a superior force. The purpose of competition is the opposite of warlike. The purpose for which we, the people, let this institution survive is to stimulate efficient production at reasonable prices. In a sense it is cooperation, not warfare, and must reasonably be viewed as such, even by those who engage in it.

It is virtually an axiom in economics that in an open market there can be but one price for one thing at one time. So long as prices are kept secret, it is easy to sell more cheaply in one district than in another, but if prices were published, in a country favored as we are with cheap transportation, any very marked differences would be sure to be wiped out with little delay. Hence the more open the market the less chance for the discriminations in which, to a large extent, cut-throat competition has its origin. The publishing of prices cannot reasonably be objected to on any sound ground of public policy.

The conditions under which we may have competition that is tolerant and not destructive, are well exemplified in the retail traffic of a great city. The department store is the most economical distributor of merchandise; and yet for one such store in every large city there are scores of little ones that sell goods in the old way and compete successfully with some department of the great establishment. One may walk miles in several directions from the centre where the large stores are located and find, on nearly every block, retailers selling some kind of goods that is to be found in the department store. They do what may be called a traffic of convenience; they sell when people have not time to go to the great centres. It is unprofitable for a buyer to give up an hour or a half-day to buy a few goods if he can find them at the nearest street corner. This traffic of convenience, if we use this term comprehensively, greatly exceeds in volume the traffic done by the great department stores; and this fact means that it is possible for an immense amount of local competition to continue after vast consolidations have taken place, and that complete monopoly is a goal beyond the reach of the most ambitious schemer.

Now it is true that small and strictly local factories do not as safely meet and survive the competition with large central ones as small retail stores survive a similar competition. The item of convenience counts for much more in the case of the stores and affords them a more adequate protection. Some of them have to go to the wall, and of the local mills a larger proportion may suffer. Nevertheless even in manufacturing, the advantage of proximity to customers counts for something; and whenever it happens that one of the numerous local mills has good machinery and runs on a fairly large scale, it can hold its place against its great rival, *unless that rival takes an unfair advantage of it*. Against foul blows the small man cannot defend himself, but under proper rules of the ring he can do so. So much for one condition in which competition may survive without disaster. It is the rivalry of a single great producer and a number of small ones operating in local fields.

The other condition is illustrated by the relation of the department stores to each other. They compete, but not to the extinction of profits and certainly not to the extinction of capital. Why is this? All of them appeal to the same public for custom. They advertise in the same papers and tell the same stories as to new and attractive goods on opening days and cheap ones on bargain days. Yet they are very far from cutting one another's throats, if we judge by the vigorous commercial life that the owners of the throats for the most part show.

The situation reproduces on a great scale what exists in a village on a smaller scale. Two country stores for general merchandise may face each other on the principal street, and yet live in peace. *The secret is a wholesome respect for the effect of competition that cannot be confined to any one part of a market*. If the merchant on the east side of the street tries to win customers from the shop on the west side by offering a special inducement, he must offer it to all the customers that he already has. Prices have to be practically uniform to all who patronize one of these stores, and they have to be publicly known; and these two facts are the conditions of tolerant rather than ruinous commercial rivalry. To this may be added the fact that there is no prospect of possible monopoly gains to induce any one dealer to bear the losses of the cut-throat competition by which alone a monopoly might be established, and the further fact that the factor's agreement is obviously out of the question in retail trade.

If the identical conditions which exist naturally in this instance can be reproduced by law in the case of the corporations that will survive when the trusts shall have been divided, it is possible that here also a tolerant and normal competition may, in general, be the rule, and ruinous competition the exception. The one-price rule, and publicity of prices are obvious means to the gaining of this end.

A more difficult problem is that of directly and definitely putting beyond the reach of any competitor the prize of complete dominion over his industry. As has been seen, we cannot do this by merely forbidding combination. Our whole experience with trusts is a record of the futility of this course, and of the need of limiting the size of combinations, regardless of the form they take. But in doing this, what shall we set as the limit, and by what test of size shall we know a monopoly? It is easy to suggest various simple, rule-of-thumb standards, but it is to be feared that in such a matter as this, simplicity means crudeness, and that we must learn by experience the different needs of different industries, and follow a policy that can adapt itself flexibly to our growing knowledge.

It is clear enough that no simple rule can be made to fit all cases. Shall we place the limit at a capital of a hundred millions of dollars, or of five hundred millions, or shall we judge by the share of the nation's output of each commodity that has come under one control, and draw the line at twenty-five per cent, or fifty per cent or seventy-five per cent, of the total output? Obviously the absolute size of capital is meaningless. A paltry few millions of dollars, which would be no more than was needed to give an independent a fair chance for his life in the steel business, would be enough to monopolize completely a dozen minor indus-



tries.

The other standard is more logical, but still far from being completely satisfactory. For the market of some goods is nation-wide, while that of others is more limited, and a small capital, measured relatively to the whole amount in the industry, might well hold some limited locality in a grip practically as firm as if the field contained no others. A trust in brick or building-stone would hardly need to be nation-wide to tyrannize over the would-be builders of houses in a given town, while a barbers' trust in a single town might do away with all active competition though it included not one ten thousandth of the nation's tonsorial enterprise.

The key to the situation is the position of the consumers, rather than that of the producers. Has every consumer a choice of efficient and independent producers to buy from? If so, there is no monopoly, even if one combination should control three quarters of the output. The solid reason back of the fear shown when combinations begin to absorb a great part of their field lies in the fact that the competitors who are left are likely to operate, each in a narrow local market, leaving the trust a considerable domain in practically undisturbed possession.

Where this has taken place, the reliance of these consumers must be on some form of potential competition, either of producers who are serving other markets but who are within reaching distance, or else of producers not yet in the field and of mills not yet built. The force of this surviving competition would be a thing very difficult to determine.

If we are about to attempt it, it seems clear that we have here, if ever, a task for an administrative commission, acting under a law that should state in general terms the result to be secured:—sufficient competition to protect the public interest. The things such a commission would need to consider are many and varied. The amount of capital needed to enter the business effectively is important as a measure of the difficulty the potential competitor would meet in entering the field. The relation of transportation costs to the value of the goods would determine the distance at which competition could be effective. In a business requiring small capital or making goods of such high value that small producers can seek wide markets, comparatively little active competition is needed. With bulky goods, the industries usually concentrate in the centres of greatest natural advantage, and each centre dominates the markets nearest to it. In such cases there should be one efficient independent in each centre, or at least near enough to it to be in touch with the market and able to take advantage of any opening for traffic that might be offered.



## Chapter Eight: Conclusion and Summary.

If we can carry out all the changes and reforms proposed in the preceding pages, we shall at least be on the way to the ultimate solution of our problem, and if these measures prove successful, the problem is as good as solved. We shall have reestablished a measure of active competition wherever that is in danger of disappearing, and we shall have created the conditions that are necessary to enable it to continue without degenerating into mere cut-throat warfare. We may not have been able to prevent agreements, but we shall have robbed them of their power for oppression by securing the right of any man to enter any business whose profits may attract him, assured of a "square deal," and knowing that if he can give as good value as his rivals, he will be as well off as they are, regardless of size. We shall have big plants, so far as bigness is essential to efficiency, but we shall not be burdened with the swollen and unnatural growth that comes from trying to absorb all possible competitors and that often results in burdening the merger with inefficient plants which the rest must carry as a dead weight. Such size defeats the ends of efficiency instead of promoting them. Above all, we shall have preserved the key that has opened to us the gates of progress throughout the century just past, we shall have kept the competitive incentive to efficiency that we know of old experience, and shall not be forced into attempting to contrive a substitute.

It now remains to gather up the various proposals here advocated and to present the result as a connected program of action. It is not a simple program, for our conditions are complex and no simple remedy is adequate to meet them. It is enough for the purpose of this book to state merely the things that must be accomplished, without attempting to be dogmatic as to the legal methods by which they should be brought about. The economist must treat such matters with great caution, save when they are so clear that even the layman cannot greatly err therein.

We must assume, in the first place, that our control over transportation shall be so developed as to prevent all favoritism of the kind that leads, or may lead, to giving the favored shipper a monopoly. The two chief causes of such discriminations are, first, railroad competition, and second, communities of interest between carriers and shippers. The first source of trouble could be largely avoided through legalized pooling, while the second was forbidden in 1906 by a law which seems to have been rendered ineffective by judicial construction, and which might be unconstitutional if literally interpreted. This problem presents very stubborn practical difficulties, and the complete solution of it is not clearly in sight. One thing that would greatly contribute to the object in view is preserving competition on our water routes, and to this end guaranteeing to independent carriers adequate terminal facilities and fair and equal treatment by the railroads from which they must draw their traffic. With these needs recognized and provided for, the direct attack upon the trust problem proper may begin.

Next a question of ways and means presents itself. It is clear enough that in regulating trusts there are

things to be done and needs to be met that cannot be accurately foreseen and provided for by detailed and self-acting statutes. Our methods must be so far as possible elastic, adaptable as to ways and means though inflexible in underlying purposes; and yet these laws must be applied definitely and forcibly. We cannot afford to have any large section of the business world in doubt whether they have broken the laws or not, and we cannot let the laws become a dead letter through vagueness. In this view it is clear that an administrative commission can render invaluable service. After commanding everything we can definitely command, and forbidding everything we can definitely forbid, we may cover the rest of the field in general terms and leave the commission to enforce them, as the Interstate Commerce Commission now enforces the general terms of the Interstate Commerce Act. The need of such a body is probably the one thing on which the various plans now before the people are most generally agreed.

In attacking the first great division of the trust problem, that of internal organization, there are two chief things to be accomplished. The investor must be made reasonably secure in his property, and the property should be managed genuinely in the interests of the majority of the investors, so long as they do not exploit the minority. In securing the latter result, the greatest single step will probably be the abolition of the holding company, which might conceivably be brought about by a federal rule limiting the right of interstate corporations to exercise voting power on their holdings of the stock of other corporations. As to the former task, the one great need is effective publicity.

In securing this effective publicity, the present writers believe that help might be rendered by the issuing of stock without the more or less haphazard measuring-unit known as "par value." Everyone of intelligence knows that the dollar-sign on a share of stock is meaningless under present conditions, and that if he is at all guided by it, rather than by independent knowledge, in judging of the value of the property, he is to that extent misguided. Yet many have little else to depend on. With this fictitious reliance taken away, the result should be an increasing demand for real information. Such a system would be very like the situation created by a law against false labelling of goods. It would not prevent securities from being issued on any terms desired, but it might well have a wholesome influence in purging the transaction of false pretence and the suspicion of it. This measure, however, has encountered objections, and is not a necessary means to the end we are seeking. The essential thing is the effective publicity which non-par stock might help to secure.

The second great task is the preventing of predatory competition. The factor's agreement and local price-cutting must go, and the law should forbid all acts of similar purpose and effect in such general terms that none could escape, while the enforcement of the law could well be entrusted to an "Interstate Trade Commission" or similar body. Preferably the law should provide for the selling of goods at one price F. O. B. at the factory, (with such exceptions as have been mentioned), and for the publishing of prices. The latter measures would be important in preventing the clubbing of small competitors by large ones, but still more so in the difficult constructive task of furthering a healthy and tolerant type of competition between the large corporations themselves. In the recording of prices and the administering of the details of the one-price system the commission would prove invaluable. Incidentally to this, we may need to prevent the misuse of patents, chief among which may be mentioned the buying up of patents to keep them out of use, and the extension of the patent monopoly to non-patented articles by a contract similar to the factor's agreement. In a recent decision of the Supreme Court, not made, however, by the full court, and concurred in by only four justices, it was held that the seller of a patented mimeograph could bind the purchaser to use only his ink in the machine, though the ink was not patented. Without presuming to pass on the merits of this case (which may be reheard before a full bench), one can easily see that this form of contract might, if carried far enough, restrain competition unduly, and that we should do well to ascertain whether this is a real danger. Some

countries forbid such contracts. The keeping of patents out of use may be met by compelling the holders of such a patent to let anyone use it who wishes, on payment of a royalty fixed by a court. This would virtually apply the right of eminent domain to patents outstanding and unused, and is provided for by the laws of various foreign countries. As a trust regulation it would be helpful, though probably of minor importance. The third great division of our task is to prevent the growth of combinations of such size that competition is impossible, and to break them up when they have so grown. The breaking up of existing corporations may be expected to go on under the Sherman Law, with the help, perhaps, of an administrative commission in supervising reorganizations and in watching the results that follow. In preventing the growth of combinations so big as to dominate the field, we shall probably follow the method of issuing federal charters, or licenses, to corporations of large size wishing to do interstate business, and these licenses will be withheld or withdrawn from any concern so great as to have a monopoly power. To make this effective, we shall have to prevent these corporations from combining, either through holding each other's voting stock or through communities of interest, just as we shall have to prevent these measures from being used to cement the pieces of trusts that have been dissolved under the Sherman Act. We may find it necessary to limit the rights of individuals to vote stock in competing companies, and to prevent the choosing of directors who have substantial interests in outside and presumably competing enterprises.

Here again is work for a commission. No fixed rule of size can be framed, for the present at least, which would work well. We cannot pass the country's industries through a legal sieve with a mesh of just the right size to stop all monopolies and let all others pass. The law might take some notice of size. Any corporation controlling over half its field, for instance, may be required, as a condition of getting and keeping its license, to show affirmatively that there is enough competition remaining to safeguard the interests of the public. All smaller corporations should then be assumed to be free from monopoly unless some special complaint were brought against them. Such a rule would simplify the work of granting licenses, while it could still be adapted to the needs of particular cases, however varied.

There are two serious objections brought against any scheme that involves breaking up combinations or limiting their size, and these must be recognized and met. One says that we cannot keep men apart if they are determined to come together, nor compel them to compete against their will. The answer to this, as we have already seen, lies in the weaknesses of all those informal understandings and agreements which lie outside the law. It takes more than these to make a true monopoly. Another objection claims that in breaking up the trusts we are, like the laborers of the time of the industrial revolution, smashing the engines of progress and efficiency. But does not this rest on assumption rather than proof? It has not been proved that we cannot have size enough for the greatest possible efficiency, and still stop short of monopoly. Would the Carnegie Company have suffered seriously in its industrial efficiency if it had never joined the "Steel Trust"? Much is made of our need of the trust to maintain ourselves in foreign markets, but it should not be forgotten that some of our most striking conquests were made before competition had been relegated to the background, and that some authorities assert that we have made much less satisfactory progress since that time.

These objections can neither be proved nor absolutely disproved with the limited knowledge we now have. Experience alone can give a final answer. The knowledge gained in a few years by a commission of the kind suggested would be worth more than volumes of mere assertions and contradictions. When, in any business, it shall be found that, in spite of everything, competition dies, or that some of our industries are condemned to inefficiency, it will then be time to change our policy, to recognize monopoly in these cases as a necessary fact and to take the logical next step of regulating prices.

We shall probably find that this is true in some industries and not in others. In some fields the savings of large scale production might conceivably go so far that, to get them all, we must have combination to the

point of monopoly. It is thinkable that this condition might develop in some of the great metal-working industries, and, if so, those industries would be shown to be truly natural monopolies and have to be treated as public service businesses, and regulated as to price.

If in the future this shall prove to be the case, then we may adopt this policy *for those businesses only*, and for the others keep on with our policy of maintaining competition. The thing we shall not do, if we are sane, is to abandon the effort to maintain competition in the whole field of large-scale enterprise merely because in a few cases it proves to be unsuccessful.

The central feature of the program here outlined, and the feature most likely to be looked on as radical and visionary, is the control of methods of marketing, and that enforced selling at one price publicly advertised. But however great the disagreement as to the exact method that will bring the best results, there can be no doubt among those who have faced the problem squarely, that the thing this section aims to do is a thing that must be done, in one way or another, if competition is to be preserved. Predatory price cutting through discriminations must be stopped, and the driving of prices below cost must be made difficult, if our effort to restore competition is to have solid and stable results. The statute books of our states bear witness to the fact that the people feel this to be the truth and have begun to act upon it.

But as yet we are far from unanimous. Within the past year a federal court issued a decree which forbade the members of a combination from “seeking to injure the trade of rival manufacturers by offering . . . prices . . . to the customers of such rival manufacturers more favorable than they make to their established trade, though nothing in the decree is to be taken in any respect as a restraint upon fair, free and open competition.” No better statement could well be made of the spirit of rational competition; and yet comment has appeared to the effect that this decree is self-contradictory, because it professes to maintain competition while prohibiting “the only effective method” of carrying it on.

The opinion expressed in this criticism is interesting as being the exact opposite of that to which this book is dedicated. The making of extra low prices to a rival’s customers is a very effective method of getting those customers away from him, and if that be the one purpose of competition, then it may have been interfered with by the decision quoted above. But this kind of competition is unworthy of the name, for it means merely a short spurt of low prices, followed by monopoly and permanent high prices. That is not our purpose, the people’s purpose, in making the rules under which we allow competition to be carried on. If the object of competition be to secure the survival of those most fit to produce goods or to render services, then the case is exactly reversed; and this latter is the true view. To put the other man out of business, regardless of the effects on society—this is not, and never has been, the whole object of competition since cavemen stopped exploiting their fellows with stones and clubs. Since that time we have never had perfectly “free” competition in the sense which the above-mentioned criticism implies.

In our worship of the survival of the fit under free natural selection we are sometimes in danger of forgetting that the conditions of the struggle fix the kind of fitness that shall come out of it; that survival in the prize ring means fitness for pugilism; not for bricklaying nor philanthropy; that survival in predatory competition is likely to mean something else than fitness for good and efficient production; and that only from a strife with the right kind of rules can the right kind of fitness emerge. Competition and its purpose are not individual but social. It is a game played under rules fixed by the state to the end that, so far as possible, the prize of victory shall be earned, not by trickery or mere self-seeking adroitness, but by value rendered. It is not the mere play of unrestrained self-interest; it is a method of harnessing the wild beast of self-interest to serve the common good—a thing of ideals and not of sordidness. It is not a natural state, but like any other form of liberty, it is a social achievement, and eternal vigilance is the price of it.

At present, our ideals are ahead of our practice, the rules of the game need revising, the harness needs

strengthening. Just as English football became a different game when played by Americans who were coached to make the most of each technicality in the rules, so the game of competition has changed in the modern environment, and the change has led some to think that competition itself is doomed. But it is much too soon to reach such a conclusion. The large probability is that the old institution needs merely to adapt itself to the new conditions. Institutions never maintain themselves without constant human endeavor. Surely it is the part of wisdom to exhaust every effort to maintain this one, before we let it go.

The laws are already being developed that will help to strengthen competition against its new dangers, and we may welcome the opportunity to have some part in that development. And the time should not be too far distant when the business world at large may catch the constructive spirit which these laws but partially embody, when the laws will become practically self-enforcing, because business men shall recognize the duty of fair competition and accept as a public trust the power to maintain it in the field where vast enterprises rule. If so, we shall see the new competition firmly established, as the means of securing to laboring humanity a maximum of power and justice with a minimum of restraint.

## Notes.

1.

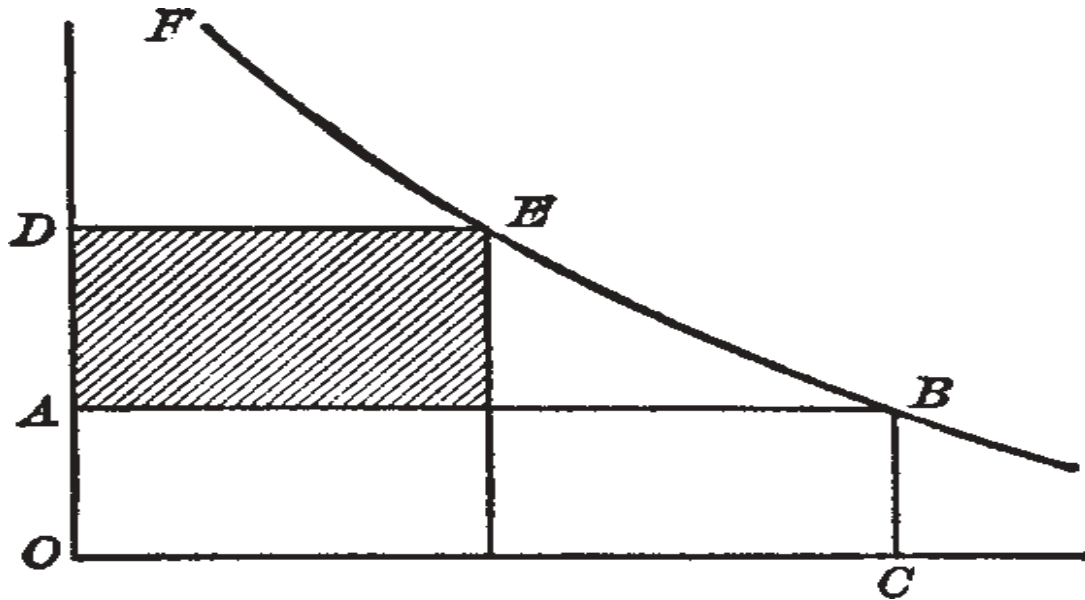


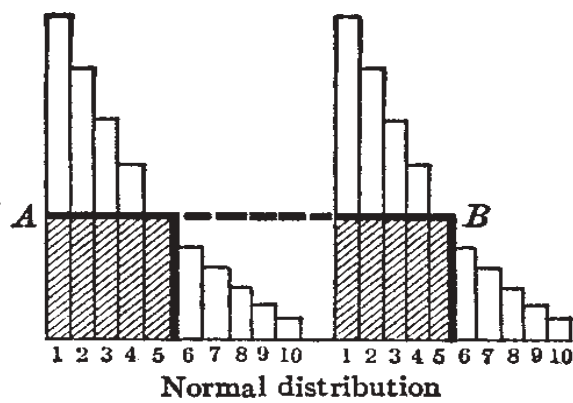
Diagram Representing Monopoly Price

In the accompanying figure distance along the line O C, represents the amount of goods produced, while vertical distance above this line measures costs of production as well as selling prices, and the descending curve F B represents the varying amounts of goods that can be sold at different prices, the amount diminishing as the price increases, or *vice versa*. If the cost of making the goods is represented by the level of the line A B, then a monopoly will fix its price at the level of the line D E, so that the shaded area, which represents the sum of the net profits on all sales, should be as large as possible.

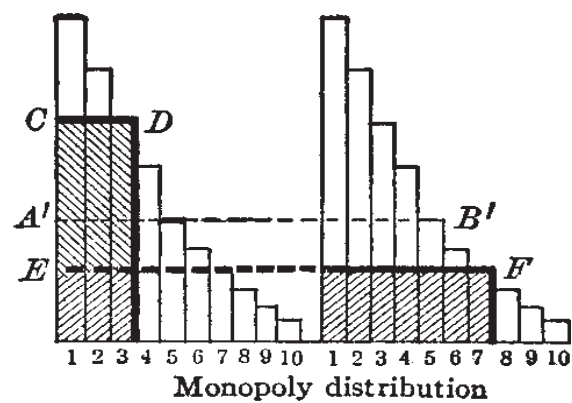


Obviously, this assumes that the sales are made to an outside public, which can thus be exploited. If the field of monopoly increases and that of competition narrows, we shall approach a condition in which the monopolists would have only each other to exploit, and at the final stage when all industry should be in one vast consolidation, it would constitute the consuming public. An all-inclusive combination that should act as a monopoly by limiting output, would be a logical absurdity.

2.



**Fig. I**

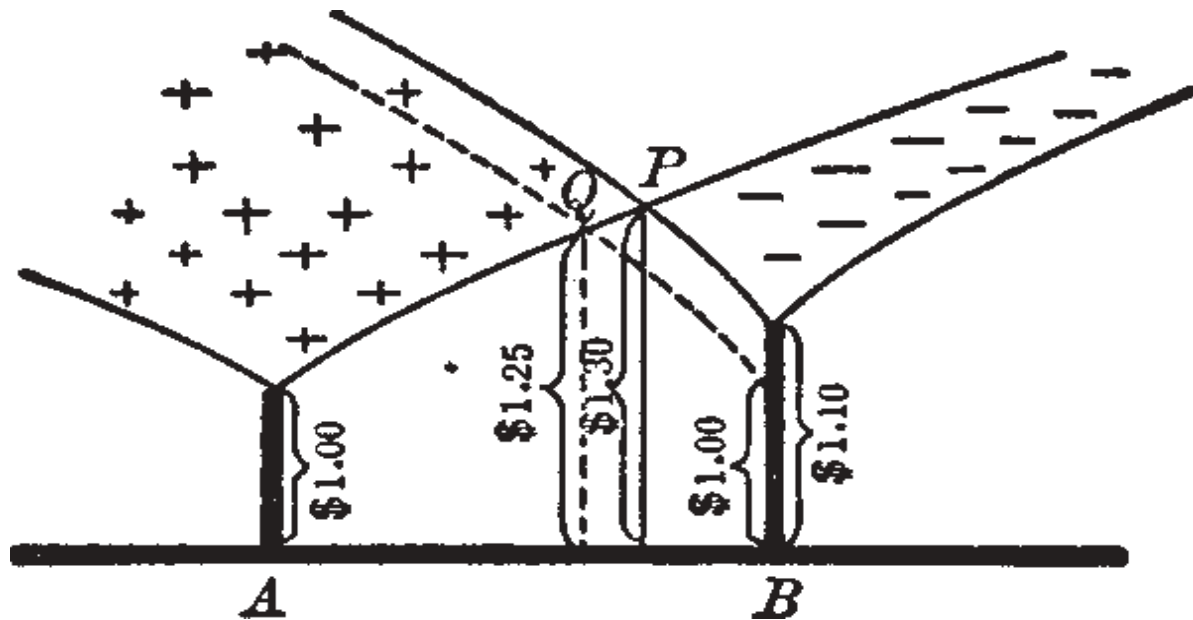


**Fig. II**

The above diagrams picture the field of employment for labor, divided in two parts representing respectively the industries that are in danger of being monopolized and those that are not. The heights of the rectangles represent the diminishing value of the products which successive units of labor can turn out, and the rate of wages is fixed by the value of the product turned out by the last or marginal laborer. If there are ten units of labor, normal wages will be measured by the height of the line *A B* above the base (Fig. I).

In the second diagram, one half the field of employment has been monopolized, the output limited and the number of labor-units it employs cut down from five to three. The two displaced units must crowd into the competitive field, forcing the value of labor down to the level of the line *E F*. The labor employed by the monopolies may get more than this, for the monopoly gains that come from limiting the labor employed (and are represented by the shaded area in the diagram) may be shared with those laborers who remain in the favored industries. Even if they continue to get the old rate *A' B'*, they will be getting more than the new competitive rate, lowered as that is by the action of the trusts themselves. In that case, friends of the trust might argue that it had benefited labor and raised wages above the competitive level! Obviously, the reverse is the case. Outside labor has lost, labor within the monopolies may or may not have gained, according to its bargaining power, while the consumers have lost through the diminished producing power of the displaced labor. This loss is measured by the difference between the areas of rectangles four and five, which the monopoly no longer produces, and of

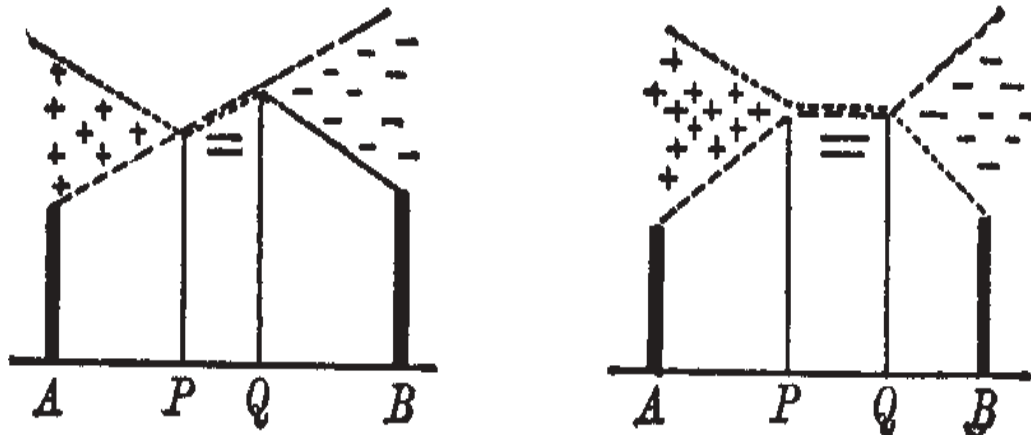
- rectangles six and seven, which is all the displaced labor can produce in its new situation.
3. Report of Railroad Securities Commission, 62nd Congress, 2nd session, House Document No. 256, p. 34.
  4. Act of 1906.
  5. Act of 1910.
  6. Arkansas, Iowa, Kansas, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Oklahoma, South Dakota and Wyoming.
  7. Massachusetts.
  8. Mississippi, Nebraska and North Carolina.
  - 9.



Thus in the accompanying diagram, the heavy vertical lines represent the prices received at two factories located at A and B, and the sloping lines represent the increase caused by the freight-rates as the goods are sold in the surrounding country. Evidently, if the freight-rates increase with distance, there can be but one point, P, of exact equilibrium. Everywhere else, mill A will either have an advantage, represented by the area covered with plus-signs, or be at a disadvantage represented by the area covered with minus-signs. If mill B lowers its price, it merely shifts this point, as represented by the dotted line, to the point Q. The result, it is claimed, might be a series of partial local monopolies rather than a field in which every consumer has his choice of several producers offering their goods on terms of equal rivalry.

10. "Railroad Freight Rates," N. Y., 1909, p. 51.

11.



Thus in the above diagrams, the heavy vertical lines represent the prices charged at the factories located at A and B, and the sloping dotted lines represent the increase due to the freight rates. In each case the factories are placed on even terms in the area between P and Q; in Fig. I this is done by an unnatural adjustment of rates from B, while in Fig. II the adjustment is a more normal one and does not violate the “long and short haul” principle. This adjusting of rates to meet market competition” is a common practice, and may be expected to be carried still further under a one-price rule which prevents the producers themselves from making concessions to distant customers.

12. See Commercial & Financial Chronicle, Apr. 6, 1912, p. 938.

13. Assuming, of course, that the new plant has to be of the average size, or in some fairly definite ratio to it, in order to compete on even terms.