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A REMEDY FOR THE TRUST EVIL.

The Constitution of the United States provides that

“The Congress shall have power * * * * To regulate commerce * * * among the several States.”

The decisions of the Supreme Court are to the effect that the Federal Government should be confined very strictly to the subjects as to which it has been given jurisdiction by the Constitution, but that when it once has jurisdiction of the subject its powers shall be broadly and liberally construed. The fields it may enter are narrowly defined, but when once within the field its power is limited only by the express prohibitions of the Constitution itself.

In construing the particular section of the Constitution I have quoted, the Supreme Court follows its well-known rule. It will not sustain legislation that relates only to production simply because the articles produced may afterwards become the subject of interstate commerce, but it sets no limit to the regulations which may be imposed on the commerce itself, even though these regulations should affect or even control production.

The makers of the Constitution were wise and far-seeing men. The President of the Constitutional Convention was a man who never said a superfluous word, and never failed to do the right thing at the right time. Washington's influence in that convention was all the greater because he was slow to exert it, and all the better because he always thought before he spoke. The reason why the Convention—whatever foolish things may have been said—*did*

not one foolish thing from its call to order to its adjournment, was perhaps because the man at the head of it, and who guided its counsels, never himself either said or did a foolish thing.

The Convention was composed of men of the youngest but the most self-reliant nation in the world.

We of the English-speaking race have always been the most self-reliant of men because we and our ancestors, from the time we were the wild denizens of the German forest, down to the anthracite coal strike, have had to shape our destinies for ourselves. The Latin has always had someone—king or emperor, pope or priest—to do his thinking for him. The Saxon has had to do it for himself, and his fate on earth and in heaven has depended on his own exertions. He has had no confessor on whom he could shift the burden and responsibility for his sin or his salvation. He has had to suffer for the one and work out the other for himself. It was the descendants of the men who wrested from the unwilling hands of King John that Magna Charta, which was the fore-runner of our Constitution—the descendants of the men who for six centuries in the English Parliament and out of it, with a determination that never faltered, asserted and defended the right of the representatives of the people to lay the taxes the people were to pay—the descendants of the men who fought at Marston Moor and Naseby—that cut off the head of one king and drove another into exile, that elected the members of the Constitutional Convention of 1787.

The people who elected that Constitutional Convention were the most self-reliant of their self-reliant race. By a process of natural selection the bravest and the best of the race, that itself was the bravest and the best, had left their homes in the old world and endured climatic rigors, frontier hardships and the onslaughts of savage foes, to found a community where they could be more free, and more the architects and the artisans of their own fortunes, than they could be at home.

The men who fought the battles of freedom in America were better even than those they had left behind them, who themselves were otherwise the best of men. Well said the pious Stoughton of Massachusetts,

“God sifted a whole nation that he might send choice grain over into this wilderness.”

The Convention itself was composed of the leading lawyers, statesmen, publicists and patriots of the nation—men who were not deficient in the knowledge to be derived from books, but who knew

more than books could teach, who were not deficient in eloquence but were men of deeds rather than words, and above all, of men, who in one way or another, had done their share to create the nation they were now seeking to place on a broader and securer foundation.

No wonder that the Constitution which was the result of the work of the Convention so elected, so constituted and so presided over, should have stood the test of time.

It was devised for a nation extending only from Maine to Georgia and from the Atlantic to the Mississippi, with a population of only four million people who were without wealth and mostly engaged in agricultural pursuits. It has been found necessary to amend it only six times in more than a hundred years—three times within the first few years after its adoption to perfect the original instrument in some minor particulars, and three times after the Civil War to provide for the new conditions which were the result of that war—and it is now the basis of the government of a nation that extends from Porto Rico to the Orient and from the Yukon to Samoa, on whose dominions the sun never sets, with a population of eighty millions of people, engaged in every kind of production, trade and commerce—the greatest, freest, strongest and richest nation in the world.

It is this Constitution that provides that "The Congress shall have power to regulate commerce among the several States."

The men who inserted that clause in the Constitution meant something by it. There are no superfluous words in the instrument, any more than there were in the common speech of the Great Commander who presided over the Convention.

There was very little interstate commerce in the United States at that time. A few sailing vessels brought products to the ports of Baltimore, Providence, Newport, New London, New Haven, New York, Philadelphia and Baltimore. but they were mostly tropical products, coming from outside the United States. It was half a century before we found out that we could produce such things cheaper than we could buy them, so that interstate commerce should take the place of commerce with foreign nations. A few farmers, living near State lines, engaged in interstate commerce in the products of the dairy, the potato field and the hen-house, and the wives of Delaware and New Jersey bought some of their finery in Philadelphia and New York retail shops. It was not, however, hen-house products or the finery of retail shops that the Constitution-makers had in mind. No man ever saw further into the future than George Washington, and the Convention over which

he presided shared his faith in the United States that was to be. It was a quarter of a century before George Stephenson built his first locomotive, so they could not foresee the system of iron roads that now binds the nation together more closely than a hundred constitutions could, but God had made the rivers and the lakes, and it was Washington himself who planned the first artificial waterway to supplement them. The members of that Convention foresaw—perhaps not in all its greatness but in a greatness approaching the reality—the mighty “commerce among the several States” that was to come, and they well knew what they were doing when they provided that Congress should regulate that commerce. So great was to be its influence in the development of the nation, the corner-stone of whose government they were laying, so important to the welfare and prosperity and happiness of the people, that it was not to be left to the caprice or selfish interests of any particular State. Interstate commerce as it developed was to be a matter of national concern, under the control and regulation of the National Congress.

The great problem before the Constitutional Convention was the division of the power of government between the nation and the constituent States. The Convention solved the problem and made no mistake. Not one of the fifteen amendments relate to this question, and the Constitution to-day, so far as this division is concerned, is precisely as it originally stood. No different arrangement has been found necessary. No change of line fences has been found desirable. The general government seems to have all the powers that it needs and none that are dangerous. We had, it is true, four years of civil war to determine the question of whether a State might secede from the nation, but the nation won and the only changes that were made in the Constitution itself at the close of the war were those which gave freedom to the slave and suffrage to the negro. The line of demarcation between national and State authority which has stood such tests must have been wisely drawn.

I do not think that in relation to the interstate commerce question, which is now looming up as such an important issue before the American people, the Constitution-makers were any less wise than in relation to the other provisions of the instrument they formulated. I believe, on the contrary, that in nothing is their wisdom more apparent than in the way in which they solved the problem of “commerce among the several States.”

I see no occasion for a Constitutional amendment. The instrument which has stood the tests of all the changed conditions which the Nineteenth Century brought about, including the mid-century Civil War, is good enough to start the Twentieth Century with. The light of Washington's wisdom never before shone so bright as it does now, a hundred years after his death. The Constitutional solvent which has been found so effective a solution for the troubles we have had, will, I believe, be found no less effective for the troubles of the present day, without any change in the Constitution itself. It will be time enough to talk about amending the instrument when we have put into operation all its existing potentialities. Until we have occupied the whole field we now have open before us, it is, I submit, premature to talk about pushing back the line fences.

Let us hope and trust that we shall never come to imitate our Latin sisters on the south and enter into a career of Constitutional amendment. Nothing can be more demoralizing. Once entered upon it there is no end to it. A constitution so frequently amended becomes an unstable basis for a government. Truly did Wendell Phillips say of the Central and South American republics, whose constitutions were amended with almost every change of the seasons, that "They topple over so often that you could no more daguerrotype their crumbling fragments than the waves of the ocean." To my mind the best thing about the American Constitution is the fact that it has been amended so little and is so hard to amend.

So far as relief from our present evils is concerned, if it cannot be obtained without the amendment of the National Constitution, it is my opinion that we had better make the best terms we can and surrender to the trusts at once.

I believe, however, that full, complete and perfect relief can be found under the provisions of the Constitution as it stands.

There is little doubt but that the relief is needed. No one who has been a close observer of the signs of the times can doubt that the trust question is the most serious question that our nation has to confront to-day—in my judgment the most serious question it has ever had to confront. Kings in ancient times used to think some people too great to be subjects and so they cut off their heads. Some of us think now that the republic has corporations too great to be citizens and that we must cut off their heads or trim down their proportions in order to secure the national safety and assure the people's welfare.

The whole genius of our institutions is founded on competition. Our Anglo-Saxon civilization has grown up under competition. There has been competition between one employer and another for the labor of the workman, competition between workmen for the job, competition between sellers for the trade of the customer and between customers for the goods of the seller. Manufacturer has competed with manufacturer, merchant with merchant, producer with producer, trader with trader and artisan with artisan, and the best man has won. The combinations have now become so great that competition is being destroyed and monopoly seems to be coming to take its place. We have almost, if not quite, reached the point where if anyone wants a pound of meat he can get it only from the Beef Trust or some of its agencies. If he wants anything in the iron and steel trade there is only one seller. If he wants tobacco he must go to the American Tobacco Company. If he wants sugar, to the American Sugar Company or the Oxnard Company, and the rumor is that the two are about coming to make a still more perfect monopoly. The anthracite coal trade is practically under one head. I read in the paper while I am dicating this article, of the formation of a lead trust with sixty million dollars of capital, intended to absolutely control and monopolize the production and sale of another of our most important metals. We in New York City are confronted with a real estate trust of such gigantic proportions that the time does not seem to be far ahead when we of our town will have one universal landlord who can fix his rents at his own rates. The production of the other necessities of life is being rapidly taken over by giant corporations and their production and sale monopolized. Where it will stop no one knows, but if the growth of monopoly should continue for twenty years more at the rate that it has been going on for five years past, we shall not be far from one industrial corporation which will control the production and fix the prices of every necessity and luxury of modern life. The worst phase of monopoly—worse even than thirty-cent beef and twenty-dollar coal—is the monopoly of employment. It is fast coming to the point where anyone who seeks employment can find only one employer. If he is an artisan in the iron or steel trade he must go to the Steel Trust. If he is a butcher he must go to the Beef Trust. If he belongs to some other trade, then to the combination that controls it. If he does not commend himself to his trust—if it does not like the color of his hair or the style of his cravat—he can go out and starve. If the march of combination goes on till there is only

one industrial combination controlling all production, then there will be only one employer in all the land, and whether the ordinary man outside the combination shall be allowed to work for his daily bread or condemned to starve, will depend upon the will or the whim of a single man at the head of a single corporation.

Our fathers rose in their majesty and their might against the despotism of George the Third, but the infatuated English king was guilty of nothing more serious than an attempt to make the people of the colonies pay a few hundred dollars in taxes on tea, against their protest. Many of us now think that His Majesty George the Third presented not nearly so serious an issue to our fathers as His Majesty Mr. J. Pierpont Morgan presents now to their sons.

The question has become such an important one that it has been the burden of the message of the President of the United States, and half the statesmen of the land are wrestling with it as best they can, to try to find a solution of the problem.

I believe that the solution we are seeking is to be found in the twelve words of the Constitution of the United States which I quoted at the beginning of this article. I can think of no other twelve words in the literature of the language we speak that mean so much to the welfare of our nation and the happiness of our race. If I am right as to the untold power for good that they confer upon the National Congress and the National Government, their far-reaching power to cure the social ills of the beginning of the twentieth century, and the close way in which they fit the trust question of to-day, there is nothing in the way of Constitutional change to be desired.

The effect of this provision of the Constitution is practically to abolish State lines and State jurisdiction so far as trade and commerce are concerned, whenever Congress chooses to exercise its jurisdiction in the premises.

The railroads are the great instruments of commerce to-day, but there is no railroad system of any importance that does not extend through half a dozen States. The coast steamers and vessels are also important instruments of commerce, and there is hardly a line of steamers along the coast that has its two termini in the same State. The internal waterways are still of immense importance. The commerce of the Great Lakes exceeds that of any other body of water of the same acreage in the world, and the commerce of the Great Lakes is nearly all interstate commerce. The navigable part of the Hudson River, it is true, is between New

York City on the south and Troy and Albany on the north, but the Greater Erie Canal which New York State is about to build will extend the commerce of the river so that it will reach from Sandy Hook to Duluth, and the stream which Hendrik Hudson discovered will be a most important artery of interstate commerce. The Mississippi is navigable from the wheatfields of Minnesota to the ricefields of Louisiana, and all along the way is an artery of interstate commerce. Even the trolley roads, which are now important freight carriers, are coming to cover long stretches and to extend from State to State.

Transportation is now almost entirely in the hands of corporations. The process of the combination of transportation companies has been going on at such a rate during the last few years that some of the organizations thus created have become colossal, and the power which they exercise in many States is always supreme and sometimes dangerous, almost beyond the power of words to express.

Not only is the transportation part of interstate commerce in the hands of great corporations, but the production of the things transported is in great measure in the hands of great corporations whose business is by no means confined to any one State. The Standard Oil Company would do but a small part of its business if it had to sell in Pennsylvania all the oil that it produced in that State, all Ohio oil in Ohio, Indiana oil in Indiana, and Texas Oil in Texas. Ninety per cent of the anthracite coal which is produced by corporations operating in Pennsylvania, finds its market in other States. The woolen mills which are operated by corporations in New England and Pennsylvania, and the cotton mills by corporations in the South, find a large part of their market in other States than those in which their manufacturing operations are conducted. The wheat crop of the Dakotas is made into flour by corporations at Minneapolis, and the corn crop of Kansas, Nebraska and Iowa is made into whiskey and glucose by corporations at Louisville and Buffalo, and then these manufactured products are marketed through all the arteries of interstate commerce in all parts of the American nation. Only a small fraction of the fruits of California and Florida—much of which is produced by corporations—could find a market within those States, and the cotton of the South is manufactured into cloth by corporations and sent wherever the American flag floats. The United States Steel Company has its plants in many of the States and its customers in every part of the American continent. The Amalgamated Copper Company produces copper in half a dozen States and sells it in

forty States. The General Electric Company makes its goods in Schenectady and sells them in every State and Territory in the Union. The corporations of Grand Rapids, Michigan, make a dozen times more furniture than all Michigan could use, and the carpet mills of Pennsylvania supply a continent. The American Tobacco Company buys the tobacco of half a dozen States and sells it everywhere. The Beef Trust buys the cattle of the West and sells steaks and roasting pieces in the East. The Ice Trust cuts its ice on the Kennebec and sells it all along the coast from Boston to Texas. The Paper Trust buys the spruce logs of Maine and the Adirondacks and sells the product wherever newspapers are printed throughout the land. It is not alone transportation companies and producers that do interstate commerce, but far the larger part of the business of the merchants of the land is interstate business. New York and Boston, Philadelphia, Baltimore, Chicago and St. Louis would be small cities indeed if their trade were confined to New York State, Massachusetts, Pennsylvania, Maryland, Illinois and Missouri. This mercantile business is coming more and more to be transacted by corporations. Nearly all of the wholesale establishments and most of the retail department stores are now under corporate management. The business partnership is disappearing and the business corporation is coming to take its place.

The power to regulate commerce among the several States in the United States is practically the power to regulate all trade and commerce in the United States. The jurisdiction is over the trader as well as the trade—the living instrument as well as the dead object—and while there is some trade and commerce that is confined to one State, there are few traders who do not, either in their buying or their selling, engage in some form of interstate commerce, and in many, if not in most cases, the interstate part of the business is the most important part of it. The power to regulate “commerce among the several States” carries with it, therefore—through the power over the trader as well as the trade—power enough over the commerce that is carried on within the State itself to practically control it.

I do not see why Congress cannot, if it chooses, prescribe what kind of commerce shall be carried on between one State and another, under what condition it shall be carried on and *by what class of persons or corporations*. It may, if it will, provide that no commerce among the several States shall be carried on by any corporation, and, as the great includes the less, it may prescribe

the kind of corporation that may engage in interstate commerce, the manner of its incorporation and the kind of executive or judicial supervision that shall be extended over it, and it may adopt the most stringent regulations to prevent its exercising anything like a monopoly in the business in which it is engaged.

After Congress has exhausted its power, the only field left for uncontrolled corporations will be the trade done by traders whose trade is confined to a single State. Such a corporation would be too small to excite apprehension.

The danger which confronts us is from the corporation whose operations are extensive enough and exclusive enough to constitute a monopoly, and such a corporation must of necessity engage in interstate commerce. The clause in the Constitution which we are considering gives us, therefore, right in hand, the most powerful of weapons to use against monopolies. There is no weapon devised by the reformer of this present generation of trusts anything like so effective for the purpose as this weapon, forged a hundred years before the first trust had its beginning.

Let Congress, for instance, pass a law as follows:

"Be it enacted, etc.

Section 1. No corporation shall engage in commerce between any one State and any other State if in its organization or its methods of doing business it creates or tends to create a monopoly, either in the production or distribution of products, or increases or tends to increase, the prices of such products beyond what such prices would be were it not for such corporation or the business transacted by it.

Section 2. The Circuit Court of the United States shall have jurisdiction at the suit of any interested party, or of the Attorney-General on behalf of the United States, to entertain suit for an injunction to restrain the violation of the provisions of this Act, or any of them, or for damages for such violation, or both, and to render appropriate judgment in such suit."

As I construe the interstate commerce clause of the Constitution, such a statute is not only clearly within the power of Congress to pass, but is only a partial and incomplete exercise of that power.

The statute that I propose differs from the bills lately introduced in the House of Representatives, or the legislation recommended by the President in his message, as well as from that asked for by the Interstate Commerce Commission, in that it goes farther. Com-

merce, as usually conducted, involves a seller, a buyer and a carrier. The remedies proposed have been against the carrier. I propose to reach the buyer and the seller—particularly the seller—as well. I think the carrier, against whom all the penalties are projected, is the most innocent of the three parties. There was a time when more or less powerful monopolies flourished by reason of favoritism in railroad transportation and rebates on rates of freight. In those days the carrier had the upper hand of the producer. To-day the producer controls the carrier, and the greatest and most dangerous trusts to-day will smile at the suggestion of legislation proposed against transportation companies and send their lobbies to Washington to help pass the bills. The attempt to punish the carrier for carrying trust-made goods might do a great deal to embarrass transportation companies, but would not be likely to accomplish much in the way of disarming the producing combinations of their power. If a railroad company, when freight was offered to it, had to trace its history, and then pass judgment on the character of the party that gave it being, railroading would become difficult, but the combinations would probably find some other way to distribute their goods. President Roosevelt's recommendation of absolute equality of rates of freight, is good so far as it goes, but it does not reach the real evil. Here again the trusts would smile and send their lobbies to help pass the bills. The real sinners are the producing combinations, which have absorbed their competitors and become monopolies. In my judgment, we should proceed against the real sinning producer, rather than against the comparatively innocent distributor.

The thing to be desired, of course, is legislation that shall curb the evils of the monopolies without embarrassing trade that is legitimate and beneficial to the community. The question with the ancient kings was how to cut off heads enough to save the throne without cutting off so many as to weaken the nation. The question with Congress is how to restrain monopoly without restraining trade. Trade is the life-blood of the nation, monopoly a disease that kills. How shall we cure the disease without draining the life-blood?

It seems to me that a statute in the form that I have suggested, would accomplish the desired result. If it were found that the legislation restricted legitimate trade too much, it could be modified. If it should be found that it was not trenchant enough to restrain the evils of monopolies, it could be extended.

I hardly need to say that the form of my proposed statute is suggestive only. I do not think the man lives who could to-day formulate the terms of the final act on that subject. Legislation no less than organisms is the product of evolution. In legislating on a new subject the legislator has to feel his way. He will inevitably make mistakes in matters of detail and form, and can only learn how best to reach the desired result through the school of experience. I am very far from thinking that I have formulated a statute which Congress will pass, as it stands, and which would remain unamended, even if Congress should adopt it. I think, however, I am on the right track and that the legislation proposed is in the right direction.

It may be objected that the authority to institute suits contemplated under such an act should be given to the Attorney-General alone, and that the courts should not be open to private parties who may consider themselves aggrieved. Such seems to be the view of President Roosevelt. On this subject, however, I take issue with him. I think that any citizen who is aggrieved should have the right to seek for himself the remedy which the statute gives, and that the courts should be open to him for that purpose. I do not think that serious abuse would result. We can imagine, it is true, how a corporation attempting to do a legitimate business might be required to meet a multitude of baseless suits, and that fair trade would suffer. I do not think, however, that this would happen. Numerous statutes have been passed in this country which would be open to the same theoretical criticism, but in practice no such evil results have been found to follow their adoption. The American citizen is not a litigious being. He has no hankering after a lawsuit. He accepts one if it is forced upon him as he does the smallpox, and makes the best of it, but he is prone rather to suffer wrong than to seek redress. Then, too, the burden of such a suit would be greater than the ordinary citizen would be willing to accept, unless he had very strong ground for it. I do not think that any considerable abuse of the process of the court would result in the practical operation of the law. If it were found that such abuse did result, then limitations, conditions or restrictions could be imposed upon the right of a citizen to sue in his own name. It will be time enough to impose these, however, when the necessity becomes apparent.

Of one thing I am firmly convinced, and that is, that whatever remedy is adopted to cure the trust evil from which the community suffers, the application of the remedies should be in the hands of

the courts rather than of the executive department of our government. The training of the lawyer leads him always to favor judicial rather than executive remedies. The proposed statute puts the power in the hands of the court to judicially investigate and render judgment. I think that the rights of the people and the interests of trade will be safer in judicial than in executive hands, and that we can trust the courts of the nation to so interpret and administer a statute of this nature as to give to the community and the country the benefits that it is intended to confer, and save them from the evils that might otherwise attend it. Ours is a judge-governed land. It is a land of liberty because it is a judge-governed land. Despotism has flourished only where the executive has overshadowed the judiciary. The courts are the bulwarks of our institutions, the safe-guards of Anglican liberty. In this day when our nation and our race are confronted with a new evil, we may well turn to the courts of justice for a remedy. If there must be—and it seems there must—an increase in the functions of government, let that increase be on the judicial rather than on the executive side. Let it be the courts rather than the executive departments that receive the increment of power.

Walter S. Logan.