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THE EVIL OF SPECIAL PRIVILEGE*

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A corporation is styled as a “person” in the Constitution of the United States and created for a public purpose. The dominion of corporate power is greater than the general public comprehend, also the evils which infest these creatures of the law are skilfully and secretly destroying the inalienable rights of personal liberty while the people are lingering. States have created these corporations by special acts of their legislatures tinged deeply with the stain of corruption. Special charters of power were broad and dangerous, irresponsible and destructive in many instances. These charters have nearly ceased to exist and many of the unlimited powers are now conferred, or permitted by general incorporation laws. These legal provisions of authority in State charters, by some expressive or permissive force, evidently, are the sources of the prevailing evils and proper subject for reform. Even the issue of charters to organizations has been promiscuous. It is to this charter of corporate power that many of the great evils of monopoly existing in interstate commerce are attributable. Government and business have been united by laws of incorporation which authorize, permit or make possible, unfair and oppressive methods. Originally charters had no special privileges for power to own stock in other corporations or the power of transferability of shares of stock. When the right to transfer shares of stock began the evil of special privilege had its birth.

Early records show that in 1587 the Portuguese government granted a charter to a trading company. The East India Company, authorized in 1600, during the reign of Edward VI was the first corporate organization to possess this capability to transfer stock in England, which was a monopoly created by royal grant. This special privilege was immediately utilized in other countries. The Dutch India Company was organized in Holland on the same basis as the English company. France was next in line to create similar corporations. These corporations were

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formed to conduct trade between Europe and the Indies and yielded immense profits. The duration of their charters was limited in years and renewed for periods of twenty years. The government shared in the profits as the purposes of the corporation were in nature of public corporations. The Bank of England obtained its first charter in 1694. Eventually the evils of corporate power appeared in the first quarter of the eighteenth century in both England and France, all caused by the development of numerous fraudulent stock companies. At this period the great South Sea bubble in England grew and burst. In England the prohibitory act of 1720 was passed and few corporations were created till 1741, when the provisions of the act were extended to the American colonies. Between 1741 and the American Revolution very few corporations appeared till the adoption of the Constitution. Nearly all the corporations prior to 1850 were public in their nature such as banking, railroad, and bridge companies. At this time there were no general incorporation laws for purely private purposes in this country. Probably the first charter having private privileges was granted by England in 1688, incorporating a trading company in Massachusetts which had power to open and operate mines. The people protested against this special privilege, arguing that such grant of power tended to produce a monopoly and enhance prices of mining products resulting in oppression upon the general public. The view of monopolistic power and restraint is not a modern complaint as shown by the prejudice widespread among the people against grants of corporate power and the creation of artificial persons in commerce. This same hatred towards corporate power is manifested in the public press, verdicts of juries, and even in some judicial opinions have not failed to voice a warning or reprimand.

A review of the inception, history, and growth of corporate legislation in the various States gives the impression that the tendency of legislatures in the matter of privilege is diversity rather than uniformity for the rivalry in the corporate business; and creates a legislative policy to protect domestic corporations and at the same time exercise a feeling of antagonism or belligerent feeling against foreign corporations. Some States have charters for sale and look for the initial fees of organization and the yearly return of taxes to be assessed. By proceeding on this basis to procure money returns they obviate sound principles of government and measure legislation by monetary and political
scales. Special legislation for the benefit of a particular corporation is always open to the charge of being legislation for expected revenues to the State, especially if the character of such legislation is manifestly unsound in principle. Granting charters with unusual privileges and immunities arouses a public distrust against the integrity of the members who compose the corporation.

To demonstrate that the people themselves are responsible for the evils of corporate power obtained through the actions of their legislatures, which power is frequently used for indirect and selfish private gain, a glimpse at the following may be convincing:

Forty-two States permit the organization of corporations for any lawful business or purpose.

Forty-three States have no superior limit on the capital stock of the corporation.

Twenty-four States issue perpetual charters and in most of the other States charters are limited as to time but may be renewed again and again.

Eighteen States permit the merger and consolidation of corporations and they are specially prohibited in only two States.

Nineteen States sanction holding of stock in other corporations; it is prohibited in two States and qualified in seven States.

Forty States have no provision that any part of the capital stock shall be paid in money, either before organization or at any period in its existence. One State provides for the payment of $1,000 in money, three provide that ten per cent, one twenty per cent, one twenty-five per cent, and one fifty per cent of the capital stock shall be so paid.

Thirty-eight States by statute, and three by jurisprudence, provide that stock may be issued for property, and in most of them for labor or services as well. Fourteen States declare the issue of fictitious stock void. In nine States the judgment of the board of directors as to the value of the property for which the stock is issued is declared conclusive except in the case of fraud, but the stock is not declared void. Montana permits any arbitrary value whatever to be placed on mining property for which the stock is issued. Massachusetts, Virginia, Iowa and Texas exercise State supervision over the issuance of stock for property.

Twenty-four States permit corporate meetings to be held either within or without the State of incorporation.
Thirty-three States have no provisions requiring any of the directors of a corporation to be residents of the creating State. Eleven States require one director, two States require three directors, and two States require a majority of the directors to be residents of the State of incorporation.

Twelve States require annual financial reports to be made to the State officer. Twenty States require an annual report containing nothing but certain formal matters, such as the name and domicile of the company, the names of the directors, residences, and the amount of the capital stock.

None of the States have provisions against the same persons acting as directors in corporations of the same character and engaged in the same business in the same State or in different States.

Some corporations are organized primarily for the purpose of doing business outside of the State which grants the charter for incorporation.

Some corporations are organized for the purpose of doing without the State such business as is prohibited to be done within the State of its creation.

Some corporations are organized for the purpose of doing their business as corporations entirely outside of the State, being specifically forbidden by their charters from operating or carrying on such business in the State where organized. Some corporations are organized for the express purpose of doing business in evasion—sometimes in violation—of the law of the State into which the corporation intends to go and operate.

In 1866 the State of Pennsylvania granted a special charter to the New York California Vineyard Company giving it power to do the business set forth in its charter in any State of the United States or Territories except in the State of Pennsylvania, as a natural person. Later in 1870 the name of the company was changed by special act and it was given banking power to be exercised in any State, Territory, or county in the United States, except in the State of Pennsylvania. This illustrates the evil of oppressing other States and protecting its own corporations. The Supreme Court of Kansas (6 Kans., 255) in ousting this corporation from that State said that, "At the very creation of this corporation its creators spurned it from the land of its birth as illegitimate and unworthy of a home among its kindred and sent it forthwith a wanderer on foreign soil. Is the State of Kansas
bound by any sort of courtesy, or comity, or friendship, or kind-
ness toward Pennsylvania to treat this corporation better than its
creator? No rule of comity will allow one State to spawn cor-
porations to do outside of the State such business as it will not
allow them to do within its own boundaries.” The State
of Connecticut is a close follower of Pennsylvania in creating cor-
porations to do outside of the State such business that it will not
allow to be done within its borders. This same State recently
created by special charter a banking company with power to hold
its stockholders' meetings anywhere in the world; and granted it
power to transact the business of merchants, manufacturers,
miners, shippers, and agents of every description, to construct
private and public works of any kind, all outside this State of
Connecticut. In contrast to this same State granting wholesale
powers for banking outside of the State, it puts a limitation on
those applying for a license to conduct a banking or trust business
in the State by compelling them to submit to the supervision of its
banking commissioners. The limitation to operate outside of the
State carefully guards the citizens and welfare of the State; and
publicity of corporate accounts and documents denied to stock-
holders by its by-laws must be wide open to publicity when oper-
ating within the State. Such acts as these made by the representa-
tives of the people are purely impositions and should not be
tolerated for a moment.

The corporate system of New Jersey is often declared to be
loose and lax, which assertion is probably based upon the liberal
features of the laws devised to attract enormous capital. All
corporations are created under a general incorporation law. The
policy of the executive officers connected with the business man-
agement of the administration, associated with the intelligence, in-
tegrity and high character of the Bench and Bar has given the public
confidence in the stability of the New Jersey laws. Under these
laws the Standard Oil Corporation was organized and flourished
with unlimited power, reaching the highest personification of a
stygian monopoly. This peer of monopoly, characterized as the
vilest rebater and user of secret and immoral means, has been
branded as a bad trust by the Supreme Court of the United States.
They have passed into dissolution in vaudeville style. The United
States Steel Corporation and many of its constituent companies
were organized under the laws of this same State. This State-
was preferable to any other as the laws gave them the unlimited power to stifle competition and foster a trust-fed monopoly. This is shown by the control and operation of steamship lines and more than thirty railroads. Public opinion seems to disapprove the New Jersey laws of incorporation, especially those laws which sanction holding companies, but other States, as New York, have attempted to legislate liberally with a view of inducing capital to organize under its laws, that the State might receive the income tax. Under the New York laws a perpetual corporation can be formed with unlimited power and with the power of merger and with the power to hold stock in other corporations for any lawful purpose, including the power to incorporate estates. In Pennsylvania, the Pennsylvania Railroad Company was created with unlimited power to maintain and operate for profit a great highway of commerce, protecting it from competition and safeguarding its secret and vicious methods, thereby denying to the citizens of the State the equal privilege of transportation. The State incorporated other railroads within the State and gave them unlimited power to maintain and operate for profit coal mines in the anthracite coal fields, whereby they have controlled the output of mines and advanced prices almost to a condition of feudalism. The very independence and natural wealth of the people they have unqualifyingly bestowed upon these artificial persons, who tyrannically operate them for their own personal greed. The States of Pennsylvania and Massachusetts both take the stand that stock must be issued for an actual money value and the courts are the judges both as to the law and the fact of what is the value of the property for which the stock is issued. They insist upon publicity for all corporations, public or private, while New Jersey has consistently adhered to the principle of private publicity as the better policy for business corporations. Massachusetts insists upon an official State valuation for stock, but New Jersey takes the position that stock can not be issued for services; also compels publicity by requiring the corporation in each annual report to distinguish between stock issued for cost and stock issued for property.

The States seem to have overlooked this evil of unlimited power, or it has never dawned upon the respective legislatures that the controlling power lies in the privilege of the same persons acting as directors in various and similar corporations. This express power for a corporation to hold stock in another corpora-
tion or association gives to the holding company the unlimited and unbridled power to regulate sales and prices. As the State laws stand to-day these laws are simple legal machinery in the hands of dishonest wise men to manipulate monopolies calculated to concentrate the wealth of the country and defraud the honest investor of his money by various systems of watered stock. Many persons hold stock in two or more corporations engaged in fierce competition. States overlook the necessary prohibition of limiting the eligibility of persons to engage in the corporate business of more than one company, thus permitting the evil to reach out and tighten its monstrous grasp. The combination, merger and pooling arrangements have not been restricted from interlocking with several competing companies. You can not provide that A. B. cannot buy stock in any corporation he chooses, but you can provide that if A. B. owns stock in two or more competitive corporations he shall not have the right to vote that stock at a stockholders' meeting of either of them, because the State which creates the corporation has the right to regulate and define clearly the manner in which these artificial creatures shall hold their meetings, and how the members shall vote their stock and attempt to operate the business. Much stock is afloat over the country, held by individuals in small quantities, who know nothing of corporate affairs and who never attend the corporate meeting nor voice an interest in its welfare. It is through these small stockholders that the officers obtain their control of corporations by proxies.

At first corporations were creatures of the State, organized for public purposes and held subservient to the general welfare. Mr. Justice Brown said that “it is presumed to be incorporated for the benefit of the public”. Charter legislation has radically changed in recent years, and the power which was so jealously guarded by State officials to protect the public has been unwisely exercised. It is well known that many of the statutes are drawn and passed with the most obvious evidences of haste, lack of knowledge of constitutional principles, coupled with ignorance of many of the facts to which the statutes will apply when in the power of dishonest users, or of the consequences which will follow from its operation in circumstances the makers never had the remotest thought ever existed. Old charters which were difficult to obtain, with broad and irresponsible privileges, have been superseded by general incorporation laws permitting worse evils than
special charters, and actually allowing or inviting any prospective association or combination to even draw its own charter. It seems that some States have actually auctioned their power to practically encourage dishonest enterprises and give them a legal status, so that if an association finds it disadvantageous to apply for a charter in one State, it has the right to proceed to another State and there obtain that which it was impossible to obtain in its own State. These corporations organized to operate often have no association with the State, and operate, own property, conduct business and hold directors' meetings anywhere best suited for their interests. They pay for incorporation and comply with the meager requirements, such as having a home office in the State of origin, which has few restrictions of law; thus these "legal fictions" evolve themselves into monsters of gluttony.

Some stockholding statutes are so unlimited in power that the conscience is astounded by the magnitude of legislative injustice. One of the most noticeable of these unrestrained stockholding statutes was passed in the State of Utah in 1907, amending Section 26 of the laws of 1901, which reform gives to the Utah railroad companies the power to acquire and control stock in all the transportation companies by land, river, lake or sea in the United States; of all terminals, wharves, docks, or other shipping facilities; of all express companies; of all refrigerator plants; and of all other corporations that manufacture, sell, lease, or otherwise provide railroad equipment. The State has made one limitation that this grant of power cannot extend to the ownership of stock, or securities of a parallel or competing line of railroad within its boundaries. The Union Pacific Railroad is a corporation of Utah and previous to this amendment, Mr. Harriman, late president of this company, acquired stock in several other large railroads, which control was deemed necessary to be protected. The evil of intercorporate stockholding has very recently met with the disapprobation of the Supreme Court of the United States in the merger dealings between the Union Pacific and Southern Pacific Railroads. These two corporations were acting independently as to a large amount of interstate commerce until the acquisition of stock, by which manipulation they attempted to effect a combination and suppress competition between the two systems. Railroad and industrial development originated intercorporate stockholding when every State felt called upon to make inducements to facilitate large combinations of capital to advance
enterprises. Many States did not expressly give power to hold stock in other corporations and court decisions held that corporations had no such inherent right from merely obtaining a charter. Only a few years ago the country was harassed by transportation companies who discriminated in freight charges and undue preferences. Nearly all the railroads are chartered by States which have extended concessions and powers of eminent domain under the general incorporation laws as inducements to prospective transportation companies to secure facilities that require legal authority. Thus the evil was not wholly the acts of the corporations, but it is safe to say that the legislatures of the States were responsible for such organizations whose malpractices extended over the entire country. These railroad corporations originally were purely creatures confined to the States of their birth, but soon the State limits vanished as something only imaginary, and they spread over other States, becoming instruments of interstate commerce, subject in a degree to the Act to Regulate Commerce. Public opinion hastened Federal regulation of these corporations with gratifying results, both to the shippers and the owners of the railroads. There is no general Federal incorporation statute for transportation companies, although some railroads were created by special acts of Congress. Much has been said on the subject of Federal incorporation for interstate carriers and bills have been introduced in Congress, but they all have come to a sad death in the committee rooms, although the business of the railroads is so enormous and the interests of the people affected are so far reaching that Federal regulation of railroads is actually necessary for the general welfare. Railroads continue to combine and merge, under State laws, for the control of traffic, and frequently great combinations have been formulated to restrain competition, as was attempted by the Northern Securities Companies, which was dissolved by the Supreme Court for illegal practices and restraint of trade (193 U. S., 361). Under the present regulations, railroads can establish their own rates and charges, or advance their rates to a reasonable degree to guarantee profitable returns for the money invested in the property. The Supreme Court has repeatedly held that railroads cannot be compelled to operate their lines at a loss, neither can they charge exorbitant rates for transportation services. They manage to have their rates sufficiently high to take all the traffic will bear, and advance rates if thought necessary to replenish the treasury.
this point of advancing rates the Interstate Commerce Commis-

sion has recently declared that the general public must be consid-
ered before an advance will be permitted.

Industrial corporations owe their existence to incorporation and
are subject to the State laws regarding their issue of stocks and
bonds. At times much stock is issued at less than par value, and
often issued as bonus to promoters. Most people know that

securities are divided into two classes, stocks and bonds, although
few people really apprehend as clearly as they should their dis-

tinction, or real value. The bond obligation is definite, as it is
limited by the terms on its face and essentially amounts to a note,
or promise to pay a certain sum of money at a prescribed rate of
interest. The face value mostly determines its market value.

The share of stock is vastly different and of a more complex
nature. It represents a certain sum paid into the treasury of the
corporation and the holder has a certain share in the ownership of
the property, of whatever value that may be. This value is the
worth of the share or stock certificate. The face value of the
certificate is not a measure of its real value, but its actual value is
determined by its market value of negotiability and the develop-
ment of the property. The purchaser of stock certificates takes

his risk when he chooses his investment and management. If
the management acts wisely he fares accordingly, but should he
fare badly he must abide by the consequences. Holders of stocks
sometimes receive shares on the increased value of the property,
or in course of reorganization, or in exchange for stock of other
companies, which may not be fully warranted by the facts of the

case. The actual facts should be publicly disclosed that the true
character and valuation of the physical property may be deter-

mined. All these transactions of stocks are controlled by State
statutes, and herein lies an evil that needs a remedy. This un-
certainty of stock value often results in the issue of shares of stock
beyond the real value of the property and business, and thus the
corporation immediately becomes over-capitalized. Corporations
of great capitalization and controlling entire industries must neces-
sarily keep in close touch with the great banking and financial
interests who usually select the board of directors; consequently,
all matters of business policy are devised or approved by them.

Regulation of stock issue, credits, and the indebtedness of these
great corporations appears to be necessary for the public welfare;
especially when a bond is issued at $1,000 and bears a thousand
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dollar mark upon its face, it should be absolute evidence to the financial world that a thousand dollars is in the treasury of the corporation, or it has the actual property back of it to sustain its face value; and if a thousand dollars' worth of stock is issued, it should signify under the law that it represents a thousand dollars in the treasury or property of the corporation. Some law should control these great corporations in the issue of watered stock for which the public must pay a fair rate of interest for an uncertain value. Also, this fictitious stock issue places an exorbitant price on commodities, without which lower prices would prevail. Neither would combinations develop and expand so rapidly if their charters did not empower them to purchase sufficient shares of stock in other corporations for the control of the business. The most obnoxious form of intercorporate stockholding is the holding company which undertakes to hold the stock of other corporations, which is the real purpose for which it is formed. Control by holding is probably the greatest evil and cause of great combinations in transportation affairs. This characteristic of intercorporate stockholding, which reaches its acme in the creation of a corporation designed for nothing but to hold stock and securities of other corporations, is identical with a trust monopoly, and it is by this means of intercorporate stockholding that competition is absorbed by a single control of the avenues of business enjoyed by separate independent corporations. These are purely evil devices designed to suppress competition and deceive the public.

Inside manipulation, inherent in corporate stock ownership, might be prevented by eliminating the charter power of intercorporate stockholding. Minority rights of stockholders vanish like a mist the moment the stock majority submerges in another corporation, which actually has no interest in the active operations of the industry. To control the business the holding company may go so far after purchase as to close the industries, or reduce the output to eliminate competition, and report that such industry was too expensive to operate. As a result the stockholder's money, intended to be used as a pure investment, is converted to purchase stocks in another corporation, and his money is handled according to the wishes of the leaders, although he is never consulted as to the policy of the company, regardless of anything like fair treatment. But we find the legal status of holding corporations in the United States is exceedingly complicated, not
by reason of the conflict of the organizations, but by reason of the conflict of the dual jurisdictions of State and Federal governments. Each of these jurisdictions is by virtue of the Constitution of the United States supreme within its own particular sphere. The Constitution gives the Federal government power over interstate commerce and the right to interfere with the corporations chartered by the States where questions of interstate operations are involved. Thus a stockholding corporation organized under the laws of any State for the purpose of consolidating several corporations subjects itself to State and Federal control. The powers of Congress are construed and defined by the Supreme Court, which forbids interference with an industry operating wholly within one State. Much business is now conducted by these holding corporations, and their destruction or serious disturbance would involve loss to innocent stockholders for value, hamper the employment of millions of workmen, and probably result in conditions of general bankruptcy to the most prosperous people and nation on earth. All components must be considered by wise and prudent men, who attempt to formulate laws to promote the general good and not produce wholesale destruction. With the States furnishing opportunities of which the financial leaders of holding companies may take advantage, the dangers of our industrial system are apt to be overlooked. Monopoly, sanctioned by the order of judges who are bound by law and every sacred obligation to protect rights and property, stands ready to paralyze business organizations which the States are continually establishing. Threatened disaster must be avoided both by the recalcitrant tactics of ironclad monopolies and radical legislation.

Honest industrial and commercial combinations are not dangerous, but lawless organizations are dangerous, because these great organizations have not been under any direct control of the law. Greatness is not an evil, but the evil exists in the fact that they have been exempt from regulation and control. By being exempt from legal regulation the result has been malicious monopoly derived from combination. That competition is impossible whenever combination is possible, has been clearly demonstrated by the development of commerce. The results of non-regulated organizations and hybrid monopoly are these evils: Power to fix prices; power to deteriorate quality; power to limit commercial output; power to lower wages; and the power to destroy competition.
The assertion is often heard that competition is past history, but the opinion of a few will not prevail to eliminate an inherent element of the human race; neither can it be eliminated from the minds of men unless you destroy that selfish motive which moves every human being and fires his brain with financial enthusiasm. Free competition should be open to all persons interested in business, and they are entitled to protection in the exercise of their respective degrees of personal industrial ability. The spirit of competition has come down from the earliest history, when men sought to conquer by superior power and force of arms; and this is seen in the world of industry and business, where men wish to attain the highest point for the satisfaction of personal superiority. This spur of competition sometimes produces a natural monopoly not in restraint of trade as the result of skill in one particular class of manufacture. A manufacturer may have a natural monopoly by producing goods of a superior quality in an open field, as the manufacture of astronomical lenses. Here the degree of quality makes a demand for the class of articles, and the man who is most efficient will command the trade and the prices. In like manner the industrial man in labor who possesses the greatest ability will command the highest wages. The best man in industrial management, or the best man on the basis of personal skill, is the person who would be supposed to succeed when opportunities are equal. So long as the world continues, competition will not pass, unless human nature becomes changed; then the axiom of the survival of the fittest will be eclipsed.

By combination as a means the business of corporations is gradually stifling competition; also, actual competition may be destroyed by the consolidation of corporations. The almost instantaneous operation by which competitors are combined into a single controlling company, accomplished by selling and buying stocks, or the creation of a corporation authorized to hold all their stock, cannot be termed a process of competition. The effect of such devices and practices is not generally known by the public; thus the pressure of public opinion has been evaded greatly and the sham of competition maintained. Even industrial corporations have conducted a private banking business with enormous capital which often amounts to many millions of dollars, as investigation has recently brought to light concerning the United States Steel Corporation. All these financial resources strengthen the purpose and generally aid the tendency toward monopoliza-
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This money reserve or private bank of the holding company is indispensable in illegitimate affairs and constitutes the source of evil and public danger.

If these corporations are allowed to come into existence, a limitation of excessive capital which one corporation can properly employ would be a step toward the preservation and maintenance of fair competition, although the amount of capital could not be minutely determined on account of the wide range of business sagacity. Between a match industry and a steel plant there is such an enormous range of difference that what would be considered an excessive capital in one instance would not make an impression for the necessary capital in the other case. Thus the amount of capital which one corporation can utilize without serious danger to its rivals varies in different cases, but a careful survey of the field may determine just about how much capital can be prudently employed without unduly restraining competition. It would become too large whenever it should be discovered that actual competitors are being unfairly driven to the wall. Of course, assuming the non-existence of special privilege or special restraint in competition, the inefficient producer must yield to the successful producer and the limitation upon the capital might be increased from time to time, according to the development of the business. The large independent corporations and the original trusts, if there were no dissolutions into fragments, should compete reasonably with each other if both are subject to a rule prohibiting all unfair practice in competition.

The "trust" acquired an unenviable prominence in the eighties and became the familiar and common expression for a combination of competing interests under one management. Today and for many years past the so-called trust in its original sense has become rare, but the expression survives and has assumed a generic significance as indicating every form of combination of competing industries. The original trust was, as will be remembered, an arrangement whereby a number of competing manufacturers, individual or corporate, while retaining their individual or corporate ownership of their respective properties, put into the hands of trustees their interests; the trustees being clothed with the right to dictate to the respective competitors the terms on which they should compete, the amount and character of their output, and the prices at which the output should be sold. The appellation soon became a term of oppro-
brium and has so remained. The large combinations of capital which now exist in various branches of industry have inherited the opprobrium attaching to this term. To call a corporation a trust is to excite public condemnation and to put the combination or corporation on the defensive. The corporations that purchase materials by hammering prices and whose unpardonable crime is stifling competition; whose conception of sales is to obtain the last cent by force from their purchasers; who practice the evil of secrecy concerning trade operations; who have no regard for the producer of raw materials as long as he produces; and who resort to ruthless and drastic methods to drive competitors from the business, such as the American Tobacco Company or the Standard Oil Company, are illustrations of bad trusts and evils of special privilege which had their inception and organization under State incorporation statutes.

That a merely permissive Federal incorporation statute would be of little value is manifest because only those corporations which thought they might secure some advantages through Federal incorporation would resort to it, while if they thought they could profit better by State incorporation they would not submit themselves to Federal jurisdiction, and therefore it would be an option solely for the advantage of the corporation. Instead of being merely permissive it should be compulsory, and if permissive, only such corporations would come under its provisions voluntarily as sought an avenue to escape the general condemnation that is threatening their business and credit. Many corporations that are now doing business, which have been organized under the laws of the respective States, might find it difficult to remove themselves from the obligations that they have already incurred to the State and resort to Federal incorporation and regulation. In the instance of a State bank which desires to change its status into a national bank, it must surrender its charter or franchise under which it transacted business; and most States will require a complete dissolution and winding up of its affairs generally before the State will release its obligation. Too radical legislation may work an unexpected hardship upon the innocent.

All the monopoly cases decided by the Supreme Court had their origin in some State where the statutes knew no limitations for breadth of power. These individual ills began by the negligent exercise of legislative authority when these respected bodies by
some irresistible lure or indomitable power were forced into servile submission of those inalienable rights inherited by the people from the beginning of government. The evils exist in abundance, although corporate powers are constantly expanded. Unlimited delegation of power under State government has made many existing evils possible. The State is a sovereignty of almost unlimited power and fully able to enact statutes limiting the powers of corporations. A return to the original conception of a corporation subservient to the public good rather than for public oppression would be very acceptable if such could be possible. Although a corporation is an individual in the union of States and has a perfect right to seek its fortune anywhere, it should not with legal impunity exercise its power to injure the individuals or public policy of allied States. Conservative business men are awake to the danger of impatience among the public for a more equal condition in business affairs, and these men are seeking a sovereign remedy for the evils that will not result in disaster to individual prosperity. Many of the large corporations can not afford to be subject to the divergent laws of various States and no doubt the better class of corporations would welcome some prudent national regulation.

District of Columbia Bar.