

clusively that it is useless to try to get any adequate regulation and supervision of these great corporations by state action. Such regulation and supervision can only be effectively exercised by a sovereign whose jurisdiction is co-extensive with the field of work of the corporations—that is, by the national government. I believe that this regulation and supervision can be obtained by the enactment of law by the congress. If this proves impossible, it will certainly be necessary ultimately to confer in fullest form such power upon the national government by a proper amendment of the constitution. It would obviously be unwise to endeavor to secure such an amendment until it is certain that the result can not be obtained under the constitution as it now is. The laws of the congress and of the several states hitherto, as passed upon by the courts, have resulted more often in showing that the states have no power in the matter than that the national government has power; so that there at present exists a very unfortunate condition of things, under which these great corporations doing an interstate business occupy the position of subjects without a sovereign, neither any state government nor the national government having effective control over them. Our steady aim should be by legislation, cautiously and carefully undertaken, but resolutely persevered in, to assert the sovereignty of the national government by affirmative action.

"This is only in form an innovation. In substance it is merely a restoration; for from the earliest time such regulation of industrial activities has been recognized in the action of the law-making bodies; and all that I propose is to meet the changed conditions in such manner as will prevent the commonwealth abdicating the power it has always possessed, not only in this country but also in England before and since this country became a separate nation.

"It has been a misfortune that the national laws on this subject have hitherto been of a negative or prohibitive rather than an affirmative kind, and still more that they have in part sought to prohibit what could not be effectively prohibited, and have in part in their prohibitions confounded what should be allowed and what should not be allowed. It is generally useless to try to prohibit all restraint on competition, whether this restraint be reasonable or unreasonable; and where it is not useless it is generally hurtful. Events have shown that it is not possible adequately to secure the enforcement of any law of this kind by incessant appeal to the courts. The department of justice has for the last four years devoted more attention to the enforcement of the anti-trust legislation than to anything else. Much has been accomplished; particularly marked has been the moral effect of the prosecutions; but it is increasingly evident that there will be a very insufficient beneficial result in the way of economic change. The successful prosecution of one device to evade the law immediately develops another device to accomplish the same purpose. What is needed is not sweeping prohibition of every arrangement, good or bad, which may tend to restrict competition, but such adequate supervision and regulation as will prevent any restriction of competition from being to the detriment of the public—as well as such supervision and regulation as will prevent other abuses in no way connected with restriction of competition. Of these abuses, perhaps the chief, although by no means the only one, is overcapitalization—generally itself the result of dishonest promotion—because of the myriad evils it brings in its train; for such overcapitalization often means an inflation that invites business panic; it always conceals the true relation of the profit earned to the capital actually invested, and it creates a burden of interest payments which is a fertile cause of improper reduction in or limitation of wages; it damages the small investor, discourages thrift, and encourages gambling and speculation; while perhaps worst of all is the trickiness and dishonesty which it implies—for harm to morals is worse than any possible harm to material interest, and the debauchery of politics and business by great dishonest corporations is far worse than any actual material evil they do the public. Until the national government obtains, in some manner which the wisdom of the congress may suggest, proper control over the big corporations engaged in interstate commerce—that is, over the great majority of the big corporations—it will be impossible to deal adequately with these evils.

"I am well aware of the difficulties of the legislation that I am suggesting, and of the need of temperate and cautious action in securing it. I should emphatically protest against improperly radical or hasty action. The first thing to do is to deal with the great corporations engaged in the business of interstate transportation. As I said in my message of December 6, last, the immediate and most pressing need, so far as legislation is concerned, is the enactment into

law of some scheme to secure to the agents of the government such supervision and regulation of the rates charged by the railroads of the country engaged in interstate traffic as shall summarily and effectively prevent the imposition of unjust or unreasonable rates. It must include putting a complete stop to rebates in every shape and form. This power to regulate rates, like all similar powers over the business world, should be exercised with moderation, caution, and self-restraint; but it should exist, so that it can be effectively exercised when the need arises.

"The first consideration to be kept in mind is that the power should be affirmative and should be given to some administrative body created by the congress. If given to the present interstate commission or to a reorganized interstate commerce commission, such commission should be made unequivocally administrative. I do not believe in the government interfering with private business more than is necessary. I do not believe in the government undertaking any work which can with propriety be left in private hands. But neither do I believe in the government flinching from overseeing any work when it becomes evident that abuses are sure to obtain therein unless there is governmental supervision. It is not my province to indicate the exact terms of the law which should be enacted; but I call the attention of the congress to certain existing conditions with which it is desirable to deal. In my judgment the most important provision which such law should contain is that conferring upon some competent administrative body the power to decide, upon the case being brought before it, whether a given rate prescribed by a railroad is reasonable and just, and if it is found to be unreasonable and unjust, then, after full investigation of the complaint, to prescribe the limit of rate beyond which it shall not be lawful to go—the maximum reasonable rate, as it is commonly called—this decision to go into effect within a reasonable time and to obtain from thence onward, subject to review by the courts. It sometimes happens at present, not that a rate is too high, but that a favored shipper is given too low a rate. In such case the commission would have the right to fix the already established minimum rate as the maximum; and it would need only one or two such decisions by the commission to cure railroad companies of the practice of giving improper minimum rates. I call your attention to the fact that my proposal is not to give the commission power to initiate or originate rates generally, but to regulate a rate already fixed or originated by the roads, upon complaint and after investigation. A heavy penalty should be exacted from any corporation which fails to respect an order of the commission. I regard this power to establish a maximum rate as being essential to any scheme of real reform in the matter of railway regulation. The first necessity is to secure it; and unless it is granted to the commission there is little use in touching the subject at all.

"Illegal transactions often occur under the forms of law. It has often occurred that a shipper has been told by a traffic officer to buy a large quantity of some commodity and then after it has been bought an open reduction is made in the rate to take effect immediately, the arrangement resulting to the profit of the one shipper and the one railroad and to the damage of all their competitors, for it must not be forgotten that the big shippers are at least as much to blame as any railroad in the matter of rebates. The law should make it clear so that nobody can fail to understand that any kind of commission paid on freight shipments, whether in this form or in the form of fictitious damages, or of a concession, a free pass, reduced passenger rate, or payment of brokerage, is illegal. It is worth while considering whether it would not be wise to confer on the government the right of civil action against the beneficiary of a rebate for at least twice the value of the rebate; this would help stop what is really blackmail. Elevator allowances should be stopped, for they have now grown to such an extent that they are demoralizing and are used as rebates.

"The best possible regulation of rates would, of course, be that regulation secured by an honest agreement among the railroads themselves to carry out the law. Such a general agreement would, for instance, at once put a stop to the efforts of any one big shipper or big railroad to discriminate against or secure advantages over some rival; and such agreement would make the railroads themselves agents for enforcing the law. The power vested in the government to put a stop to agreements to the detriment of the public should, in my judgment, be accompanied by power to permit, under specified conditions and careful supervision, agreements clearly in the interests of the public. But, in my judgment, the necessity for giving this further power is by no means as great as the necessity for giving the

commission or administrative body the other powers I have enumerated above; and it may well be inadvisable to attempt to vest this particular power in the commission or other administrative body until it already possesses and is exercising what I regard as by far the most important of all the powers I recommend—as indeed the vitally important power—that to fix a given maximum rate, which rate, after the lapse of a reasonable time, goes into full effect, subject to review by the courts.

"All private car lines, industrial roads, refrigerator charges, and the like should be expressly put under the supervision of the interstate commerce commission or some similar body so far as rates, and agreements practically affecting rates, are concerned. The private car owners and the owners of industrial railroads are entitled to a fair and reasonable compensation on their investment, but neither private cars nor industrial railroads, nor spur tracks should be utilized as devices for securing preferential rates. A rebate in icing charges, or in mileage, or in a division of the rate for refrigerating charges is just as pernicious as a rebate in any other way. No lower rate should apply on goods imported than actually obtains on domestic goods from the American seaboard to destination except in cases where water competition is the controlling influence. There should be publicity of the accounts of common carriers; no common carrier engaged in interstate business should keep any books or memoranda other than those reported pursuant to law or regulation, and these books or memoranda should be open to the inspection of the government. Only in this way can violations or evasions of the law be surely detected. A system of examination of railroad accounts should be provided similar to that now conducted into the national banks by the bank examiners; a few first-class railroad accountants, if they had proper direction and proper authority to inspect books and papers, could accomplish much in preventing willful violations of the law. It would not be necessary for them to examine in the accounts of any railroad unless for some reasons they were directed to do so by the interstate commerce commission. It is greatly to be desired that some way might be found by which an agreement as to transportation within a state intended to operate as a fraud upon the federal interstate commerce laws could be brought under the jurisdiction of the federal authorities. At present it occurs that large shipments of interstate traffic are controlled by concessions on purely state business, which of course amounts to an evasion of the law. The commission should have power to enforce fair treatment by the great trunk lines of lateral and branch lines.

"I urge upon the congress the need of providing for expeditious action by the interstate commerce commission in all these matters, whether in regulating rates for transportation or for storing or for handling property or commodities in transit. The history of the cases litigated under the present commerce act shows that its efficacy has been to a great degree destroyed by the weapon of delay, almost the most formidable weapon in the hands of those whose purpose it is to violate the law.

"Let me most earnestly say that these recommendations are not made in any spirit of hostility to the railroads. On ethical grounds, on grounds of right, such hostility would be intolerable; and on grounds of mere national self-interest we must remember that such hostility would tell against the welfare not merely of some few rich men, but of a multitude of small investors, a multitude of railway employes, wage-workers; and most severely against the interest of the public as a whole. I believe that on the whole our railroads have done well and not ill; but the railroad men who wish to do well should not be exposed to competition with those who have no such desire, and the only way to secure this end is to give to some government tribunal the power to see that justice is done by the unwilling exactly as it is gladly done by the willing. Moreover, if some government body is given increased power the effect will be to furnish authoritative answer on behalf of the railroad whenever irrational clamor against it is raised, or whenever charges made against it are disproved. I ask this legislation not only in the interest of the public but in the interest of the honest railroad man and the honest shipper alike, for it is they who are chiefly jeopardized by the practices of their dishonest competitors. This legislation should be enacted in a spirit as remote as possible from hysteria and rancor. If we of the American body politic are true to the traditions we have inherited we shall soon scorn any effort to make us hate any man because he is rich, just as much as we should scorn any effort to make us look down upon or treat contemptuously any man because he is poor. We judge a man by his con-

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