A REMEDY FOR THE TRUSTS

(Continued from page 3.)

Under the constitution congress has power to regulate interstate commerce and in some respects congress can apply a much more effective remedy than is within the power of any state. Some have suggested the use of the taxing power. While corporations ought to be taxed for revenue purposes, it is questionable whether the taxing power can be successfully used to exterminate a trust. A corporation which has an actual monopoly is in a position to transfer to the consumer any taxes laid upon it, so that the first effect of a tax might be to increase the extortion of which the trust is guilty. Then, too, it would be difficult to levy an internal revenue tax in such a way as to hurt only the corporations at which the tax was aimed. The removal of the tariff from articles which come into competition with trust-made goods would lessen the extortion now practiced and discourage the organization of trusts among manufacturers, but it would not entirely destroy the trusts, and most of the advocates of protection oppose the remedy, although many of them would like to see the trusts exterminated.

The most effective weapon within the reach of the federal government, without new legislation, is the criminal clause of the Sherman law. While it is grossly inadequate, and while the penalty is disproportionate to the magnitude of the crime, its enforcement would accomplish more than anything that has been tried. The long term of imprisonment prescribed for a man who steals a few hundred dollars and the short term of imprisonment prescribed for a trust magnate who is guilty of stealing hundreds of thousands or even a million dollars from the people, show how tenderly the large offenders are dealt with even when criminal prosecution is proposed. But notwithstanding the inadequacy of the punishment, the criminal clause would, if enforced, kill some of the trusts. A few trust magnates actually serving time in the penitentiary would do more to stop the present trend toward monopoly than any amount of publicity—more than all the injunction suits which could be commenced.

But the Sherman law does not cover the entire field. It only prohibits combinations between separate and distinct corporations or independent concerns. The weakness of the Sherman law lies in the fact that a half dozen trust magnates, if prosecuted under the Sherman law, can evade future prosecutions by selling all of the plants of the various separate corporations to a new corporation, and becoming the managers of it. The steel trust has done this very thing, and so far as the Sherman law is concerned occupies a more favorable position than the corporations engaged in the meat packing business. The Sherman law needs to be amended so as to make it a criminal offense for one person or a group of persons to attempt to monopolize any product, whether the persons are connected with several separate corporations or are stockholders or directors of a single corporation. But it is always difficult to prove conspiracy, and it would be especially difficult to prove it where the persons charged with conspiracy were directors of one corporation.

The abolition of railroad rebates and discriminations would go far toward crippling the trusts. They have profited largely by favors coaxed or forced from the railroads; but some trusts might possibly exist under the strictest regulation or even under public ownership.

There is a remedy which, if enforced, would not only exterminate all existing monopolies, but would prevent the creation of any monopolies in the future. This remedy was suggested in the democratic national platform adopted at Kansas City in 1900, and has since been endorsed by the present head of the bureau of corporations, Mr. Garfield. The plan contemplates a law requiring corporations engaged in interstate commerce to take out a federal license upon terms and conditions to be prescribed by the law. Under this plan a corporation organized in a state could do business in that state without interference from without. The people of the state could be trusted to regulate such corporations in their own interest and for their own protection. The moment a corporation organized in any state attempts to do business outside of the state it enters the sphere of interstate commerce, and comes under the scrutiny of the federal authorities. A law requiring a license could be easily complied with by legitimate corporations. If, for instance, the law required a corporation applying for license to show that there was no water in its stock, and that it was not trying to monopolize any branch of business or the production of any article of merchandise, it would impose no hardship upon the corporation, because the evidence would be at hand and the legitimate corporation could well afford to take the trouble to secure a license in order to obtain protection from corporations bent upon monopoly.

This plan strikes at the root of the evil, and it strikes in such a way as to disable the monopoly without injuring any other corporations. To be sure, the law must be enforced by individuals, and the individuals intrusted with the enforcement of the law might fail to do their duty, but that is true of all laws. Where the law requires compliance with certain specific conditions it is, however, easier to hold the officials to strict accountability.

If it is objected that it might be difficult to determine what constitutes a monopoly, it is sufficient to say that the law can, if necessary, fix the proportion of the total product which any corporation can produce or control. For instance, the law might fix the proportion at 75 per cent, or 50 per cent, or 25 per cent, or any other per cent, and say that the control of more than the stated per cent would prevent the granting of a license or forfeit a license already granted. Would such a law be unconstitutional? When this plan was first proposed at the Chicago anti-trust conference in 1899 the question of its constitutionality was raised. There is no reason to doubt the constitutionality of such a law. Corporations are creatures of law and congress has power to control corporations engaged in interstate commerce. If congress can prohibit the carrying of a lottery ticket either by mail or express, when both the vendor and the vendee want the ticket transported, it can certainly prevent the use of the mails, the telegraph lines, and the railroads for the transportation of the merchandise of a corporation when the purpose of that corporation is to destroy competition and harm the public. A private monopoly has always been an outlaw, and it requires a stretch of the imagination to suppose that the supreme court would so construe the constitution as to protect a corporation in the doing of a thing regarded through all history as unlawful.

In dealing with the question of monopoly two distinctions ought to be drawn. First, a fictitious person created by law ought to be distinguished from the natural person of flesh and blood. The natural man living in any state in the union is, and should be, allowed to trade freely with natural men in other states, and no state would be justified in discriminating in favor of its own citizens as against the citizens of any other state. But this right of citizens to trade freely