

# Government--Evolution and Industry--The Trust Problem

An address by Joseph E. Davies, Commissioner of Corporations, before the National Association of Hardware Manufacturers, at Atlantic City, October 31, 1913.

Government and industrial society are both organisms, subject to the law of evolution, which Gladstone defined as a continuous "series with development." They are intimately related and connected. Economic laws in industry have produced conditions that demanded the enactment of civil law; whereas civil law, on the other hand, has created conditions which have developed new types of industry and have changed and modified economic law. Change in either induces and demands change in the other.

## RAPIDITY OF MODERN INDUSTRIAL CHANGE

Modern industrial society has changed much more rapidly than the development of law in government with reference thereto. Steam, electricity, and invention broke down the privilege of both "baron" and "gild" of medieval times, and opened up the modern era. The annihilation of space opened with great rapidity new fields. A new spirit of individualism came, and with it a flood of new industrial energy. Out of these conditions came the modern era of unprecedented organization and consolidation. The old partnership, with its individual liability of each partner, and with its limited capital, soon became out of tune with the great movements of the time, and there was created by law a new artificial person, the corporation, which insured continuity of management independent of the life of individuals; which enabled many partners to join capital in enterprises, freed from the individual liability of the old partnership. Competition was alleged to be destructive, and the advantages of size and combination were exploited; costs would be reduced, business could be extended, prices could be increased; but all animated and directed to one end, and inspired by one motive—to increase the individual profit. The corporation invented the "pool," an organization of corporations to control output and prices. The pool, in turn, gave way to the trust, the trust to the holding company, and the holding company to common ownership; in affiliated corporations, with interlocking directorates, which made for a concert of action quite as effectively as a single consolidated unit.

The development of the last fifteen years in corporate organization is unprecedented in history. The business world is organized on a different basis than heretofore. Giant concerns furnish our meats, sugar, flour, woollens, kerosene—our steel, locomotives, plows, harvesters, telephones, bathtubs, paper, schoolbooks, chewing gum—our matches, gas, breakfast foods, bacon, bread, ice and all our long list of daily needs.

## BIG BUSINESS UNITS

Within the last decade and a half, two hundred corporations have come into being which own property of the value of \$22,500,000,000. Two hundred artificial persons, one ten-thousandth of one per cent of the natural persons of this country, own three times as much wealth as this country owned in 1850. This sum is three and a half times the total interest-bearing debt of the United States. The gross income of one of these artificial persons is equal to the total revenue of the government from internal revenue and customs. Twenty-four of these corporations have three and a half times the gross income of the federal government.

## CONTROL OF LABOR

One corporation employs 218,000 men, which is more than the total population of New Hampshire, Vermont, Florida, North Dakota, or South Dakota; another single corporation employs 38,000 men, more than the total male voting population of the state of Nevada; and still another corporation employs more men than there are males in the sovereign state of Nevada.

These facts are not cited as an indictment against the men engaged in these enterprises. They are cited simply to show the way in which we are going.

The framers of the Sherman law foresaw this development, and sought to anticipate it. The period of greatest development in this movement, however, occurred in the face of the Sherman

law and after its enactment, and prior to 1904, when it was first sought to be made an active agency for government.

Events in the development of industrial evolution have moved, therefore, with great rapidity in the last twenty years. There has come an economic revolution. Changes of great importance have come into our industrial life, which affect the lives and purposes of many men and women.

Primitive men first demanded law and its enforcement to protect his private right in the fruits of his industry against the encroachments of the unorganized many. Conditions have now reversed. The unorganized many are demanding that law shall protect their rights from the encroachments of the organized few. The covenant of our political faith in this government, which was conceived with the idea that it should be the trustee for all the men and women who made it up, is that government itself is instituted among men designed to secure certain rights to all men, and it therefore becomes incumbent upon a government of this kind to take cognizance of this evolution in the industrial world and these changed conditions, with the result that there confronts us today the so-called "trust problem," which is nothing more or less than the problem of what shall be the just, fair, and scientific attitude of government, in the interests of society, toward industry and business in its present stage of evolution.

## GOVERNMENT AND A STATE WITHIN A STATE

Government or society is concerned with these tremendous industrial units from several different angles. That which confronts us immediately is, what effect have these gigantic concentrations had upon the question of representative government and its perpetuity? Is there danger of a state developing within a state? Is there danger of the child becoming greater than the parent? What safeguards, if any, must the state throw about itself, so that the powers of government may not be subverted by reason of the greed of men and inherent human selfishness? An investigation of the congress of the United States only recently conducted has given evidences of certain insidious influences that attack the integrity of government itself.

## GOVERNMENT AND RELATION TO LIVING CONDITIONS

The effect of these tendencies in our industrial life upon the lives and habits of living of men and women who toil, and upon the standard of living of the present generation and the standard of health of future generations, is the problem of the department of labor.

## CONGRESS AND THE TRUST PROBLEM

The economic aspects of the problem, to-wit: what is the fair, just attitude of government to the capital invested in and the men interested in and directing these great enterprises, as well as to the public at large, what shall be done to preserve freedom of opportunity for business, is the problem congress will address itself to in the immediate future.

There are wide variances of belief as to the treatment of this problem. Some maintain that the Sherman law in its present condition, with a few amendments, is sufficient. Others there are who maintain that the Sherman law, even though amended, is negative in its effect, and not constructive in attacking the problem; that what is needed is not only a declaration of what can not be done, but a definition of what can legally be done. Some offer in solution an interstate trade commission, to proceed upon the theory that monopoly should be frankly recognized and regulated, even to the extent of regulation and control of prices. Others advocate a similar commission, whose object and purpose, however, shall not be to regulate monopoly, but to regulate and control interstate business in supplementing the Sherman law by aiding the courts in the restoration of competitive conditions, and in giving force to the decrees of the courts; charged with the additional power of defining what shall constitute fair and unfair competition, what shall constitute reasonable restraints of trade, and what agreements, now apparently in violation of the Sherman law, are

not in fact in restraint of trade and should be permitted, together with other similar powers. Still another plan has been suggested which looks to keeping the control of this question more within the province of the individual states, by making it illegal for any corporation to do an interstate business unless the requirements of its charter, granted by the states respectively, should contain certain inhibitions upon the activity of such corporation, looking to the prevention of the issue of watered stock, to the prevention of interlocking ownership and common directorates, and other similar conditions which are alleged to be the operating causes for the evils of the present condition.

## QUESTION OF FACT FUNDAMENTAL

But back of the immediate action to be taken to remedy certain evils that are patent, there lies a fundamental question of fact to be determined, upon which must rest the ultimate and correct solution of the problem and the final attitude of government. In the last analysis, society is concerned with the question of which of the two types of industrial system is the most advantageous to the general welfare. The question resolves itself into whether the monopolistic system of large units or the competitive system confers the greatest advantage upon society. The advantages and disadvantages of each are questions of fact, and one of the paramount considerations therein is the question of cost of production. The efficiency of an industrial system will be finally gauged by the people, in a large measure, by the difference in the cost of what they buy; and that system which produces most cheaply, and does not induce other and greater evils than those sought to be remedied, would be regarded as the final economic fact, in a large degree, by the consumer. One of the fundamental facts, then, to be determined is the question of the efficiency of the trust,—the question of whether increase of the size of capital and organization necessarily means a lowering in the cost of production and distribution to the ultimate advantage of the people who buy.

## MONOPOLY AND SOCIALISM

It is the contention of the monopolistic school of thinkers that the economies of large-scale production do continue and increase with the size and organization; that through the processes of manufacture and distribution, costs are reduced extraction of raw materials from the earth and processes of manufacture and distribution, costs are reduced as size is increased; that size confers other and additional advantages in the development of foreign trade, in the encouragement of invention, and the utilization of by-products; that the system of monopolistic units is therefore the last word in the evolution of industry, and has displaced the competitive order of things as clearly as machinery displaced hand labor a century ago. It is contended, therefore, that the proper attitude of government with relation thereto is to take such action as will insure that the public generally shall participate in this scientific advance in industry, even though it must go to the length of regulating and controlling prices.

## LAW CAN EFFECT ECONOMIC REVOLUTION

To attempt to do otherwise, they claim, would be an attempt by civil law to stop the operation of economic forces and fundamental facts; to stop evolution, which it is claimed would be as useless as an attempt to stem the tides or to prevent the operation of some other natural phenomenon. There is some truth in this position; but more fallacy. Because a condition exists is not conclusive that it is the result of fundamental natural and economic laws, or that it is right. Modern conditions in industry are the result of civil laws made by men. Economic society and its present-day development has been directed, shaped and formed by the laws of men. Property is a creation of law. The right to take property, the right to descent, comes only by virtue of law. The form of the law of descent may shape the economic development of a nation. The law of England gave landed estates to the first-born male child. France abolished primogeniture a hundred and twenty-five years ago, and by law declared that property should descend to children equally. England's present-day economic development and problem of landed estates, absentee landlordism and pauperism is due in a measure, undoubtedly, to the law of primogeniture. The economic prosperity of France, as shown by the high average of individual wealth, is the result of equal descent of property, in large