

EDUCATIONAL SERIES

NATIONAL INCORPORATION

The following extracts from an article by Frederic J. Stimson of Boston on federal incorporation, which appeared in the *Inter-Nation* in March, 1907, furnish strong arguments against the plan of federal incorporation proposed in President Taft's recent special message to congress:

What would be the result, not so much to the corporations to be controlled as to the republic and the people of the forty-five states, were this scheme of federal incorporation to be adopted? No one knows exactly how large a proportion of the business of this country is now done by corporations. It is certain that it is increasing. The best opinion we could get before the industrial commission four years ago, was that at least half of the total activities of the people of the United States were conducted under the corporate form. I think no one will deny that that proportion is increasing every day.

Now consider the effect of handing the control of all this to the federal government at Washington. It may be objected that they will not all go, that only interstate commerce corporations will take out federal charters; but consider: the railways undoubtedly will do so; the larger trusts, of course, will do so. The insurance companies, we know, wish to do so. It is to be remembered that the business of railroads, certainly in New England, is not the bulk of its interstate commerce. We have now a most excellent railroad commission and excellent railroad laws. Do we wish that commission abolished, those laws wiped out and the control of all our local business taken from the people of Massachusetts and vested in congress and the federal courts? I think we must not forget, when we talk of interstate commerce and national powers, that after all the bulk of a man's business and the bulk of a man's concerns are local and dwell in the town or the city or the state in which he lives. Street railways, too, electric railways, we should find rapidly running across state lines in order that they too might take out federal charters. Your law would have to apply to any corporation that does an interstate commerce business. Now there are very few corporations so small and so local that some part of their business may not be brought under the head of interstate commerce. If not so, they can make it so; and the obvious and enormous advantages to the corporations of having a federal charter, I venture to predict, would, in a few years, cause all corporations that can possibly do so to leave the state laws and take out federal charters.

Law Would Apply to Small and Large Corporations

Judge Grosscup, an advocate of federal incorporation, says that he only intends his law to apply to large corporations whose activities are, in effect, national. But how are you to draw a law which will compel such to take out federal charters and not even allow other corporations whose business is of the same nature, although not so large or not entirely or mainly interstate commerce, to do so? I can conceive of no law so drawn as to compel large corporations doing in large part an interstate commerce, to take out federal charters, which will not permit small corporations doing interstate commerce to do so; and corporations whose functions are mainly in the state but who can show that they do some interstate commerce business will hasten to avail themselves of the act. Not only will this apply, let us say, to the case of electric railroads, express companies, etc., but even manufacturing and trading companies—if, as I understand, the law is to be so drawn as to cover such institutions as the sugar trust and the steel corporation. Imagine the convenience that it would be for such a corporation, obnoxious to state laws, to get a federal charter, thereby removing themselves from the jurisdiction of the state courts, from state taxation and, most of all, from the state police power! Fancy, for instance, the great cotton mills, many of whom now own factories in more than one state, getting rid of restrictions on hours of labor, wage payments, police regulation to protect the operatives, by taking out a federal charter! Judge Grosscup objects that congress will so draw the law as to leave them still subject to the state power to tax, to require jurisdiction for her

courts and to regulate under the police power—but are we sure of this? It is true that a special statute to that effect was passed in the case of national banks; but there has been no special statute authorizing taxation on the corporation stock of telegraph companies or other companies now recognized as doing interstate commerce, nor has there been any legislation putting the few federal corporations which now exist under the police power of the states for all purposes.

Think, for one moment, what the change would mean. Two-thirds of the business of Massachusetts will be taken from the control of the Massachusetts people through their legislature, will be taken from the control of Massachusetts law through their courts. For a federal corporation can only be sued in the courts of the United States. And a corporation which is an instrumentality of interstate commerce, could not, in most ways, be controlled by state legislatures or laws. I need not cite the decisions.

Riddling Massachusetts Laws

Now we believe our Massachusetts laws are good. They have been complimented more than once by the national government as the best in the country. They are now being copied by Wisconsin and other states. Do we wish to have one-half or three-fourths of all our business activity taken out of the control of these laws, of the people of this state, and placed in the hands of congress? It is no answer to us to say that the laws of other states are bad. We reply, "improve them." If necessary, "exclude them"—that is, the corporations they create—which the states have a perfect right to do. In discussing the subject on this side, we must consider the best state laws, not the worst; for the evils which result from bad corporation laws of other states may be reached in another way: It is well known that every state has now the authority to shut out from its borders any corporation of which it does not approve. The states are only beginning to use that power. Witness the recent suit of the state of Missouri against the Standard Oil company—and we must very particularly note that under this scheme of general federal incorporation that great power and protection would be lost to us. Also the use of the power to tax as the power to regulate or even to destroy, which both states and nation now have. Again consider the result: Not only would our people have no control over the corporations, not only would their courts have no control, but we should lose the great power we now have of shutting them out. We should be bound hand and foot at the mercy of congress not only as to our own corporations but as to all corporations outside of us. Half the business of our legislatures will cease. More than half the business of our courts, at least in importance. There would be left to us nothing but the accident cases and suits for personal injury by natural persons or upon contracts between individuals. We should not be able to enforce debts due us upon corporations in our own courts. We should lose forever the power to protect ourselves against their insolvency, and more important still, to protect their laborers and employes.

Our Taxes on Corporations Would Be Lost

There is one more point: Taxation must not be lost sight of. I do not regard it as so important as the other, but I think at the state house, at the city hall, it might be the argument which would impress them most. A very large part of the revenues of all states are now derived from the taxation of corporations; but under the decisions of the supreme court of the United States, a state can not tax a United States corporation. That is to say, it can only tax it on the tangible property within the state, not upon that vast value which taxation experts call the "corporate excess." Now the great bulk of the value of corporate shares arises, not from the tangible property which can be taxed locally, but from the good will of the business—all those indefinite values which can not be taxed except direct to the corporation. Substantially all the states now get revenues from corporations derived from taxes other than the mere tax on property actually situated within the state. A very large proportion of our revenue in this state is so derived. I asked our tax commis-

sioner to tell me what it was and he wrote me this letter:

"The value of the corporate excess of Massachusetts corporations in 1905," (that is to say the value which could no longer be taxed by the state under a federal incorporation law) "amounted to \$343,878,658." The actual tax assessed upon this amount and paid into the treasury of Massachusetts was \$5,856,487.40. Of this sum, only \$1,386,398.67 went to the state. The balance, about four millions and a half, went to the cities and towns. Both taxes would be wiped out by this proposed change. The people of Massachusetts would lose five and a half millions a year. How would congress give it back to them? By a reduction of the tariff?

The total tax raised by the state of Massachusetts for the year 1905 amounted to \$4,470,088.73, showing that the state now derives nearly one-third its total revenue from this tax upon corporations which would be entirely wiped out if they all took out federal charters.

Nor must we forget the taxation of foreign corporations. Under our laws the state already derives large revenues from this, which would also disappear if they had federal charters. The amount is now one-tenth of one per cent with an upset limit of \$2,000. This should be removed and machinery provided to enforce the law properly. Mr. L. W. Calkins, secretary of our committee which drew the present law, estimates that the state now loses at least \$100,000 a year by simple failure to collect. With the unfair and partial limitation removed the amount would increase by half a million.

The Alternative as Pointed Out by the Industrial Commission

Next, I wish to point out that every single end desired, not only by Judge Grosscup, but by all the reformers, as to corporations engaged in interstate commerce (which are the only ones over which the national government has any power) can be gained as well as by a system of regulation and national control. We are only just beginning to do that under the present system, but, in my opinion, it is perfectly adequate. The industrial commission appointed by President McKinley sat four years in Washington and recommended two ways of doing this: First, by prescribing the broad outlines of a corporation law to which all corporations doing interstate commerce business must conform. For congress has power to exclude any such corporation from doing business outside its own state. For that purpose, they recommended the creation of the bureau of corporations. Second, they recommended a system of taxation of such corporations; not a heavy tax, or mainly imposed for the purpose of getting revenue, but to enable the national government to get full information as to the affairs of such corporations, and control them by necessary legislation.

This was what the industrial commission recommended; and the trouble is, that congress went a very small part of the road. That is to say, they created the bureau of corporations and stopped there. They prescribed no rules as to capitalization, publicity or otherwise to which such corporations should conform. This was the main part of the first recommendation. On the second recommendation, that of a machinery of taxation which would control such corporations and compel their reports, they did nothing whatever. Had they done so, in my opinion, the recent failure in the beef trust prosecution would not have occurred. Now let us consider who has been and who is in favor of this proposed federal incorporation:

The unanimous report of the industrial commission, Vol. 19, p. 643, recommended against federal incorporation, but in favor of federal supervision of state corporations doing an interstate business. Three plans were considered. First, for the national government to surrender to the states full power to control all corporations, even those doing interstate commerce. For obvious reasons this plan was not recommended. Second, a federal corporation law under which any corporation engaged in interstate commerce might or must be organized; such corporations could be compelled to take out federal charters either by direct requirement upon all corporations doing an interstate commerce business or through the machinery of taxation. That is to say, state corporations might be forbidden to act outside the state creating them, or a tax might be imposed on state corporations which would practically drive them out of existence and compel them to take out federal charters. But the commission unanimously recommended against this plan. The grounds of their disbelief will be found at page