

EDUCATIONAL SERIES

Monopoly and National Incorporation

At the democratic dinner given at Lincoln, Neb., on the evening of February 14, Hon. James A. Reed of Kansas City, Mo., spoke as follows:

The recent message of President Taft clearly embraces the following propositions:

1. That there has been a marked tendency toward combinations of capital and manufacturing plants.

2. That this has resulted in economy of operation and in the removal of excessive competition.

3. That these combinations have frequently resulted in complete monopoly.

Then follows the unequivocal statement that a combination, no matter how large or how complete its monopoly, is not within the inhibitions of the Sherman act merely because of its size or the completeness of the monopoly:

"It is possible for owners of a business, as manufacturers and sellers, to so conduct their business as not to violate the anti-trust law, and yet to secure to themselves the benefits of the economies of management and production due to concentration under one control of large capital and many plants. If they use no other inducement than the constant low price of their product and its good quality to attract custom, they violate no law."

But he adds: "If they attempt, by exclusive contracts or temporary reduction of prices, or threats of non-dealing or other unfair, unbusiness-like and coercive methods to frighten off competition, then they violate the act."

He expressly says: "The object of the anti-trust law was to suppress the abuses of business of the kind described. It was not to interfere with the great volume of capital which concentrated under one organization, reduced the cost of production and made its profit thereby, and took no advantage of its size by methods akin to duress to stifle competition with it."

Here, then, we have the statement, plain and unmistakably, that under the anti-trust law, as construed by our courts, a corporation may grow to any size—may, in fact, occupy the entire field—become a complete monopoly, and yet be free from any prosecution under the anti-trust act.

It would seem that such a condition is all that the most ardent advocate of concentrated capital could demand. The only institution coming within the inhibition of the act, is "one which resorts to coercive, dishonest and unbusiness-like methods." In a word, it is an aggregation which uses the great power and force of its money to destroy, by unfair and dishonest methods, competition.

A little later on in the message, this thought is emphasized in the declaration that recent decisions of the courts have rendered unnecessary any amendment of the act whereby combinations shall not be held to have violated the act merely because of the restraint of trade which results from such combination. The president concludes his expression of this idea in the following language: "The necessity, therefore, for an amendment of the statute so as to exclude these incidental and beneficial covenants in restraint of trade, held in common law to be reasonable, does not exist."

The president then declares that "The department of justice has power at the present time to inquire into the history and purposes of all industrial companies, and to ascertain whether they are conducting business on a plan which is in violation of the anti-trust law. * * * And that this work is not beyond the power of the department of justice."

These several declarations may be epitomized as follows:

1. A combination may be so large as to constitute a complete monopoly and yet be perfectly legal.

2. The law only reaches those combinations which resort to coercive, unfair and intolerable methods in order to crush their rivals in business.

3. The department of justice is powerful enough to ascertain whether a corporation is pursuing legal methods and to punish those institutions which have violated the law.

If these statements are true, then we have arrived at a condition which ought to satisfy the most ultra-believer in the wisdom of large combinations—provided, at the same time, he is satisfied to have such combinations resort only

to fair and decent methods in transacting their business.

The only person who believes in great combinations who can complain at all, must ground his complaint upon the fact, that those combinations which pursue dishonest or coercive methods may be punished therefor.

There are many of us who believe that no corporation or combination should be permitted to become large enough to exercise a monopolistic control over the production or price of any article in common and general use. We might, therefore, well desire a change in the law so as to prohibit the existence of combinations large enough to exercise such monopolistic control.

If we are to change the present law, surely it should be in the direction of limiting, rather than extending, the rights of these great combinations.

If the president's message had for its recommendation such limitation, then we might look upon it as the utterance of a patriot, devoted to the protection of the interests of the people.

The president does recommend a change—but the change he recommends is not in favor of limiting the march of monopoly, but rather to facilitate its progress. He plainly states that the present condition under which monopolies may grow to any size whatsoever, may exercise complete control of the market, yet not violate the present law, is not sufficiently favorable to these concerns and on their behalf, pleads for a change of the statute. A change, not in the direction of limiting their power or capital, but one which will enable them to do those things which at the present time they may not do.

What is this proposed change and what are the reasons given for a change? We find the answer in the statement:

"Many people conducting great businesses have cherished a hope that in some way a line may be drawn between good trusts and bad trusts and that it is possible by amendment to the anti-trust law to make a distinction under which good combinations may be permitted to organize, suppress competition, control prices, and do it all legally, if only they do not abuse the power by taking too great profit out of the business. They point with force to certain notorious trusts as having grown into power through criminal methods, and urge the establishment of some legal line of separation by which 'criminal trusts' of this kind can be punished, and they, on the other hand, be permitted, under the law, to carry on their business." * * *

The president adds: "The business public ought to rid themselves of the idea that such a distinction is practicable or can be introduced into the statute."

Yet the president had just stated most forcibly that no such amendment to the statute is necessary, when he set forth the fact that the courts have already drawn clearly the distinction between trusts pursuing criminal and non-criminal methods.

If the courts have drawn this distinction, then obviously, no business enterprise however large, if it be conducted honestly, need be alarmed or disturbed. It knows its own purposes—it pursues its own methods—it formulates its own policies and is fully protected, according to the president's own statement, by the decisions of the courts—so long as its methods are honest and decent, even though it may exercise the complete and dangerous powers of a great monopoly!

Having thus repeatedly shown that there is absolutely no necessity for any change in the law for the purpose of making it easier for the great combinations to exist—having completely demonstrated that aggregations of capital may be created large enough to occupy the entire field of commercial enterprise—and that they may do this with absolute safety so long as they pursue honest means—surely the president has at the same time demonstrated clearly the fact that there is absolutely no reason to change the law in order to make it more favorable to these institutions, unless his purpose be to extend the powers and make safer the field of commercial aggregation. This alone can constitute the reason for any proposed change.

At the threshold, therefore, of any discussion of the proposed national corporation law, we are forced to the conclusion that its prime object is to grant to corporations greater powers

and privileges than they now possess, and that as they now possess power to become so great as to exercise monopolistic control, with the single limitation that they must not resort to coercive and dishonest methods, that the change is intended to enlarge their power so that they may pursue those methods which are now held by the courts to be illegal.

It is no answer to this statement to say that corporations are in danger of being harrassed by federal investigation, or that they are in danger of inadvertently and innocently violating the law, for these reasons apply to every citizen and to every line of business.

The individual, in his daily life, must see to it that he does not violate either the civil or criminal laws of the country. If he is guilty of violation, then he must pay the penalty. Why should the same rule not apply to any business institution?

The natural man is constantly liable to investigation by the authorities. Why should not the artificial body or aggregation be in like manner subject to investigation?

Manifestly, it is not investigation by the federal or state authorities which these aggregations seek to escape, because the president's recommendation is of law which will enlarge and facilitate the powers of the investigation by the federal government. Plainly, therefore, it is not to escape espionage or investigation. But it is to escape the penalties now resultant from discovery by means of investigation. The monopolies fear punishment, not publicity.

A little further on in the president's message, hidden in a maze of long and involved sentences, we find the real reason. Here it is:

"I therefore recommend the enactment of a general law providing for the formation of corporations to engage in trade and commerce among the states and with foreign nations, protecting them from undue interference by the states, and regulating their activities, so as to prevent the recurrence, under national auspices, of these abuses, which have arisen under state control. * * * The conflicting laws of the different states of the union with respect to foreign corporations, make it difficult, if not impossible, for one corporation to comply with their requirements so as to carry on business in a number of different states."

And now, stripped of all gloss and pretense, we arrive at the purpose of the administration.

1. That purpose is to lay the heavy hand of the government on the respective states and to deprive them of that power, which they now exercise, of declaring the conditions upon which business may be done within their respective borders by foreign corporations.

2. To arrest the efforts of the various states to protect their people against the aggregations of criminal monopolies.

3. To enable the monopoly to pursue methods, which, under the decisions of the federal courts, are now declared to be illegal.

4. To make of the capital of the nation a city of refuge to which every criminal conspiring against free and open trade—every monopoly engaged in coercive and dishonest methods—every scoundrel who desires, through the power of aggregated money, to crush individual or corporate enterprise, can flee and cry "sanctuary!"

It is the last step toward centralization. It will reduce the powers of the sovereign states so that they will not exceed those now possessed by county governments.

The plain purpose is to give to the monopolies of this country a habitat in the city of Washington, and to place them beyond the control of the various sovereign states. Nay, more—to enable them to invade the territory of these states—set at defiance the will of the people thereof, and to exercise the powers of complete and criminal monopoly under the wings of the federal government.

To what condition will this lead?

1. These institutions, operating under a federal license, can enter our states against our will and can transact business despite our protest. We will be compelled to grant to them the protection of our laws—we will be forced to do all this, even though their objects, purposes and methods be such as are by our laws denounced as illegal or even criminal.

2. These concerns will be permitted to have the protection of our courts when they desire; to use our machinery of justice; to enforce claims against any of our citizens. But if a citizen of the state has complaint to make against them, he will be dragged into federal courts to there litigate his rights.

3. The federal incorporation act will either be drawn so that (a) all concerns engaged in interstate commerce must, or at least, may avail themselves of its privileges; or (b) it will be