TRUSTS AND COMPETITION

JOHN F. CROWELL

The National Social Science Series

Edited by Frank L. McVey, Ph.D., LL.D., President of the University of North Dakota

Now Ready

THE COST OF LIVING. WALTER E. CLARK, Professor and Head of the Department of Political Science in the College of the City of New York

TRUSTS AND COMPETITION. JOHN F. CROWELL, Associate Editor of the Wall Street Journal

MONEY. WILLIAM A. SCOTT, Director of the Course in Commerce, and Professor of Political Economy, University of Wisconsin

TAXATION. C. B. FILLEBROWN, President Massachusetts Single Tax League, Author of *A B C of Taxation*

THE FAMILY AND SOCIETY. JOHN M. GILETTE, Professor of Sociology, University of North Dakota

BANKING. WILLIAM A. SCOTT

THE CAUSE AND CURE OF CRIME. CHARLES R. HENDERSON, late Professor of Sociology in the University of Chicago

In Preparation

PROPERTY AND SOCIETY. A. A. BRUCE

THE CITY. HENRY C. WRIGHT

STATISTICS. W. B. BAILEY

BASIS OF COMMERCE. E. V. ROBINSON

GOVERNMENT FINANCE IN THE UNITED STATES. CARL C. PLEHN

WOMEN WORKERS AND SOCIETY. ANNIE M. MCLEAN

THE NEWSPAPER AS A SOCIAL FACTOR. ALLAN D. ALBERT

THE STRUGGLE FOR LAND IN AMERICA. CHARLES W. HOLMAN

Each, Fifty Cents Net

A. C. McCLURG & CO., PUBLISHERS, CHICAGO

TRUSTS
AND
COMPETITION

BY

John Franklin Crowell, Ph.D., L.H.D.

Of the Wall Street Journal, Sometime President of Trinity College, Durham, N. C., and Professor of Economics in Smith College

CHICAGO
A. C. McCLURG & CO.
1915

Published May, 1915

EDITOR'S PREFACE

AFTER nearly a half-century of Trust experience it is becoming apparent what the national trust problem is, and how it shall be handled. It needed the struggle over the status of the Standard Oil Company, the uncertainties of railroad combinations, and the crowning purpose of the Northern Securities Company to make known the length and the breadth of the problem. For full half of the time devoted to this great economic question, the author of this volume has been in the midst of the situation. Equipped with thorogoing training and possessed of wide knowledge of the facts, Dr. Crowell has given to The National Social Science Series a really important contribution to the Trust question. Big business is on trial, so is competition as an economic factor. What we shall do with them? This is the question the book well answers.

F. L. M.

AUTHOR'S PREFACE

THIS book seeks to bring out in clear relief the main aspects of the issues involved in "Big Business."

It comes at a time when Government and Business are beginning to work out a method of co-operation whereby Competition may be conserved and when Corporate Consolidation seems disposed to respect the rules of the game in business morals.

The purpose has not been to exploit any special theory, but simply to analyze the facts and conditions by the light of economic experience. Within the limits of what is fair in business conduct and free in business rivalry, it is sought to point out a path along which both material progress and popular contentment may find it worth while living together in the national household.

To call out the interest of the reader to a more extended examination of the larger aspects of the Trust Question, a larger number and variety of references have been given at the end of the volume. If it succeeds in inducing straighter thinking and sharper discrimination in the consideration of public questions, it will have served its purpose.

JOHN FRANKLIN CROWELL.

New York City, April, 1915.

CONTENTS

	PAGE
Chapter I. Origin and Causes of Trusts	1
1. Typical Trust Definitions	2
2. The Case Against Competition	4
3. Through Competition to Combination	6
4. The World's Greatest Trust	8
5. The Main Causes of Trusts	10
Chapter II. Development of Trust Policies	14
1. Consolidation for Price Control	14
2. Combination by Rate Control	17
3. Legitimate Aims in Trust Policy	20
4. The Equilibrium of Business	22
5. Extending Control Over Railway Domain	25
Chapter III. Competition—Fair and Unfair	30
1. Unfair Corporate Competition	32
2. Coercion by the Corporate Crowd	34
3. Is Big Business Unfair?	37
4. Legal Limits of Fair Competition	39
5. Court Control of Unfair Competition	41

PAGE

Chapter IV. Regulation and Monopoly . . 46

1. Regulation of Competition 46
2. The Law and Limits of Monopoly . . 48
3. Elements and Sources of Monoply . 52
4. Regulation of Public Utilities . . . 56
5. Public Relations of Service Companies 59
6. The Right and Wrong in Holding Companies 60

Chapter V. Trade Restraints in Commercial Practice 66

1. Cooperative Trade Agreements . . 66
2. Pooling for Fixing Prices 68
3. Why Pooling Agreements Failed . . 71
4. Re-Sale Contracts in Mercantile Field 74
5. Rule of Reason in Trade Restraints . 78

Chapter VI. Federal Policy Toward Trusts 82

1. The Sherman Anti-Trust Act . . . 83
2. Investigations of Trust Conditions . 85
3. Prosecutions Under the Anti-Trust Act 88
4. General Results of Trust Dissolution 91
5. More Recent Legislation on Trusts . 94

Chapter VII. Command of Capital and Credit 97

1. Supply of Investment and Working Capital 98
2. Capitalization and Promoter's Profits 100
3. Risk Elements in Trust Capitalization 103
4. Use and Abuse of Over-Capitalizing . 106
5. Banking Credit and Trust Control . . 108

PAGE

Chapter VIII. Prices Under the Trust Regime 112
1. Course of Wholesale Prices, 1890-1913 112
2. The Retardation of Rate of Supply . 115
3. Stabilizing Wholesale Prices . . . 117
4. Problems in Unfair Merchandising . 120
5. Quantity Prices and Misrepresentation 122
6. Price-Making Forces in Big Business . 125

Chapter IX. Some Problems of Trust Management 129
1. Management a Cooperative Service . 130
2. Interest Service of Capital 131
3. Profits of Industrial Trusts 134
4. Industrial Efficiency of Combinations . 137
5. Labor Relations With Large Industries 142

Chapter X. Status of Trusts in Other Lands . 147
1. Cartels and Syndicates in Germany . 147
2. Attitudes in England and Her Colonies 150
3. Austria-Hungary's Steel Trust . . . 152
4. Prohibition or Regulation 153
5. Cooperation in Foreign Trade . . . 155

Chapter XI. Combinations and the Community 158
1. Pioneering Risks in Modern Enterprise 158
2. Bargaining Power of Big Business . 160
3. Adjustment to Public Welfare . . . 162
4. Public Commissions as Business Umpires 164
5. The Old Game Under New Rules . . 167
6. New Wine in New Bottles 169

References 175

Index 181

TRUSTS AND COMPETITION

CHAPTER I

ORIGIN AND CAUSES OF TRUSTS

FOR more than a third of a century the trust question in the United States has been in the forefront of unsettled public issues. From the time when the Legislature of Pennsylvania (1872) revoked the charter of the South Improvement Company — a precursor of the Standard Oil — down to the flood of anti-trust bills recently before Congress, there has not been a year in which the subject was without consideration in legislatures, courts, or political conventions.

Probably not over a generation ago there was no question as to the title of competition to be recognized as the law of ultimate appeal in things economic. The late Edward Atkinson expressed this principle of economic freedom as well as any one. "The natural law of free exchange and competition," he declared, "evolves high wages, low prices, large product, and a lessened margin of profit on each unit of product. That is the law of progress." Within a quarter century or less there has arisen in commerce, in industry, and in finance a compar-

atively modern form of corporate organization. A combination of capital resources, of mechanical equipment and of national or international market control has found embodiment in what is known as "Big Business," or "The Trusts." In its short history it has apparently proved its capacity in many different fields to subordinate to its sway the principle of competitive regulation.

1. Typical Trust Definitions

In the ordinary sense a trust is correctly understood to be a combination of corporations occupying under public charter a more or less dominant position in its own field of economic service. The legality or illegality of its operations depends on the purpose of its practices or agreements in its dealings with other interests. "The object and intent of the combination," as the United States Court says, "determines its legality."

Hobson, the British economist, defines trusts as "a class of syndicates which have established a partial or total monopoly in certain productive industries by securing the ownership of a sufficient proportion of the instruments of production to enable them to control prices." *

A trust, according to S. C. T. Dodd, the well-known Standard Oil attorney, "embraces every

* *Gold, Prices, and Wages,* J. A. Hobson. Methuen & Co., London.

act, agreement, or combination of persons or capital believed to be done, made, or formed with the intent, power, or tendency to monopolize business, to restrain or interfere with competitive trade, or to fix, influence, or increase the prices of commodities." *

Easily the most elaborate definition of the trust is in the New Jersey laws of 1913, Chapter 13, in which a trust is defined as a combination or agreement to do any one of six distinct acts, each of which is declared to be illegal and indictable.

Probably the most striking feature in the trust situation has thus far been the apparent contradiction between contemporary legal standards and the main tendencies of economic life as they relate to values and prices. The core of the question is the location of power over prices of commodities and services. Here we see wrought out within comparatively few years a re-partition of modern business between the two colossal forces in economic policy — combination and competition. The great industrial governments of the world are divided on the question as to which side of the scale the State should cast in the weight of its influence. Great Britain manifestly regards her policy as following the traditional lines of competitive freedom. Germany, on the other hand, is confessedly the

* *The Truth About the Trusts,* John Moody. Moody Publishing Co., New York, p. xiii.

land of combinations and cartels in the pursuit of her industrial and commercial aspirations. Government in the United States has avowedly entered upon the program of restoring competitive conditions as the basic aim of its industrial, commercial, and financial policies.

Half-way between these two opposing codes of economic conduct, partaking partly of both of them, is a third principle recognized as co-operation, including many varieties of corporate and collective policy ranging from profit-sharing to state socialism.

These three — Competition, Cooperation, and Combination — in varying degrees have been present in all stages of development of modern business. But just at this time the issue is pre-eminently that of the possibility of the continuance of competition. Professor John B. Clark, one of our most incisive thinkers in the field of economics, declares: "Our industrial system has become what it is as a result of competition and our entire policy in dealing with it depends on the question whether competition will or will not continue." *

2. The Case Against Competition

That competition in its captaincy of civilization was forcing society back into savagery, if not into suicide, is what the communistic experi-

* *The Problem of Monopoly*, J. B. Clark. Lemcke & Buechner, New York.

ments in Europe and America about 1840-50 claimed in protest against the existing order. Yet these were mere voices crying in the wilderness compared with the two great social movements which came later against competition as a code of industry in the form of Trade Unionism and Socialism. The future of competition is probably more completely wrapped up with the progress of these two collective efforts than with anything else. In fact, under the upward trend of prices and costs of living since 1897, the conviction has been gaining ground rapidly in some quarters that Unionism, Socialism, and the Trusts — the best organized factors in industrial society, and each aspiring more or less directly for the control of government — are already dominating the policy of the modern state in opposition to earlier conceptions of economic freedom.

This view, that old-fashioned competition is a thing of the past, whatever truth there may be in it, finds forceful expression in Arthur J. Eddy's *The New Competition.** This examination of the adjustment that is taking place in business — a change from competition to co-operation — concludes: "Two very large factors in modern society are opposed in theory and practice to competition as commonly understood. Unionism will have none of it in the world of

* *The New Competition,* Arthur J. Eddy. A. C. McClurg & Co., Chicago.

labor. Socialism will have none of it in the world at all. When to the opposition of these two factors is added the opposition of the capitalists, society would seem to be pretty nearly a unit to the effect that competition is not the good thing it is said to be." If any more aggressive indictment of the competitive policy were wanted that of President Charles R. Van Hise in his *Concentration and Control** lacks nothing in its portrayal of the shortcomings of the old order in contrast with our newer era of large-scale business undertakings.

3. Through Competition to Combination

The trust movement, as a matter of more remote history, had its origin and its earlier development in business conditions prevailing between the two panic years of 1873 and 1893. That was not only an era of unprecedented progress in railway construction, but also one of unequaled intensity of rivalry in railway operation. To manufacturing and trade it brought with it, as we have seen, the necessity of meeting competitors in over-supplied markets. "This was the beginning of modern industrial competition in the United States," says Allen Ripley Foote. "It grew without restraint until it developed destructive tendencies, which grew stronger and

* *Concentration and Control: A Solution of the Trust Problem in the United States,* C. R. Van Hise. The Macmillan Company, New York.

more vicious until they culminated in the panic of 1893. During the recuperative period from 1893 to 1898 men capable of intelligent thought came to the conclusion that competition as then practised was destructive, and that combination, or a recognition of a community of interests in some form was absolutely necessary to enable all persons engaged in productive industries to make a profit. Unregulated competition forced the era of cooperation into existence, which commenced when men began to change their business methods to safeguard their business against wastage and destruction by adopting measures to restrain trade by regulating competition between themselves." *

The trust problem, as it has been known ever since, has always been the problem primarily of these great consolidated corporations formed for the purpose of effecting some reasonable measure of escape from bankrupting competition by cooperation among its units, but with more or less inherent tendency toward the two things forbidden by the Sherman Anti-Trust Act — restraint of trade and monopoly or attempt at monopoly.

These combinations, in the order of their appearance as factors in the general movement, furnish four groups of trusts, of which Collier in his classification down to 1900 gives three.

* *Annals of the Am. Acad. of Polit. and Social Science,* Philadelphia, July, 1912, p. 113.

"The three generic types of combination [he concludes] are, first, combinations, pools, and associations based simply upon agreements made by persons who still continue as individual owners and which generally affect prices, but sometimes affect output and methods and scope of business; second, trusts proper, in which the owners of the several properties transfer their respective interests to several persons in trust to manage them as one property for the common benefit; third, great corporations which absorb, amalgamate, and unify into one gigantic company various small concerns." *

4. The World's Greatest Trust

This was the situation prior to the conditions of competition which led to the formation of the United States Steel Corporation. In this development we have the fourth type of trust — a holding company controlling eleven constituent subsidiaries whose combined capital liability, as measured by stocks and bonds issued, is $1,402,846,817. That was precipitated by a very simple yet significant change — the decision of the Carnegie company to go into the manufacture of finished products from its own semi-manufactures; that is, to make pipes from billets simply by extending its own operations one

* *The Trusts: What Can We Do with Them? What Can They Do for Us?* W. M. Collier. The Twentieth Century Pub. Co., New York.

stage farther by becoming the consumer of the output. Hitherto the National Tube Company — the Tube Trust — had bought its billets from the Carnegie Company. By building a proposed tube mill at Conneaut Mr. Carnegie and his young lieutenant, Mr. Schwab, saw a saving of $10.00 a ton under existing conditions of transporting coke and iron ore. "It has been an unwritten law that each group should confine itself to the fabrication of its own specialties [read the National Tube Company's minutes of January 15, 1901] and should voluntarily refrain from using constant surplus of material by the production of the special product of its neighbors. If this unwritten law is to be ruthlessly disregarded by the Carnegie Company it will, of course, have a broader significance than the mere competition with our own products."

It was this threatening competition that brought the industrial leaders to the leaders of finance with the proposal to consolidate the several groups of iron and steel trusts under a centralized management in the United States Steel Corporation. Up to that time the trust movement was one of specialization and integration of each industry within its own manufacturing field. With the departure from that policy came the regime in which the single consolidation began to occupy the entire productive process beginning with the ownership of raw materials, embracing the transportation of materials and

ending with working up semi-manufactures into finished products ready for the consumer. The trust in this form became a coordinated series of specialized industries, the profits of each of which processes it hoped to turn into its central treasury. It was to do this by preventing the wastes of competition, by standardizing costs and by stabilizing prices. For the old-fashioned policy of progress by division of labor it instituted that of cooperation by centralized control.

5. The Main Causes of Trusts

We are now prepared to summarize the causes of trusts. These causes may be designated as primary and secondary. Among the primary causes are the following:

(1) Excessive and unfair competition, whereby manufacturing capacity was duplicated, selling costs unduly enhanced and profits and credits imperiled. Unfair competition drove the morale out of business. Potential as well as actual competition were effective influences in bringing into existence the large consolidated corporations. Potential competition, as has been seen in pipe manufacturing, occasioned the formation of the United States Steel Corporation. Collier calls competition the "mother of trusts." It was no doubt the most general *economic* cause.

(2) Railway rate discriminations. The privileges of preferential freight rates were enjoyed

more or less exclusively by larger or more powerful shippers, as in the South Improvement Company's contract with three eastern trunk lines on oil rates, and by the large meat-packing plants of the west. These discriminations were among the primary *commercial* causes in the creation of monopolizing combinations. These included rebates, "midnight" schedules, joint rates for industrial lines, etc. "No more powerful instrument of monopoly could be used," declared Justice Holmes of the United States Supreme Court, "than an advantage in the cost of transportation." And again, as Professor Clark says: "The oldest and the strongest trust in the United States was built up from this beginning by virtue of rebates on freight which its competitors could not get." *

(3) Economies of production, including distribution and general management. These embraced ownership of raw materials, use of each others' patents, reduction of marketing expenses, elimination of intermediate profits and wider supervision under a single executive management due to the multiplication and perfection of means of communication and accounting. Azel F. Hatch at the Chicago Conference on Trusts (1899) gave to the last-named the first rank among causes in this movement. These were the chief *industrial* inducements.

(4) Better credit and command of capital

* *The Problem of Monopoly.*

were no doubt among the larger *financial* causes. The trust régime coincides, in its more active period of growth, with the fall in the rates of interest due to the increases of investment capital. These lendings to industry took the form of stocks and bonds. The builders of the trusts, says Meade, created the huge mass of industrial securities by capitalizing the country's manufacturing industry, to the sharing of the profits of which the investing public had thus been admitted. As Hadley points out, by combination local securities obtained a national market.* These issues, as collateral in borrowings at bank, became thereby of nation-wide acceptability. The fund of working capital in manufacturing was vastly increased both by issues of securities for long-term borrowing from the public, and by their use as collateral for making short-term loans at banks. Such expansion of credit marked a new era in American finance.

(5) The necessity of greater cooperation among corporations in their effort to cope with the demands of trade unionism as a bargaining power, the belief that in combination lay the hope of better relations between capital and labor, and the desire to promote a higher type of welfare among employees. These were the main *social* motives among the industrial and financial leaders. In the larger economies lay the hope of higher rewards to labor.

* *Scribner's Magazine*, November, 1899.

(6) There was also a *legal* aspect to this consolidating tendency among corporations. By 1890 many states had made them illegal, but the narrower interpretation of the Federal laws by the Supreme Court led to the rise of holding companies, either by purchase of securities or by exchange for those of subsidiaries. The Federal law was taken as admitting of stock purchases of subsidiary manufacturing corporations after the Supreme Court's decision on the sugar refineries case. The rapid increase in trusts after the Knight case* is proof of the purpose of corporations to conform their organization to the authorized import of existing law.

The Sugar Refineries Company's agreement is typical of impelling reasons. Its objects were officially stated to be, (1) To promote economy of administration and to reduce the cost of refining, thus enabling the price of sugar to be kept as low as is consistent with reasonable profit; (2) To give each refinery the benefit of all appliances and processes known or used by others, and useful to improve the quality and diminish the cost of refined sugar; (3) To furnish protection against unlawful combinations of labor; (4) To protect against inducements to lower the standard of refining sugar; (5) Generally to promote the interest of the parties thereto in all lawful and suitable ways.

* *The United States vs. The E. C. Knight Co.*, 156 U. S. 1.

CHAPTER II

DEVELOPMENT OF TRUST POLICIES

AT what did the pioneers in the creation of this new instrument of industrial and commercial power really aim? They felt and saw that something was essentially lacking in that economic order which more or less regularly threw the commercial system into crises, panics, and depressions. Must the nations go on forever running the bases of prosperity, decline, depression, and recovery? Or was there some expedient by which a more durable equilibrium could be attained as a persistent feature of business policy? If so, then billions of built-up values might be saved and the worst curse of modern commerce eliminated. This was preeminently the economic peril of America. And a task of such proportions was worthy of the best spirit and purpose to be found in the leadership of business and the statesmanship of politics. And whoever might find a cure would be entitled to the gratitude of mankind.

1. Consolidation for Price Control

This was in fact the main purpose in the formation of the many price-controlling consolidations by which the country's industries

increased in capitalization and productive output while diminishing the number and the size of the industrial units. For their own salvation it became necessary to set up some system by which to prevent healthy competition from degenerating into predatory rivalry, with all its waste of wealth and impairment of investing confidence. It is true that, in the effort to escape one evil, occasion might be given to bring on another. Consolidation into larger units bore with it the seeds of monopoly. But for the time being the cure was all-important, not the remoter consequences. After the panic of 1893 it was not so much a question of law as one of life for the majority of business corporations. Salvation lay in agreeing by common consent not to do certain things, such as cutting one another's throats, commercially speaking. In their distress there was practically no enforcement of the anti-trust law. In fact, the tendency to mitigate the evils of an undermining rivalry dates much farther back.

Concentration on the part of leading industries had become evident after the panic and depression of 1873. The census of 1880 showed that in the manufacture of textiles the number of establishments was at its maximum in 1870, remained about stationary between 1880 and 1890, while the total of employes and value of products increased rapidly. Cotton mills numbered exactly one hundred less in 1890 than in

1880. Woolen mills were nine hundred and sixty-seven less in 1890 than in 1870, although their product had meanwhile increased over fifty per cent and the number of employes nearly the same. Within this same period, in which all textile establishments decreased seven hundred and seventy-six in number, the average number of employes in each establishment had risen from 57.4 in 1870 to 124.4 persons in 1890. In 1880 the iron and steel mills numbered 1,005, against 645 in 1890, a decrease of 360 establishments in a decade, or thirty-six per cent, while the average number of employes per establishment rose sixty-eight per cent. In the making of agricultural implements, 1,943 plants were in existence in 1880, but only 910, or less than half, a decade later; yet the average output of each establishment nearly trebled in this period.

The form which these consolidations took, it is well known, was at first only that of a larger-sized establishment. That was soon followed by the manufacturing industry, as in the iron and steel trade, bringing under one management its raw material, supplies, and transportation; or, by retailing their own product, as in the boot and shoe industry. Neither of these forms really embodied the "trust" idea. That came with the era of agreements between different establishments in the same industry to operate their plants as one enterprise, or under some common control under which the different units were

placed in the hands of a trustee or group of trustees in exchange for certificates in proportion to their general interest in the consolidation. It was this divorcing of corporate control from ownership by surrender of voting power to more or less monopolistic hands that made of the "trust" form of concentration a unique problem in America's industrial evolution.

There was often a measure of compulsion in this surrender — a compulsion born of fear of ruin by cut-throat competition then so common. A threat to duplicate or bankrupt the plant of the reluctant proprietor introduced a species of terrorism. "Founders of trusts [wrote Prof. W. F. Willoughby at the time] have not been content with the advantages which the superior organization of a large establishment ensures, but have sought to increase them by arbitrarily fixing prices, not as dictated by the cost of production and competitive influence, but by what the public can be made to pay. Thus, while the formation of trusts is undoubtedly dictated by the desire to cheapen production, the chief object in view is to regulate the prices that will be obtained for their products by establishing a monopoly and controlling the market." *

2. Combination by Rate Control

How largely railway rate discriminations laid the foundation for some of the best known trusts

* *The Yale Review*, May, 1898.

is clearly disclosed in the public records of the Standard Oil Company. Chiefly by advantageous freight rates, among other causes, between 1870 and 1877, when its pipe lines rendered it practically independent of the railroads, the Standard enhanced its proportion of the country's oil business from four to ninety-five per cent of the total. The completeness of its mastery of the freight rate situation is revealed in nothing more fully than in its famous South Improvement Company's contract of January 18, 1872, with the Pennsylvania, the New York Central, and the Erie railroad companies.

Those were the days of chaos in both railway rates and oil prices, and it was the cut-throat rivalry among carriers that made possible that pooling contract. By its terms the South Improvement Company of Pennsylvania was to get rebates on all of its own oils or oil products shipped, while the railroads were to collect full rates from other shippers, paying the difference to the South Improvement Company. The contract was not in effect a full month before the railroads publicly cancelled it in response to an irresistible storm of business protest. The Pennsylvania legislature summarily revoked the oil company's charter within less than a year from the date of incorporation.

Yet the conditions were there which gave the largest of the oil industries its opportunity for ascendency. It secured and to a great extent

maintained it (1) by taking advantage of the insolvency of the smaller refineries; (2) by securing discriminating freight rates in other ways; and (3) by welding together six western and eastern companies into the Standard "Alliance" (1872), officially known as the Central Association of Refineries, of which John D. Rockefeller was president. This so-called "Alliance" formed the basis of the Standard ten years later, when it definitely took the form of the trust. It was a sort of cooperative understanding among leading stockholders. The companies represented ceased to be competitive with one another in the sense of striving to undersell one another. They continued to be competitors in the sense that each strove to show at the end of the year the best results in making the best product at low cost. From time to time new persons and additional capital were taken into this association. Whenever and wherever a man showed himself skillful and useful in any branch of the business, he was sought after. As business increased, new corporations were formed in various states in the same interest, some as trading companies, some as manufacturing companies. This, in bare but lucid outline, is the rise of one of the pioneer trusts in the great American group, as portrayed by one of its ablest exponents.

Here was business genius: (1) Competition was brought within fruitful limits, as among members of the "Alliance;" (2) Productive

efficiency was the criterion of success; (3) Special ability was everywhere recognized and encouraged; (4) Self-extension over new territory enabled the small group of loyal coworkers each to push business into new fields without losing any ground in the old.

With the advent of pipe lines the Standard Oil "Alliance" found a new instrument of forcing home its primacy. They were the most potent means of private monopoly until declared common carriers in 1914. These lines originally connected producing wells with the railroads at the nearest stations. They were thus short freight feeders to the railways. Such control of freight resulted in a contract whereby the Standard's united lines secured a rebate of twenty-two cents in 1874 on oil delivered. After three years the Standard, through its United Pipe Line Company, had secured, in the contract of October 17, 1877, with the Pennsylvania Railroad, a monopoly of the production and transportation of oil in the United States.

3. Legitimate Aims in Trust Policy

The wastes of destructive competition no doubt drove most of the industrial trusts to seek a more rational form of organization. The problem confronting business managers in manufacturing was that of putting limits to expenditures in some directions in order to insure solv-

ency and development in others. In a large number of cases it was a question of the exhausted capital being restored and increased by consolidating into one strong organization a number of smaller plants, some of which were not strong financially or even industrially. Such was the state of the shipbuilding industry when the ill-fated United States Shipbuilding Company was formed. However defective its financing, the broad-gauged principles which impelled its public-spirited promoters are typical of the aims that led to some of these combinations. As stated by Rear-Admiral F. T. Bowles in the official report* they were as follows:

(1) Each concern builds that for which it is best fitted and equipped, or that which its character, location, and labor can accomplish most economically.

(2) Structural materials, steel, iron, timber, etc., can be purchased at the lowest rates, a prompt supply secured at points where it is most needed.

(3) The technical knowledge of design, which comes from experience, records, and data of each concern, will be combined, thus giving confidence to customers that the results contracted for shall be attained.

(4) The healthy professional rivalry of the various yards can be utilized to produce the best result in design, construction and administra-

* *The Truth About the Trusts:* Part III, p. 337.

tion, without the disastrous and narrowing devices of destructive competition.

(5) The standardization of the numberless details of ship fittings, auxiliaries and appliances, which are now almost as various and incongruous in design as they are in number, and their production in quantity by those best qualified, would produce enormous economies.

(6) It will be possible to effect great economies by the separation of warships and merchant construction into different establishments, thus avoiding the difficulties of organization and increased cost of radically different types of construction upon adjoining ships.

(7) The better organization and management of the individual concerns would be a necessity and direct result of this incorporation.

4. The Equilibrium of Business

One of the most difficult problems in the business world is to prevent by legitimate means those wide fluctuations of prices which work havoc to trade and industry. To maintain some degree of normality in trade conditions so as to insure average profits for average abilities and opportunities, some degree of foresight and common knowledge of conditions are necessary. Wherever the law is strict in its application to restraints of trade and monopoly, the methods of limiting these injurious price swings are necessarily few. Whatever policy might be adopted

must work itself out within rather narrow legal and equitable limitations. How the United States Steel Corporation, with fifty per cent of the domestic steel business of the country, steered its way within these limits was stated by Judge Elbert H. Gary before the House Committee in the steel investigation. The company was confronted, he said, with two propositions. "It had no right to endeavor to prevent reductions in prices, or, in other words, to maintain the equilibrium of business and maintain prices substantially level, or at least free from sudden and violent fluctuations, by means of any sort of an agreement, express or implied. We had no lawful right, as I understand, to make any agreement, express or implied, directly or indirectly, with our competitors in business to maintain prices, notwithstanding we were receiving letters daily from the jobbers all over the country, begging us, if possible, to prevent demoralization and to prevent decrease in prices which should mark down their inventories and in many cases subject them to the risk of bankruptcy. On the other hand, considering this same question of sustaining, so far as practicable, the equilibrium of trade, we believed we had no moral or legal right to become involved in a bitter and destructive competition, such as used to follow any kind of depression in business among the iron and steel manufacturers, for the reason that if we should go into competition of that kind it

meant a war of the survival of the fittest; it meant that a large percentage, as in old times, of the people engaged in the manufacture of steel would be forced into bankruptcy, for many reasons — their facilities for manufacture were not so good, their cost of production was high, their equipment, their organization, their decreased ownership of some of the raw products and other things of that kind which enter into the cost of production, would place them at a disadvantage, and therefore it was believed, by me at least, that it was not for the best interests of the manufacturer generally, or for their customers, who desired stability as opposed to demoralization and wide fluctuations, or for the employes of the various corporations throughout the country, who desired, so far as possible, steady work — continuous work at the best prices; and a wide, sudden, extreme lowering of prices necessarily meant reduction in wages." *

Every sharer in the distribution of the products of industry is vitally interested in the successful elaboration of a policy that will set reasonable limits to price fluctuations. For, whatever each participant gets comes out of the selling price. Under unbalanced relations of supply and demand, long-term contracts become impolitic, if not impossible. Uncertainty rules where foresight should prevail. The owner of natural resources, the lender of capital, the

* *Hearings,* 62nd Cong., 2nd Sess., 1911-12.

wage-earner, and the business manager — all of these are a unit in wanting to find some way out of the chaos of unrestrained competition. There is, in theory at least, a line within which competition is both free and fair, and, therefore, constructive; a line beyond which lies economic wreckage or monopoly. It is to the interest of every member of society that such a line of demarkation be discovered and defined, because it marks the boundary between economic life and death, between civilization and relapse to savagery.

5. Extending Control Over Railway Domain

There is no more instructive development in trust policy within recent decades than that in which the Supreme Court extends the Trust Act over the domain of railway transportation. Combinations in railway transportation took three particular forms in the effort to regulate competition and maintain rates. These were (1) pooling, which the Commerce Act of 1887 forbade, (2) community of interest, which in due time was superseded by (3) the holding company. These three are represented in the three great railway anti-trust cases of the Trans-Missouri Freight Association, the Joint Traffic Association, and the Northern Securities Company.

In the earlier years of the act it was taken for granted that the Trust Act of 1890 and the

Commerce Act of 1887 were intended to cover two mutually exclusive fields. "It was not the intention of Congress to include common carriers subject to the Act of February 4, 1887, within the provisions of the Act of July 2, 1890 [affirmed the Circuit Court of Kansas, November 28, 1892, when the Trans-Missouri Freight Association case first came up]. It was the purpose of Congress [the opinion of court runs] to remedy a very different evil then existing. A number of combinations in the form of trusts and conspiracies in restraint of trade had sprung up in the country which were dangerous to its commercial interests; for example, the steel-rail trust, cordage trust, the whiskey trust, the Standard Oil trust, dressed beef trust, the school-book trust, the gas trust, and numerous trusts and combinations which threatened to destroy the commercial and industrial prosperity of the country. These trusts assumed the absolute control of the various corporations entering into them, directing which of the constituent members of the trust should continue operations and which should cease doing business; how much business should be transacted by each, what prices should be charged for their product, and in fact had the power to direct every detail of the business of every corporation formed in the trust. It was to combinations and conspiracies of this sort that the Act of July 2, 1890, was directed."

Upon these grounds the bill was dismissed, only to re-appear on appeal, October 2, 1893, in the Circuit Court of Appeals, where the original court's ruling was sustained. Justice Sanborn in delivering the opinion concluded: "We rest this decision on the ground that, if the anti-trust act applies to and governs interstate and international transportation and its instrumentalities, the contract and association here in question do not appear to be in violation of it." Thus the Appellate Court assumed the possible applicability of the Trust Act to railway business, partially reversing the court below on this point. But the dissenting opinions of District Judge Shiras went farther in holding that if the Trust Act applied at all, the Trans-Missouri Freight Association was in violation, "in that it deprives the public of the benefit of free competition between the associated railway companies." Thus the case rested until the appeal to the Supreme Court was decided, March 22, 1897. The reversal here of both of the lower decisions not only resulted in making the Trust Act the more general and comprehensive of the two, but also in removing any claim of inconsistency between the General Trust Act and the Special Commerce Act. The court seemed to reason with a tone of apology for its conclusion in the Knight case, in which the Trust Act was declared not to apply to monopolies in manufacturing, but to restraints in commerce. To have now reasoned that it did

not apply to a freight-line pool would have nullified the act itself. "All combinations which are in restraint of trade or commerce are prohibited [declared Associate Justice Peckham], whether in the form of trusts or in any other form whatever." A broader basis for correcting commercial limitations could hardly be desired. It took nearly seven years to forge out this result. But the process did not stop here. The Joint Traffic Association was brought under the same ruling by the decision of October 24, 1898. Here the Supreme Court reversed again the original Circuit Court, which held that the agreement involved did not include a pooling offense because the earnings of the separate roads were left "wholly in separate channels."

In the railway sphere another long step forward in extending the scope of the Anti-Trust Act came with the Northern Securities suit. Here the ownership of two competing railroads was transferred to a third New Jersey holding company with a capital stock of $400,000,000. This subterfuge not only took the control of the property from the stockholders as owners, but it also "destroyed every motive for competition between two roads engaged in interstate traffic, which were naturally competitors for business, by pooling the earnings of the two roads." The decision of March 14, 1904, moreover, put an end to the practice of state legislatures chartering corporations to do business in other states

in restraint of interstate commerce against the will of the nation. Its effect was to make the Anti-Trust Act supreme as against the states throughout the country as a whole. And one of its first consequences was the re-opening of the anti-trust prosecution of the New Haven railway system in dissolution proceedings involving consolidations of one hundred and eighty-nine companies.

CHAPTER III

COMPETITION — FAIR AND UNFAIR

WHAT is there in the methods and practices of the American trusts that from their very beginning has met with protest and demands for relief and remedy?

It is the resort to unfair methods of competition as a means of forcing combination among corporations to the extent of an actual or potential monopoly of more or less completeness.

The line of demarkation between the monopolizing trust and the law-respecting corporation lies in the kind of competitive treatment it gives in business relations with its rivals. The method of competition which causes trade and industry to revert to the status of rapine and robbery is outlawry practiced under the guise of corporate privilege. The competition which cooperates and conforms to both law and equity alike is the type destined to survive.

The modern doctrine of fair and unfair competition, as developed and applied in its larger scope in common law codes, in anti-trust court decisions, and in trade ethics, affords the *via media* between the competition which crucifies and that which is constructive. Both unfair competition and private monopoly are equally

immoral and anti-social. The former has no place in a healthy economic system, and the latter can not be tolerated except under public regulation. Unfair competition is foul play, and it can never serve either the ends of private prosperity nor those of the public weal. Much less ought a state, whose citizens have even an ordinary sense of honor, knowingly charter corporations to play unrestrained the rôle of economic highwaymen throughout sister commonwealths. The main problem of trust policy is, How can we prevent unfair methods and practices in competitive business? The answer is, By abolishing monopoly, or the hope of monopoly.

In applying the legal rule in equity to unfair competition — a rule that is older than statute law itself — a broad principle of business integrity and common justice has been developed, out of an earlier rule respecting the rights of trademarks, into a code of conduct as comprehensive as the relations of business. Commenting on this wider application of the law as a business principle, H. D. Nims, of the New York Bar, says:

"One reason for the growth of the law of unfair competition is probably to be found in the effects of the delay incident to suits at law for damages. Business lost and credit impaired by misrepresentation or threats made by malicious or unscrupulous competitors — such losses cannot be compensated for by damages received

at the end of a tedious suit at law, occupying perhaps two or three years. Any adequate remedy must stop the injurious acts instanter, and that can be afforded only by use of the writ of injunction.

"The law of unfair competition has developed in part also in response to a general feeling that the honest and fair-dealing merchant is entitled to the fruits of his skill and industry, and must be protected against loss caused by fraudulent and unfair methods used by business rivals. It is a recognition by the courts of the duty to be honest and fair in all relations of business life. This is one of the most healthful signs of the times. The gradual judicial development of this doctrine is an embodiment of the principles of sound common sense, business morality." *

1. Unfair Corporate Competition

Inasmuch as unfair competition has been one of the main instruments by which combinations have achieved or exercised monopoly, it is highly important that this aspect of the trust movement be clearly appreciated. To begin with, it is not of the ordinary type of rivalry between individual buyers and sellers in the same market. Nor is it the competition of the copartnership, which dissolves with the death or retirement of a member. The unfair type of competition is

* *The Law of Unfair Business Competition,* H. D. Nims. Baker, Voorhis & Co., New York.

that of the compounded corporation wherein the individual disappears in the aggregate — an aggregate invested with a maximum of semi-public rights and divested of all but a minimum of personal responsibility. Such was the Northern Securities Company. Give to this corporate *imperium in imperio* the power over the sources of credit and capital; give it continuity of existence, unity of control from within, and free access to a home market of 75,000,000 to 100,000,000 consumers and investors, and we have the actual corporate unit in which lies the kernel of the trust problem in the United States.

This compound unit of competition has developed from the voluntary associations known as pools, based on the good faith of members, through the legal consolidation of several corporations, known as the trust proper, into the holding company. As state and nation outlawed pooling methods of controlling supply, prices, and rates, they took refuge in the trust scheme of combining corporate competitors. This scheme of compounding competitive capacity spread rapidly as its superior service in overcoming single corporations became known. At last the holding corporation came as the refinement of corporate compounding, destroying still more completely the competitive equilibrium which, both in law and economics, had, until the rise of the trust, always been regarded as an axiom of public policy.

From this it may rightly be seen that the dominant form of unfair competition is to be found in the practices of the combination of two or more competing corporations. Paradoxical as this may seem, it is elemental that if two competing corporations combine, that very act puts every other single corporation in the same line of trade at a disadvantage, resulting in an inequality which is economically and legally unfair. It is unfair because the law which gave birth to the corporate unit contemplated competition by numerous independent units rather than competition by combination. It is unfair in economic principle and practice, because our whole theory of the competitive state rests on the assumption of something like equality of opportunity and responsibility among many different agencies making for material progress. For it is rivalry on something like equal terms that develops leadership, liberty, and economic power to best advantage among the many, and diffuses the largest measure of mastery among the mass of producers.

2. Coercion by the Corporate Crowd

Various kinds of force are recognized in law as coming under the category of unfairness in trade methods. Among these are frauds, misrepresentation, and intimidation. "That is held fair," says Wyman, speaking of Types of Unfair Competition, "which the community re-

gards as consistent with its safety; that is held unfair which the state considers dangerous to its peace." Causing another to break an existing contract, libelous statements to win away customers, violent and malicious acts to injure another's occupation; these are among the acts disallowed by law. "The idea in modern commerce is that to compete as one wills is not an absolute right in our law," says the same authority just quoted. "On the contrary, competition is only a thing permitted by the state when its operation is for the best interest of established society, forbidden if it is carried on under circumstances prejudicial to the social order. It cannot be said that where one man has an absolute right to compete as he chooses, therefore ten men acting together have the same right to compete as they choose. By this theory, whenever the operation of a combination is proved to be detrimental to the best interests of society, its course will be held illegal."

If it be asked what distinguishing quality marks off fair from unfair competition in the methods and practices of trust policy, it is properly answered that it lies essentially in the economic pressure which combination tends to exercise against the simple corporation acting single-handed. It consists in the application of force which might not be feared if exercised, or even threatened, by a simple corporation against one of like kind; but which would become effec-

tive if a dozen or more corporations acted as a unit against an individual company. When the combination comes to deal with the individual on a basis of force rather than of freedom, then economic liberty is eliminated and fair competition gives place to an unequal struggle between a united group and divided individuals. Unfair competition is therefore a manifestation of force by a crowd of competitors acting as a combination; and this very privilege of combination bespeaks submission or surrender on the part of the unmerged unit.

Nor is it always necessary that the economic pressure to be unfair in its effects should take the form of actually applied coercion. The Pittsburgh Glass Company's type of coercive brutality toward importers is possibly seldom resorted to for this purpose. The corporate crowd, or predatory trust, achieves its unfair purpose quite as certainly and with less hazard if the pressure be merely potential, not actual, and therefore not easily provable in court by any overt act. There is a coercion as inevitable as fate, but far too subtle in the policy of the marauding trust to leave any record of its prowlings. It may take the form of a passing suggestion, of a casual association, of a hint too vague ordinarily to deserve notice. But it is none the less the identical pressure which has driven hundreds of independent corporations into the coils of the combination.

It is this unfair struggle that imperils the fundamental status of free economic institutions. It is this very potentiality in combination, this very monopolizing capacity, which makes it unsafe for the state whose economic life is dependent on free institutions for the performance of its economic work, to tolerate for a moment the private combination which has power to paralyze whatever does not yield to its pretense to sovereignty.

3. Is Big Business Unfair?

Respect for fair competitive conditions in business is not, however, a virtue that depends on the size of the concern. The individual corporation is no more or less honorable than the combination in this respect. Size in itself has ordinarily no relation to the character of competitive conduct. Nevertheless, where there are fifty corporations doing the business of the country at a given time, they are all more or less on the alert as to each other's methods; and that in itself is a potent influence in setting limits to unfair trading. On the contrary, where a single combination, as in the American Sugar Refining Company, had absorbed ninety-five per cent of the sugar refining of the country, competitive restraints had been wholly broken down. Its dominance, amounting to monopoly, had become such as to leave the leviathan to be a law unto itself in the treatment of the pro-

ducers of the other five per cent of the total supply to the consuming public.

The manifest object of unfair trading is to obtain control of producing and distributing the supply of a commodity. This misuse of the powers and privileges of the corporation has taken numerous forms of misdemeaning. One of the oldest, yet most unsound, of unfair business practices by big business is the exclusive contract. Under the trust régime this had had a wide vogue until it came to be recognized as a mistake, on general business principles. It lessened the zeal of the retailer in pushing the goods concerned, and it wounded his sense of freedom by coercing him into a distasteful contract. It caused him to lose customers who preferred other goods. It prejudiced the consumer against the goods which the manufacturers then attempted to force upon him. Consequently such far-seeing trusts as the American Tobacco Company abandoned the exclusive contract as economically bad business long before litigation to dissolve it had begun.

Where size counts most in competition among unequals is in the exhausting effect of underselling a few special brands which comprise the full line of the smaller rival's output, although only a small part of the trust's output. Trusts have been known to devise a special brand to sell under cost in a territory served by a successful small company which has only one brand to sell.

Big corporations have other resources than the exclusive contract or the refusal to sell to some and not to others, in dealing with small rivals.

"Sometimes they make many kinds of goods, while a rival makes only a few. If, then, a trust cuts prices on a few varieties which its rival makes, but charges a large profit on the other kinds, it can make money itself while it is exterminating its opponent. The small producer must meet the cut in prices on all the goods he sells, and that will soon make an end of him. When cut-throat competition takes the shape of putting prices very low on one or two things, which are all a small manufacturer makes, it is not necessary to resort to the factor's agreement at all." *

4. Legal Limits of Fair Competition

From the legal standpoint there is much debatable ground as to what is allowable and what is not in trust policies. But the so-called "twilight zone" has faded out rapidly during the past few years. Prof. Bruce Wyman summarizes the results as follows: "Policies which have been used in the past to get control of the market, the illegality of which is beyond argument, include (1) rebates from the railroads, to which many a trust owes its dominance; (2) the abuse of the patent laws by getting out lists of patents as the basis for lawsuits against com-

* *The Problem of Monopoly*, pp. 35-36.

petitors; (3) establishment of a bogus competing concern; (4) bribery of employes, to get at trade secrets." * To these should be added another: (5) selling to a subsidiary distributor at less than to other jobbers, as in case of the American Tobacco Company to the Manhattan Tobacco Company. No trade ethics can justify such policies. There are others rather more debatable, by which many trusts have gained their dominating position, the illegality of which, as Wyman points out (*Annals*, etc., July, 1912), has not been so clear. They include (1) refusal to sell to retailers who persist in buying anything of a rival manufacturer; (2) making a lower price in certain localities, where incipient competition has appeared; (3) imposing terms in leases that the lessee shall not buy anything of the same sort; and (4) fixing prices at which the product may be re-sold. The combinations which are keeping their position by these policies have no economic justification; and for them there can be no defense.

It is evident, from what has thus far been said, that neither in trade circles nor in business ethics is there entire clearness as to what practices are regarded as against sound commercial and industrial policy. In the zeal for profits standards of trade demeanor have not been de-

* *Control of the Market: A Legal Solution of the Trust Problem,* Bruce Wyman. Moffat, Yard & Co., New York.

fined nor developed as they should have been by the cooperation of the ones directly interested. Trades having failed to develop their cooperative capacities, the burden of demarking the limits of fair competition has fallen to the equity procedure of our courts. Scattered through these records of twenty-four years may be found the essentials of a substantial code of fair competitive practice.

It is surprising to note how insignificant has been the actual contribution to positive criteria of trade conduct by the trusts during the thirty years of their existence. Yet they have afforded the occasion for the courts to re-define and assert anew the essentials of fairness in common law and in current morals. By this means, mainly through the use of the injunction, there has been elaborated a series of forbidden practices in specific cases. In this way the higher courts have come to enumerate the more important of unfair conditions of competition. As lower courts came to apply the same prohibitions the limits of fair trading became more clearly re-established.

5. Court Control of Unfair Competition

In the use of the injunction to eliminate unfair and restore fair rivalry two steps have generally been necessary. Agreements found to be in restraint of free and open competition have been cancelled, and specific orders issued against enumerated practices and relations. The Alumi-

num Company of America, for instance, was ordered to refrain from any contract by which control of necessary materials for manufacturing aluminum could prevent the purchasing of such materials "of good quality in the open market in free and fair and open competition." The Pacific Coast Plumbing Supply Association of twenty-four corporations and sixty individuals, wherein the court found the trade bound hand and foot by forbidden restrictions, was another flagrant instance. So arbitrary had this small junta of tradesmen become that the court found it necessary to forbid its members "from communicating with a manufacturer or dealer to induce him not to sell to persons not members of the association or not conforming to the definition of a jobber given in the blue book." Still more recently in the Yellow Pine Lumber Manufacturers' Association the list of prohibitions included one even against holding membership in the organization. These restrictions may seem to cut very close to the quick of the fundamental right of communication and of the freedom of association. Yet they illustrate the length to which legal authorities go in the attempt to reconstruct competitive conditions on a fair and just basis to all within the trade.

Probably as definite and comprehensive a statement of what competitive lawlessness does is to be found in the injunction of the Supreme Court against practices of the Central West Publishing

Company and the Western Newspaper Union. These two concerns practically controlled the supply of ready-print matter and stereotype plates. As defendants they were enjoined against combining with each other and thus suppressing all existing competition in the business. They were further enjoined:

(1) From underselling any competing service with the intent or purpose of injuring or destroying a competitor;

(2) From sending out traveling men for the purpose or with instructions to influence the customers of the competitors, or either of them, so as to secure the trade of the customers, without regard to the price;

(3) From selling their goods at less than a fair and reasonable price with the purpose or intent of injuring or destroying the business of a competitor;

(4) From threatening any customer of a competitor with starting a competing plant unless he patronized the defendant;

(5) From threatening the competitors of either one that they must either cease competing with the defendants or sell out to one of the defendants, under threat that unless they did so their business would be destroyed by the establishment of near-by plants to compete with them;

(6) From in any manner, directly or indirectly, causing any person to purchase stock or become interested in the other for the purpose or

effect of harassing it with unreasonable demands or inquiries;

(7) From circulating reports injurious to the business of the other;

(8) From persuading customers of competitors to violate contracts made with them by undertaking to indemnify them against loss and damage by reason of so doing.*

A long step forward was made to relieve business of predatory practices by the creation of the Federal Trade Commission (1914). The feature of this act was its declaration, "that unfair methods of competition in commerce are hereby declared unlawful," (Sec. 5). The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the act to regulate commerce, from using unfair methods of competition in interstate and foreign commerce.

Two unfair advantages helped to put the Standard Oil Company in a position to eliminate competitors. First, it enjoyed exclusive rebates, drawbacks, and discriminating railway rates. These not only gave it control of markets against its rivals, but early in the history of the industry of producing, refining and marketing oil it equipped the company with a surplus of working and investment capital, which it was not slow to use as a war chest to drive its

* *Report of the Attorney General,* 1912, p. 13.

rivals out of the market. Such a resource enabled it indefinitely to undersell its less favorably situated competitors.

Secondly, its ownership of pipe lines which it refused to put at the service of rivals as common carriers, enabled the Standard to strengthen and perpetuate its monopoly. In the report of the Interstate Commerce Commission, in the Pipe Lines Cases, that tribunal declared that "more than anything else, the pipe line has contributed to the monopoly of the Standard Oil Company, and the supremacy of that company must continue until its rivals enjoy the same facilities of transportation by this means." And the contention of the Government in the "Pipe Lines Cases," before the Supreme Court, finally compelling the pipe lines companies to serve as common carriers, was absolutely within the facts when it asserted that "the shipment of oil except by pipe line is a practical impossibility. No other means of transportation can possibly compete with it. Without a pipe line the oil produced is, as it were, shut out by an impassable barrier." Under the California law, requiring pipe lines to serve as common carriers on heavy penalty for failure, the Standard lines preferred to pay what was meant as a confiscatory tax of fifty cents a barrel, rather than yield the advantage of exclusive control of its lines of transportation obtained under the right of eminent domain.

CHAPTER IV

REGULATION AND MONOPOLY

WE have seen that neither predatory competition nor monopoly for private profit can hope in the long run to survive in the field of corporate enterprise. Yet large-scale production has come to be welcomed under the corporate form in trade and industry in all leading countries of the globe. And monopolies rightly regulated serve certain public uses acceptably. Out of an era of wasteful competition we have come into one of restrictive combinations. We are entering upon a third stage of business, a re-division of the domain of corporate service. On the one hand competition tends to become the ruling principle within legal limits in corporations operating for private profit. On the other, monopoly under public regulation becomes the dominant policy in public service activities.

1. Regulation of Competition

Do these two fields require different policies? Louis D. Brandeis is credited with the formula that the only sound policy in relation to trusts is the regulation of competition rather than the regulation of monopoly. But this is too narrow a view of trust policy taken in its larger

aspects. It suffices to express the right aim as it applies to corporations organized for private profit. But it does not cover that large class of cases included in the quasi-public corporations known as franchise trusts. The fact is that the treatment of monopoly and competition as operative policies in business has long since ceased to call for a simple or a single solution.

In the field of private profit the industrial and commercial corporation affords a large number of instances of combinations still exercising some degree of monopoly control over natural resources, methods of distribution, or the fixing of prices. The main reason for the more offensive kind of monopoly, however, is not to be found in the destructive competition which in the past has had no limitation set to it short of the survival of the strongest. Destructive competition is a tendency which, unregulated by public control, corrects itself in its own costly way. When private control of policies and prices becomes institutionalized the corporation may become one of the principal instruments of monopoly. "The corporation will be a danger to industrial and financial freedom," declares Robert R. Reed, of New York, in his argument for restricting the state charters of interstate companies, "so long as single or secret interests can control nominally competing concerns. The essential reform is to destroy the power of control of competing companies." From this viewpoint it is clear that be-

fore fair competition can prevail it will be necessary to take from corporate charters that which keeps the corporations themselves from functioning as competitive units. There is no way of making corporations compete on fair and equal terms except by de-monopolizing them as legalized institutions.

This policy insists that, as the basis for industrial and commercial liberty, the conditions of fair competition must be re-established in all corporations which lie outside of the domain of public utility. There must be no legalized monopoly without public regulation. Private monopoly — monopoly for private profit as the essential and preeminent aim — is repugnant to the public sense of right, because it gives to individuals acting in their private capacity a privileged opportunity apart from government to exploit the community. Wherever by combination or other means private corporations succeed in securing a position for themselves which amounts virtually to a privilege of this type, there the status of the private combination becomes intolerable because it has usurped a power which the state should grant only to corporations consecrated to the public service.

2. The Law and Limits of Monopoly

Competition and monopoly stand as opposites in economic terminology. They represent mutually exclusive practices and principles. They

are as opposite as freedom and bondage, as liberty and servitude. As principles in business they refer to conditions under which the production, exchange and distribution of wealth take place. But they are both alike related to the one economic fact of prices. Competition and monopoly each refer to opposing forces that are active in productive processes in determining prices. Hence, as Prof. Frederick C. Hicks claims, there are but two price-making groups of business enterprise — the competitive and the monopolistic.*

In competitive business prices tend to equal the sum of the expenses of production out of free goods.

To the extent that monopoly costs, that is, monopoly goods, enter into expenses of production, to that extent the resultant price contains a monopoly element. This element may consist in exclusive control of natural agents (land), in personal capabilities (skill), or in market opportunities, as in a municipal franchise.

Monopoly is a question of degree of price control. Exclusive control completes the monopoly. Hence Ely's definition: "Monopoly means that substantial unity of action on the part of one or more persons engaged in some kind of business which gives exclusive control,

* *Competitive and Monopoly Price,* F. C. Hicks. University of Cincinnati Press.

more particularly, although not solely, with respect to price." *

It is plain, therefore, that even in competitive business there is more or less of what is monopolistic in its effect on the price resultant. It is only when this monopoly factor becomes of dominant proportions that society, through its governmental authority, proceeds to ascertain whether or not the productive process needs to be re-organized so as to restore competitive or approve monopolistic prices.

Monopolies exercise their power over the market not simply by raising, lowering, or stabilizing prices. They do it by control over and distribution of supply. They may furnish a supply regularly or irregularly. They may charge different prices in the same market for but slightly different goods. Increased expenses of production, higher tariffs or heavier taxes on monopoly products result in shifting forward the price increase as a rule upon the consumer, unless such increase exceeds the limits of monopoly.

Limits to monopoly are set by three very strong influences. First, by the elasticity of demand. As prices rise, or the purchasing power of money diminishes, demand may be curtailed by the consumer, the number of unit-sales be reduced and net profits fall. Secondly, by the

* *Monopolies and Trusts*, Richard T. Ely. The Macmillan Company, New York, Chap. I.

power to substitute for a monopoly article one similar enough to serve the consumer's purposes. Thirdly, by potential competition. "I sell my company's output at the highest price that will keep competitors from putting capital into the business," is the way a trust president stated it.

Where potential competition hedges about an industrial combination's policy the emphasis in management will normally be placed on increased efficiency of making and selling the output. This is one of the main lessons of trust experience in the United States. President Arthur T. Hadley states the principle admirably as showing this limitation of price-making power in industrial monopolies. "If [he reasons] monopoly is managed by unexperienced hands the effort to put prices up is usually more noticeable than the effort to put expenses down. It seems so easy to make a profit at the expense of society, that managers are apt to neglect the more laborious method of making a profit by service to society. When business men have been all their lives accustomed to face immediate competition they think that the combination of all competitors removes the only effective restriction upon charges. But this is a short-sighted view of the matter, which has wrecked most of the enterprises run on such a basis." *

* *Economics*, Arthur T. Hadley. G. P. Putnam's Sons, New York.

3. Elements and Sources of Monopoly

In practically all of the more important trusts there was some element of monopoly, privilege, or natural advantage which gave the concern a position not easily duplicated by a rival. The Secretary of the National Asphalt Company, testifying of its chief subsidiary, which had absorbed constituent companies at a security cost of $30,000,000, said: "The Asphalt Company of America's property is of such a character that its value is largely speculative and can not be positively fixed. This is because of the important position which the deposits of asphalt, owned or controlled, hold among the assets of the company." * Of the steel trust's advantages in consolidation Charles M. Schwab testified, "The great advantage started with the ore," of which this corporation held eighty per cent of the known ranges in the Northwest by outright ownership, containing 500,000,000 tons in sight. Equally advantageous was its large ownership of Connellsville coking coal.

The presence or absence of monopoly in any industry is often sought in its ability to dictate prices by its large percentage of products made. Yet here much depends on market conditions, on the kind of product, on the character of control and on the policy of management. Ability to fix

* *United States Industrial Commission*, Vol. XIII, p. 677.

prices was disclaimed (1901) by the steel authorities with an output ranging from sixty-five to seventy-five per cent of the whole industry. "These prices are naturally fixed [it was claimed by President Schwab], whether there is a combination or not, in times of great demand. In times of depression the chances are that when we take anything like seventy per cent of the business, the company would be unable to fix the prices." The Pittsburgh Plate Glass Company, on the other hand, controlling eighty per cent of the output, exercised so much of a monopoly as to dominate among jobbers the importing of plate glass. This company was charged with maintaining prices in this country at fifty per cent above the prices abroad, and of advancing prices from one hundred twenty-five per cent to one hundred fifty per cent by combination of factories and reduction of supply.

The American tariff of import duties has been regarded as giving to otherwise competitive industries some degree of monopoly advantage among combinations. That was certainly not the case with the oil and tobacco trusts, nor with the meat trusts. Yet Byron W. Holt of the Tariff Reform Club, and H. O. Havemeyer, the sugar magnate, both saw in protective duties a chief cause of trusts. The latter, who wanted free raw sugar, declared: "The mother of all trusts is the custom-tariff bill." The former, who wanted free trade, identified the tariff as the most

important among the special privileges which breed trusts, but did not claim that the abolition of tariff duties would kill all or even most of them. "Tariff duties, such as this country levies [he argued] practically alienate us from the rest of the world, so far as concerns many industries, and make it easier for our producers in any one line to combine, formally or informally, and to put prices up to the import level of the duty-paid prices of foreign goods." *

Patents confer upon their owners an exclusive privilege. As such they have figured largely in the program of combinations. Under the anti-trust laws it became necessary to define to what extent a patent entitled its proprietor to restrictive control. In the Dick mimeograph case the Supreme Court took the view that the patentee might either suppress entirely his invention, or if he put it on the market he was within his rights in requiring users to purchase certain supplies (ink, etc.), as the condition of the right to use the invention at all. To use other supplies was adjudged to be an infringement. In that instance the patented article, the rotary mimeograph, was sold at cost and the profits made on the supplies sold with it.

Efforts to secure a monopoly by the combination of patents have been attempted in various instances, but not with much success. Where several manufacturers of harrows under United

* *United States Industrial Commission,* Vol. XIII, 553.

States patents agreed to organize, by assigning their patents to a corporation controlling seventy per cent of the total output of the United States, each subsidiary agreed to work under license and not to cut prices. In this case the combination was declared an unlawful restraint of trade. "Patents confer a monopoly [said the court in the National Harrow Case] as respects the property covered by them, but they confer no right upon the owners of several distinct patents to combine for the purpose of restraining competition and trade. . . . Such combinations are conspiracies against the public interests, and abuses of patent privileges." The same conclusion was reached in the bath-tub case, denying combinations the right to effect a monopoly under the cloak of a patent privilege. On this same principle the booksellers' association, which formed a combination and agreement to maintain the prices of copyrighted books at retail, was held to be unlawful. "No more than the patent statute was the copyright act intended to authorize agreements in unlawful restraint of trade and tending to monopoly."

In all of these cases the result of combination was to lessen competition and promote monopoly, by merging similar and rival industries. But in the combination of different industries, as seen in the new company formed by the three patent shoe machinery companies, the merging was not regarded as lessening competition or as

giving any more of a monopoly than resided in the patents of each company taken separately. "The combination," said Mr. Justice Holmes, "was simply an effort after greater efficiency."

4. Regulation of Public Utilities

Among the corporate problems of the day a more recent class to require attention is that of the public utilities. These include, besides interurban electric and hydro-electric plants, municipal companies organized for the purpose of rendering a public service and usually classed as municipal or franchise corporations. Formerly the functions of lighting, water supply, and the like were each performed in the local territory by one or more corporations enfranchised for the purpose. But it soon came to be seen that the public interest could not best be served by regarding this field as one suited for competition.

The inconvenience of rival corporations operating in the same streets, the waste of energies in pitting one corporation against another, the duplication of investment and the inevitable outcome of consolidation after a period of competitive waste and deficient service — these things led to the conclusion that regulated monopoly was better than unregulated competition. Hence, out of the competitive policy arose that of control and bargaining. First the municipal au-

thorities acting for the state and then the state through public service commissions became the supervising power in determining, within constitutional and legal limits, the terms on which utilities should be operated under public franchise.

In an address delivered in 1914 Francis T. Homer said: "After years and years of experimenting with a view to having competitive service in the public utility field it has at last become universally recognized that a public utility is a natural monopoly, and that genuine competition between separate utility corporations furnishing a similar service is substantially impossible. Nay, it has been found that not only is it impossible, but by the very nature of the service rendered it is most undesirable. To illustrate that briefly — why have two gas plants with double the investment, each duplicating distribution pipe lines throughout a city furnishing gas, one to this consumer, one to that, when with a single plant and a single distribution system manufacturing costs would be less and interest charges on investment would be one-half?" *

In certain services the tendency toward monopoly has gone still farther. Many municipalities sooner or later have come to take over the service of water supply. Two reasons are usually

* *The Public, the Investor, and the Holding Company,* F. T. Homer. West Side Y. M. C. A., New York.

assigned for this: first, the simplicity of the service, involving much less technical talent and risk in administration than in the service of lighting and certainly less than in that of the street railway service. A second reason is that water relates so directly to the health of the community, and the cost of service is so negligible as compared with its importance that absolute control is desirable.

An idea of the growth of the service of furnishing light and power, largely in the public utility field, may be gathered from the fact that in 1877 the electrical industries of the country represented an investment of about $30,000,000, whereas the corresponding estimate in all the electrical fields at the end of 1913 was put conservatively at $20,000,000,000. In this particular utility, wherein electricity is the motive power, or medium of service, the considerations against public ownership are numerous. Both political and technical conditions veto the idea of the municipality preempting a service to itself in which the costs of development are so high. It is regarded as much better that pioneering profits should serve as a premium to induce private capital to enter this field of corporate monopoly under public supervision than that the state or city should impose upon its taxpayers the burden of providing and improving the facilities in a field which is still in a rapidly advancing state of progress.

5. Public Relations of Service Companies

The committee on public relations at the convention of the American Electric Railway Association, October, 1914, through Thomas N. McCarter, president of The Public Service Corporation of New Jersey, outlined the definite code of principles to govern relations between the electric railways and the public, which follow:

"1. The first obligation of public utilities engaged in transportation is service to the public, and the first essential of service is safety.

"Quality of service must primarily depend upon the money received in fares, which should be sufficient to permit the companies to meet the reasonable demands of patrons and to yield a fair return on a fair capitalization.

"2. Regulated private ownership and operation of electric railways is more conducive to good service and the public welfare than government ownership and operation. The interests of the public are fully protected by the authority given to regulatory bodies.

"3. In the interest of the public and good service local transportation should be a monopoly and should be subject to regulation and protection by the state rather than by local authorities.

"4. Short-term franchises are detrimental to civic welfare and growth because they ultimately

check the extension of facilities and discourage good service.

"5. Securities which have been issued in accordance with the law as it has been interpreted in the past should be valid obligations on which an electric railway is entitled to a fair return.

"6. The relation of adequate wages to efficient operation should always be recognized, but electric railways, being public servants regulated by public authorities, should be protected against excessive demands of labor and strikes.

"7. The principles of ownership of securities of local companies by centralized holding companies is economically sound for the reason that the securities of the latter have protection against the varying business conditions of a single locality or company and because money for construction and improvements can thus be more readily obtained.

"8. In the appraisal of an electric railway for the purpose of determining reasonable rates, all methods of valuation should have due consideration.

"9. Full and frank publicity should be the policy of all transportation companies, to the end that proper information may be available to the investor and the public."

6. The Right and Wrong in Holding Companies

Holding companies are corporations authorized to hold the securities of other corporations.

They are corporate stockholders which eliminate the individual. No feature of the trust system has been more severely criticized or more widely resorted to. In the order of development it came after pooling and the trust proper had failed to serve the purposes of combination to restrict competition and secure unity of control. It was the form of corporate organization in which such aggregations as the sugar, the oil, and the tobacco trusts took refuge when their original trust decrees became legally untenable. It has rendered service in each of the great fields of trust organization of industrial, railway, and public utility consolidations.

Curiously enough, the holding company is almost contemporaneous with the Sherman Anti-Trust Act. In 1889 the New Jersey legislature took the unusual step of authorizing what legislatures and courts had up to that time refused to do, except incidentally or by express designation. Since that year most of the other states in self-defense have amended their corporation laws to admit a corporation to serve in the capacity of a stockholder. The result has been that trust after trust sought shelter under this device to renew its loosening grip on corporate monopoly. Probably the worst feature of the holding company is its elimination of the body of stockholders from responsibility for the management and policy of the trust corporation. It has been pointed out that the large corporations are man-

aged mainly by their executive committees. Under that system of government the management of the controlled company is conducted primarily for the benefit of the controlling or holding company, which may be and often is opposed to the welfare of the controlled companies.

This has tended also to impair public faith in these issues. "If it were asked [Samuel Untermeyer declared] what single thing is mainly responsible for the loss of public confidence in security values, I should say, without hesitation, the holding company. This financial device is not only a great evil in itself, but harbinger of other evils. It is a recent abomination, a prolific means of oppression, and the most faithful source through which minority stockholders are defrauded of their rights. But for this device, the majority of the trusts that are afflicting this country could never have been born. The holding company is the result of vicious competition between the states, which have bid against one another for the patronage of the corporations by offering the inducements of the lax requirements and improper privileges." *

By playing one state's authority against another, trusts condemned in one have sought refuge and authorization in another to do the condemned things. It will be recalled that when the Sugar Trust of New York and the Standard Oil were declared illegal by the courts back in the

* *Munsey's Magazine*, August, 1912.

early eighties, they went to the legislature of New Jersey and obtained a statutory grant of the power of monopoly, the creation of holding companies, to take the place of the trusts which the courts had dissolved. Here we get at the source of the difficulty, in the evasive recoupment of monopoly power.

A third field of holding company expansion is found in the control of public utilities. How extensively the holding company figures in this movement is seen by the following table of values of the three main classes of utility investments in the United States:

Classes of Utilities	*Securities issued*	*By holding companies*	*Per cent hold. cos.*
Electric lighting...	$2,111,961,000	$1,741,958,000	82.5
Gas business.....	1,320,000,000	874,000,000	66.0
Traction companies	4,043,663,000	3,281,000,000	81.4
Totals	$7,475,624,000	$5,896,958,000	78.9

This form of corporate management in which nearly seventy-nine per cent of the investment of $7,475,624,000 is found, stands by itself in occupying a field of monopoly service under public regulation. Its uniqueness is the result of decades of experiment with competition. In the address already referred to Francis T. Homer stated this principle clearly, as follows:

"When, however, you pass from the holding company and the purposes which it accomplishes in the railroad, industrial, manufacturing and

commercial field, to the holding company of a public utility corporation, you find a very definite and marked distinction. This distinction is not born of a difference in corporate powers or purposes. It is born of the inherent difference between the subsidiaries owned, that is, between a public utility corporation on the one hand, and a railroad or commercial corporation on the other hand." *

The holding company differs from the trust proper as ownership differs from trusteeship. In the trust form of control the agreement makes the trustees custodians of the stockholders' property, whereas the holding company purchases outright the controlled corporations or exchanges its own securities for those of the controlled companies. Hence the substitution of ownership in subsidiaries for trusteeship of the original trust member-corporations is the essential feature in passing from the trust form to the holding-company form of consolidation.

Holding companies among public utilities cannot be said to control competing companies. There can be no competition between two electric lighting plants in Indianapolis and Denver owned by the same holding corporation; but there may be much gain by common and comparative management.

Yet these utility holding concerns are not without their meed of criticism. It has been justly

* *The Public, the Investor, and the Holding Company.*

claimed, in instances at least, that they are a means of excessive over-capitalization; that the public is likely to be misled by the character of the holding company's securities, because of the facility with which their intangible values are carried into security or book worth; that by acquiring a majority of the stock of subsidiaries they place the minority stockholders at a disadvantage; that manufacturers of equipment and supplies by means of such companies tend to control much of the field in their own behalf through stock payments for equipment supplies; that management of local companies through a distant holding company prevents the responsible officials from being promptly responsive to the needs of the local situation.

Holding companies are most vulnerable in the industrial and commercial branches of business. The trend of legislation and economic criticism is against them and they are destined to go, so far as they evade legal responsibility and defeat the course of fair competition. Wherever they promote monopoly in private enterprise they are a source of dis-service and retard progress. Where they limit their services to developing cooperation, as in the municipal realm they may readily justify their right to exist.

* *Public Policies as to Municipal Utilities,* Annals of Am. Academy, &c., Philada., January, 1915.

CHAPTER V

TRADE RESTRAINTS IN COMMERCIAL PRACTICE

TRUSTS derive most of their powers to exploit the market from two sources — from their charters or from outside contracts. Their charters embody their most basic legal asset, and the law regards the corporation as entitled to do what its charter enumerates as among its powers. Outside of these it is debatable ground. But the general right to enter into agreements with other corporations in such a way as to enhance original powers much beyond those enumerated in charters has enabled the trusts to develop a dominion unique alike in the realm of law and economics.

1. Cooperative Trade Agreements

These intercorporate agreements in one sense constitute the nervous system of the trust problem. At them the best efforts of governmental attack have been aimed. So vital do these compacts seem to be to business confidence, so essential have they apparently been in the structure of corporate life and so long have they been a part of the commercial system of this and other nations, that to some it would seem like economic suicide to attempt to eliminate rather than to regulate them.

How extensive these agreements have been in the course of our industrial evolution is not always appreciated by those who would reform our corporate system. Charles G. Dawes, in advocating a governmental tribunal to pass on these agreements, declared: "The United States Consular reports state that in 1905 there were 385 cartels or agreements in restraint of trade in existence in Germany, where they are encouraged in behalf of the general public and have no political opposition. I believe it no exaggeration to state that in the United States we have five cartels to every one in Germany. When the agreements among local retailers, district wholesalers, local and district manufacturers, publishers, labor unions, contractors, employers, and employes are considered, existing as they do, throughout almost the entire country, some reasonable in their nature and some unreasonable, an idea may be gained of how far the business interests of this country have already adopted the new order of cooperation as against the old one of unrestricted competition." *

In different countries these agreements are known by different names. The cartel in Germany corresponds with the amalgamation in England, the syndicate in France, and with pools, associations, and trusts in America in a general way. But in America the pooling association has had its most varied and longest history.

* *New York Times*, November 7, 1911.

Prof. Wm. S. Stevens's instructive analysis of this type of industrial combination* indicates the scope of their efforts. He finds that they assumed the following seven different forms according to their purpose: (1) To divide output or traffic; (2) To curtail productions; (3) To apportion territory; (4) To provide for sales through a common agent; (5) To fix and control prices; (6) To serve as clearing-house for dividing profits; (7) To preserve "legitimate" trading among manufacturers, wholesalers, and retailers. Of the last-named type are the lumber, the grocery, and the plumbing organizations representing different portions of the country. Their scope is as wide as the nation, so that they are practically all interstate agreements. Federal court decrees have dissolved several of these, but it is believed that there are still many in actual operation.

2. Pooling for Fixing Prices

Among the earlier methods of cooperation to mitigate the severity of competition, without surrender of financial and legal independence by the parties to these understandings, were the pooling organizations. These played their larger rôle in the period of about thirty years prior to the era of trust formation, from 1893 to 1898. There were many different varieties in existence

* *The American Economic Review*, September, 1913.

during these three decades. They may all be divided into three main types among agreements whose object was self-regulation of competitive forces.

The first type is not inaptly designated as the conference type of pool, or "gentlemen's agreement," without forfeit for failure to conform to their word. These were based on social or moral rather than on any legal obligation. A second variety was the clearing-house type, which imposed forfeits and had a central office in charge of a supervisor to whom reports were regularly submitted and who reported to members. Such was the American Wall Paper Company of 1880-88. A third was the disciplinary type whose capacity to penalize irregularity maintained rates or prices. The Southern Railway and Steamship Association was a striking example of this species.

Of the clearing-house type of pools was that in the cordage industry. These were in force more or less continuously from 1860 to 1890. James M. Waterbury, then President of the National Cordage Company, described before the Industrial Commission, 1901, their pooling operations as follows: "All manufacturers would meet and agree to divide the business of the country upon certain percentages, and when they had agreed on the percentages the rule was that each manufacturer should make his returns monthly to a supervisor, and if his business ran beyond his

percentage he paid in to the supervisor so much per pound on the excess beyond his percentage; and then those that went below that percentage drew out from the supervisor an amount as much per pound as they went below their percentage. The supervisor acted as a clearing-house for the manufacturers.

"*Q.* Did any of them last long?

"*A.* I think they lasted about three years, and they were broken up by other new competition starting, or by some men not being willing to act up to the agreement. Of course, there was no legal way of holding a man to his agreement. We had no written agreement."

Of a similar order was the Globe Naval Stores agreement, by which four operators in these products pooled their businesses. They each agreed to act as agents for the Globe pool, to report all transactions daily to the principal office, to settle all profits and losses in account with the Globe every six months, to apportion output and to divide territory. This agreement began April 1, 1905, to run for five years. The steel rail pool of 1888 bound its members not to sell in excess of current allotments, without first obtaining the consent of the Board of Control — a clear case of limiting output.* The Michigan Lumber Dealers' Association (1888) was organized "to establish the equitable principle that

* *Industrial Combinations and Trusts,* W. S. Stevens. The Macmillan Company, New York. Ch. 9.

the retailer shall not be subject to competition with the parties from whom he buys."

Such violations of competitive code occurred where producers shipped directly to consumers (builders), ignoring the local retailer. The risks to capital invested in the retail trade were greatly enhanced thereby, and this pool sought self-protection from trade practices regarded as unfair within its own class. The powder pool, in the "Fundamental Agreement" of 1890-95, avowed its objects to be "for the purpose of avoiding unnecessary losses in the sale and disposition of such powder by ill-regulated or unauthorized competition and by underbidding by the agents of the parties hereto, and for the purpose of protecting consumers and the public from unjust fluctuations in prices and from unjust discriminations." By this agreement the country was divided into seven geographical districts within which uniform prices were to prevail for sporting and blasting powder. The so-called pools in the steel rail industry, as Charles M. Schwab bore witness, were simply "agreements between the managers at the various works to sell steel rails at the same price at the same point."

3. Why Pooling Agreements Failed

Thousands of pooling agreements were in force in the period prior to the Interstate Commerce Act of 1887, both in industrial and in

mercantile circles of business. Their prohibition in that law discredited them in transportation circles at least. Long before that date pools in many corporations had given place to more compact forms of organization, taking either the trust form or that of the holding company. The depression of 1893-95 demonstrated that something more than a "gentlemen's agreement" was needed in most cases to keep industrial rivalry from going to unprofitable limits. Steel bars, for instance, during 1899 went up two and one-half cents a pound at Pittsburgh in the boom following the tariff of 1897. Within a year they sold below a cent a pound in a violent business reaction. "Under the best conditions," testified an official of Jones & Laughlin, Limited, "it would require an average of eight to ten years to bring the manufacturers' profit to a point where he could live." *

It was such irregularity in prices, due to rapid changes in conditions of demand and supply, that made investment in industry too uncertain to endure on the old basis of pooling without the law. The disease had ceased to be merely industrial. It had become financial and was undermining the credit of manufacturing corporations among which these evils prevailed.

In the wall paper industry there was a typical pooling agreement, to secure uniform prices

* *United States Industrial Commission*, Vol. XIII, p. 501.

and terms of credit, for several years prior to 1873. Hard times brought on severe competition, nullifying the pooling obligations which were without means of enforcement. With this came the usual price depreciation and unprofitable business. In the second compact, 1880, security of insignificant amount was given by members for stricter performance of the agreement. In due time, however, abnormally high prices, following combination in the American Wall Paper Company, disrupted the pool. Members undersold their own schedule of prices and failed to report as they had agreed to.

These alternating depressions and booms, striking both extremes of price movements, proved equally fatal to cooperation. Again a period of open market ensued, prices were demoralized, dealers with stocks on hand suffered severe losses in the declines, and the impaired credit of manufacturer and merchant resulted in failures to meet liabilities. Out of this emergency, in which both industrial and commercial competition had threatened financial ruin to the wholesale and retail trades alike, the makers of wall paper combined in a genuine trust organization as The National Wall Paper Company.

Because of the instability of these pooling arrangements, from lack of discipline through penalties imposable on those within, as well as through failure to guard against competitive assaults from without, pooling generally failed

to serve its purpose as a means of eliminating excessive competition. Hence it was abandoned in favor of a more coherent form of organization. There is no doubt that pools prevented waste and they increased profits so long as good demand sustained prices. But this very increase of profits in turn made more compact control necessary as a means of defense against unfavorable conditions of trade. Under higher profits severer competition came in again to unsettle market conditions and bring lower prices. Speaking of this in its effect on trade understandings a Pittsburgh manufacturer said: "Such understandings do not last if the market is not behind them. If prices are advancing they stand; but if prices go the other way, they do not last."

4. Re-Sale Contracts in Mercantile Field

Agreements between manufacturers and merchants constitute a field difficult to traverse in drawing the line of demarkation between what is freedom and what amounts to restraint or unlawful control. These so-called factors' agreements, in the opinion of Stevens, are still probably very numerous. They regulate contract relations between producers and distributors, including wholesale and retail merchants. They aim at price-fixing and at restriction of competition. They project the influence of the manufacturer into the mercantile sphere to an extent that has raised many puzzling questions

as to how the manufacturer may legally reach and profitably maintain his markets. In some cases it has resulted in his entering the retail business directly as the best available method of selling his own goods.

Several judicial decisions have greatly modified the status of the question within the past few years. After the mimeograph case, which gave the patentee a market among consumers of necessary supplies, the Miles Medical Company decision went far in the opposite direction. It declared illegal, both at common law and by statute, "a system of contracts between manufacturers and wholesale and retail merchants by which the manufacturers attempt to control not merely the prices at which its agents may sell its products, but the prices for all sales by all dealers at wholesale or retail, whether purchasers or sub-purchasers, eliminating all competition and fixing the amount which the consumer shall pay." *

By this and other decrees it is now fully established that the manufacturer of patented articles has no right to fix the price at which jobbers, wholesalers, or retailers, shall re-sell the products of his factory. Passing of ownership does not carry with it any sort of price control. The buyer is free to sell what he owns on his own terms and at his own price, even though it be below the cost of production or under factory

* *Federal Anti-Trust Decisions,* Vol. IV, p. 1 (1911).

prices. Nor does it matter whether the goods be patented or not. Trade-marked products, copyrighted books, or patented medicines — all alike are no longer subject to the restraints of price maintenance by the producers upon retailers.

One effect of cutting away these agreements which pertain to price-fixing has been to throw open to the freest competition the dealings of patentees, licensees, or makers with wholesalers and retailers. They are all on a level with others less favored. The owner may not use his patent to extend his monopoly of manufacturing into the marketing of the product.

Another effect of this has been to cancel a vast number of sale contracts that were in force before the highest court of the land declared them to be contrary to the anti-trust law. Jobbers, in known cases, now sell without any price agreement with the manufacturer as to the re-sale prices. Manufacturers try to convince the jobber of what in their judgment is a fair price; but there is no pressure. As a result the freedom of the jobber has led to his pushing business and vastly increasing the sales.

The main purpose of the re-sale contract was to prevent price-cutting. The issue under the Sherman Act was fought out most fully in the famous book trust cases. The facts and conclusions, as stated by the U. S. Supreme Court, were as follows: "It appears that the Publishers' Association was composed of probably seventy-

five per cent of the publishers of copyrighted and uncopyrighted books in the United States and that the Booksellers' Association included a majority of the booksellers throughout the United States; that the Associations adopted resolutions and made agreements obligating their members to sell copyrighted books only to those who would maintain the retail price of such net copyrighted books, and to that end, that the Associations combined and co-operated with the effect that competition in such books at retail was almost completely destroyed."

The Court's conclusion in this case, based on the Bath Tub decision relating to sales control through patents, was thus stated: "No more than the patent statute was the copyright act intended to authorize agreements in unlawful restraint of trade and tending to monopoly, in violation of the specific terms of the Sherman law, which is broadly designed to reach all combinations in unlawful restraint of trade and tending because of the agreements or combinations entered into to build up and perpetuate monopolies."*

Naturally the cutting of this Gordian knot produced much confusion in mercantile circles. In the grocery trades "free deals" and quantity prices became more general. The fixed-price policy assumes that the retailer could not be trusted to survive without it. In order to coun-

* Strauss vs. Am. Publishers' Assn., Dec. 1, 1913.

teract the effects of this upheaval the American Fair Trade League was organized in July, 1913, by prominent manufacturers (1) to secure to the public the benefits and protection of stable uniform retail prices upon all trade-marked and branded goods; (2) to prevent the elimination of the small retail dealer whom price-cutting department stores were regarded as menacing; (3) to aid in re-establishing and insuring fair competitive commercial conditions.

5. Rule of Reason in Trade Restraints

In ordinary language the three terms, competition, restraint of trade, and monopoly are often confused. But in their more exact meaning they apply to three different degrees of economic activity. Competition is an act in which two or more persons seek to get the advantage each for himself in a common transaction for profit. Restraint of trade is some limitation put upon the conditions upon which this rivalry is shared. And monopoly refers to cases in which the advantages are narrowed down to a single individual or corporation sufficiently in control of the situation to dominate the terms of the bargain. The three purposes of the Federal anti-trust policy are (1) to restore competitive conditions as between trading corporations; (2) to prevent unreasonable restraints upon trade between the states; (3) to abolish monopoly.

Among the views entertained on the subject of competition, good authority holds that mere size is no sin against the law. "The merging of two or more business plants necessarily eliminates competition between the units thus combined. But this elimination is in contravention of the statute only when the combination is made for the purpose of ending this particular competition, in order to secure control of and enhance prices and create a monopoly." *

On the other hand the court in which the International Harvester Company was adjudged guilty took the ground that the control of eighty-five per cent of the country's output of a given kind of implement was in itself a trade-restraining status within the act.

Contracts in restraint of trade in the common law do not appear to have been applied to anything but personal service, trading, and ordinary business relations. When a man bound himself by contract not to labor at his trade "in the realm," that was restraint against public policy and hence forbidden. When a merchant sold his business to another, on condition that he would not re-enter in that place as a competitor for a term of years, that was held at common law as a "reasonable restraint of trade," and made binding.

Among the most ancient of business practices, interfering with freedom of trade in local mar-

* Ex-President Taft, *N. Y. Sunday Times*, 1914.

kets, are the threefold offenses of forestalling, regrading, and engrossing — all of which seek to limit or monopolize the supply and are condemned at common law as unreasonable and against the public interests.

No doubt the most paralyzing feature in the Trust Act was the shifting and uncertain interpretation given to the term "restraint of trade." In the prevailing opinion by Justice Peckham, as far back as the Trans-Missouri decision (1897), the term was taken to include all contracts. In the Northern Securities case Justice David A. Brewer, whose vote was the decisive one, said: "Congress did not intend to reach and destroy those minor contracts in partial restraint of trade which the long course of decisions at common law had affirmed were reasonable and ought to be upheld. The purpose rather was to place a statutory prohibition with prescribed penalties and remedies, upon those contracts which were in direct restraint of trade, unreasonable and against public policy."

In the foregoing statement of the case we no doubt have the transition step from the earlier, and more literal interpretation to the broader reading of the spirit of the Act, as it first found expression in the Standard Oil decision (1911). There the common law distinction between reasonable and unreasonable restraint was first brought out. It was for the court to decide, Chief Justice White explained, whether any par-

ticular act fell within the class of prohibited things. And having classified the act complained of, it was also for it to decide "whether if the act is within these classes, its nature or effect causes it to be a restraint of trade."

If the restraint did not unreasonably abridge the freedom of trade or commerce and was not against public policy, then it was not contrary to the intendment of the statute. This is the "Rule of Reason."

CHAPTER VI

FEDERAL POLICY TOWARD TRUSTS

SO FAR as the Federal statute books show there are now three main acts which deal with trusts and competition. These include (1) "An Act to protect trade and commerce against unlawful restraints and monopolies," known as the Sherman Anti-Trust Act of July 2, 1890; (2) "An Act to create a Federal Trade Commission," approved September 26, 1913; (3) "An Act to supplement existing laws against unlawful restraints and monopolies," which became a law October 15, 1914. To these should be added the Interstate Commerce Act whose anti-pooling clause makes it really an anti-trust measure. There are also sections of acts approved in 1894 and in 1913, expressly enumerated in the Federal Trade Commission Act of 1914 (Sec. 4) as "anti-trust acts."

But public policy is expressed not alone by laws on the subject. One must also look to the Federal Court decisions under these laws, to the special investigations of complaints of their violations, to the effects of decrees in dissolution cases and to the conditions which have brought about amendments to the laws in the light of experience.

1. The Sherman Anti-Trust Act

Party platforms with pronouncements against the trusts began to appear about 1885. Within the next five years the discussion became effective enough to record itself in the act of July 2, 1890. This Act is generally taken as giving statutory expression to what is regarded as the common law on the subject of interference with freedom of contracts and trade. In its essential features it covered two primary elements of business life — restraining contracts and monopolizing conduct in interstate and foreign trade.

(1) The Sherman Act declared illegal every commercial restraint under any of the three forms of (a) contract, (b) combination, trust or otherwise, or (c) conspiracy.

(2) It pronounced guilty of misdemeanor every person, corporation, or association "who shall monopolize or attempt to monopolize" any part of interstate or foreign commerce.

(3) It authorized the federal circuit courts (a) to make temporary restraining orders pending the hearings to prevent and restrain violation by parties complained of. (b) It declared that all property involved under such alleged illegal conditions "shall be forfeited to the United States and may be seized and condemned."

(4) It provided for recovery by the injured party of threefold damages and cost of suit.

(5) It classified violations as misdemeanors subject to a fine of $5,000 or not over a year's imprisonment or both.

There is little doubt but that the attitude of public opinion towards trusts, as a result of which the anti-trust act was passed, was largely the outcome of hostility engendered by such corporations as the Standard Oil Company, the Cordage Trust, the Salt Trust, the Wire Trust, the Whiskey Trust, and the Sugar Trust. This law came into being because of widespread commercial abuses prior to a period of low prices in the depression of 1893-95. The states had chartered many corporations with powers that placed little or no restraint upon their practices, resulting in an extremely lax standard of interstate competition. Consolidations pursued high-handed methods toward competitors by price reductions, only to advance quotations later. Sellers' agreements bound distributors to exclusive contracts. Vast reserves of raw materials were bought up for control far in advance of need. Consolidated properties were grossly over-capitalized. Dividends were juggled to induce sales of securities to the public. Minority stockholders and the rights of subsidiaries were inadequately protected. The progress of monopoly within the different fields of trade and industry became such as to cause genuine alarm. Especially throughout the mercantile and the consuming worlds was this feeling extant. The

spread of combination in manufacturing industries through the control of markets had brought about an economic revolution, and the Anti-Trust Act of 1890 was a carefully considered answer to that tendency by some of our wisest statesmen. It was their hope that by giving the common law of the land a statutory form the courts might correct the abuses of the times by remedies in keeping with the equity traditions of free industry and fair trading. Its scope was no doubt intended to be essentially industrial, and not until 1897 was it determined that it applied to railroads. It received its first illuminating construction, in its commercial imports, according to Governor Charles E. Hughes of New York, nine years after its passage in the Addyston pipe case. Only by slow stages did the courts ascertain in the course of years what Congress meant. As interpreted from time to time it was no doubt a potent instrument, as President Seth Low of the National Civic Federation declares, in promoting the concentration of commerce in few hands. Gradually it extended its scope until manufacturing, railroads, labor organizations, and others, as well as commerce, were made amenable to it.

2. Investigations of Trust Conditions

It cannot fairly be said that anti-trust legislation or decisions have been reached without due inquiry. In no part of the administrative pro-

cedure under the anti-trust statutes has there been more careful mastery of the merits of the case than in the preliminary investigations following complaints. Much of the information relating to the history and practices of trusts has been gathered by the Bureau of Corporations in the Department of Commerce and Labor, a Bureau which President Roosevelt had hoped to arm with administrative powers ample enough to correct many abuses of trust methods. These inquiries went far to establish the essential facts in the industrial and commercial record of leading trusts. A far more thorough-going agency of investigation and of administrative control was later provided in the Federal Trade Commission (September 26, 1914), into which the Bureau of Corporations was incorporated.

Five large industries which this Bureau of Corporations investigated have all been subjected to prosecutions more or less effective in modifying their status under the trust law. Beginning with the beef industry under the House resolution of March 7, 1904, the subjects of petroleum (Standard Oil Co., 1907), of tobacco (American Tobacco Co., 1909, 1911), of the steel industry (1911, 1912), and the International Harvester Company (1913), were all investigated in the course of eight years. In nearly every case of an industry investigated the prosecution which followed resulted in conviction in the courts.

There were five separate inquiries on the part of Congress which bore directly on the trust question. All of them looked to the disclosure of conditions or the proposal of remedies for abuses actual or imagined. These congressional investigations include two in 1911-12. One took the form of hearings before the Senate Committee on Interstate Commerce and the other of hearings before a House Committee on the investigation of the American Sugar Refining Company.

Of other legislative investigations by far the most elaborate were the Stanley investigation into the steel corporation (1912) and that of the Pujo Money Trust investigation into the concentration and control of money and credit (1913). Trust legislation was the subject of extended hearings before the House Committee on the Judiciary (1913-14), also before the Senate Committee for Interstate Commerce of the same period. A veritable mine of detailed information is to be found in the Reports of the Industrial Commission made between 1898 and 1902.

These more scientific inquiries, as compared with the congressional hearings, all had the merit of disclosing actual conditions, analyzing them in their more vital aspects, and summarizing the methods and results. One of the best specimens of governmental inquiry is found in the report by the Bureau of Corporations on the Interna-

tional Harvester Company's organization, capitalization, profits, and competitive methods. It finds that the three principal factors responsible for the position attained by this company were (1) combination of competitors; (2) superior command of capital; (3) certain objectionable competitive methods. Next to the combination of principal competing companies, amounting to what was regarded as a monopolistic control of the harvesting machine business proper, was the company's exceptional command of capital. In the company's formation its working capital was provided for to the extent of $60,000,000. The full amount of this was actually paid in cash, so far as the investigation of the accounts goes. The objectionable competitive methods were regarded as rather incidental to the mainspring of its power, namely, the consolidation of the country's leading competitive plants in the industry with vast resources of working capital, enormously enhancing its competitive power.

3. Prosecutions Under the Anti-Trust Act

Prosecutions under the Anti-Trust Act were few and far between during the first three federal administrations. Although enacted early in the second year of Harrison's presidency (1889-93), only eleven bills in equity, five indictments, and two informations for contempt comprised the eighteen cases brought before the courts in the first eleven and a half years of the Act. Dur-

ing the next seven and a half years of Roosevelt's administration forty-four cases were brought, compared with eighty-nine in the four years under President Taft. Each of these presidential terms was marked by some phase of progress in the application of the statute to the trust situation. The Act was being interpreted judicially and, so to speak, applied by experiment.

A convenient record is given below in tabular form of the prosecutions under the Anti-Trust Act from July 2, 1890, to September 12, 1913.

Administration	*Period years*	*Bills in equity*	*Indictments*	*Informations*	*Total cases*
Harrison	1889-1893	4	3	—	7
Cleveland	1893-1897	4	2	2	8
McKinley	1897-1901	3	0	0	3
Roosevelt	1901-1909	18	25	1	44
Taft	1909-1913	46	42	1	89
Wilson	1913 to Sept. 12	5	3	0	8
Total	23	80	75	4	159

Evidently the turn in the enforcement of this statute toward the far-reaching application of its later history came shortly after 1900. Ninety per cent of the prosecutions occurred during the latter half of the Act's history.

"The decision of the Supreme Court sustains, beyond controversy, the proposition that every contract, combination in the form of trust

or otherwise, or conspiracy having for its purpose, or directly and necessarily affecting the control of prices, suppression of competition, creation of a monopoly, or other obstruction or restraint of trade or commerce among the states, is made illegal by the Sherman Act; and that every person who shall make such contract, or engage in such combination or conspiracy, is guilty of a misdemeanor and liable to fine and imprisonment." *

Wherever it could be shown by the facts in the case that agreements, contracts or trusts existed "with the obvious intention of restricting output, dividing territory, fixing prices, excluding competition," or attempting to monopolize commerce, there the policy of the administration became one of punishment and prevention. Where no intention of violating the law was evident, civil proceedings to restrain continuance without instituting criminal proceedings was the rule followed. The Department of Justice on its own account carefully investigated all complaints of combinations and conspiracies in violation of the Act of July 2, 1890. Many of these complaints proved to be without warrant and others without the hope of the federal jurisdiction.†

The activity of the Department of Justice may be gauged by the fact that in the fiscal year

* *The Attorney General's Report*, 1910.
† *Ibid*, 1913, p. 2.

ending June 30, 1913, there had been ten anti-trust cases pending, while in the official report covering the next fiscal year there were twenty-six different combinations under prosecution, including the coal, powder, shoe machinery, sugar, oil, and tobacco trust cases.

4. General Results of Trust Dissolution

Much criticism has been spent on account of alleged shortcomings in the dissolution of the trusts under adverse decisions of the Federal courts. Most of this has been directed against the oil and tobacco cases. The main contention has been that the decrees did not go far enough. Neither of these decrees required any change in individual ownership other than that of distribution pro rata among the stockholders of the combination. It was contended, however, especially by Assistant Attorney General McReynolds, later Attorney General of the United States, and still later Associate Justice of the Supreme Court, that in order to make dissolution effective a change in ownership, obliging the reorganizers to find outside purchasers for millions of dollars worth of security should have been insisted upon.

Another criticism held that no dissolution could be satisfactory to injured parties, for offenses of which the tobacco or oil trust were pronounced guilty, without provision being made for the recovery of triple damages con-

tained in Section 7 of the Anti-trust Act. The court, however, did not deem this necessary, as part of the "plan or method of dissolving the combination and of recreating, out of the elements now composing it, a new condition which shall be honestly in harmony with and not repugnant to the law." *

That competition has ensued among the constituent corporations, into which the tobacco company was dissolved, is well known to those who have taken the trouble to inform themselves about the facts. The decree divided the trust into four large companies, and the result has been, in the eyes of competent judges, "a genuine, strong competition between these four companies by advertising and cutting prices, so that the small so-called independent companies, in the face of the competition between the large companies, have been far less comfortable than under the tolerance of the tobacco trust. . . . The four companies into which the trust was divided are trying to get business one from the other. They are not trying to drive independent companies out of business, but their purpose to win business in competition with one another leads them to great effort and expense." †

On the same authority, the objection to the tobacco decree is that it did not divide up the companies into small enough pieces to prevent

* *American Tobacco Decision*, p. 27.
† W. H. Taft, *N. Y. Sunday Times*, 1914.

effective competition — a result which would, it is claimed, have been foreign to the purpose of the statute and economically unreasonable. In the Standard Oil case, the argument against the effectiveness of the decree, as President Taft claimed, "is based on the fact that after the decree was put into operation the stock in the individual companies increased greatly in value." This result arose from the necessity of distributing equities which disclosed to the market large values hitherto not fully appreciated.

It appears from the facts thus presented that the Federal Department of Justice, aided by other inquiries, has made substantial progress in providing an effective control through equity suits whereby the essential evils in trust organization and practice are being exorcised from interstate commerce. The virtue of this control, quite contrary to "big business" expectation, lies not only in preventing the abuses and wastes of unfair competition but also in curbing the tendencies to monopoly or illegal combination.

This restoration of economic freedom is accomplished by means of the injunction. Under this form of administrative procedure a method is being developed capable of relieving trade among the states of any illegal condition, whether it arises from predatory competition or from trade-restraining combination. To make competition salutary, to establish freedom and fairness within the market — that is the goal of

this policy. For that purpose the ends of justice, as expressed in the Department's procedure, required among other things:

(1) That trade-restraining agreements be cancelled where necessary to render illegal combination ineffective, as in the Powder Trust decree of June 21, 1911.

(2) That certain enumerated illegal practices, which make possible the renewal or perpetuation of types of unfair competition, be specifically enjoined, as in the Pacific Coast Plumbing Supply Association, involving twenty-four corporations.

(3) That an open market, one in which free and fair competition actually prevails, be made one of the essential conditions through which equitable treatment is insured in trade relations among competitors.

In brief, the Courts in enforcing the anti-trust acts are gradually formulating anew the legalized standards of economic freedom (a) by defining what is free in principle; (b) by forbidding what is unfair in methods, and (c) by formulating the accepted canons of equitable business conduct within whose limits economic efficiency must work out its salvation.

5. More Recent Legislation on Trusts

Most recent of anti-trust law amendments was the Act of October 15, 1914, entitled "An Act to supplement existing laws against unlawful

restraints and monopolies." Just as the Federal Trade Commission Act of September 26, 1914, was expressly made to prohibit unfair competition so the one enacted nineteen days later was designed to correct certain well-known abuses whose effect was to substantially lessen competition, "to restrain commerce or to tend to create a monopoly of any line of commerce."

Of these forbidden evils there were five, including (1) price discriminations; (2) exclusive or "tying" contracts, involving price-fixing agreements or re-sale control; (3) inter-corporate stock acquisition, excepting for investment not resulting in any substantial lessening of competition; (4) interlocking directorates of banks and trust companies having over $5,000,000 of deposits, capital, surplus, and undivided profits; also all corporations whose limit of like assets is $1,000,000; (5) dealings of $50,000 a year on the part of common carriers with corporations having the same officers, and providing for "free and fair competition among bidders."

In the Trade Commission Act its sponsors had in mind the creation of a regulative tribunal with powers ample enough to insure free and fair business activity and at the same time to correct abuses complained of among industrial concerns. In the grant of powers the Interstate Commerce Commission was taken as the standard. The danger of empowering a small group of men with too much inquisitorial

authority was recognized. Furthermore, the type of control and investigation exercised by the government in the national banking system served to show to what extent public examination could go without disclosing legitimate business secrets to competitors.

The labor view of the policy of making labor associations exempt from the anti-trust act prevailed in the Clayton amendments thereto. Section 6 of the Clayton Act reads:

"That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organization from lawfully carrying out the legitimate objects thereof; nor shall such organizations or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

Organized labor's efforts to restrict the use of injunctions in disputes between employers and employes was to a large extent embodied in Section 20 of the Clayton Amendment. By this the right to terminate employment and of "persuading others by peaceful means" (picketing) were declared lawful under anti-trust statutes.

CHAPTER VII

COMMAND OF CAPITAL AND CREDIT

EVERY public question is entitled to be viewed from the twofold aspect of its general purposes and of its specific problems. In the discussion thus far the trust in its more theoretical bearings has received attention. We have viewed from the outside the facts and the forces of its evolution. It began as a tendency and has now acquired the status of an institution rooted deep in our economic life. The result of our examination is a restatement of the leading principles of its guidance and control during fully a quarter of a century. Briefly stated, the trend of legislation, of judicial decrees, of corporate policy, and of economic criticism is to divide the field between competition in private pursuits and monopoly in public service. But everywhere are corporate combinations being brought under stricter public control. That is one aspect only. In this time a firmer grip has been gotten on the application of these principles — legal, economic, and administrative — to the solution of the more essential problems arising from within. This marvelous growth in the business corporation is now to be

considered from the viewpoint of its internal developments.

1. Supply of Investment and Working Capital

Large-scale production is continually under the necessity of adjusting itself to changing conditions in the pursuit of its main purpose — to gain maximum net returns on its investment. One of its first problems is, therefore, to assume that form of organization which will best enable it (1) to command adequate capital, and (2) to reach larger markets. It has been often said that America is but another name for opportunity. When John D. Rockefeller was beseeching farmers in Indiana to sell their farms to build pipe lines out of the proceeds, his main aim was to get capital to cut out the railway costs of getting products to market. So of the trusts in general, their first great task was to get capital enough to take advantage of an ever-enlarging scale of marketing goods. To do this, combination of working resources as a means of reaping greater profits was the most available method.

One of the financing stages of trust organization is admirably outlined in Professor Mead's portrayal of the promoter (Chaps. II-III.): "The advantage which the trust promoter sought to obtain was to capitalize the economies of combination, sell the certificates of capital, and obtain a share of the proceeds as

his own profit."* But this is after all an incidental phase of the bigger problem of obtaining an adequate supply of investment and working capital as the most essential means of increasing profits and extending markets. The promoter was not really the power behind the throne of America's big business developments. He was rather the midwife than the parent. The real dynamics in this industrial growth was the world's faith in the future of America — a faith that took our securities and salted them away in the investor's boxes of Europe and America, or temporarily held them for expected enhancement in value. In this work of issuing and distributing securities the banking and the speculative agencies of the world played a much larger and a more enduring rôle than the promoter.

Nothing but confidence in the earning power of American industries could have attracted so vast an investment fund as flowed into large-scale enterprises, especially from 1895 to 1902. According to Commissioner Luther Conant that was the most active period of consolidation. His estimate of the stocks and bonds issued by eighty-seven consolidations between 1887 and 1897 was $1,414,294,000. But within the next three years (1898-1900) 149 consolidations were capitalized at $3,784,000,000. In

* *Corporation Finance,* E. S. Mead. D. Appleton & Co., New York. Chs. II-III.

an informing study of the investment merits of industrial securities,* Dr. A. M. Sakolski summarizes the security situation at that period of "undigested" issues as follows:

Defects	*Merits*
1. Over-capitalization	1. Conservative dividend policy
2. Insufficient working capital	2. Build up capital surplus
3. Insufficient integration	3. Better knowledge of markets, etc.
4. Inexperience with conditions	4. Stability of earnings, etc.

All of these defects were the marks of promotion bent upon manufacturing securities for the purpose of unloading them on the public. All of these merits were in no small part the result of banker and business management aiming to build safely out of the investors' supply of capital.

2. Capitalization and Promoter's Profits

Nevertheless, in spite of the odium attached, promotion of combinations between 1890 and about 1910, covering a period of twenty years, came to be recognized almost as a new financial profession. In rank the promoter stood on a par with the trust lawyer and the trust manager. It was the function of the promoter to bring various proprietors together on some scheme of consolidation to which the participants were will-

* *Journal of Accountancy*, July, 1911.

ing to affix their signatures. It was the function of the trust lawyer to see how near promoting genius could go to the quick of the law in effecting combination of maximum capitalization. The work of the third functionary, the supervisor, the commissioner, or manager of the combination, was to enforce penalties and maintain discipline both in the industrial and the commercial end of the business.

It was to the promoter's interest generally to work for a capitalization as large as was salable. All that the speculative appetite would take he would give it. On that account his estimates of the valuation of the separate plants invited to enter the trust were often liberal beyond the hopes of their owners. Price was not a question of his, so long as the public paid for it.

Much of this promoting was done in periods of extraordinary prosperity, and then on the basis of net earnings. The ill-fated American Bicycle Company was made up out of plants which for a given period had net earnings of $3,500,000. This sum added to the estimated values of the properties gave total assets exceeding $20,000,000. On this basis the authorized capital of the company was placed at $35,000,000 preferred and $45,000,000 common stock, of which $10,000,000 preferred was issued and $20,000,000 common together with $10,000,000 of five per cent twenty-year debentures. The organizer of the bicycle trust bought the prop-

erties from the sellers with so much of the preferred and common stock as was required by his bargain with them, retaining the remainder in his own hands as promoter's profits.

One strong purpose, probably the strongest, in over-capitalization is to conceal profits. As Greene originally pointed out,* the prejudice in the public mind against high rates of profit or dividends resulted in capitalizing the surplus assets by stock distribution. To this device the Standard Oil Company, for instance, never resorted. Its properties are in this sense generally under-capitalized. In other cases, the rule, in consolidating several companies, is to capitalize promotion services, good will of original owners, business connections and intangible assets by issues of common stock. Thus the future basis of claims on dividends is broadened while the necessity for working capital is ignored or scantily met.

It was much the same in other formations. The single industry on going into the first consolidation probably doubled its security capitalization. When the next step was taken into the trust proper, its promotion may have called for another increase, in order to capitalize opportunity for enhanced earning power due to a more complete control of the market. But that was not the end. The Tin Plate Trust, the Steel

* *Corporation Finance,* T. L. Greene. G. P. Putnam's Sons, New York.

Hoop, and the Sheet Steel were each so highly capitalized as separate trusts as to amount to a total of $144,000,000 late in the nineties. Yet within the next few years (1902) they were taken into the Steel Trust at $219,000,000.

One can easily see now how such a persistent inflation of security issues might cripple business in its borrowing of capital. If every reorganization were to call for a new dose of inflated issues, based on an earning power which left years of adversity out of account, then the premium is put on skinning the maintenance account for big book profits as a new basis for reorganization. Yet this whole method of procedure, Fay claims, "is honest enough, if the earnings justify the capitalization and the prices at which the shares are distributed." *

3. Risk Elements in Trust Capitalization

Yet over-capitalizing has its legitimate uses. In corporate issues bonds are taken to represent the value of the actual property as a going concern with a considerable margin of safety even in the least prosperous periods of business. The preferred stock is regarded as representing that portion of the demonstrated net earning power which can be certainly spared after deducting interest on bonds from net income. Where that

* A lucid exposition of over-capitalization in railway fields is given in *Railroad Promotion*, F. A. Cleveland. Longmans, Green & Co., New York. Ch. XVII.

preference income, so to speak, is especially assured, it is indicated in making the preferred dividend cumulative. That is, if not paid as due it accumulates as a charge to be paid later in full. Finally the common stock represents the risks and potentialities often of undemonstrated values of the company's net earning capacity. They who take the risks want title to the contingent outcome, and they get it in common stock.

It is thus seen that common stock, which is to a large extent speculative in character, improves with aging under good management. It means, among other things, a title to opportunities, to latent resources. As earnings are put back into the company, the potential becomes real value. That in turn is expressed in the rising price of the security in question reflecting higher surplus income. How the market price of such a security varies as the "water" is being eliminated, is shown by a calculation given below, covering nine years of the Steel Corporation's history, from 1902 to 1910.

Year	*Earned on common, %*	*Mean prices com. stock*	*Water in capital*
1902.....	10.7	38	$625,353,559
1903.....	5.0	25	635,989,021
1904.....	1.0	21	626,591,046
1905.....	8.5	31	567,158,314
1906.....	14.3	41	487,574,093
1907.....	15.6	36	395,399,210
1908.....	4.0	42	375,551,303

Year	*Earned on common, %*	*Mean prices com. stock*	*Water in capital*
1909.....	10.6	68	330,855,512
1910.....	12.2	76	281,051,222

The same general policy of fortifying the market value of the common stock probably went on at a slower rate for the next three years, when common earned 8.9, 5.7 and 11 per cent respectively, and its average prices were 66, 74½ and 59½. At the end of 1914 the common capital stood at $508,302,500, of which over half may have represented real value.

It is estimated that between 1902 and 1909, in which time this common stock rose from 38 to 68, or $30 a share, the total of $300,000,000 of "water" was eliminated.* According as the single undeveloped asset of 1,200,000,000 tons of iron ore were valued higher or lower, the company's common stock was calculated to have a higher or lower value. The company's giving it a book value of $600,000,000 made Steel Common worth $150. The government's valuation of $134,000,000 made the stock average $44.70 a share. The one had in mind the cost of duplication, the other an idle property to be used far in the future.

Capitalization of industrials, railways, or public utilities is closely related to all questions of prices and rates. State commissions consider it

* P. V. Davis in *The Independent*, October 19, 1911.

necessary, at the very start of their labors, to find an answer to the question, What is the fair value of a given electric plant, a street railway property or an inter-urban line? Shall it be figured on the original cost or going value, or on cost of reproduction? The conclusion of Halford Erickson of the Wisconsin Railroad Commission, not only utilizes both as advisable, but recognizes the necessity of including developmental costs, depreciation and other risks. Of the latter he says: "Public utilities are not wholly free from risks to investors. If investors therein must bear losses from decreasing prices, is it fair to deprive them of profits from increases in prices? . . . Would not the elimination of such profits be reflected in higher rates of interest for needed capital?"

On this the Courts have not said their last word. How far earning capacity enters into rate-making principles in corporations exempt in the main from competition, and therefore from competitive risks, is ably discussed in a pamphlet by the same official.*

4. Use and Abuse of Over-Capitalizing

The mistake is usually made in allowing those who take stock for promotion and properties to work it off at once through the stock market or any other way. France requires her promoters and sellers of property to hold such se-

* *Valuation of Public Utilities,* Halford Erickson, 1912.

curities for two years, thus protecting values and safeguarding legitimate industry. Otherwise inflation is the certain effect of such heavy flotations marketed after the usual plan. An underwriting syndicate with options in hand at high figures for the concerns to be combined, arranges to pay for them in stock of the combination. It has no time to lose. "It arranges for the new issues to be listed on the Stock Exchange, where they are made 'active' by many brokers who had been let in on the underwriting of the whole scheme. This speculative activity before long would result in distributing many millions of new shares, bought for a rise by traders in stocks and so taken off the hands of the syndicate." *

Over-capitalizing consists in the issue of stocks and bonds in excess of the property equivalents of the corporation's possessions. This excess is usually known as "watered" stock or bonds. Where this rule of capitalization is followed the "watered" issue is usually small. But where earning power, actual or assumed, is made the basis of capital issue, the opportunity for abuses is far greater.†

Under the inflation of capital values, in the financing of combinations, a large part of the

* *Big Business and Government,* C. N. Fay. Moffat, Yard & Co., New York.

† This aspect is critically discussed by E. S. Mead in his *Trust Finance,* D. Appleton & Co., New York, chs. XVI-XVII.

capitalization stands for some of the most uncertain qualities and conditions in commercial and industrial experience. A Hawaiian sugar combination capitalized its property fourfold, including "climate" at more than $1,000,000, or twenty-five per cent of the total. Yet this is the thing with which the stock market occupies itself in trading and the general public is supposed to buy or sell as of actual value. A combination of twenty-five manufacturing plants into a single trust created a degree of monopoly, otherwise known as capacity to control the markets and beat competitors. This alleged advantage the promoters immediately capitalized without testing its capacity to withstand competition. They forthwith distributed certificates of stock pro rata to the unrealized prospect.

5. *Banking Credit and Trust Control*

By reason of the dependence of trust financing upon leading banking institutions for underwriting and marketing their securities financial control becomes direct and highly concentrated. In the capacity of fiscal agents these leading banking interests give continuity to that relationship. This in itself tends to perpetuate the dependence of trusts upon the single institution or group of bankers who have become accustomed to act together in syndicate operations or otherwise. Nowhere has there been

greater cooperation in limitation of competition than in the field of money and credit.

On this matter the conclusions of the Pujo Committee, which investigated the subject for the House of Representatives early in 1913, are highly pertinent. This report said:

"Far more dangerous than all that has happened to us in the past in the way of eliminating of competition in industry is the control of credit through the domination of these groups over banks and industries. It means that there can be no hope of revived competition and no new ventures on a scale commensurate with the needs of modern commerce or that could live against combinations, without the consent of those who dominate these sources of credit. A banking house that has organized a great industrial or railway combination or that has offered its securities to the public, is represented on the board of directors and acts as its fiscal agent, thereby assumes a certain guardianship over that corporation.

"If competition is threatened it is manifestly the duty of the bankers, from their point of view of the protection of the stockholders as distinguished from the standpoint of the public, to prevent it if possible. If they control the sources of credit they can furnish such protection. It is this element in the situation that unless checked is likely to do more to prevent the restoration of competition than all other con-

ditions combined. This power, standing between the trusts and the economic forces of competition, is the factor that is most to be dreaded and guarded against by the advocates of revived competition." *

This investigation of the concentration of control of money and credit no doubt disclosed a serious evil. But whether it was the result of a monopolizing purpose among leading financiers, or the natural consequence of a defective banking and currency system, is debatable. The findings of the Pujo Committee were in favor of the former view. On the other hand the statement of J. P. Morgan & Co., in the analysis of causes and conditions making for money and credit concentration, laid the result to the following: (1) that our antiquated banking system, forced reserves into New York automatically, thus causing undue concentration; (2) that the average demand for credit throughout the world's money markets determines interest rates, and not the banks of New York by combination; (3) that the panic of 1907 was not caused, as the committee intimated, by machinations of certain powerful men, but that these very men helped effectively to check and compose it by putting funds at the service of weaker members of the community; (4) that practically all the railway and industrial development of this country has taken place through the agency

* *Pujo Committee's Report*, H. R., 62nd Cong.

of the large banking houses, and that representation on boards of directors of railways and industrial corporations has been for the purpose not of control but of cooperation in the interests of the investors, to whom the banking houses have felt responsible through the securities sold them as clients. This function of trusteeship stands out as one of the distinguishing features in the services which the great banking institutions of New York and other centers render on behalf of investors, large and small. Concentration of money and credit has come partly as a normal growth in the progress of wealth, commerce, and industry; and partly as an abnormal growth under laws and banking conditions which business had long since outgrown. There is far more competition and far less combination than is commonly supposed.

CHAPTER VIII

PRICES UNDER THE TRUST REGIME

ONE of the avowed objects of centralizing control in industry is to stabilize prices, to prevent that deadly sinking of price levels which eliminates profits. This arrest of decline in prices is accomplished by means of tipping the balance against supply and in favor of demand. To this end restriction of production is the direct path. In fact, this is one of the main aims in trust organization — to prevent such demoralization as comes from the tendency of production, under large-scale machine industry, from exceeding consumption. Most of the evils of gluts, "dumping," and price wars came from this tendency to over-supply of consumption goods in specific lines of production.

But this restriction does not stop here. To stabilize price levels is one thing; to so utilize the advantage as to secure progressively higher prices is quite another. The course of wholesale prices, during the year from 1896 to 1913 illustrates the tendency not only to restore former levels, but to go far beyond them under the present state of industrial control.

1. Course of Wholesale Prices, 1890-1913

The following price diagram from the Bureau of Labor, Washington (March, 1913), con-

trasts sharply the trends of wholesale prices of raw and manufactured goods, first under the competitive system (1891-1896), and then under the trust régime (1897-1913), when restriction of supply became a part of industrial policy in the alleged effort to give stability to prices.

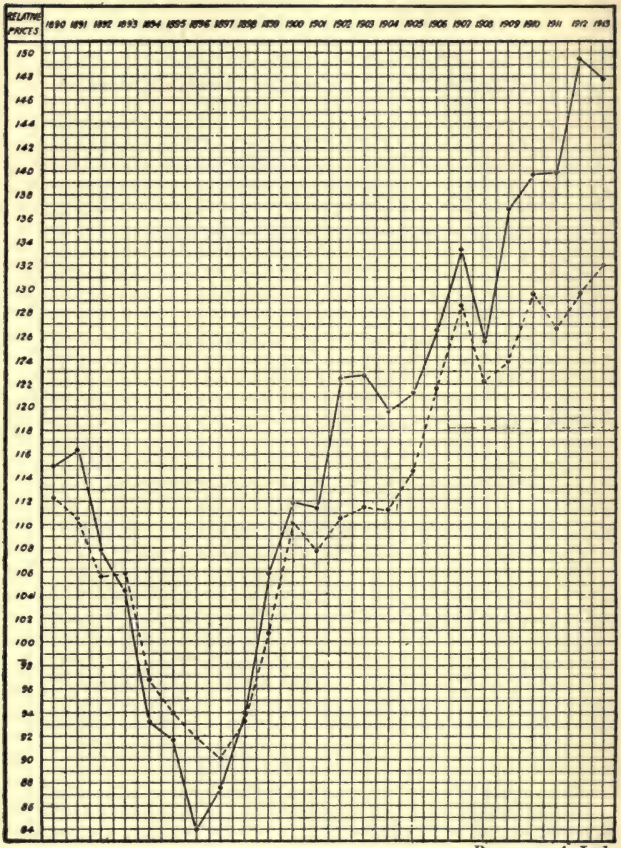
Rise in prices beginning with 1897 cannot be entirely laid to combination. Part of the advance was due to normal reaction from undue depression. But apart from this general condition the actual causes were chiefly (1) increase in gold production; (2) increase in population; (3) widening of the area of production and marketing in the world's trade.

The period in which these great industrial combinations had their growth was also one of vast extension in the scope of commerce, of the world's greatest human migrations from older to newer lands, and of increase in the wealth and population of nations.

The statistical returns on which this diagram is based show that the upward swing of commodity prices coincides largely with the period of greatest expansion in the trust movement. The depression became acute by 1893, and began its recovery after 1896. From that time forward, coinciding with the recovery of business in the latter year, trust financing proceeded on a colossal scale. Profits were measured by gains in prices in floating securities. Prices between 1896 and 1912 for raw materials rose

RELATIVE PRICES OF RAW AND MANUFACTURED COMMODITIES, 1890 TO 1913.

[Average for 1890 to 1899 = 100.0.]



—*Bureau of Labor.*

from a basis of 84 to 148, or seventy-six per cent. By 1900 raw materials were 33.6 higher than the average for the preceding twenty-two years, and manufactured commodities were 17.7 per cent higher, making an average for all commodities of 20.9 per cent. Owing to this fact, that the general price movement was mainly upward it is difficult to refute the claim that the trusts were among the contributory causes of advancing prices. But they were not alone; favoring conditions were general. During the depression of 1893 to 1897 there occurred one of those general exhaustions of reserves both visible and invisible. Universal economy in consumption of manufactured products left the reserves of the world's stock bare and depleted. Of this situation the combinations took advantage. The rapid advance of prices which followed in many commodities when business revived was also aided much by the great elasticity of demand sure to develop with the return of better times. Not until near 1900 were the supplies replenished fully enough in many staple lines of industry to build up a secondary line of supply.

2. The Retardation of Rate of Supply

Trust control of the market comes through command of the situation on the supply side. This is its line of attack of the price problem. A pertinent criticism of this aspect of trust

policy is advanced by Prof. J. A. Hobson.* According to his view the growth of trusts, cartels, and various orders and degrees of combination in many highly organized trades in England and North America can only be interpreted as restraints upon supply of goods. Their *raison d'etre* is the maintenance of prices on a profitable basis by limitation of output. For in no other way can profitable prices be maintained. The tendency toward over-production has been the invariable plea for the utility of these organizations. They must, therefore, be understood as instruments for keeping the rate of supply of goods in the industries where they operate lower than it would have been had they not existed. Though there are other economies of combination, this is the main and essential result — to regulate, i. e., to retard, the rate of production.

If it be true that the trust system of industry, by its price maintenance policy, secures stability of values by control of supply, we have to that extent removed from the business field the automatic capacity of the market for adjustment to higher and lower levels. In other words, the free play of economic forces being limited in scope, those transitions to different levels by which production under the competitive system alternately stimulates or checks the operations of demand, are made to recur less fre-

* *Gold, Prices, and Wages*, p. 113.

quently, if also less violently. Demand under such a system of control tends to become stationary rather than elastic. Prices vary, but within narrower limits. Instead of inducing increased demand by lowering quotations, the whole structure of the market rests on the basis of a more or less uniform price-level. There is little or no power, under hard-and-fast price schedules in industry, to invoke the elasticity of demand to increase trade. All or most of the potency of industry to bring about trade revival, by a readjustment of production to lower levels of cost to the consumer, are sacrificed on the altar of restriction of output. Time and changed conditions must be relied upon to generate from the demand side a corrective to any wide variation from the normal balance between supply and demand.*

3. Stabilizing Wholesale Prices

Prices viewed from the demand side of the market have no doubt become more generally stabilized under the trust régime. This is true even in international as contrasted with domestic trade. The valorization of Brazilian coffee (1908-1914) illustrates the way in which world-wide scope is given to control of prices. There a big crop threatened (1908-1909), by unprofit-

* How these underlying changes tend to render unstable the static equilibrium, is described by C. N. Fay in his *Big Business and Government*, ch. XVII.

ably low prices, to bankrupt a country's main industry if not to provoke political revolution. To avoid these, a banking syndicate bought 8,000,000 bags of coffee in one season to hold for sales to be spread equally over a period of several years following. The result was that, aided by smaller crops, for most of this selling period prices rose from eight to twelve and fourteen cents a pound.

Among manufactured commodities the problem is also world-wide. In commenting on the failure of quotations to drop as usual in dull trade periods, *The Ironmonger* of Birmingham, England, remarks that the modern system of price-maintaining combinations has hindered a prompt readjustment of prices in the iron and steel products made from billets, blooms, and bars which had declined 25 per cent. The same persistence is shown in the American price of steel rails which for the past twelve years have sold more or less regularly at $28 a ton.

More of the stability in the prices of raw materials has come from the absorption of main bodies of natural resources into fewer hands, say since 1900, than from any other source. Rivalry for possession of ore deposits, for consolidation of timber areas and the centralizing of coal deposits, waterpower sites, etc., under great syndicates and trust subsidiaries — these are matters of common knowledge. And they

fully explain the persistent advance of price-levels on the production side of the markets.

Raw materials and manufactures are the two great classes of commodities most subject to the influence of combination on prices. The period over which this sway extended, from 1893 to 1913, approximately includes the main era of restrictions on competition.

In that period prices of these two classes not only recovered to the high level of 1891, but were carried far beyond to the apex of 1912. Not all this advance was, of course, due to the monopoly factor in trust organization or to contracting the scope and intensity of competition; but it is within all probability true that no such an upward swing in prices of raw materials and manufactures as that shown below could have occurred without corporate combinations.

Among the able but less conclusive discussions of the effects of combinations on prices is that by Prof. J. W. Jenks.* By means of data gathered through the agency of the United States Industrial Commission, Vol. I, charts of price movements are constructed. These bring out the differences at succeeding periods between raw material prices and finished product prices, thereby disclosing the contracting or expanding margin of profits, costs of production, etc., in sugar, petroleum, tin plate, whiskey, and iron

* *The Trust Problem,* J. W. Jenks. Doubleday, Page & Co., New York.

and steel products. On the whole, these methods do not prove the emergence of excessive net profits, nor phenomenal gains of any sort. They tend to show that the capacity of combinations to render prices proof against competitive organizations has been greatly overestimated.

4. Problems in Unfair Merchandising

Some of our most perplexing questions in trade practices and their relation to monopoly have arisen from the retail or merchandising side of business. Outside of the big corporations with colossal capital resources there are numerous businesses in which the individual, as distinguished from the corporation, is the creative force. This is the field of the ordinary American business man. In the solution of the trust problem he is not to be forgotten. Most amendments to the Sherman Act are proposed in his behalf. And any adjustment which impairs the capacity of the ordinary individual, be he merchant or manufacturer, to hold a serviceable place in the commercial system, is by that test vitally insufficient.

In the mercantile field the department stores, the mail-order houses, and the chain store systems have carried large-scale organization to the very door of the consumer. After thirty or more years the small retail trade does not seem to be the worse for the department stores' success in the cities. The chain stores are

admitted to sell only about 10 per cent below the individual retailer's prices (Pittsburgh). It is the retail concentration known as the mail-order house that now most alarms the 1,250,000 retail merchants of this country, especially those of the smaller towns and the rural districts. Here the problem is not only one of prices, but also of practices. In the competitive relations of the system with the individual store we have the soulless corporation contesting the field with the individual merchant citizen. He is still the main distributive agency between the ordinary manufacturer and a large part of the consuming population.

"If these large companies are truly economic and able to deliver, with a lighter carrying charge, the goods which consumers must have, and provided they deal fairly, the greater they are the greater good they do; and provided, also, that the process of monopoly does not go so far that their mere size makes them a menace."

Thus one of the newest, yet oldest, forms of the trust problem in the mercantile world is stated by W. H. Ingersoll of the American Fair Trade League.*

The ability to render a superior merchandising service under fair competitive conditions and without monopoly advantage — that is the criterion by which any new agency in large-scale enterprise must be tried in business. Our

* *Unfair Retail Practices,* American Fair Trade League.

earlier trusts practiced both to their heart's content. They played foul, and they too often made the rules of the game to suit themselves. Most of the more flagrant kinds of unfairness have meanwhile been given up. But there remain two or three varieties which are widely condemned as unsound in economics and ethics, if not in law as well. These are (1) unnatural price-cutting; (2) discriminatory quantity prices; (3) fraudulent advertising. Each of these may be considered from three standpoints. Is it good business for producer, for merchant-distributor, and for the consumer to become party to a price-cutting program? Taking the community as a whole, Mr. Justice Holmes' dissent in the patent medicine decision of the United States Supreme Court would probably find wide acceptance. "I cannot believe," he insisted, "that in the long run the public will profit by this course, permitting knaves to cut reasonable prices for mere ulterior purposes of their own, and thus impair, if not destroy, the production and the sale of articles which it is assumed to be desirable the people should be able to get." *

5. Quantity Prices and Misrepresentation

In deciding these questions the public is gradually taking the broader view — the view of enlightened self-interest. That kind of compe-

* 220 U. S., 373.

tition which tries to create business by unreasonable price-cutting is a species of fraudulent self-exploitation.

(1) Brandeis' reasoning seems to be sound on this score. "To sell a dollar watch (he argues) for sixty cents injures both the manufacturer and the regular dealer, because it tends to make the public believe that either the manufacturer's or the dealer's profits are exorbitant. Such a cut necessarily impairs the reputation of the article, and by impairing reputation lessens the demand." * It takes only a few of such cut-sales to eliminate the regular dealers. Finding their market despoiled by quotations which mean loss on every unit sold by them, they cancel their contracts with the manufacturer or jobber. Then the industry finds its demand weakened. The factory that was the life of the community shuts down — and all because the maker of a standard commodity is denied the inherent equity of seeing that his product, into which he has put his best service to society, is given safe conduct in its journey from factory to consumer.

(2) Discriminatory quantity prices embody a practice quite distinct from the discounts, reductions, or other concessions made to all equally, to the wholesaler or jobber as compared with the retailer. Cost of carrying the stock includes warehousing charges, interest on money, and the like. Whoever renders this service is

* *Harper's Weekly*, November 15, 1913.

entitled to the proper return, whether manufacturer or distributor. But beyond that lies what is called an inside price, lower to some than to others, the conditions of which are not open but secret, or within the reach of few enough to exclude competition. This is the discriminatory element, which Prof. Paul H. Neystrom of the University of Wisconsin, calls "the greatest evil in modern merchandising."* His inquiries lead to the conclusion that the mail-order houses are the chief exponents of this practice. Probably they would say that if they do not get that part of the output of a given factory at the price they offer they would have to build a factory of their own or buy out a rival. Such kinds of coercion, or competition, require no threat to make them effective. But against this method of enforcing discriminatory trading the ordinary retailer is but a fly on the wheel. His remedy is to be sought in some form of legalized price protection recognizing the equity of the manufacturer in the marketing methods of his own trade-marked output.

(3) Fraudulent advertising is a case in which the evils are curable mainly by outside pressure. Not all advertisers are liars, but too few of them handle the truth carefully enough to indicate any intent to avoid misleading the public. Fairness here is to be attained by three means:

* *On Competitive Unfairness of Quantity Price,* Anti-Trust Hearings, House Committee on the Judiciary, 1912.

Cooperation by honest advertisers, good laws against misrepresentation, and the vigilance of advertising associations.

6. Price-Making Forces in Big Business

How far can combinations dominate the prices of materials and products? The Industrial Commission's Report on Trusts and Industrial Combinations, Vol. XIII, 1901, probably carried investigations into this subject as far as is necessary for our purpose. Substantially all witnesses identified with trusts agreed "that unless a combination has either some natural monopoly of the raw material, or is protected by a patent, or possibly has succeeded in developing some very popular style or trade-marks or brands, any attempt to put prices at above competitive rates will result eventually in failure, although it may be temporarily successful." Yet it was admitted that competitive forces worked out their results more slowly under large-scale production or combination (page 21). Strong faith was expressed in the self-correcting capacity of the industrial system for most abuses, unaided by legislation. Edward Atkinson reasoned: "Competition cannot be suppressed by combinations or other devices. Through competition the volume of product is augmented, and the cost of each unit is diminished, the rates of wages are raised, and the margin of profit is lessened." The low prices

for oil and sugar, he asserted, were only possible through the combination of the ablest possible men working on a very big scale for the lowest margin of profits.

Yet it must be remembered that the essential goal of big-scale production is not minimum profit, but maximum net income from minimum cost per unit of production on a progressive enlarging scale of output. The trusts have been charged with systematically selling at lower prices abroad than in the domestic market. In most cases this is admitted, but the fact is due to several causes. In 1900 the steel corporation sold abroad at $23 a ton grades of steel for which home consumers paid $26 to $28. The reason was that to keep the mills running and the men employed continuously the price had to be made low enough to sell the output. Had the plants run only part time or less than full capacity the cost to home consumers would have been increased. The competition was keener in the foreign market as a rule, and lower prices were necessary to secure orders enough for steady operation.

But why does not the domestic consumer also get the benefit of lower prices? This failure has been attributed to (1) group control or community of investment interests among industrial and railway trusts; (2) to the exclusion of foreign competition by protective tariff. To which it is properly replied that the tariff,

"instead of helping to give them a monopoly, it is the one thing that prevents them from having a monopoly, because it sustains their smaller competitor who could most easily be driven out by free foreign competition."* As for domestic prices, the larger combinations are the price-making force in the home market, and the smaller concerns adapt themselves to their quotations. The combinations pursue a let-live attitude toward the smaller industries, as the more prudent price policy. The prices at which the smaller industries can live are extra-profitable to the combinations. An import duty so low as to eliminate these smaller industries by foreign competition would simply divide the domestic market between foreign competitors and domestic combinations. Given fair competitive relations between combinations and the smaller concerns, prices, on a somewhat higher than the competitive level, tend to that degree of normality which is just to the producer and that measure of elasticity to which the consumer is entitled by progressive conditions of producing efficiency.

Industrial combinations are also charged with destroying competition by lowering prices in certain market areas, and maintaining them at a higher level elsewhere, or later to recoup themselves. Part of the difference in prices in differ-

* *United States Industrial Commission Report*, Vol. XIII, p. xxviii.

ent localities equally distant from the source of supply may be due to higher or lower freight rates. This species of unfairness is easily corrected under the amendments to the anti-trust act. There is no doubt that combinations were formed to put up prices and that the vast gains of invention to costs of production are appropriated by them as fully as is possible without inviting competition or restricting consumption. In other words, whatever reduction in prices to the consumer have ensued under big business is the result (1) of competition actual or potential, and (2) of the policy to expand consumption wherever the margin of profit per unit of product can be increased by reducing the cost of production. Under the system the combination can and does tend to appropriate the residual gains of progress. Hence the necessity of keeping competition free and fair as the sole condition on which just prices can ensue to the consumer, under the régime of big business.

CHAPTER IX

SOME PROBLEMS OF TRUST MANAGEMENT

REFERENCE has been made earlier to the difficulty of finding men who could keep in hand these vast combinations of corporate properties effectively enough to produce results in competition with smaller concerns. It was the testimony of experience that the capacity for management was one measure of how large a combination might safely become. In combining various properties it has often been the case that the unfit had to be taken in with the fit, thus handicapping the management from the very start. In this lies the reason for not a few of the failures of trusts to make good, either financially or otherwise.

The first test of management of a combination is shown by its ability or inability to earn normal returns on its outstanding obligations. Of these the bonds, usually limited to half the value of the property underlying them, have first claim in the form of interest. Preferred stock, secured by the balance of the tangible property, has the next claim on net income; and the less tangible or intangible assets, such as patents, good will, and expectation of economies of combination represent the residual earning power of the common stock.

1. Management a Cooperative Service

It is probably true that the success or failure of the average trust, as Fay puts it, may be judged from the market price of its common stock. If so, then the financial organization of possibly the majority of these corporations is so heavily water-logged as to justify no fear to conservatively capitalized concerns under fair competitive conditions. Over-capitalization is a handicap on successful management. The management that makes good is as a rule favored by two features — moderate capitalization and competitive efficiency. "The successful trusts," says one who speaks with authority, "have gained their power and wealth in not one case before us by the power of combination, but by the power of destructive competition; not by monopoly but by efficiency."

The real test of management is competitive service — financial, industrial, commercial and social.

On the service side of this question a higher order of economic responsibility is no doubt emerging. Prof. Lewis H. Haney's apology is pertinent here. "The critics of the modern business world are too prone to underestimate the real social service performed by those who direct the industrial process, the business men. In the main these men are no mere exploiters. Without their leadership the effectiveness of

industry would be far less than it is. In a social order in which private ownership of the instruments of production exists, we have separate groups of laborers and of capitalists, and some one must undertake to bring the labor and the capital of these groups together, so that they may cooperate."*

2. Interest Service of Capital

Every wise management goes slow on increasing fixed charges of which interest is the main feature. There are always two elements in any rate of interest. One is the payment for the use of capital; the other is compensation for risk. The larger charge pays for service, the other for hazards assumed. In the security issues of large combinations, bonds, preferred stocks and common stocks represent these two elements in varying proportions. In bonds, the risk element is at the minimum, hence the interest rate is lowest. Preferred stocks pay higher rates partly because they bear more risk of repayment of principal than bonds. Common stocks assume the main risk of income after bonds and preferred stocks have been compensated for services and for insurance against loss of principal.

Maintaining price levels under combinations has a direct bearing on the interest cost of

* *Business Organization and Combination*, L. H. Haney. The Macmillan Company, New York, p. 5.

capital. Higher prices cause capital to flow in that direction for investment or for working employment. Whether these prices be maintained by a protective policy securing the home market or by control of market through consolidations, the result is much the same. In the competition for capital the flow follows the path of higher interest rates, in which the risk is not too prominent. In combinations, as Hobson rightly holds, "part of the rising interest and profits are due to the establishment over large markets of prices above the level which free competition would have maintained. The era of large gold output, of expanding credit and of new large productive areas of investment, has also been the era of trusts, cartels, conferences, and combines of every size and strength, all directed primarily to secure a higher rate of interest and profit than competition would secure for the group of business engaging in the operation." * Thus trust capital is usually high-cost capital.

Interest payments on capital invested in large corporations is one of the monthly features of the money market. Payments from every part of the globe are made at the large financial centers through fiscal agents in each one of the industrial nations. Here loan funds tend to accumulate and find an investment or a speculative market. The commercial uses of surplus

* *Gold, Prices, and Wages.*

capital also influences the industrial interest rates. Both uses compete constantly, and the discount rates in foreign exchange often determines whether or not corporate financing shall be undertaken or postponed.

Three main fields of investment in trust securities are open to the public. Not including railways, the two main classes are industrials and public utility issues. Of these the interest rates are lowest for railway securities, highest in industrials, and midway on public utilities. The more nearly any of these approach legalized monopoly in the control of its field the more attractive does it become as an investment for safe income purposes. The competitive industry is the more hazardous and commands the higher rate of interest.

Owing to the higher rate of interest and margin of safety borne by public utility bonds they have tended to displace other securities. This class of investment is found over a period of years to have had average annual earnings on the aggregate capitalization of public utilities of 8.45 per cent, while railroads showed average annual earnings of 4.25 per cent, and industrials 7.79 per cent.

Over a similar period it is shown that while an average of 1.84 per cent a year of capital invested in railroads was in the hands of receivers, and 2.07 per cent of industrial capital, there was an average annual receivership risk

in public utility companies of only 37/100 of 1 per cent of the capital invested. The stability of earnings of public utility corporations is shown by the fact that for the five years following 1907, the net earnings of gas and electric companies increased 60 per cent, and of electric railways 20 per cent; while for the same period the net earnings of steam railways increased only 5 per cent. Freedom from competition because of the general recognition of the principle of "regulated monopoly in public utility service" by state commissions is also adduced as a material point in their favor.

3. Profits of Industrial Trusts

"The very thing for which capitalism exists," declares John Graham Brooks, "is profits on sales." Profits depend on the success of selling as well as on the efficiency of manufacturing. They are the margin between selling price and production costs. The trust system of production and marketing is noteworthy for its elimination of intermediate profits. All those tolls of profit which come from buying materials, raw or semi-finished, from other producers, are eliminated in the fully integrated trust organization. Its essential idea is to become self-sufficient in this respect, so as to reap the full benefit in reduced costs, both of manufacturing and of selling as well as in owning sources of necessary materials.

Larger profits were the goal of most of these consolidations through three sources — reduced costs, less competition, and selling economies. "The best thing to do was to get rid of the fierce competition," testified an official of a constituent member in the International Harvester Company, "to get rid of the waste of money in canvassers. We have not half as many canvassers today as we did have."

The report of the United States Bureau of Corporations shows that the profits of the McCormick Company for the year preceding the merger were 12 per cent of the net book assets, those of the Deering Company were 18 per cent, and those of the Milwaukee Company, 11 per cent.

After the consolidation of the five companies, when competition was materially reduced and prices far more easily maintained, the Harvester Company showed the following yearly results in the eight years ending with 1911:

Years	*Net earnings*	*Per cent of profit on assets*
1904	$ 5,682,445	5.34
1905	7,511,284	7.01
1906	7,406,946	6.74
1907	8,227,716	7.31
1908	10,179,726	8.73
1909	16,458,843	13.43
1910	17,208,597	12.77
1911	16,638,703	11.51

The average rate of earnings for the latest three years was 12.5 per cent. These rates

are figured on assets with no capital allowance for good will. In none of these years does the rate equal the average of the three companies for the year prior to the merger. "On the basis of the company's own statements, the rate of return on investment in the monopolistic lines is at least from two to three times as great as on some lines on which it meets active competition." *

In the meat packing industries profits have been popularly regarded as of monopoly proportions. But President Swift, in his annual report of 1911, asserted that competition was never keener. With the rising price of live stock and the curtailment of demand, meat production was actually conducted at no net return whatever. The only profits came from by-products. Disclaiming inordinate net earnings, his report showed 15.2 per cent net in 1908 on $50,000,000 invested, compared with 8.2 per cent on $75,000,000 in 1911. Packing profits, it was claimed, on share capital and surplus assets, uniformly ranged under 10 per cent. Business with an average output of $250,000,000, showed an average profit of 3 per cent on the value of products sold. This was equal to $1.40 on each head of cattle slaughtered, 1/4 of a cent a pound on dressed beef sold, and 1/8 of a cent on the live weight of the whole steer. Between the cost of materials

* *The U. S. Bureau of Corporations' Report,* p. 243.

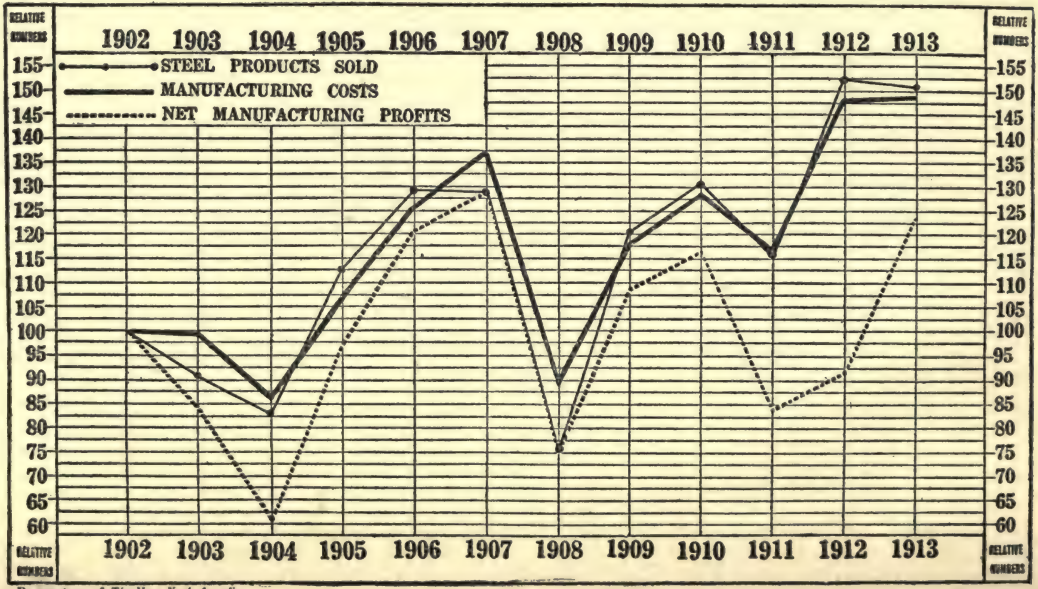
and the wholesale price of the product the packing industry adds only 12 per cent of value.

Large industries have no way of wholly escaping those elements of cost which are subject to the law of diminishing returns, nor the law of a progressive standard of living. Nor are they any less liable to the rising cost for investment capital. Yet all three of these have a direct bearing on the tendency to limit profits. Probably this is best shown by the operations of the United States Steel Corporation. For a period from 1902 to 1913, inclusive, manufacturing costs and volume of output are contrasted with the cause of net manufacturing profits. The diagram on page 138 is from the *New York Annalist*, February 2, 1914.

4. Industrial Efficiency of Combinations

How do the trusts stand on the score of economic efficiency? Certainly that was one of the arguments given for creating them — especially the industrial trusts. But, after all, have they, as a class, proved themselves to be the exponents of progress rather than of reaction? Were not the usual reasons for their coming into being found in two objects, one a negative purpose of finding some way to end bankrupting rivalry, and the other the insider's vision of vast profits arising from the security-distributing capacity of the stock market to the public? In other words, was not much of the trust-building based

The Business and the Profits of the Steel Corporation



By courtesy of *The New York Annalist*

on two unsound buttresses: (1) the fault of government in granting monopoly powers to them, followed by failure in simple police duty to prevent unfair practices; (2) the economic fallacy that centralization resulting in a large measure of price control, in elimination of intermediate profits and in reducing common elements of expense, is certain to widen the margin between costs and prices?

Although no statute or decision forbids largeness, there is an economic limit to combination in the nature of the industry itself. It has been pointed out that low-priced products of big bulk have a much more limited market than those having high value in small bulk. A foundry casting combination of country-wide extent, would find it difficult to compete with local concerns because of the extra cost of a selling force, overhead charges, and small selling territory, conditions which a low-priced product could not stand. On the other hand, a combination of machine industries might vastly gain in efficiency in which the best of devices and inventions in each subsidiary could be availed of, in which one shop organization could be brought to compete with others, and in which standardization of working conditions, safety measures, and social insurance could be applied to equal advantage.

In the anti-trust hearings of 1914, W. L. Saunders concluded on this aspect: "Generally

speaking, big business is vulnerable to the attacks of a small competitor. Where its product can be made on the duplicate part system or by machinery, it must reach out for large markets and be satisfied with a small percentage on its turn-over or it will fail. In order to get this large turn-over made, so necessary to its business, this big concern reached out for foreign markets. Here is where we have one of the strongest arguments for bigness in business." This applies especially to staple as distinguished from specialty manufacturing, in the latter of which the independent industry, with ample capital and good selling agencies, usually takes care of itself.

Time is the surest test of the worth of these combinations to the nation's economic life. The attitude of doubt as to their efficiency has become more general with the rise of the sciences of cost-accounting and of efficiency engineering. William C. Redfield, Secretary of Commerce, probably voiced the growing conviction of many, in his report of 1913, when he asserted:

"It is doubtful whether there does not come a point of maximum efficiency at minimum cost, beyond which an increase of product means an increase of cost per unit of that product. It is significant that some of the great trusts have ceased to exist; that others pay but moderate dividends, if any, on their securities, and that side by side with the most mighty and supposedly

the most efficient of them have grown up independent organizations quite as successful and perhaps earning even more on their capital than their powerful competitors."

The rather frequent changes in the headship of some of the largest trusts within the first ten years of their experience affords ample proof of the limitations under which big business has been conducted. Probably the testimony of Charles R. Flint of New York, whose direct contact with the forming of combinations entitles him to speak, may best be cited at this point:

"In my judgment, one of the dangers to the success of industrials is that parties, without being intellectual giants, are liable to attempt to centralize too much. Taking men as they are, I think that in businesses where high-class ability is required at many places, and where the business is not of such a character that its conduct can be reduced to rules and where its success depends on local ability and local judgment, and where the efficiency of the selling department is involved with long-time personal relations, such a business may be very dangerous to suddenly centralize. It is far wiser, I think, in a case of that kind, to sustain the independence and individuality of the separate concerns. In that way you have the advantage of the organizations that have created those concerns and by an adjustment of compensation based somewhat upon the earnings of those individual

concerns, you sustain the individual interest that is essential to success. At the same time your central organization has the advantages of comparative accounting and comparative administration, and is able to hold the separate concerns to a strict accountability, or, by appealing to their pride, to promote a healthy spirit of rivalry." *

5. Labor Relations With Large Industries

The industrial combinations come to their social estate through their relations with labor. Labor, under the trust régime, furnishes one of the most complicated phases of the subject. The main criticism of organized labor against such companies as the United States Steel Corporation, which in 1913 employed an average of 229,000 persons and paid $207,206,000 in wages, is due to the company's open-shop policy. In none of the steel corporation's 800 plants is labor unionized or recognized as such. In this case the annual average wage in the past ten years increased from $720 a year per man to $905, or 25 per cent. In the same period the average gross receipts per ton of product decreased over $7.50 for steel sold. The finished steel product per man in the manufacturing properties advanced from sixty to seventy-five tons, or 25 per cent, showing that the rate of

* *The United States Industrial Commission,* Vol. XIII, 84.

increase in average wages was equal to the rate of increase in manufactured product. Apparently, wage advances absorbed a large part of the increase in output. Presumably this increment in wages was reflected partly at least in improvement in productive processes by increase in labor efficiency.

One of the main motives in the combination of industries, for which there is ample testimony of official records, was the necessity of some more comprehensive form of organization to deal with the country-wide activities of organized labor. The progress of collective bargaining between 1890 and 1900 made it clear to many employers that the labor unions were in much better position to enforce their demands than the isolated employer was to meet or resist them. The trust movement simply restored a balance by enabling the combined organization to stand on an equality in negotiating contracts with the collective sellers of labor. For this outcome unionism is as much responsible as industrial combination.

Among the leaders in the formation of the trust organization there was no lack of sympapathy with labor as a class. Many of the employers had themselves developed from the ranks of the employee. And while the ex-employee when he becomes an employer sometimes turns out to be a tyrant and a brute in his attitude towards subordinates, it is more

often the case than not that the one who has risen carries with him a fellow-feeling which is of no mean service as a factor in bargaining on a wage scale.

But from outside of the ranks in financial circles the hope and belief were widely accepted that the trust movement had large emancipating possibilities in it for labor. The arrest of price-demoralizing competition was expected to prevent not only depression in prices but to put an end to unemployment. Much was hoped for through the development of foreign markets to keep the mills going at capacity or all the year round. Greater stability of prices was also one of the most fortunate developments to which labor could look forward under the self-control to which industry was gradually coming. But entirely apart from these considerations, such leaders in the financial world as the late J. Pierpont Morgan made one of the first things to be considered in the organization and development of these combinations, "some plan of bringing about better conditions of labor, some plan of cooperation and participation in the benefits and profits of the company, which was considered the only way practically of helping to solve the relations of capital and labor." *

To the question whether the trusts have made good in their relation with their employees, the

* Testimony of Robert Bacon, Dissolution Suit, U. S. Steel Corp., June 13, 1913.

representatives of organized labor are inclined to give the negative reply. John Williams, of the iron, steel, and tin workers, Pittsburgh, asserts that the smaller establishment, which the trust régime has absorbed or superseded, had many advantages which made for the better position of labor as a whole. He says:

"Before the organization of modern industrial combinations, the hours of labor were shorter, which in turn gave the workers some time for mind culture, some time to devote to the home and some time for social enjoyment. The physical requirements were not so great. Today, in the iron and steel industries, outside of those plants engaged in the manufacture of sheet and tin plates, the twelve-hour work-day is almost universal. This means practically fourteen hours per day, which gives the worker practically ten hours to devote to his family and public duties, with practically no time for recreation. The workingman loses his individuality as soon as he enters one of our modern industrial plants. He becomes but an atom in the great aggregate of this industrial system, and his only hope of regaining his social and economic individuality is by uniting with his fellow workmen in a movement through which he will be able to secure a joint bargain with his employer for the labor he has to sell." *

* *Annals of the American Academy of Political and Social Science,* Effects of Industrial Combinations on Labor Conditions, Vol. XLII, p. 9.

Probably the account on this score may best be put in the form of the following comparative summary of claims, pro and con, as to effects of combinations on labor:

Combinations claim they

1. Increase kinds of employment;
2. Improve labor conditions;
3. Promote steadier work;
4. Enlarge chances of promotion;
5. Make investing easier and safer;
6. Enhance value to community.

Labor claims combinations

1. Favor unskilled labor
2. Level down wages;
3. Restrict personal liberty;
4. Intensify competition;
5. Exalt machine over man;
6. Do not develop citizenship.

CHAPTER X

STATUS OF TRUSTS IN OTHER LANDS

DIFFERENT countries entertained entirely different views on such fundamental questions as the relation of business to government. Germany, for instance, favors trusts, not only by admitting combinations to complete legality, but even by promoting them and cooperating with them. England, on the other hand, under the civil or common law, allows them wide latitude with a minimum of regulation. In Canada and in the United States combinations are prohibited under both civil and criminal statutes. In Australia their validity is the more directly dependent upon the question whether a combination is primarily contributory to the public welfare. An examination of each country's position separately is necessary, however, to grasp the essential purport of their individual policies.

1. Cartels and Syndicates in Germany

Germany, where formerly extreme liberality in industrial policies prevailed, later came to be among the strictest in restraining industrial combinations. This status prevailed up to about the middle of the last century. At the present time, however, the widest freedom of contract

in private business activity goes side by side with strict laws relating to unfair competition and forbidden practices in the distributive branches of trade. To understand Germany's position one must keep in mind the historic tendency toward unification which ended in the formation of the Empire and the enlargement of the Zollverein. Her economists who stand highest in the imperial councils have always been exponents of the idea that the most economical unit of production is the nation with the least interference with freedom of movement of labor, capital, and commerce among its component states. Germany, furthermore, has recognized in the commercial, industrial, and engineering organizations effective instruments of self-control and correction in business practices to a much greater extent than is the case among English speaking peoples.

Probably the main reason why syndicates of industrial capitalists have found favor in Germany is because of their undisputed service in the equipment of home industry for participation in foreign commerce. Germany's national prosperity depends much on the capacity to keep her export and import trade on sound economic and technical grounds. Hence the trusts in that country are conducted with much more regard to export efficiency than to domestic markets. A second reason is found in the service of the syndicates in protecting smaller enter-

prises from being exterminated through extreme competition. This enables small industries to obtain raw materials or semi-manufactured products at something like a common scale of prices. As a result German manufacturing has developed a large number of smaller machine industries and handicraft occupations, which comprise a middle-class bulwark between large-scale manufacturing and agriculture.

Syndicates there are regarded finally as serving a useful economic purpose as a means of balancing the relations of production to distribution and therefore preventing any abnormal disproportion between demand and supply. Although there is criticism of excessive prices, practically all political parties recognize the legality and economic necessity of these syndicates or cartels. This is also true of various other interests, including finance, agriculture, mining, and labor.

Government's relation to some of the German cartels is that of positive and direct encouragement. The potash industry under the law of May 25, 1910, established a legal monopoly with government participation and regulation of prices. Desirous of preventing too rapid exploitation of a natural monopoly in potash in the German states, and having regard to the necessity of the commodity for intensive agriculture, the government's dominant share in promotion is self-evident as a matter of public

policy. On different ground but for the same general end, Russia promotes the beet sugar industry, as also does Italy. Recent steps to establish a petroleum monopoly by the state* are due partly to the government's desire to promote the good of German investments in that industry in the Balkan states and to oppose the control which the Standard Oil Company has acquired in that country.

2. Attitudes in England and Her Colonies

As to England's attitude, Dr. Francis Walker, an accepted authority on the question, says: "The policy of the law, therefore, is to encourage competition; but it does not prohibit combination. Furthermore, while agreements in unreasonable restraint of trade are invalid, the English courts give a wide scope to the freedom of contract, and they have never interfered with a consolidation of competing industrial enterprises into a single company, on this ground." †

British practice gives business the benefit of the doubt. Pools for the limitation of competition and maintenance of price lists among iron and steel makers are accepted as natural growths. Shipping rings, which by "conference" agreements completely control the rates of freight on over-sea trade, and combinations which have a

* *American Economic Review,* June 19, 1914.

† *Annals of the American Academy of Political and Social Science, July, 1912.*

large measure of control or monopoly in the supply of food stuffs, such as the meat trades — these have never seemed serious enough to the authorities to interfere with, or to attempt to restrict their operation.

In two of Great Britain's leading colonies, Australia and Canada, quite the opposite policy has found favor. The Canadian Acts of 1889 and 1904, as well as of 1906 and 1907, and also the Combines Investigation Act of 1910, form a series of repressive statutes intended to prevent "combinations from injurious exploitations of the public." Here the consumer receives the benefit of the doubt. Canadian policy coincides quite closely with that of the United States. One feature of the Australian law bearing on combinations has proved to be of special value in determining whether a combination is within or without the limits of legality. It makes guilt depend upon the question whether or not the public good is served by the agreements and acts of the consolidation. The Australian authorities are specially vigilant in their supervision of foreign combinations.

To summarize, the policy towards trusts in continental Europe is generally one of government toleration or even cooperation. This is largely due, no doubt, to dependence upon export trade for markets. In England the maximum of freedom is allowed in inter-corporate relations and dealings. In America, both in Canada and

in the United States, there is increasing strictness in the enforcement of law, in both civil and criminal prosecutions, against restraints of trade and attempts at monopoly.

3. Austria-Hungary's Steel Trust

On the continents of Europe combinations in primary production seem to be so entrenched as to put the many dependent manufacturers of specialities at a more than ordinary disadvantage. The Austro-Hungarian Steel Trust affords one of the most effective cases of market control. Its benefits to investors are proved by its dividends of thirty-five to forty per cent. So complete is the mastery of the market within the kingdom that many of the smaller plants have been closed. The policy of restricting the output to a little above the domestic demand is unhindered, reports the U. S. Consul at Fiume (June, 1913), and the combination seldom raises the vexing question of selling at lower prices abroad than at home. An import duty on pig iron of $2.72 a ton and of $34 on certain steel products guarantees a home market among iron and steel users.

This large class late in 1913 organized a protective association to resist the monopoly position of the steel trust. By means of three bureaus, a legal, a statistical, and a purchasing bureau, the counter-combination of employers' associations hopes to pool its contracts for iron and steel materials by entering into exclusive

agreement with a foreign company to furnish supplies for a term of five years on the basis of ruling German or English prices.

This steel trust's control is vested in bankers bent on maximum profits. Manufacturers pay higher prices than their competitors in Germany and England for iron and steel products consumed, even though Austria-Hungary produces such products at a lower cost than Germany. This handicaps the exporting manufacturers of such products as cutlery, hardware, and building materials in their effort to develop trade abroad. Banking control of steel production is regarded as a drawback. No more frequent complaint is heard in continental experience than this — that the various cartels and trusts exploit by monopoly prices that large body of manufacturers of specialties, which counts for so much in local economic prosperity. Not even the German combinations are exempt from the persistent claim that these argus-eyed syndicates see to it that the consumer of semi-manufactures makes no more than a moderate profit.

4. Prohibition or Regulation

How far foreign experience has brought out results that can help toward solving our own problems is not yet certain. With the Europeans the trust problem has been more closely tied up with the necessities of promoting export business than with us. The connecting link between British

policy and our own is found in the common law. From that point of departure the anti-trust policy has been developed in the United States to a position almost the exact opposite of the British attitude. We have no half-way program — it is either prohibition or regulation of monopoly. Many students of the subject will agree with Dr. E. Dana Durand "that it is necessary either to prohibit and destroy the trusts and pools, or to regulate their prices and profits." *

Those who take the former horn of the dilemma stand with the Federal policy of enforcing to its full intent the provisions and amendments of the Sherman Act. Those who take the other course regard the government's policy as mischievous and futile. The first word in their creed, as Henry L. Higginson affirms, is, "I believe the Sherman law is bad." To them the British policy of widest liberty within common law limits, or the German plan of governmental sanction is far more to be desired.

Reasoning from analogy, foreign experience has failed to take account of difference in national policies. What meets European needs may not be at all in harmony with our own economic institutions and our ideas of freedom. President Taft met this preference for foreign methods by saying:

* *Quarterly Journal of Economics*, May and August, 1914.

"There is a tendency among some foreign governments to encourage what they call trusts, to take part themselves in the management of the trusts, to fix prices and to depend upon governmental control to secure their reasonable conduct; but such a system with us is absolutely impossible, and it might as well be understood. The countries to which reference is made are veering toward state socialism. This, indeed, if competition is to disappear, is the logical escape from the evil of private monopolies, because if private companies are to be allowed to manage everything and fix prices, then there is every reason why the control thus exercised by them should be transferred from them to the government, and this is state socialism." *

5. Cooperation in Foreign Trade

In the effort to promote foreign trade a situation has arisen in which the anti-trust laws appear to stand in the way of the desired development of our external commerce. Foreign countries, as a rule, whose international trade is large, favor combination among exporters to meet competitive conditions. But the prohibitions of the Sherman law and its amendments, extending to foreign as well as to interstate trade, put our own exporters and importers at serious disadvantage, it is claimed.

At this date the law has not as yet been con-

* Speech at Waterloo, Iowa, September 28, 1911.

strued as to exports. In the Harvester Company decision, the lower court, after dissolving the combination, approved petition for modification of decree, excepting the company's foreign business from disintegration. But this was only for the time being and largely on account of the pending European wars, making it impossible to adjust business under prevailing conditions. In the importing branch of foreign trade the so-called Coffee Trust suit can not be taken as at all conclusive.

The Potash Selling Association of Germany is often cited as an instance of governmental cooperation with private interests to promote foreign commerce. In that case the imperial authorities went so far as to cancel contracts between German mine-owners and American fertilizer makers for a long-term supply of this commodity, and then put in its place a contract much less favorable to the American party. This conduct of an official character is cited to show to what lengths some governments go to support combination against the world market in international bargaining.

It is claimed that the small manufacturer is the main interest sacrificed by these anti-trust restrictions in foreign trade. "No small manufacturer can develop a market abroad for any product he makes, unless it is a patented article on which foreigners cannot compete, for he has not the capital or the organization to seek the

markets and fight for them single-handed," is a fair statement of this view.* But it overlooks the fact that many exporters of shoes, and similar kinds of goods have made world-wide successes of their business through recognized export agencies, or even independently.

The argument is by no means all on the side of the big business in exporting, even though the large combinations have without doubt done more than any other means to build up foreign trade. No other country in the world has more efficient exporting than is to be found in our own United States Steel Products Company, the International Harvester, or the Standard Oil. On the other hand, among individual companies the Singer Sewing Machine Co. stands out as a most successful exporter. But it has vast capital resources.

There can certainly not be one interpretation of the anti-trust acts for domestic and another for foreign trade. But it is entirely reasonable to recognize certain kinds and degrees of cooperation in the promotion of foreign commerce as making neither for restraint of trade or tending to monopoly. In this middle domain it is believed by some that there are vast possibilities for judicial and administrative adjustment without amending the law itself.

* *National Foreign Trade Convention,* 1914, p. 168.

CHAPTER XI

COMBINATIONS AND THE COMMUNITY

AS industrial combinations are now organized, the application of labor and capital to the utilization of natural resources results in turning out a vast supply of commodities for the market. This supply passes through the market to the consumer, and the prices which he pays are the measure of the gross value to be distributed among all who have participated in the productive process. To this so-called income fund made up of all that the consuming world pays for commodity needs in the course of a year, there are several claimants. The validity of their claims rests on their proportionate share of necessary participation in advancing the goods from their natural state to the point at which property right passes over into the consumer's hands by the payment of a price for consumption goods.

1. Pioneering Risks in Modern Enterprise

Now, there are four main contributors to this cumulative value of the products of industry. They are the owners of natural resources, the contributors of labor, the lenders of capital. A fourth participant is the organizer of these three

other elements of production into a systematic process. Under the progressive economic order of today the role of this participant is the one whose status is most in dispute. Yet it is he more than any one else who is ever pushing out the frontiers of industry and trade. He is both entrepreneur and pioneer. Hence it has seemed to many that the responsible adventurer might rightly be entitled to pioneering profits. Indeed, the economics of pioneering risks in modern business lends strong support to the view that, without this industrial and commercial leadership in the command and the management of capital, material progress would be much slower. Are not he and his capitalist associates, regarded as a group of pioneer risk-takers, really entitled to the net returns of the national income, after the other claims, including taxes, are fairly and fully met?

There is much to be said in the affirmative. Modern capital is always seeking through the laboratory the means for creating new sources of economic goods. In a progressive society, based on freedom and private property, the great game of the pursuit of business for profit needs the pioneering type of talent. The speculative risk-bearers are the participants who put millions of surplus capital at the disposal of specialists. They project into the future by means of long-term contracts vast plans of production. They organize raw materials, labor power and other-

wise idle capital, under a system of continuous and profitable enterprise. They are the ones who in a large measure personify modernity with its highly organized armies of peaceful industry, advancing by the all-conquering guidance of science, and all marshalled under a risk-assuming service responsive to the spirit of democracy.

2. Bargaining Power of Big Business

There are two widely different views on the question whether combination makes for a more equitable outcome to labor and to the consumer. Something akin to Marxian hopelessness is evident in A. J. Hobson's analysis. He holds that "the era of competition in the business world is giving place more and more to an era of combination. While capital and labor are both combining, the combination of capital is advancing faster and is more effective. Though primarily designed more for the control of output and of selling prices than for bargaining with labor, it has been inevitable that trusts, and other combines or federations of businesses, should pay increasing attention to the art of buying labor economically. This new organization of capital thus tends to militate against the rise of wages in two ways: by restraining competition in the markets so as to raise the price of commodities which wages buy, and by restraining money wages from rising so as to compensate the workers adequately for the rise of prices.

Though there is here no closely thought-out and conscious policy, the operation of organized modern capitalism is towards a modified 'iron law of wages,' keeping real remuneration of labor down to a level of minimum efficiency demanded for the sorts of skilled or unskilled labor which the several industries require." *

In line with this is the view of John A. Fitch of *The Survey*, New York, claiming that the attitude of the Steel Trust against resort to collective bargaining of any kind, in dealing with its 260,000 employees, tends to outweigh any advantage gained by pensions, profit-sharing, or bettered labor conditions.

It is part of the faith in the existing economic order to hold that, in spite of criticism, the natural development of society is steadily toward equality in essentials. "There are inherent and unseen forces that work everlastingly to this end," is the way George E. Roberts sees it. The leaders and inside organizers may seem to apportion to themselves more than is really due, and less than is equitable to their employees in wages. Yet, "the remainder goes into the investment fund and creates a new demand for wages and a new supply of products, thus strengthening the employee's position both as a wage-earner and as a consumer." †

* *Gold, Prices, and Wages*, pp. 127-129.

† *The Investment Fund*, pp. 24-25. Farm Mortgage Bankers' Assn., Chicago, Oct. 10, 1914.

But over against this must be set the labor view of the national dividend. "They affirm," as Dr. Peter Roberts expresses it, "that the men at the head of industrial combinations take the fat of the fry, while a bare subsistence is given to the vast majority of laborers." It is difficult to dislodge this conviction, so long as combinations fail to realize that the test of their service is in promotion of sound conditions of public welfare.

3. Adjustment to Public Welfare

What is still by all means the largest of the trust's problems is its harmonious adjustment to the social, political, and moral convictions of the community. Here is a new instrument of great power in the business world with direct relations to the state and nation and to the homes and associations of the people. A form of private enterprise has become a mighty institution. To what extent does its management undertake to prevent discordant relations and to promote harmonious attitudes with its environment? Speaking at the Chicago Conference on Trusts, Prof. Henry C. Adams concluded his address by saying:

"This is indeed a great question. It moves in many directions and embraces many considerations. It is at bottom a question of social theories and social ideas. Its vastness will be appreciated when it is observed that its judicious

treatment will result in securing for the people the advantages of the industrial development of the past century, while to ignore it or to fail in its solution would result in prostituting the wealth created by an hundred years of phenomenal development to the service of a class." *

That trust management at the start failed to grasp this opportunity will generally be admitted by most students of the subject. On the other hand, while it failed to adjust itself sufficiently to legal and moral standards in its political and social environment, the more public spirited have to their credit a splendid record of welfare work—instances shown in the United States Steel Corporation, The International Harvester Company, the National Cash Register Company, and many others. In dealings with their own people these combinations set higher sanitary standards than their predecessors, or their independent competitors. They have grasped the business wisdom of better conditions of living, better social opportunities and privileges, and larger leisure as a means of enhancing industrial efficiency. But, in their external relations, officers, directors, and stockholders have yet to appreciate their responsibilities as citizens in adjusting these splendid agencies of wealth production and distribution so as to accord with the political order and economic freedom under which they have attained their position of power.

* *Report of National Civic Federation,* 1899.

4. Public Commissions as Business Umpires

If it be true that combinations and natural law follow the same main line of progressive betterment for the wage-earner, how does it work out for the investor and the consumer?

When the wage relation breaks down, strikes ensue and the community is penalized if not terrorized by boycotts primary and secondary. Public investigations are invoked, and the political powers effect a surrender or compromise. That looks like a piece of bad bargaining on the part of capitalism. But is it not simply an acquiescence to the principle that in a case of doubt public powers wisely cast their deciding vote on the side of the less favored party in controversy? This very tendency of public opinion, acting through government, to function as umpire where organization meets counter-organization is a new thing in the bargaining process, and it generally works out to the cost of the consumer and the investor.

There is no better instance of this than the Anthracite Coal Strike award of 1904, as a case of charging up against the investor and the consumer the enhanced costs resulting from the arbitration. Probably the only way of escape from this loss of control of the bargaining machinery is for the trust to anticipate the demands of labor for betterment in conditions and wages.

The best managed combinations have the least possible controversy with their employes.

How near this equilibrium comes to being a combination of employer and employe against the consumer is a fair question. If the facts warrant that conclusion, the consuming public is apt to demand publicity of profits as a means of self-protection — a case in which the bargaining advantage of business management tends to become trusteed in some form of administrative commission. About the time of the Chicago Convention on Trusts (1899) publicity was the first commandment of the anti-trust decalogue. Now it is seldom mentioned as a remedy, and nowhere as a cure-all. The knowledge that was supposed to be wanted by the investor and consumer has not proved to be corrective, except as it found expression in the self-interest of investors or in the regulative control of a governmental commission with powers to insure fair competition among private corporations and to make rates for public utility.

Of these two lines of remedial policy in the regulation of the American trusts, the older is the publicity of corporate accounts. The other, the later, and now the vogue, is supervision by commission. Publicity of accounting has much more to be said for it than has yet been given to its credit. It has worked fairly well in the control of insurance companies both in Great Britain and America. It is far less complex as

a regulative program, and its extension of supervisory authority stops short of impairing private responsibility for corporate results. It involves no radical departure in policy; and, if properly applied, it may afford adequate protection to the public. "The publicity required," declares an eminent insurance specialist, "is of the simple, straightforward, intelligent type, covering essential matters, so that the public may judge." *

In both of these lines of development the bargaining power has already passed in its final form to the political powers. This extension of public powers is differently interpreted. To some it means incapacity in self-governing industry. But the more scientific view is the truer — that it is only a division of labor in which government, whose business it is to decide controversies, extends its services over into the field of free enterprise. This is not because its decisions are more nearly ideally just; but, as the cricket umpire explained to the novice, that some sort of a decision may be rendered promptly, "so that the game may go on." This is why government by commission has come to play so large a rôle in the complex conditions of modern trade and industry. Where one sort of umpiring proves unequal to its task it is set aside for another. Commissions will be needed until the

* Miles M. Dawson, address, published in the *Annals of the American Academy of Political and Social Science*, March 29, 1912.

administrative arm of government, as contrasted with the other three divisions, comes to stand on an equality with them. Then we may have the four corner stones of a complete system of governmental control in the executive, the judiciary, the legislative, and the administrative.

5. The Old Game Under New Rules

The solution of the American trust problem cannot be found in governmental repression within abnormally restricted limits of economic freedom. It lies rather (1) in the discovery of the maximum legal limits within which free enterprise may safely be assured to the employment of capital and labor in the service of the market; (2) in the observance of reasonable "rules of the game" as defined in jurally sound codes of competitive relationships. On these bases economic law will settle all questions of forms and size of the business corporation.

This solution lays down two general principles, free enterprise and fair competition. With the former there must be no legalized monopoly apart from public control. With the latter we keep the *via media* of economic experience. Together they comprise the best in American and European commercial experience, and are in line with sound economic development. As in politics, so too in economics — the remedy for the abuses of freedom is more freedom, not always of the same kind but always of a more responsi-

ble kind. Here is the union of what George W. Alger calls *The Old Law and the New Order.**

To summarize, the requirements of a trust solution must at least —

(1) Insure the maintenance of a superior type of economic responsibility in trust management;

(2) Sufficiently safeguard the interests of the community — the creator of corporations and the consumer of its products;

(3) Define the limits within which trade and industry in the exercise of their legal privileges and economic practices shall have regard to the principles of public welfare;

(4) Recognize within the scope of their relations the necessity of the state as umpire to define and enforce the standards of fair and unfair competition.

Recent amendments to the Sherman Act embody this code of fair dealing among rivals big and little, with a view to strengthening competitive conditions and abolishing the monopolistic abuses in enterprises devoted wholly to private profit.

The principle is recognized here that prevention of the abuses of competition is necessary to forestall the tendency toward monopoly. As destructive competition killed off rivals, leaving the field to competitors with the best staying powers, so interposition of positive checks be-

* *The Old Law and the New Order*, G. W. Alger. Houghton Mifflin Company, Cambridge. Ch. VIII.

comes the duty of a new administrative body. Such an agency is the logical outcome of a policy to restore sound competitive conditions to the field of commerce. To make effective this method of keeping competitive business within legal limits the Federal Trade Commission is authorized (1) to investigate interstate corporations, excepting banks and common carriers; (2) to make recommendations for the readjustment of the business of any corporation alleged to be violating the anti-trust acts; (3) to act thus as a master in chancery for the purpose of ascertaining and reporting an appropriate form of decree in equity suits for relief; finally, (4) the Commission is authorized to extend its investigation into trade conditions in and with foreign countries where trade practices may affect the foreign trade of the United States.

Thus the Federal Government in its administrative capacity enters upon the policy of the guardianship of the conditions of competition which make for freedom and fairness. By doing this it not only cuts out the worst curse of national commerce but it also sets up a tribunal before which business may seek to learn the salutary paths of constructive competition.

6. New Wine in New Bottles

Nor is the trust solution mainly a matter of schoolmaster's rules to insure good behavior. It is rather a question of the spirit of right

management and just relations. A new wine is tingling in the veins of modern humanity, and it cannot but mean new bottles — new mentalities and new attitudes, as well as a new order under old legal forms. Neither combination nor competition need be regarded as an exhausted asset of industrial society. If by combination we secure the highest economy, efficiency, and freedom in specific fields of public service, then let us promote it within recognized standards of fairness in costs and services. On the other hand, so long as competition tends, in the opinion of society, not only to utilize the aggregate product of the community to advantage, but also tends, on the whole, to make the price of different articles proportionate to the expenses of producing them (Hadley), then let us proceed to emancipate that principle of private enterprise as part of the program of national policy.

Competition to serve its purpose and natural functions must be normalized. Each age must decide what these limits are. Faith in its complement — combination — has often been misplaced because of the general misconception of what true competition is. So much of what has passed as such lies outside of the truly economic, ethical, or legal criteria of the genuine. Hence, it has come to be regarded as immoral and destructive in its purposes, and its essential characteristic of service has been obscured. But, says Associate Justice Oliver Wendell Holmes:

"True competition looks to the invention and introduction of more and more comprehensive ideas. It results in the upbuilding of emulation and cooperation and always, taking one period with another, to the furtherance of the general interest. The ordinary notion of competition takes account of numbers only. I regard the customary thinking here as a sort of atheism. Competition, rightly understood, is rivalry in the service of one's fellows. Men can not compete save with reference to a common end." *

As things stand now "Big Business" need not necessarily go. But it is on trial. If it is to stay, on what condition may it persist? On condition that corporate organization develop a type of service in commercial, financial, and industrial as well as in public utility fields, capable of appreciating and respecting the right of the public, both as consumer and investor, to have commodities and services supplied at reasonable prices and rates. The older right of exploitation must defer to the newer duty of service on fair terms. More and more it is coming to be recognized that the progress of society in wealth and welfare is due not alone nor even chiefly to any few men nor any class of interests. It is the joint resultant of the cooperation of all economic groups of the community working through division of labor applied in special fields.

For this type of economic service some cor-

* Private Letter to Franklin Ford, New York.

porations may have to be disintegrated. But, given economic freedom, the main thing is to arrive at a resultant in which each working group will recognize some approach to justice in its share in the national income. Whatever in public policy and private effort makes for that end will work toward a right solution. But the solution is not wholly a question of the distribution of the national dividend. It is at the same time a question also of the kind of public attitude which such division of wealth engenders. For that reason modern peoples have no more fundamental problem before them than that of balancing their material prosperity with the prevailing demands of social justice. In the realm of practical government there are few tasks more persistent, especially among peoples whose national spirit is of the progressive type. It is that type which profits by comparing its conditions of well-being at any one time with what they were in the past, and with what these conditions are in other communities and nations today. The spirit of comparative research has made the prevailing sense of justice a progressive concept of the popular consciousness. This attitude finds expression in discussion, in investigation, in legislation, and in administration. And, because of this, the problem of adjusting outward prosperity with inward contentment becomes the really great work of modern statesmanship.

Finally, this is the problem which the trusts

have brought to contemporary Democracy. In working it out we are still in the stage of investigating their merits and shortcomings. The disintegration of the most dominant ones probably has contributed more to the discovery of a practicable method of dealing with the problem of monopoly than to any other result. These dissolutions were carried out under writ of injunction, providing for prompt correction of what had been adjudged as a wrong, under peril of receivership control. But they have also been the occasion of bridging the gulf between progressive competition and reactionary monopoly. Guided by the principles of equity, the courts have found in the morals of business practice the means of opening the highway of corporate progress. Any ultimate solution of the trust question must recognize this result as the open gate to the future of industry and trade in America. It means that our courts have found a method of insuring the potentiality of competition in private enterprise without destroying the corporation disposed to be amenable to the settled convictions of business morality. And they do this by taking away the potentiality of the trusts to interfere unduly with the freedom of economic opportunity.

But the elimination of monopoly from the private combination is only half of the problem. The conservation of competition within fair limits is equally vital. For that end, among

others, the Federal Trade Commission was created, but not without hedging the injunctive powers of the courts about with certain limitations which may or may not impair the effectiveness of control of unfair practices. Thus eliminating what is unfair in corporate competition and what is intolerable in private monopoly, or unreasonable in trade restraints, we enter upon a new era in the possibilities of business.

REFERENCES

CHAPTER I

ATKINSON, EDWARD. *Facts and Figures: The Basis of Economic Science.*

MOODY, JOHN. *The Truth About the Trusts.*

EDDY, ARTHUR J. *The New Competition.*

Conference on Trusts, Chicago, Sept. 13-16, 1899.

HICKS, FREDK. C. *Competitive and Monopoly Price.*

HOBSON, J. A. *Gold, Prices, and Wages.*

VAN HISE, CHARLES R. *Concentration and Control: A Solution of the Trust Problem in the United States.*

Annals of the American Academy of Political and Social Science.

COLLIER, W. M. *The Trusts: What Can We Do with Them? What Can They Do for Us?*

The United States vs. The E. C. Knight Co., 156 U. S. 1.

CLARK, J. B. *The Problem of Monopoly.*

CHAPTER II

Federal Anti-Trust Decisions, Vol. II. "Knight Case."

Steel Investigation, U. S. House of Representatives, Stanley Committee, 62nd Cong., 2nd Sess., 1911-1912.

WYMAN, BRUCE. *Control of the Market: A Legal Solution of the Trust Problem.*

WILLOUGHBY, W. F. *The Yale Review,* May, 1898.

CHAPTER III

Annals, July, 1912.

CLARK, J. B. *The Problem of Monopoly.*

Federal Trade Commission Act, 1914.
Report of the Attorney General of the United States, 1912.
Report of Interstate Commerce Commission on Pipe Line Monopoly.
WYMAN, BRUCE. *Control of the Market.* "Types of Unfair Competition."
NIMS, H. D. *The Law of Unfair Business Competition.*

CHAPTER IV

American Electric Railway Association's Report on Public Utilities.
ELY, RICHARD T. *Monopolies and Trusts.*
HAVEMEYER, H. O. *Tariff and Industrial Combinations.* Ind. Com.
HADLEY, ARTHUR T. *Economics.* "Private Property and Public Welfare."
HOLT, BYRON W. *United States Industrial Commission.*
United States Industrial Commission, Vol. XIII.
Federal Anti-Trust Decisions. "National Harrow Case."
HOMER, FRANCIS T. *The Public, the Investor, and the Holding Company.* 1914.
UNTERMEYER, SAMUEL. *Munsey's Magazine.* "Holding Companies," August, 1912.
HICKS, F. C. *Competitive and Monopoly Price.*

CHAPTER V

The New York Times, Nov. 7, 1911.
American Economic Review, Sept., 1913. Stevens on Pools.
R. H. Macy & Co., vs. American Publishers' Association, "Book Trust Case."

INGERSOLL, WM. H. *Remedies Needed.* American Fair Trade League.

BREWER, JUSTICE DAVID A. *Northern Securities Case,* "Rule of Reason."

DAWES, CHARLES G. *New York Times.* "On the Sherman Act." Nov. 7, 1911.

Federal Anti-Trust Decisions, Vol. IV: "Miles Medical Co."

The U. S. Industrial Commission, Vol. XIII. "Trusts and Industrial Combinations."

The International Harvester Company Decision, 1914.

STEVENS, WILLIAM S. *Industrial Combinations and Trusts,* Chap. IX.

TAFT, WM. H. *N. Y. Sunday Times.* "Review of Trust Decisions," 1914.

WHITE, CHIEF JUSTICE. *Standard Oil Decision.* "Reasonable Restraints."

CHAPTER VI

Amendments to Anti-Trust Act, October 15, 1914.

HUGHES, CHARLES E. *Addresses.* "Addyston Case."

International Harvester Company, Report on, March 3, 1913.

Federal Trade Commission, Act of, Sept. 26, 1914, "Labor."

LOW, SETH. *National Civic Federation on Sherman Act.*

Senate Committee on Interstate Commerce, Hearings on Sugar Trust, 1911-12.

The Attorney General's Reports, 1910 and 1913.

Powder Trust Decision, June 20, 1911.

Pacific Coast Plumbing Supply Association.

Sherman Anti-Trust Act of July 2, 1890.

U. S. Bureau of Corporations, Reports on Beef Industry, Tobacco, Petroleum, etc.

CHAPTER VII

MEAD, EDWARD S. *Corporation Finance,* Chaps. II-III. *Trust Finance,* Chaps. XVI-XVII.

CONANT, LUTHER. Commissioner, Bureau of Corporations, Washington. *Reports.*

SAKOLSKI, A. M. *Journal of Accountancy,* July, 1911, Vol. 12, No. 3.

GREENE, THOMAS L. *Corporation Finance.* "Stock Watering."

FAY, CHARLES N. *Big Business and Government.*

CLEVELAND, F. A. *Railroad Finance. Railroad Promotion.*

The Independent, Oct. 19, 1911. "U. S. Steel Corp."

DAVIS, P. V. *Pujo Committee's Report,* H. R. 62nd Cong., 3rd Sess., Report 1599, pp. 159-161, "Concentration of Control of Money and Credit."

ERICKSON, HALFORD. *Valuation of Public Utilities* (Risks).

MORGAN, J. P. & Co., *Statement, "Money Trust" Investigation.*

CHAPTER VIII

Bureau of Labor, Wholesale Prices, Washington, March, 1913.

HOBSON, J. A. *Gold, Prices, and Wages.*

The Ironmonger. "Price Maintenance." Birmingham, Eng.

Unfair Retail Practices. American Fair Trade League.

HOLMES, JUSTICE OLIVER W. *Dr. Miles Medical Co. Decision,* 220 U. S. 373.

BRANDEIS, LOUIS D. *Harper's Weekly.* "Cut-throat Prices." Nov. 15, 1913.

NEYSTROM, PAUL H. *On Competitive Unfairness of Quantity Price.*

Anti-Trust Hearings, House Committee on the Judiciary, 1912.

United States Industrial Commission, Review of Evidence, Vol. XIII, p. xxviii.

JENKS, JEREMIAH W. *The Trust Problem.*

CHAPTER IX

HOBSON, J. A. *Gold, Prices, and Wages.*

HANEY, LEWIS H. *Business Organization and Combination.*

Report on the International Harvester Co. Conant.

The Annalist. "U. S. Steel Corporation." New York, February 2, 1914.

SAUNDERS, W. L. *Trust Legislation Hearings* (1914).

FLINT, CHARLES R. *On Limits of Organization in Trusts.* U. S. Ind. Com.

REDFIELD, WILLIAM C. *Report as Secretary of Commerce,* 1913.

WILLIAMS, JOHN. *Industrial Combinations and Labor Conditions,* Philadelphia, July, 1912.

The U. S. Bureau of Corporations' Report.

The U. S. Industrial Commission, Vol. XIII.

CHAPTER X

DURAND, E. DANA. *Quarterly Journal of Economics,* May and August, 1914.

WALKER, FRANCIS. *Annals,* July, 1912.

American Economic Review, June 19, 1914.

Canadian Acts of 1889, 1904, 1906, 1907, 1910.

TAFT, WM. H. *Address on Sherman Act,* Waterloo, Iowa, Sept. 28, 1911.

SHANK, SAMUEL H., Consul, Austria-Hungary. *Steel Trust.*

CHAPTER XI

ADAMS, HENRY C. *Conference on Trusts.* Chicago, Sept. 13-16, 1899.

HOBSON, J. A. *Gold, Prices, and Wages.*

HOLMES, JUSTICE O. W. *On True Competition.*

FITCH, JOHN A. *Annals.* "The U. S. Steel Corporation and Labor," July, 1912.

ROBERTS, GEORGE E. *The Investment Fund.* Pamphlet.

ALGER, GEO. W. *The Old Law and the New Order.*

INDEX

Adams, H. C., on trusts and public welfare, 162, 163
Advertising, fraudulent, 124, 125
Agreements, cooperative trade, 66-68; purpose and forms of, 68-78; why pooling failed, 71-74; factors', 74, 75; and price-fixing, 76
Agricultural implement works and consolidation, 16
Alger, G. W., on solution of Trust problem, 168
Aluminum Company, in restraint of trade, 41, 42
Amalgamation, trade agreements in England, 67
American Bicycle Company, promotion of, 101, 102
American Electric Railway Association, and public utilities, 59
American Fair Trade League, 78
American Sugar Refining Company, investigation, 87
American Tobacco Company, abandons exclusive control, 38; unjust practices, 40; prosecution, 86; trust dissolution, 91, 92
American Wall Paper Company, type of agreement, 69
Anthracite coal strike award, 164, 165
Anti-Trust Act, its scope, 28, 29; prosecutions under, 88-91; results of prosecutions, 91-94; recent amendments, 94-96
Federal policy towards trusts, 82-96; cause of legislation, 84, 85; investigation of conditions, 85-88
Atkinson, Edward, on competition, I, 125
Australia, and combinations, 151
Austria-Hungary's steel Trust, 152, 153

Banking credit and Trust control, 108-111
Banks, interlocking directorates, when forbidden, 95
Bath Tub decision, 77
Beef industry, prosecution, 86
"Big Business," 2; is it unfair? 37-39; price-making forces in, 125-128; bargaining power of, 160-162; on trial, 171

Big Business and Government, 107, 117
Book Trust cases, 76, 77
Bowles, F. T., and U. S. Shipbuilding Company, 21
Brandeis, Louis D., trust formula, 46; on price-cutting, 123
Brewer, D. A., on Northern Securities Case, 80
Brooks, J. G., on capitalism, 134
Bureau of Corporations, incorporated into Federal Trade Commission, 86; government enquiry, 87, 88
Business, equilibrium of, 22-25
Business Organization and Combination, 131

Canadian Acts and combinations, 151
Capital, better command of cause of Trusts, 11, 12; share in value of products of industry, 158-160; and public settlement of labor disputes, 164-167; and command of credit, 97-111; supply of working, 98-100; interest service of, 131-134
Capitalization, and promoter's profits, 100-103; methods, 102, 103; risk elements in Trust, 103-106; use and abuse of over-, 106-108
Carnegie Company, 8, 9
Cartel, agreements in Germany, 67, 147-150
Central Association of Refineries, basis of Standard Oil, 19
Central West Publishing Company, in restraint of trade, 42, 44
Chicago Convention, on Trusts and Trust publicity, 165
Clark, J. B., on our industrial system, 4; on rebates on freight, 11
Collier, W. M., and groups of Trusts, 7, 8; and name for competition, 10
Combination, one of the colossal forces, 3; to it through competition, 6-8; by rate control, 17-20; in restraint of trade prohibited, 28; and unfair competition, 36, 37; and potential competition, 51; and patents, 54, 55; corporate, brought under control, 97; great industrial, and prices, 112-128; effect of on prices, 119, 120; and smaller industries, 127; problem of management, 129-146; industrial efficiency of, 137-142; effects on labor, 146; and the community, 158-174; and profits of business, 162; in labor controversies, 164-167; asset of industrial society, 170

Commerce Act of 1887, forbids pooling, 25; its scope, 26, 27
Commission, government by, 164-167
Commodities, relative prices under Trust regime, 113-114
Competition, law of ultimate appeal, 1; one of the colossal business forces, 3; the case against it, 4-6; through it to combination, 6-8; one of causes of Trusts, 10; fair and unfair, 30-45; unfair corporate, 32-34; types of unfair, 34, 35; legal limits of fair, 39-41; court control of unfair, 41-45; lawlessness, 42, 43; regulation of, 46-48; and monopoly, 48, 49; lesson by combination, 55; and public utilities, 56, 57; between states cause of holding company, 62; application of term, 78; trend of legislation regarding it, 97; prevention of abuses, 168, 169; asset of industrial society, 170; must be normalized, 170; conservation of, 173, 174
Competitive and Monopoly Price, 49
Competitive Unfairness of Quantity Price, On, 124
Conant, Luther, consolidation figures, 99
Concentration, of industries, 15-17
Concentration and Control, 6
Consolidation, for price control, 14-17
Consumer, and wage dispute settlements, 164, 165
Contracts, re-sale in mercantile field, 74-78; cancelled by Supreme Court, 76, 77; in restraint of trade, 79; exclusive, forbidden, 95
Control of the Market, 39, 40
Cooperation, in modern business, 4; necessity for, a cause of Trusts, 12; Trust management a cooperative service, 130, 131; in foreign trade, 155-157
Cooperative trade agreements, 66-68
Cooperative competition, unfair, 32-34; coercion by, 34-37; in public utilities, 56-58; elimination of unfair, 174
Corporate service, domain, 46; problem of public utilities, 56-58; holding company management, 63, 64
Corporations, combination of, forms Trust, 2; and holding companies, 60-65; as stockholder, 61; Bureau of Enquiry, 87, 88; and retailer, 121
Corporation Finance, 102
Credit, better, and cause of Trusts, 11, 12
Credit, command of, 97-111; banking and trust control, 108-111

Dawes, C. G., and trade agreements, 67
Dick Mimeograph Case, 54, 75
Dodd, S. C. T., defines Trusts, 2, 3
Durand, E. D., on treatment of Trusts, 154

Economic peril, and Trust policies, 14, 37
Eddy, A. J., his *The New Competition*, 5, 6
Electrical industries, investment in United States, 58
Ely, R. T., definition of monopoly, 49, 50
England, and Trusts, 147, 150-152
Engrossing, offense to trade, 79, 80
Erickson, Halford, on valuation of utilities, 105, 106
Europe, policy toward Trusts, 151

Factors' agreements, 74, 75
Faith, dynamic in industrial growth, 99
Federal acts in regard to Trusts, 86-96
Federal anti-Trust policy, 78, 82-96
Federal Government, as guardian, 169
Federal Trade Commission, Act, 82; and investigations, 86, 87; purpose, 95; feature of the Act, 44; powers, 169, 174
Fitch, J. A., on collective bargaining with labor, 161
Flint, C. R., on success of industrials, 141, 142
Foote, A. R., on modern industrial competition, 6, 7
Forestalling, offense to trade, 79, 80

Gary, E. H., and steel investigation, 23, 24
"Gentlemen's Agreement," 99, 72
Germany, combination and trade, 3, 4; agreements in restraint of trade, 67; and Trusts, 147-150; Potash Trust, 156
Globe Naval Stores, agreement, 70
Gold, Prices, and Wages, 2, 116, 161.
Great Britain, competitive freedom in trade, 3

Hadley, A. T., and monopoly prices, 51
Haney, L. H., on industrial service, 130, 131
Hatch, A. F., on causes of Trusts, 11
Havemeyer, H. O., and cause of Trusts, 53, 54
Hicks, F. C., and price-making groups, 49
Higginson, H. L., on critics of Sherman Act, 154

Hobson, J. A., defines Trusts, 2; on meaning of growth of Trusts, 116; on bargaining for labor, 160; 161
Holding companies, their rise, 13; supersede community of interest, 25; refinement of corporate compounding, 33; right and wrong in, 60-65; refuge for Trusts, 62, 63; control of public utilities, 63, 64; supplant pools, 72
Holmes, Justice O. W., and railroad rate discrimination, 11; and shoe merger, 55; and price-cutting, 122; on competition, 170, 171
Holt, B. W., and cause of Trusts, 53, 54
Homer, F. T., on public utilities, 57, 63, 64
Hughes, C. E., and Anti-Trust Act, 85

Individual business vs. corporation, 120, 121
Industrial Combinations and Trusts, 70
Industries, consolidation of, 15-17; distribution of, and prices, 24, 25; basis of industrial liberty, 48; electrical in U. S., 58; five large, prosecuted, 86; faith in American, 99; profits of Trusts, 134-137; efficiency of combinations, 137-142; large, and labor, 142-146; contributors to the cumulative value of products of, 158-160
Ingersoll, W. H., on large-company business, 121
Interest, service of capital, 131-134
International Harvester Company, case, 79, 86; investigation, 88; larger profits, 135; and foreign business, 156, 157; and welfare work, 163
Interstate Commerce Act, 82; and pooling agreements, 71, 72; and grant of powers, 95, 96
Investment Fund, The, 161
Investment, supply of, 98-100; in trust securities, 133
Iron and steel mills, consolidation, 16

Jenks, J. W., on prices, 119
Joint Traffic Association, Trust case, 25, 28

Knight, E. C. Company vs. the U. S., 13, 27

Labor, union, 5; union, causes of Trusts, 12; associations exempt from Anti-Trust Act, 96; organized, relations with large industries, 142-146; shares in value of products of industry, 158; bargaining for, 160, 161; and national dividend, 162; and public arbitration, 164-167
Law of Unfair Business Competition, 32

Mail-order house and retail merchant, 121
McReynolds, Atty. Gen'l., on Trust dissolution, 91
Mead, E. S., on the promoter, 98, 99
Merchandizing, unfair, 120-122
Michigan Lumber Dealers' Association, pool, 70, 71
Miles Medical Company, decision, 75
Mimeograph, Dick, Case, 54, 75
Misrepresentation, and prices, 122-125
Money, control, Pujo investigation, 87
Monopoly, advantage to by rebates, 11; private, 30, 31; value of monopolies, 46; and public sense of right, 48; law and limits of, 48-51; defined, 49, 50; power over market, 50; price-making power, 51; elements, sources of, 52-56; and patents, 54, 55; and public utilities, 57, 58; holding company power, 63; application of the term, 78; offensive practices, 79, 80; recent legislation against, 94, 95; trend of legislation regarding, 97; solution of the problem, 171-174
Monopolies and Trusts, 49, 50
Morgan, J. P., on money and credit, 110; and labor, 144
Municipal ownership of public utilities, 57, 58

National Asphalt Company, speculative value, 52
National Cash Register Company, and welfare work, 163
National Cordage Company, pool, 69, 70; and Anti-Trust Act, 84
National Harrow Case, and patents, 55
National Tube Company, and Steel Trust, 9
National Wall Paper Company, formed, 73
Natural resources, owners of, share in value of products of industry, 158
New Competition, The, 5, 6
New Haven railway, Anti-Trust Case, 29
Neystrom, P. H., on price discrimination, 124
Nims, H. D., on unfair competition, 31, 32
Northern Securities Company, Anti-Trust Case, 25, 28; type of compounded corporation, 33; Judge Brewer's statement, 80

Old Law and New Order, The, and solution of Trust problem, 168
Organizer, of means of production, 158, 159

Pacific Coast Plumbing Supply Association, in restraint of trade, 42; decree regarding, 94
Packing industries, 136, 137
Panic of 1873, 15
Patented articles, price-fixing decisions, 75, 76
Patents, value as special privilege to combinations, 54, 55
Pipe lines, help to Standard Oil, 45; cases before court, 45; getting capital for, 98
Pittsburgh Plate Glass Company, a monopoly, 53
Pooling associations, trade agreements in U. S., 67; for fixing prices, 68-71; agreements, why failed, 71-74
Powder Pool agreement, 71; Trust Decree, 94
Price control, consolidation for, 14-17
Prices, fluctuations of, 22-24; in competitive business, 49-50; affected by amount of products, 52; of glass, 53; irregularity in, 72; of patented articles, 75, 76; discriminations in, forbidden, 95; under Trust regime, 112-128; course of wholesale, 112-115; stabilizing wholesale, 117-120; unfair merchandizing, 120-122; price-cutting unfair, 122, 123; quantity and misrepresentation, 122-125; price-making forces, 125-128; and interest cost, 131, 132; stability and labor, 144
Problem of Monopoly, 4, 39
Production, economics of, cause of Trusts, 11
Profits on industrial Trusts, 134-137
Promoter, work of, 98; and profits, 99-102
Public commissions, as business umpires, 164-167
Publicity of accounts and profits, 165, 166
Public, the Investor, and the Holding Company, The, 57
Public Policies as to Municipal Utilities, 65
Public utilities, regulation of, 56-58; principles outlined by American Electrical Railway Association, 59, 60; control by holding companies, 63, 64
Public welfare, adjustments of Trusts to, 162, 163
Publishers Association, agreements and court decision, 76, 77
Pujo Money Trust Investigation, 87; on money and credit, 108-110

Railroad Promotion, 103
Railway domain, extending control over, 25-29
Railway, rate discriminations, a cause of Trusts, 10, 11, 17-19

Rate control, cause of Trusts, 17, 18; and Standard Oil contract, 20
Rate of supply, retardation of, 115-117
Rebates, causes of Trusts, 10, 11, 17-19
Redfield, W. C., on big business, 140, 141
Reed, R. D., restriction of state charters of interstate companies, 47
Regrading, offense to trade, 79, 80
Regulation and monopoly, 46-65
Re-sale contracts, 74-78, cancelled by Supreme Court, 76, 77
Restraint of trade, combinations in, 28; in commercial practice, 66-81; cooperative agreements, 66-68; agreements in Germany, 67; rule of reasoning, 78-81; uncertain interpretation, 80
Retailer vs. corporation, 120-122
Risks, pioneering, in modern business, 158-160
Roberts, G. E., on equality in essentials, 161
Rockefeller, J. D., and pipe lines, 98

Sakolski, A. M., on security situation, 100
Salt Trust, and Anti-Trust Acts, 84
Saunders, W. L., on big business, 139-140
Schwab, C. M., on the Steel Trust's advantages, 52, 53; on steel rail pools, 71
Security values, reason for loss of public confidence in, 62
Service, the new duty of business, 171
Service companies, public relations of, 59, 60
Sheet Steel Trust, capitalization, 103
Sherman Anti-Trust Act, and the trusts, 61, 76, 77, 82; summary of Act, 83-85; critics of, 154; and foreign trade, 155; and the code of fair dealing, 168
Singer Sewing Machine Company, as exporter, 157
Socialism, its coming as a social movement, 5; opposed to competition, 6
Society, cause of progress of, 171
South Improvement Company, charter revoked, 1, 18; and rate rebates, 18
Southern Railway and Steamship Association, pool, 69
Standard "Alliance," basis of the Standard Oil, 19, 20
Standard Oil Company, 1; and railroad rate control, 18; its ascendency, 18, 19; its unfair advantages, 44, 45; and holding company, 62, 63; decision, 80; and Sher-

man Anti-Trust Act, 84; prosecution, 86; dissolution of Trust, 91, 93; capitalization, 102; and exports, 167
Steel Hoop Trust, capitalization, 103
Steel Rail Pool, 70, 71
Steel Trust, prosecution, 86; absorbs other trusts, 103; history, 104, 105; prices abroad and at home, 126
Stevens, W. S., analysis of trade agreements, 68
Sugar Refineries Company, agreement, 13; Supreme Court decision, 13; absorption of the refining business, 37, 38
Sugar Trust of New York, and holding company, 62, 63
Sugar Trust and Anti-Trust Act, 84
Supply, rate of retardation of, 115-117
Supreme Court of U. S., holding companies' decisions, 13; Sugar Refining case, 13; Knight case, 13; Trust Act and railway transportation, 25; and Trust Act, 27, 28; Pipe Line cases, 45; Dick Mimeograph case, 54; Harrow case, 55; sale contract cancelling, 76; Book Trust cases, 76, 77; Bath Tub Case, 77; Anti-Trust decisions, 89, 90
Syndicate, trade agreements in France, 67

Taft, W. H., on treatment of Trusts, 154, 155
Textiles, consolidation of manufacturers, 15-17
Tin Plate Trust, capitalization, 102, 103
Trade, combinations in restraint of, prohibited, 28; in commercial practice, 66-81; cooperative agreements, 66-68; agreements in Germany in restraint of, 67; rule of reason in restraint of, 78-81; Commission Act Plan, 95
Trade Unionism, its coming as a social movement, 5; and cause of trusts, 12; relations with large industries, 142-146
Trans-Missouri Freight Association, Anti-Trust Case, 25, 27; decision, 80
Transportation, advantage to monopoly in rebates, 10, 11, 17-19; control by Trust Act, 25-29
Trusts, origin and causes of, 1-13; unsettled public issue, 1; definitions, 2-4; dominating, 5; the world's greatest Trust, 8-10; main causes of, 5-13; development of policies, 14-29; coming of the idea of, 16; to establish monopoly, 17; and rate discriminations, 17, 18; legitimate aims, 20-22; Trust Act applied to railway transportation, 25-29; attacked by Act of 1890, 26; reasons for opposition to, 30; unfair competition aspect treated,

31-45; regulation and monopoly, 46-65; franchise, 47; element of monopoly in, 52; cause of, 53, 54; and patents, 54, 55; and public utilities, 56-58; holding company system, 60-65; whence derive their powers, 66-71; failure of pooling agreements, 71-74; Book Trust cases, 76, 77; Bath Tub, 77; Federal Anti-Trust policy, 78; Federal policy toward, 82-96; Sherman Act, 83-85; causes of anti-legislation, 84, 85; investigations of conditions, 85-88; five prosecuted, 86, 87; legislation, 87, 88; prosecutions under Act, 88-91; dissolution results, 91-94; recent legislation, 94-96; financing, 98, 99; capitalization, 100-108; banking credit and Trust control, 108-111; prices under Trust regime, 112-128; meaning of growth, 115-117; problems of management, 129-146; profits on industrial, 134-137; efficiency, 137-142; relations with labor, 142-146; status in other lands, 147-157; prohibition or regulation, 153, 154; cooperation in foreign trade, 155-157; adjustment of public welfare, 162, 163; and public commissions in labor controversies, 164-167; remedial policies, 165, 166; solution of the problems of, 167-174; new duty of service, 171

Trust Finance, 107

Trusts, The, What Can We Do with Them? What Can They Do For Us? 8

Trust Act, applied to railway transportation, 25-29; its scope, 25, 27; supreme vs. the states, 29; bad features of, 80

Trust movement, origin and growth, 6-7

Trust policies, development of, 14-29; legitimate aims of, 20-22

Trust problem, defined, 7

Trust Problem, The, 119

Truth About the Trusts, The, 2, 3, 21

Unfair corporate competition, 30-45; court control of, 41-45; Acts regarding, 95; elimination of, 174

Unfair merchandising, 120-122

Unfair Retail Practices, 121

Unionism, see trade unionism

United Pipe Line Company, and oil monopoly, 20

United States, restoring competitive conditions, 4; and patents, 54, 55; and agreements in restraint of trade, 67; policy toward Trusts, 152

United States Bureau of Corporations, on Trust profits, 135
United States Industrial Commission, data on prices, 119; on price-making forces, 125-128
United States Shipbuilding Company, its principles, 21, 22
United States Steel Corporation, beginning and growth, 8-10; and prices, 23, 24; and organized labor, 142, 143; and exports, 157; and bargaining with labor, 161; and welfare work, 163
Untermeyer, Samuel, on the holding company, 62

Van Hise, C. R., on the old order and the new, 6

Walker, Francis, on agreements in England, 150
Wall paper industry and pooling agreements, 72, 73
Waterbury, J. M., on Cordage Company pool, 69, 70
Welfare work, and trusts, 162, 163
Western Newspaper Union, in restraint of trade, 43, 44
Whiskey Trust, and Anti-Trust Acts, 84
White, Chief Justice, on Standard Oil Case, 80, 81
Williams, John, on labor and Trusts, 145
Willoughby, W. F., on Trust founders, 17
Wire Trust and Anti-Trust Acts, 84
Wisconsin Railroad Commission, 106
Wyman, Bruce, on types of unfair competition, 34, 35; on legal and illegal acts, 39, 40

Yale Review, The, 17
Yellow Pine Lumber Manufacturers' Association, in restraint of trade, 42