

# The Corporation Problem

The Public Phases of Corporations, Their Uses, Abuses, Benefits, Dangers, Wealth, and Power,  
With a Discussion of the Social, Industrial, Economic, and Political Questions to Which They Have  
Given Rise

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## Preface

The author, in the course of the preparation of a treatise on corporation law, became familiar with many facts and principles relative to corporations, which, however, did not come within the scope of a work on law. The law of corporations is a subject distinct from that of the public phases and business methods of corporations. Accordingly the author separated the two, and having completed a treatise on the former, he now presents a book on the latter.

The many questions, social, political, industrial, and economic, that have arisen in connection with corporations, constitute together what is known as "The Corporation Problem." This problem embraces the uses, abuses, benefits, dangers, wealth, and power of corporations, and no attempt has been made heretofore to consider these matters collectively and by themselves. The task has proved somewhat difficult, and, in order to shed as much light as possible on the subject, frequent quotations from others are given in connection with the text. If the work results in awakening a more general interest in those topics than now exists, the author's purpose will have been answered.

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## Chapter I: Introductory

Corporations are a creation of modern times and their rise has been as rapid as it has been remarkable. In the colonial days of America no instance of a corporation for business purposes can be found. The Bank of North America was organized in 1781, while the Massachusetts Bank and the Bank of New York were not incorporated until the year 1784. In those days there were no railroads, no telegraphs, no manufacturing, mining, or business corporations, and merely the germ of the idea of a corporation was in existence. In Great Britain there were the Bank of England, the Bank of Ireland, and three banks in Scotland. Business was done on a small scale and large enterprises were not undertaken. The century of industrial development, of great affairs, and of colossal projects had not yet been entered upon.

Since that time such projects have demanded new and improved business methods. Corporations have arisen from the necessities of business. Partnerships and individuals have been unable to furnish the aggregation of capital required for modern undertakings.

Moreover the partnership has been found to be clumsy, dangerous, and insufficient. If unsuccessful it brings ruin upon all of its members, because each partner is liable absolutely for all debts. Any member may bind the firm by his contract and each one has an equal voice in deciding its policy. Its capital and credit, and consequently its amount of business, are limited necessarily by the capital and credit of a very few men—the members themselves. The death of a member or the transfer of his interest dissolves the firm. Any member may arbitrarily cause a dissolution at any time, and the insolvency of a member renders the partnership property subject to levy of execution for his debt. Upon the death of a partner the surviving partners have the sole charge of winding up the business and the executor of the deceased partner is not allowed to come in. A partner may withdraw his money only at a sacrifice, or by long and expensive proceedings. He cannot conveniently sell his interest or borrow money upon it. New partners cannot readily or safely be admitted.

The partnership is restricted in its capital, dangerous in its liabilities, narrow in its exclusion of new members, too free in its mode of making contracts, and too contracted in its opportunities for withdrawal. It is becoming obsolete as a mode of doing business on a large scale.

In a corporation all this is changed. The members are not liable for the debts. The amount already invested may be lost, but the private fortunes of the stockholders are not involved. The business is done and contracts made, not by all, but by a select few, called directors. A large capital is created by the union of funds from many sources. A person may safely invest in many enterprises and yet not take part in the management nor watch the business of any one of them. The leading spirit in an enterprise may hold a majority of the stock and may admit associates, employees or strangers, as holders of a minority of the stock, and yet he will retain the management as though he were the single owner of the concern. Persons may easily buy into or retire from the enterprise. Dissolution is not brought about by the death or withdrawal or dissatisfaction of a stockholder. The insolvency of a stockholder does not affect the business of the corporation. Upon the death of a stockholder his executor votes his stock and has a voice in the continuation of the business. A stockholder may sell or pledge his interest readily and intelligibly by reason of the reports, dividends, and market quotations of his stock. The corporation is a protection in that the liability is limited; it is capable in that it renders possible the collection of a great

capital; it is efficient because the directors and they alone govern its policy and its contracts; and it is convenient because it is easy to sell or buy or pledge or bequeath one's interest in the concern. Under its protection and concentrated power men will undertake great enterprises involving great risks or losses or gains. The corporation has rendered possible the modern era of industrial development.

It is by reason of all these facts that corporations have come into universal use. They have absorbed the railroad, banking, insurance, manufacturing, mining, telegraph, telephone, gas, express, waterworks, commercial, turnpike, bridge, canal, steamship, financial, and other industrial business of the country. They have built the railroads, dug the canals, established the factories, carried the ocean commerce, taken charge of the banks, assumed the risks of insurance, constructed the telegraph, the telephone, the water-works, the gas plant, the electric lights, and the street railroads, and are conducting some of the largest of our mercantile interests. They are acquiring the wealth of the country and are the means of investment for the savings of the poor as well as the capital of the rich. The railroads alone of the United States are over 167,000 miles in length; cost over \$9,000,000,000; employ over 700,000 men directly, and indirectly over 1,000,000 men, being one twelfth of the adult male population of the country; receive annually about \$1,000,000,000; and distribute this vast sum in wages, improvements, interest, and dividends. And, in addition to this, the banks, insurance companies, manufacturing companies, and the multitudinous corporations of the land all have their capital, employees, and earnings.

The benefits derived from corporations are undoubted. They have cheapened the necessaries of life, given quick and easy connection between distant points, developed agriculture, mining, manufacturing, and commerce; created employment for labor, marketed the products which before were not worth the cost of transportation, lowered the cost of living in Europe and America, transformed the uninhabited wildernesses into rich farms, towns, cities, and States; found land worth nothing and made it worth millions, and caused an interchange of the manufactures, luxuries, literature, arts, sciences, and ideas of the world.

As an intellectual spur and stimulus, the railroads have done for this century that which the discovery of America did for the sixteenth century. They have brought the ends of the country together, excited ambition, opened avenues for enterprise, developed community of interest, and made a nation diversified in its pursuits and ideas, yet homogeneous in its government and progress. They have quickened the intelligence and broadened the minds of men. Not only have they created energy and intellectual activity among the people, but they have peopled the country itself, and in some instances have caused rude and ungovernable communities to put aside their violence, provincialism, feuds, and uncouth manners for the life of the civilized world. Corporations have given wealth to man, and thereby given to him the opportunity for intellectual growth.

And even from a moral point of view the corporations are not utterly and irretrievably bad. The redeeming act in the life of Faust was the building of a dyke and the draining of a swamp. The builder of a railroad which opens new lands for settlement is a philanthropist in the broadest sense. The great capitalists of modern times, who have built thousands of miles of railroad, peopled whole territories, cheapened the price of food, enabled millions of men from the overcrowded parts of the world to find homes and a livelihood, increased the wealth and well-being of a great and growing population, and made possible the occupation and civilization of the American continent, are the greatest benefactors of the age. It is true that they and their corporations are not philanthropic institutions. They do not cultivate the benevolent side of life. They are not moral instructors either in precept or example, nor are they to be recommended as a school of ethics. But they have enabled whole States and communities to reach higher and better ideas of life. They have bettered the condition of men and thereby have enabled individuals to become better men.

Without corporations America would be a different nation and have had a different history. The Civil War would have been more dangerous to the Republic. The present railroad system could not have been built, and the Pacific Coast and the Eastern States would not have been bound by ligaments of steel to a common interest.

Who can wonder then that the many corporations of America, with almost unlimited wealth at their command, and directed by the highest talent, should have a firm grasp upon the industries of the country; that they should mould its political, social, and industrial features; that they are deeply affecting its intellectual life, and even to a large extent are dominating the government itself?

And even in an international way the corporations have had a wide influence. They have aided in the abolition of war, and have rendered a prolonged famine impossible. A "Thirty Years' War" in these times

would bankrupt the richest of nations. Railroads have made war swift, expensive, and deadly. In addition to this the corporations, as methods of international investments by way of stocks and bonds, have brought nations into more friendly communication with each other, and have knit more closely the financial, social, and family ties that exist between Europe and America.

And yet notwithstanding all the advantages, material, intellectual, and moral, which have been derived from corporations, there is much to be said against them. And they have two peculiarities which have led to these abuses. These are, first, the ease with which all responsibility for bad acts is placed upon the corporation itself, while the real perpetrators are concealed; second, the separation of the stockholders from the corporate agents, of the investor from the investment, of the principal from the agent, with the expectation on the part of the investor, the principal, the stockholder, that profits will be made, honestly if possible, but that profits will be made.

The particular evils to which they have given rise will be referred to hereafter. Some of the corporations have been guilty of bribing judges, buying legislatures, corrupting public officers, and sapping the integrity of public life generally. Some of them have taught men that dishonesty is respectable and even honorable, provided it is successful. Some of them conduct business, not on a basis of honor, but on that of knavery. Some of them perform contracts only when it is more profitable to perform than to violate. The sense of honor of some of them does not inspire that easy confidence and mutual good faith which lie at the basis of most business transactions. Written contracts are not always strong enough to hold them, and the fear of the penitentiary not always able to deter them. The pole-star of the existence of many of them is, not what is honest, but what is profitable, and the result is that not only are corporations a source of alarm to the conservative, and a subject of doubt to the thoughtful, but there is a deep-seated hostility against them on the part of the plain people of the land.

The railroad corporation has been the chief malefactor. It has given secret discriminations in rates; bribed legislatures and public officers by free passes and money; charged more for a short haul of freight than for a long haul; demanded extortionate rates; issued "watered" stocks and bonds; favored one city and ruined another; entered into "pools," and usurped valuable franchises by fraud, bribery, and unscrupulous practices. Not only is it audacious and skilful, but it employs the highest order of administrative ability. Indeed, it is one of the curious facts of American history that the American talent for organization, executive management, and the invention and adoption of means to ends, a characteristic talent that formerly was engrossed in the political affairs of the nation, is now very largely engaged in the development and management of the American railroads. With energy, enterprise, daring, and sagacity, the American railway has been built, improved, consolidated, and perfected. This has been done frequently far in advance of even the remarkable growth of the country itself. And to a large extent the practices of railroad men have been honest and creditable. But not always has this been the case, and often they have resorted to fruitful cunning and bad practices in accomplishing their ends. To such an extent have these practices been carried that even the railroad men themselves have come to denounce the prevalent methods of managing railroads.

Public opinion, however, is beginning to decrease the present abuses of corporations. And the power of public opinion over corporations and railroads is much greater than is generally supposed. The most powerful corporations of the country seek its commendation and fear the effects of its disapproval. The Granger legislation, the withdrawal of the Central Pacific Railroad Company from California politics, the attempt of the Standard Oil magnates to change public sentiment, the wild haste of the various "Trusts" to change their mode of organization, on the one hand, and the results of the honest and conservative management of the Vanderbilt and other great systems of railroads on the other, are examples of the power and effect of public opinion.

And there is another tendency which augurs well for the future. The days of irresponsible, reckless, and dishonest management of corporations are passing away. These practices have been found to be dangerous, unprofitable, and ruinous. Honesty towards the government, the people, and the investor is becoming the settled policy of the great corporations. The integrity as well as talent of America is beginning to assume the control and management of these colossal aggregations of capital. Corporations and railroads are being placed in the hands of conservative men, and the great questions of the "Corporation Problem" are not only decreasing in number and intensity, but are being settled largely by the character, honesty, and honor of the men themselves who manage the corporations.

## Chapter II: Various Controversies to Which Corporations Have Given Rise

### Reduction of Railroad Charges

Probably of all the differences that have existed between the railroads and the public, the first, the greatest, and the most prominent has been that of reducing railroad charges. Upon this question there has been for twenty years a course of uninterrupted legislation, litigation, and pressure of public opinion. From State legislatures and courts the contest has been carried to Congress and the Supreme Court of the United States. Reductions in rates have been brought about partly by means of this agitation and legislation and partly by reason of competition between the railroads themselves. But the question is as vital a question to-day in the Western States as it was twenty years ago, and the legislatures are again making radical reductions in railroad rates. It is interesting to inquire how this contest arose, and why the reduction is demanded.

Fifty years ago the Western States and the Upper Mississippi valley were practically unsettled. The rich lands of the West were capable of becoming the granary of Europe and America, but without cheap transportation they were valueless. In those early days the farmer could not sell and could not afford to haul his crop to market, and corn was burned for fuel. The farmer had no money, and he could make no improvements. The Western pioneer was cut off from civilization, from comforts, and even from the necessaries of life.

The railroad was necessary—necessary to furnish a market and to populate the plains.

The railroads were built and the great territory was traversed and covered. Tens of thousands of miles of road were required and were built in an incredibly short space of time. They were built by Eastern and European capital, and this capital knew that it was embarking in a dangerous speculation. It therefore very naturally insisted upon great returns, and these returns consisted: first, of gifts of municipal bonds from the cities, counties, and towns along its route; and second, of vast quantities of “watered” stock and bonds.

The gift of municipal bonds to railroads has been denounced by the greatest American jurists of the age as unjust, improvident, unnecessary, and illegal. Such is their opinion, although the Supreme Court of the United States, in its efforts to protect innocent investors, and to preserve the honor of American credit, has sustained the legality of such bonds. But the hardship of their issue did not at first appear. It was not at first realized that the railroads were built largely from the sale of these municipal bonds. The bonds were given because if not given the road would not be built at all, or would be built through a rival town. No bonds—no railroad. After the bonds were issued they were sold by the railroad builders to Eastern or European capitalists. They were sold for what they would bring, and always below par. In addition to the location of the railroad, the town or county usually received some of the stock of the railroad itself. But this stock was soon made worthless by the foreclosure of the mortgage on the railroad. As a net result the town had a railroad, to be sure, but it had a large bonded debt, and its stock in the railroad was without value. The railroad had been built partially by municipal bonds, but the railroad itself was owned by capitalists in Eastern States or abroad. It was true that land had risen in value and crops could be sold. But these municipal bonds had to be paid, principal and interest at par. They were a mortgage on the present and future generations. Taxes began to be high. And then the question arose—were the railroads acting fairly; were they contenting themselves with a reasonable profit; were they charging proper

rates, or were they charging more than their cost would justify?

Here it was that the watered stock and bonds of the railroad came into notice. And they made the problem one that has caused endless discussion, legislation and litigation during the past twenty years. The peculiarities of watered stock and bonds will be considered hereafter. The early railroad builder, promoter, and manipulator was as crafty and many-sided in his methods as Ulysses himself. He was skilled in the art of issuing watered stock and bonds. By devices, well known to the corporation lawyer, he generally managed, if his road actually cost \$1,000,000, to issue \$2,000,000 of stock and \$2,000,000 of railroad bonds secured by a mortgage on the road itself. He accordingly had \$4,000,000 of stock and bonds, and of this, \$3,000,000 was pure "water." In the course of time these bonds and stock were sold. They passed into *bona-fide* hands. The result was that a railroad costing \$1,000,000, part of which was raised by municipal bonds given to the railroad itself, had obligations outstanding for \$4,000,000 upon which it endeavored to pay interest and dividends. Even though a foreclosure took place, the new issue of stock and bonds was equal to or greater than that existing before. Exorbitant rates for transportation were necessary in order to pay the interest alone, and, generally, for many years there was nothing for dividends on the watered stock.

But population grew and business increased. The income became greater and greater. Nevertheless the rates were not reduced. They were used to pay dividends on the watered stock, and, if the income became too large even for this, then by certain other devices, well known to the astute corporation lawyer, further issues of watered stock and bonds were made.<sup>1</sup>

Then came another factor in the problem. The American farmer no longer obtained high prices for his grain.<sup>2</sup> The wheat of Egypt, India, and the Black Sea reduced the price in Liverpool, and the price in Liverpool fixes and will fix the price in America so long as America exports wheat. The farmer found that the halcyon prices of old were gone and were not to return. He found that the railroad charges were consuming a very large share of his crops. He was working for the railroads, and corn was being burned for fuel on the Western prairies. Hard times prevailed.

This was the situation: land had risen in value, crops could be sold, communication with the outer world had been established, and a flood of immigration had populated the country. But the crops could not be sold at a profit; the railroads, which had been built largely by municipal bonds, had issued large quantities of watered bonds and stock; heavy rates for transportation were charged in order to pay interest and dividends on all these; and the railroads were receiving a great income on their first cost, while the people at large were poor.

Why did not the railroads reduce their charges? Because the owners of the railroads were non-residents, and insisted upon every dollar that could be wrung from their investment.

"Practically none of the stocks and bonds of the railroads in Nebraska are owned by Nebraskans. The owners and controlling officers of the road are non-residents. This absenteeism increases the popular dislike of the roads. It is felt that any unearned profits not only injure individuals but impoverish the community as a whole, while the representatives of the roads within the State are looked upon as mere hirelings, owing to the companies duties which are inconsistent with good citizenship."<sup>3</sup>

The stockholders and bondholders wanted their income, and were too far distant from the investment itself to understand or have any sympathy with the situation. The corporation officers were their agents, and the tenure of office of those agents depended upon the profits that were forthcoming. Neither the owners nor their agents saw any occasion for a reduction of rates. Nor was the natural competition among the railroads themselves sufficient to reduce rates. Some reductions were made from this source, but not many. It was to the interest of the railroads not to compete. They were all prospering, and there was nothing to be gained by great reductions. In the cities, where there should have been competition, the railroads formed combinations, called "pools," and by these they divided the business and maintained high rates. In the smaller towns and the country districts there was no competition at all.

Moreover, the old theory that the laws of competition will induce railroads to reduce their rates has been exploded. A railroad becomes a monopoly in spite of competition. Few care to risk their money in paralleling it. If a parallel line is built, even in the old and rich communities, a railroad "war" of rates takes place, part of the capital is irretrievably lost, foreclosure of the new line follows swiftly after, and a consolidation takes place,

always with a loss. The Nickel Plate road from Buffalo to Cleveland brought loss to Vanderbilt, its purchaser. The West Shore road from Buffalo to New York brought ruin to its builders. In both cases the old monopoly has become a greater monopoly than ever. The truth is that a railroad is a natural monopoly. The laws of competition do not regulate it, and so far as the farmer is concerned, railroad competition leaves him worse off than before. After consolidation or "pooling" there are two roads where only one is needed, and the stock and bonds of the two are double the burden that existed before.

There was another plan for effecting a reduction of rates. This also has been exploded. It was the old and futile device of having the charter or statutes limit the dividends on the stock to a fixed percentage. Such a restriction has proved a delusion and a snare. If the dividends reach the limited point, watered stock or bonds are issued, and always sufficient in quantity to absorb the increased profits without exceeding the prescribed rate of dividends. Both in England and America this device has failed. Worst of all, it promised well, and by its promises caused the public to waste valuable franchises and to desist from the search for other plans of relief, and there are still other objections to such a statutory restriction.

"It takes away all motive to develop new business. But the desire to develop such business has been the most potent factor in reducing rates. Take it away, and you tend to keep rates up rather than to lower them. By trying to prevent a railroad from dividing all it can earn you defeat your own purposes.... Limitation of dividend prevents reduction of rates instead of stimulating it.

"This is no theory. It rests on actual experience. The plan of limiting dividends has been more widely tried in England than in America. Sir Thomas Farrar, for a long time Secretary of the Board of Trade, and the highest authority on the subject in Great Britain, if not in the world, does not hesitate to pronounce the attempt a complete failure. He says that 'in Parliamentary limitation of dividend they have gone on a wrong tack and involved themselves in a maze of absurdities,' that 'the principle is in itself faulty,' that 'so long as the charge is not too high the public have no interest in the reduction of dividend: their interest is in the reduction of price, which is a totally different thing. The fallacy lies in supposing that what is taken from the shareholders necessarily goes into the pocket of the consumer. It does no such thing.' This is the result of thirty years' practical experience in the effort to control corporations in Europe."<sup>4</sup>

Hence it was that to the western farmer there seemed to be but one remedy—the power of the legislature. Consequently statutes were passed arbitrarily reducing railroad rates. Sometimes the statutes provided for the appointment of State Railroad Commissioners, and gave power to these commissioners to reduce rates. In Iowa, Wisconsin, Illinois, Ohio, Missouri, Minnesota, and Michigan various statutes, known as "Granger Laws," were enacted. The movement was bold, radical, and sweeping. But the statutes were at once contested in the courts by the railroads. The railroads claimed that the statutes were unconstitutional. The old Dartmouth College decision of the Supreme Court of the United States, which had thrown a sort of halo of legal sanctity about a corporation charter as being a contract that could not be disturbed, was appealed to. That decision had proved to be a rock upon which many a State statute regulating railroads had gone to pieces. The Supreme Court of the United States, however, when the question came before it, decided that the "Granger Laws" were legal and constitutional. The farmers had won their fight.

Charles Francis Adams has said, in regard to this subject:

"Of the Granger episode little now needs to be said. That it did not originate without cause has already been pointed out. It is quite safe to go further and to say that the movement was a necessary one, and through its results has made a solution of the railroad problem possible in this country. At the time that movement took shape the railroad corporations were, in fact, rapidly assuming a position which could not be tolerated. Corporations, owning and operating the highways of commerce, claimed for themselves a species of immunity from the control of the law-making power.... They had thoroughly got it into their heads that they, as common carriers, were in no way bound to afford equal facilities to all, and, indeed, that it was in the last degree absurd and unreasonable to expect them to do so. The Granger method was probably as good a method of approaching men in this frame of mind as could have been devised."<sup>5</sup>

Such, in brief, has been the history of this phase of "The Corporation Problem." And even yet it is not ended. The Granger episode is again being repeated in the Western States. Hard times prevail there among the

farmers and the railroads are again being assailed. New reductions in rates have been made. The Supreme Court of the United States has recently decided that a reduction in rates must still leave to the railroads a living profit, but the Interstate Commerce Commission seems to repudiate the rule that railroad charges must not be reduced so low "that carriers would be left unable to pay interest on their obligations and something by way of dividend to stockholders, after maintaining the road in proper condition and paying all running expenses."<sup>6</sup>

The latest victory of the western farmer has been the decision of the Interstate Commerce Commission reducing the railroad rates for the transportation of grain.<sup>7</sup>

This much seems to be clear. If railroad rates had been reduced in times of depression, and raised in times of prosperity; if the railroads had sought only to pay a fair profit on their actual cost; if there had been less arrogance and lordliness on the part of railroad officials in dealing with the public; if there were more sympathy between the real interests, prosperity, dealings, and communications of the railroad owners and officials on the one hand, and the railroad patrons on the other; if there were more honesty on the part of the railroad official, and less corruption of legislatures, less granting of free passes, less discrimination, and a less lengthy list of evils which railroads are guilty of; then the question of exorbitant railroad charges and reductions thereof by States would not have arisen. The American people are honest, generous, and intelligent. They would appreciate and reward railroad honesty, but the abuses and usurpations, of which corporations have been guilty, have rendered wellnigh impossible an unprejudiced and impartial attitude on the part of the public.

### Watered Stock and Bonds—Stock Dividends

When it is borne in mind that probably every railroad in this country has issued watered stock or bonds; that it is the universal custom for gas companies, water-works companies, telegraph, telephone, electric-light, and all other *quasi-public* corporations to do the same; and that the object of these issues is to cover up the percentage of profits of the enterprise in order to prevent any statutory reduction of rates, it will be clear why it is that the people have endeavored to prevent the watering of stock and bonds.

Watered stock is stock which is issued as fully paid up when in fact its full par value has not been paid into the corporation. Hence it is that all stock or bonds, whose full par value has not been paid into the corporation, in money or money's worth, are watered to the extent that the par value exceeds the amount actually paid in. An issue of such stock and bonds is made in one of three ways: for cash; for property; or by a stock dividend; and the liabilities and dangers incurred by each method vary according to the skill with which the legal work is done. The usual method is by an issue of property, the property being taken by the corporation at an over-valuation. Frequently shares of stock whose par value is a million dollars will be issued as fully paid for by land, factories, plant, patents, or construction work, the real value of which is less than one hundred thousand dollars. Indeed, hundreds of millions of dollars par value of railroad stock and bonds have been issued as full paid, in exchange for railroad construction work that was worth not over one third of that par value.

The Interstate Commerce Commission says:

"It is believed that cases are now comparatively rare in which the capital stock of our railroad companies, as the same now exists, was actually issued for cash to *bona-fide* investors in the same. In many cases roads have been built by the issuance of stock to the contractors or construction companies; frequently by the creation of bonds to an amount nearly or quite sufficient to cover the actual construction cost, the stock being in the nature of a bonus or profit, or being employed as compensation for services or expenses collaterally attending the construction of the road."<sup>8</sup>

There is still another device adopted for issuing watered stock and bonds. A prosperous and solvent railroad often issues a vast quantity of watered stock and bonds in payment for another road which is purchased or leased. Still another plan is for a prosperous railroad to water its stock by a stock dividend. Commodore Vanderbilt adopted this latter device in his New York Central Railroad Company. Soon after he had consolidated the eleven lines into one the earnings increased to such a remarkable extent that a stock dividend was declared, and the New York Central Railroad to-day is paying dividends on nearly double its original cost.<sup>9</sup>

The Western Union Telegraph Company also, a few years ago, declared a stock dividend of \$15,000,000, and the New York Court of Appeals declared it to be legal.

The abuses of watered stock and bonds are not denied, nor defended. First of all the investing public are injured. A bond or stock that is supposed to represent value, and is purchased on that supposition, is subsequently found to represent nothing of the kind. It is found that although the corporation has nominally a large capital stock, yet that its capital stock is mostly water. Then follow insolvency, foreclosure, receivership, reorganization, and a general loss or reduction of the old stock and bonds. The investor is a victim of watered stocks and bonds.

The business public also have a grievance herein. A newly constructed railroad, built upon a large issue of watered stock and bonds, is almost certain to become bankrupt. Sooner or later the crash comes. The railroad cannot earn enough to pay expenses and interest on its watered bonds. Its projectors and builders probably never expected it would pay, but they built it to sell to the public or some other railroad. When the road fails to pay interest the inevitable foreclosure and receiver come. If the railroad is a large one a shock is given to the business world. Nor is this the worst. The receiver enters upon the operation of the road. It matters not to him whether the road earns anything or not. He carries traffic at reduced figures. Heavy losses are suffered by the investors and real owners of the road. General business is deranged and imperilled. Watered bonds have done the evil.

President Roberts of the Pennsylvania Railroad is reported to have said in 1886:

“If State legislatures and Congress would pass proper laws for the protection of railroads, no pools would be necessary. We are common carriers, and it is proper enough that the government should exercise supervision over us: but it should at the same time protect us by proper laws. Under the general railroad law of Pennsylvania, and its recent amendments, the railroads of the State are at the mercy of speculators. Under the law any one can build a railroad and issue stocks and bonds to an unlimited extent and at any rate, to the amount of four or five times the cost of the road. The securities are sold. The road cannot earn the interest on its securities, and goes into bankruptcy. No responsible company can compete with an irresponsible company. No company managed by its owners can compete with one managed by a receiver. It makes no difference to the receivers whether the road he manages earns 5 cents or \$5.”

Still another wrong results from this watering process. When the foreclosure of a railroad takes place, by reason of the large issue of “watered” bonds, then the stock which has been given to the cities, counties, and towns, for their gifts of municipal bonds to the railroad, is entirely wiped out. Often, indeed, this is the very result which is sought for by the manipulators and builders of the road. And it is a method which is swift, certain, and profitable. It is the natural result of a large issue of “watered” bonds.

At a notable banquet of the New England Society, held in New York in December, 1890, Congressman A. B. Cummings, of Iowa, said, in regard to this subject:

“The people of Iowa, not inclusive of those who are intimately connected with these enterprises, have contributed either voluntarily or involuntarily more than \$25,000,000 in money to aid in the construction of railways within the borders of the State. This was not designed as a donation. It was the intent of the law under which these aids were authorized—I had almost said extorted—from a community illy able to make the investment, that those whose money helped to create should share in ownership, and to that extent at least the property should not be alien. It was intended that the people should always feel the pressure of their legislation and observe in their own persons the prosperity or adversity of the interests they help to build up. But the beneficent plan has woefully miscarried; for under the rapid, though accurate manipulations of promoters, projectors, and wreckers, and the dispiriting influence of receivers, their stocks and bonds have disappeared like a morning mist; and they hold the East accountable for the transformation. The reckoning has just begun.

“Under their direction Congress gave to railways of their patrimony millions of acres of the most productive land that ever invited plow and seed, but that, too, has gone and left no other trace behind it than the advantage of general development, and they look in vain to see any perceptible diminution in interest-bearing obligations by reason of this magnificent endowment, and they hold the East accountable for that. They saw that the prime motive of those who originated and carried forward substantially every road built through the State was not a fair return for the carriage of freight and passengers, but their own immediate enrichment, and they do not discern the difference between present and past proprietors. Year after year they

were witnesses of a system of discrimination which paralyzed their industries, and for which it was hard to find even a shadow of justification, and they hold somebody accountable for that.”

But the greatest abuse and wrong brought about by the issue of watered stock and bonds by railroads, gas companies, telegraph, telephone, electric-light companies, water-works, and other *quasi-public* corporations remain to be stated. The people have given to these corporations valuable franchises; have permitted them to take land arbitrarily upon payment therefor; have empowered them to collect tolls; have limited the liability of the stockholders; and have excluded all outside parties from placing cars on the tracks of a railroad, although those tracks are public highways. In exchange for all this, the people have a right to expect that the charges for service shall be reasonable and low; that such charges shall not be such as to pay extravagant profits on the actual cost of the property, and that when, by increase of population, the profits become great, then that the rates shall be reduced. All this is what the people have a right to demand, and yet all this is what the corporations prevent from taking place by issuing watered stock and bonds.

This is the greatest of all objections to watered stock and bonds. They are issued to represent the future increase in the earning power of a public franchise. A public franchise owned by a corporation increases in its profit-earning capacity with the increase of population. This increased value is due to the franchises which the people have given away to the corporations. The people are entitled to the benefits of that increase, and it could be readily secured to the people by a reduction of charges. But by stock dividends, based on this increased value of the franchise, the railroad is able to divide all profits and yet not declare more than a six or eight per cent dividend. The smallness of the dividend prevents a legislative reduction of rates. If, however, no stock dividend were allowed, and the large profits of the increased earning capacity were employed in improving the property or in making extravagant dividends, a reduction of rates would be inevitable.

In reply to this view, however, it is urged, and with some force, that about three out of four railroad enterprises are a total loss to their projectors, and that the fourth should be made to pay more largely, by reason of the risk incurred. It is also urged that large capital and great ability in managing enterprises of such magnitude should be richly compensated, and that if the compensation be taken away railroads will not be built.

Alexander says with much force:

“It is asserted that much of the stock of our railroads is not legitimate, but is water. Such an argument may apply against any particular railroad that earns exorbitant dividends, but against the system as a whole it does not. For it would be easy to show that for every dollar of water in existing stocks, two dollars of the money of railroad investors has been lost like water spilt in the sand. Much of it was lost, doubtless, by bad judgment; but the fact remains that our existing system of railroads, as a whole, has cost fully as much as it is capitalized at. Scarcely one of them was originally built as it stands to-day. The earlier ones have been rebuilt and re-equipped three or four times, as experience pointed out necessary improvements. Many of them, too, were built before the business really demanded them, and the loss from this source has been enormous.... If the State would guarantee the interest upon money legitimately invested in railroad construction, investors would readily furnish all that might be desired, and railroads could and would be built without watered stock. But the State very properly refuses to assume any risk, and leaves it to be borne entirely by the investor. The latter, then, having all the risk, naturally demands to have also all the chances of profit if the road turns out a success. He discounts the future, and takes watered stock to represent what he hopes will be his earnings. That is the only way that communities wanting railroads can induce investors to supply the funds.... But I record my conviction that the practice of stock-watering should be prohibited, without much hope of ever seeing it done, and more on the ground that it is against public policy to make it easy for men to build railroads, or float any enterprises with other people’s money, than from the fear of railroads being enabled to practise extortion by the possession of watered stock.”<sup>10</sup>

And Swarm presents an ingenious argument on this question when he says:

“The assertion by a State of a right to fix rates and limit dividends by *ex-post-facto* legislation, without regard to existing charters and without compensation or indemnity, is, in fact, the barely disguised assertion of a right to confiscate to a greater or less extent the increment of value legitimately accruing to a going concern. In connection with a railroad the increment of value cannot with any semblance of propriety be

described as an ‘unearned’ increment. In a vast number of instances an American railroad may be said to create the settlement of population which is destined to furnish passengers and produce freight. Reflex activities are of course stimulated, and contribute in their turn to the development of traffic; but in many instances the railroad itself primarily constitutes the determining condition of settlement in a particular place, and of the transportation of passengers and merchandise through a particular channel. Subject to the restraints of equitable regulation, the right of a constructing company to the increasing benefit of the business which it builds up by its outlay and its skill is no less real than that of the founder of a purely commercial or professional business to the increasing benefit of his capital or ability.”<sup>11</sup>

Although it is easy to point out the evil, it is difficult to point out a remedy. Constitutional provisions, declaring watered stock and bonds to be void, have been enacted in Pennsylvania, Illinois, Nebraska, Alabama, and other States. But such a law does not accomplish the desired result. The courts will not enforce it. They nullify it by judicial construction. The remedy is so sweeping in its effects and so disastrous to innocent holders of corporate securities, that the courts uphold the watered stock and bonds. The fault is in the remedy itself. It seeks to cure the evil after the evil is done rather than to prevent its occurrence.

It is believed by the author that there is but one way of preventing the issue of watered stock and bonds. The law should prohibit all issues of stock or bonds for labor, property, or contract work, unless, before such issue, it shall have been decided by a court or State commissioners that the labor, property, or contract work so received is equal in value to the par value of the stock and bonds issued for it.<sup>12</sup>

### Discriminations Between Individuals—Rebates and Secret Rates

It was a principle of the old Anglo-Saxon law that a common carrier must not charge one person more than it charged another person for the same service. This principle runs far back into English history and English common law. It was applied to stages and canals, and in these latter days it has been applied to railroads. It is the public duty of a public carrier.

Notwithstanding this, the American railroads, for many years, have discriminated between individuals. They have given secret reductions, rebates, and advantages to the large or favored shipper. The extent of these discriminations was unsuspected until the Hepburn investigating committee in New York some eleven years ago disclosed over six thousand illegal discriminations by the New York Central Railroad alone.

“At one time, when a legislative investigation was ordered, there were in existence on the line of the New York Central Railroad upward of 6,000 different contracts varying in the most arbitrary manner the published schedule rate for the carriage of local freights.... They were granted as the caprice, the whim, or the interest of the railway freight agent dictated at the hour.”<sup>13</sup>

Under such a system as this, permeating as it did the whole railroad traffic of America, business became utterly demoralized. No merchant knew what rate his competitor was obtaining. He merely knew that the rate was a secret reduction, and that he also must obtain a reduction in order to meet competition. Every wholesale concern had its expert manipulator and negotiator to look after the railroad rebates and secret rates. It was a contest in which the prize was won by the keen and unscrupulous. Favoritism, bribery, and corruption of railroad agents were the order of the day. As a result, the most favored business house crushed out the competing concerns. The great shipper demanded and obtained the greatest rebates, under threat of giving all his business to a competing railroad. The railroads themselves began to be devoured by the evil which they had created. As for the small shipper, the legal principle that rates should be the same for all persons became a mockery. Power, fear, and corruption were the forces that had displaced the law. It was out of such a maelstrom of secret discriminations as this that the Standard Oil Company arose. That company did a shipping business of millions of dollars annually. It gave its business to the railroad that gave the greatest reductions, rebates, and secret discriminations. It is no wonder that competing oil refiners were ruined. Not only did the Standard Oil Company demand a rebate on its own shipments, but it had the unparalleled impudence to demand a rebate on shipments made by its competitors.<sup>14</sup>

Professor Richard T. Ely has said:

“It is stated that even such delay in shipment and such annoyance as a railway can inflict on a business man not in favor, is at times sufficient to cause his bankruptcy. All this involves immense waste of economic resources. Talent in business, accumulation of capital in various forms, and organizations extending over a wide area, all of which ought to have been a blessing to the laboring population and the entire country, are annihilated. The best-known example is the Standard Oil Company. It received, as already stated, \$10,000,000 in eighteen months in rebates. If it had done business at what would have been cost for others, it would still have had that enormous sum as profit. If it had transacted its business at such terms as would have involved the loss of \$5,000,000 for others on the same amount of business, there would still have been an equal sum for distribution among the members of the company. It is a matter of course that its competitors were ruined, and idle factories, old pipe lines no longer used, and business wrecks throughout the country give evidence of enormous economic waste.... At the time of the investigation of the New York Hepburn Committee, it was found that special rates were the rule, and the regular tariff existed only for the weak and inexperienced.”<sup>15</sup>

Ex-Governor Larrabee, of Iowa, has said in reference to discriminations in Iowa:

“It was from the first the policy of Iowa to encourage railroad construction. Favorable laws, land-grants, subsidy taxes, and liberal donations, all contributed to make this State an El Dorado for railroad builders. More than fifty million dollars in value was donated to aid in the construction of the Iowa lines. In no other State have those who own the railroads paid a smaller proportion of the cost of their construction than here. This, however, seemed to have but little weight with railroad managers. Iowa has no great city interest to protect her shippers against their rapacity, and the chiefly agricultural regions have always been singled out by them for the recouping of losses sustained by perilous competition in large business centres. Our farmers, miners, manufacturers, and jobbers were alike made the victims of a stupendous system of discrimination. In many portions of the State the freight to Chicago on grain and cattle was from 50 to 80 per cent higher than from points west of the Missouri River. Minneapolis millers were enabled to import wheat from Dakota, manufacture flour from it, and undersell at his own home the Iowa miller, who received his grain from the same source by a direct route. Davenport shippers found it to their advantage to have their Westbound freight carried across the Mississippi and shipped from Rock Island. It cost \$130 to have a car-load of wheat hauled from Western to Eastern Iowa, and only half as much to have it hauled twice as far, to Chicago. Iowa jobbers, owing to the difference in rates, were undersold by their Chicago rivals in nearly every town and hamlet in the State. Illinois coal could be carried 500 miles from its place of origin and sold with profit almost in the very heart of Iowa, and within fifty miles of our coal-beds. . . . No one could engage in certain lines of business with any prospect of success without the permission of the railroad authorities, and this one could not obtain without incurring the obligation of serving them in one way or another.

“Leading papers of both political parties were either owned or subsidized by railway managers, and corporate favors were even extended to publishers of cross-road papers who were disposed to criticise existing abuses. Annual passes were given to all State and county officers, executive, legislative, and judicial; to all prominent politicians; and in some instances even to township assessors and jurymen. Railroad power made itself felt everywhere; every shipper realized it. Men of energy and self-reliance would fail in business, while railroad favorites accumulated a fortune in a few years. The rules which had always controlled trade seemed to be inverted.”

At length the system became intolerable. Business men could not calculate as to the future, nor be certain even of the present. Small concerns were fast going to the wall. Great monopolies were arising. Courts and lawsuits were slow, tedious, and expensive. Something had to be done.

Many of the States enacted radical and stringent prohibitions against discriminations. In this movement New York designed the plan, and the Western States very quickly adopted it.<sup>16</sup>

But even this was insufficient. The Supreme Court of the United States held that such a State law could not regulate traffic coming into or going out of the State—in other words, could not regulate interstate traffic. When this decision was announced, it became clear that Congress must deal with the problem. Hence it was that the Interstate Commerce Act was enacted. By this act discriminations of all kinds were prohibited; and such is now the law of the land. Nevertheless the Interstate Commerce Act has not cured the evil. This subject; however, is considered elsewhere.<sup>17</sup>

## Discriminations Between Towns—Charging More for a Short than for a Long Haul

Discriminations against individuals have already been explained. A second class of discriminations is that of discriminations against one town as compared with another town. These two methods of discrimination are equally bad, and yet are different in their character. The former were secret, the latter were open; the former were by reductions, rebates, and underweighing, while the latter were by charging more for hauling freight to a town near at hand than to a town far away. For instance, the railroads charged more for hauling a car-load of freight from Chicago to Pittsburgh than they did for hauling the same freight from Chicago right through Pittsburgh on to New York. The charge was greater for the short haul than for the long haul, and Pittsburgh was discriminated against.

Why was this? It was because the railroads had a monopoly at Pittsburgh, but not at New York. The ocean, the Erie Canal, and a half dozen trunk lines of railroads created a competition at New York that led to low rates. But Pittsburgh, like many another American town in the interior, was at the mercy of the railroads, and the railroads used their power. They combined to keep up the rates. The same thing happened also in numberless villages and towns that had but one railroad. That railroad had a monopoly, and took advantage of it by imposing high rates.<sup>18</sup>

Hence the pernicious practice arose of charging high rates wherever the railroads had a monopoly and low rates where they did not have a monopoly, even though the haul to the former place was very much shorter than the haul to the latter place.<sup>19</sup>

Mr. Acworth, the English writer, gives an instance of charging more for a short than for a long haul as follows:

“An Oriental despot, a Baber or an Aurungzebe, did not make and unmake cities with a more absolute and irresistible power than an American railway king. Few campaigns in history have been more momentous than the great ‘Rate War,’ fought by the New York Central under Vanderbilt, and the Erie under Jewett, to protect the ocean trade of New York against the encroachments of Baltimore and Philadelphia. But those wars could only have been carried on—and even now they are not altogether things of the past—on condition that the local stations furnished the sinews of war. Chicago possibly gained by sending its wheat to the seaboard at 7s. a ton, but the intermediate points, which simultaneously were paying perhaps five or six times as much, unquestionably suffered. We are often told that the American railways have ruined the English farmer; people forget that they have ruined the American farmer also. Between 1870 and 1880, in spite of an increased area of two million acres under cultivation, agricultural land in the State of New York alone depreciated in value to the extent of £45,000,000 sterling. And all this while the American people looked on and did nothing—it cannot be said they made no attempt—to stop it.”<sup>20</sup>

The railroads have an ingenious defence for this practice of charging more for a short haul than for a long haul. They argue that at points, like Chicago, water competition makes rates very low—so low, in fact, that the railroads can make a very small profit at that rate, but not profit enough to pay interest or dividends. Hence the railroads ask, shall we lose the business and make no profit at all, or shall we do the business at a very low profit and rely upon our business at other points to pay interest and dividends? Better, they say, get a small profit than no profit at all.

This argument is plausible. But it is unjust and unsound, and for two reasons. First, the railroads, when allowed to discriminate at all, abuse their power. The luckless town wherein they have a monopoly is subjected to extortionate rates—rates as high, in fact, as can be paid. Second, if a fair share of interest and dividends on the railroads cannot be obtained from business between points having water communication, then let the traffic go by water. It is a natural law of commerce that the cheapest mode of service shall survive. Railroads are not justified in exacting their interest charges and dividends from one town, and at the same time carrying traffic from another town at a price that pays a very small part of interest charges and no dividends at all. Unless a fair profit can be made, the business should stop and the legitimate tendencies of trade be allowed to prevail.<sup>21</sup>

Least of all is there any defence for a discrimination between an interior town having two railroads and a town having but one railroad. If competition reduces rates at the former place so as to prevent a fair price being charged, this is the fault of the railroads themselves, and should not excuse higher rates at the latter place. It is

no excuse for one railroad to say that the others are cutting rates, and that consequently it will reduce rates at the competitive point, but nowhere else.<sup>22</sup>

Discriminations against places—charging more for a short haul than for a long haul—finally roused to action the people of the towns and States that were discriminated against. Statutes were passed prohibiting these discriminations. As already stated, the Supreme Court of the United States declared the statutes unconstitutional, so far as they applied to interstate commerce. Congress was then called upon to remedy the evil, and the Interstate Commerce Act, which had been before Congress in many shapes and for many years, was finally passed. It prohibits an interstate railroad from charging more for a short haul than for a long haul, under substantially the same conditions. To a certain extent this act is being enforced. As will be shown hereafter, however, this act has not and cannot accomplish that which is expected from it.

### Discriminations Between Articles—Charging What the Traffic Will Bear

There is a third class of discriminations—discriminations between articles. A railroad charges more for hauling a car-load of freight worth \$1,000 than for hauling a car-load of freight worth \$100, although both cars are loaded at the same time and place, weigh the same, are carried by the same train to the same place, and are delivered to the same person. The difference in the charge is not due to the difference in risk of loss by collision or otherwise. It is due to the fact that the \$1,000 freight can afford to pay a greater charge than the \$100 freight. The \$100 car-load is charged all that it can stand, and the \$1,000 car-load is charged all that it can stand. This frequently happens in the mining regions where the railroad rate varies with each carload, according to the assay value of the ore on that car-load. A car-load of ore worth \$1,000 is charged correspondingly more than a car-load of ore worth \$100.

What arguments do the railroads advance in defence of this practice? Their argument is similar to that on discriminations between towns. They say that only the high grade of ore can afford to pay rates that yield interest and dividends to the railroad; that the low-grade ore must be carried at a very low rate of profit to the railroad, or else it will not be shipped at all; that it is better to carry the low-grade ore at a small profit than not to carry it at all; but that the high-grade ore must pay regular charges and high charges if the railroad is to be built and operated and payment be made of interest and dividends. The railroads argue that they are justified in reducing the regular rate down to the point where the shipper can afford to ship, and that such reduction is right provided there is some profit in the business, however small that profit may be. In other words, the charge should be whatever the traffic will bear — high if the shipment is valuable; if it is of little value.<sup>23</sup>

Here, too, there is force in the argument, but difficulty in the practice. If the railroads are permitted to make a discrimination based upon the value of the article, they at once charge all that the traffic will bear. By this rule the valuable article is rendered not much more valuable to the owner than the cheap article is to its owner. The railroad takes all except the small margin which will induce the owner to transport the article instead of throwing it away. Give the railroad this right, and it does not hesitate to practically confiscate the chief value of the property transported. And if it has a complete monopoly in a district, it leaves little for the inhabitants of that district. Even in England the difficulty of the problem is recognized, but no solution has been found.

“The avowed principle of railway-traffic managers—to impose on the traffic such rates as it can bear—is a principle of discrimination. There is no pretence of charging rates according to the cost of the service. The railways have got rid of this good old standard of charges, and have adopted instead the basis of charging all they can get. That principle does not look well on the face of it, but it may be the only one that is practically workable. Upon the point we offer no opinion.”

Such is the conclusion of Jeans, the great English authority.<sup>24</sup>

In America the railroads were allowed to charge what the traffic would bear until the rapacity of the railroads became intolerable. Statutes were then passed by the legislatures of the various States, attempting to regulate the evil. These statutes did not and could not accomplish their purpose. It has been found that great judgment, experience, and capacity are required in classifying the different kinds of freight so that each class shall bear its due proportion of railroad charges. In fact, the classification of freight is one of the most formida-

ble difficulties that face the Interstate Commerce Commission to-day. The final analysis of the problem seems to require a separate consideration of each article of commerce, and on each article the question is whether the rate charged for transporting it is too high.<sup>25</sup>

### Free Passes

A free railroad pass to a public official is a bribe, open, shameless, and flagrant. Its purpose is to prevent legislatures, city officers, and public men generally from insisting upon and enforcing the rights of the people. Yet the coolness with which these passes are given to legislators and judges and the complacency and openness with which they are received are remarkable. There are few or no defendants of the iniquity, and no railroad attempts to justify it, yet there are few railroads which have abolished it. It is a cheap mode of bribery.

There have been various statutes relative to it. The Interstate Commerce Act forbids free passes, but this act applies only to interstate railroads. The legislature of Delaware regularly passes a resolution of thanks to the railroads "for passes to the members." In New York, where the free passes to the legislature are distributed openly and notoriously, the Railroad Commissioners for years have endeavored in vain to have certain laws enacted to remedy well-known flagrant railroad abuses in that State. Nevertheless the railroads are not always to be blamed. In Michigan, a few years ago the railroads decided to withdraw the free passes from the legislature. Immediately a bill was introduced by a member to reduce railroad rates. The railroads thereupon restored the passes, and the bill was dropped. In the State of Nebraska a well-known anti-monopolist, when questioned on the stump as to why he rode on a free pass, promptly replied, "Certainly I do; forage on the enemy; forage on the enemy."

Pennsylvania in its famous Constitution of 1873, prohibited free passes, and other States have followed her example. New Jersey has tried another remedy, and with characteristic directness has enacted a law that all railroads must give free passes to the legislature and certain public officers, thereby changing the gift from a favor to a right. Connecticut has recently, with true Yankee ingenuity, inaugurated a different plan, and a specified state officer is required, upon application therefor by a member of the legislature, to purchase transportation for him, and to pay for it out of the State funds.

The free-pass bribery of public officials is becoming too flagrant and too indefensible to endure or to be endured. It will be abolished, however, not by any virtue of the railroads, or of the officials themselves, but by the force of public sentiment.

Another abuse of the free-pass system was that under the old plan the rich and powerful rode free while the poor man paid. Those palmy days, however, of free passes to large shippers and to every person who had influence with the railroad have nearly gone by. The railroads have found that such liberality does not pay. The provision of the Interstate Commerce Act which prohibits the free pass, counts but little with the average railroad official. But the fact that there is no profit in it to the railroads themselves will abolish the free pass so far as business men are concerned.<sup>26</sup>

### Pools

Many years ago it became clear to railroad men that at every town where two or more railroads competed with each other for the transportation business of that town, there would be secret as well as open reductions of rates, railroad "wars," general demoralization of the business, and finally no profit at all to any of the railroads. It became clear also that the agreements of the railroads to maintain a certain rate were utterly worthless; that the agreement was no sooner made than it was broken; and that a railroad contract to maintain rates was the same as no contract at all. It became clear further that if the railroads touching at any town should agree among themselves on a division of the traffic to and from the town, and should agree also as to the rates to be charged, then that the agreed rate might be maintained; otherwise not. Accordingly such agreements were made, and they were called "pools."

A railroad pool is an agreement between part or all of the railroads running into a place, to charge certain railroad rates, and to divide the business in specified proportions. The pool is organized to prevent competition between the railroads. In most of the towns along a railroad line, the railroad has a complete and permanent monopoly because great capital and great loss are involved in paralleling that line. The pool creates a monopoly

in towns where two or more railroads run. It is a combination of the railroads running into a town.<sup>27</sup>

These pools sprang rapidly into existence. Where-ever two or more roads competed, there the pool was formed. The system soon became a vast network overspreading the country. Every railroad was a member. The whole country was divided into sections for convenience in organizing and carrying on the pool. Every town covered by the pool was called a "pooled town." Even New York, Chicago, and the great cities generally were pooled. The pool gave as complete a monopoly as though but a single railroad ran to a town, except at points where water transportation came into competition.

Naturally the railroads argue in favor of the pool. They claim that the pool prevents ruinous railroad wars; makes staple and reliable rates; enables shippers to calculate with certainty on railroad charges; does away with secret cutting, discriminations, and underbuying; places towns with one railroad on an equality with towns having many railroads; prevents the railroad bankruptcies, which are disastrous to the investor and business community; and enables the railroad to charge a fair rate, and thereby pay interest and reasonable dividends.

Jeans, the English authority, after remarking that the American pool has no exact counterpart in other countries, summarizes the advantages of the pool, as follows:

"It seems to be generally admitted that, in the United States, pools have not been without beneficial influence; they have prevented unjust discriminations, through special secret rates, to favored freighters; they have prevented, similarly, unjust discriminations against towns and cities, and against particular States or sections of the country; they have tended to put an end to constantly fluctuating rates; they have prevented the absorption of the weaker lines by the stronger, and have thus conserved the elements of competition; they have tended to prevent the bankruptcy of the great railroad corporations, and the consequent shocks to the financial interests of the country. Moreover, they have not hindered, but rather assisted to promote, the extension of transportation facilities, the reduction of rates, and the development of traffic."<sup>28</sup>

All this may be true temporarily, but it is not the permanent result. A pool is but a truce. It is only a cessation of hostilities. It generally ends a railroad war, and ends with a railroad war. Not even while it is in existence does it prevent secret cutting, discriminations, and all the practices by which one railroad seeks to get business away from another railroad.

The old and great trunk lines have begun to see that the pool is a good thing for their weak rivals, but a bad thing for themselves. A railroad war means ruin to a new railroad, because the war reduces rates below the cost of running the trains. But the pool prevents war; sustains the new road; enables it to establish its finances; gives it time to gather local business; creates confidence in its future; and enables it to sell its bonds to investors. The pool gives the weakling an opportunity to grow strong. The great trunk lines are beginning to see the folly of the pool, so far as their interests are concerned. It is true that this development of weak trunk lines by the pool is an advantage to the public, but it may safely be said that this incidental advantage to the people is not the object of the pool. The railroads are not run for philanthropic purposes.

The Interstate Commerce Commission has said of pools:

"The pooling system was looked upon with distrust by the public, mainly because it seemed to be a scheme whereby competition between the roads could be obviated, and rates for railroad service put or kept up to unreasonable figures. But if railroad managers supposed that by this scheme they were to stop competition among themselves, the result has not answered their expectations. The competition has still gone on; each road striving to obtain as large a share of the business as possible, and no agreement among them could altogether prevent a yielding to the pressure of shippers for lower rates."<sup>29</sup>

The public have always been hostile to the pool. It fixed rates arbitrarily without consulting shippers or shippers' interests. It was subject to sudden fluctuations without notice. It created a monopoly without responsibility. The regulating power of competition was done away with and nothing in behalf of the public was put in its place. Moreover it divided and diverted traffic. A large shipment sent to one railroad was liable to be delivered at its destination by a different or several railroads with all the delays and troubles incident to each.

Public hostility to pools culminated in 1887 in the Interstate Commerce Act. By one of its provisions, pools are prohibited. As to the effect of that prohibition there is a wide difference of opinion. There is no doubt

that the breaking up of the pool has promoted competition among railroads, but it has also increased discriminations, secret rate-cutting, and other nefarious modes of getting business. Consequently a strong effort is now being made by the railroads to repeal the anti-pool provision on the ground that the pool may be bad, but it prevents things that are worse. There is little indication, however, that the American people are inclined to allow such a repeal. The people at large do not favor the railroad plan of curing one evil by another. For the things "that are worse," other remedies will be found and those remedies will be efficacious. The pool is believed to be iniquitous, demoralizing, and dangerous. It will not be revived. In its place, however, will arise a more substantial union of railroad interests, the character of which is considered elsewhere.<sup>30</sup>

## Railroad Wars

A railroad war is a war of rates. It is competition broken loose. It is a contest between two or more competing roads to see which one can endure longest the carrying on of business at a loss. The war is caused by secret cutting of rates, or by loss of business, or by the advent of a new road seeking business, or by a stock-gambling project or by the determination of an old road to crush a new competing road before the latter becomes established.

These wars sometimes do a little good. Frequently it happens that after one of them the rates are never increased to former figures. Such has been the case with wars on rates between New York and Chicago, and also on rates from the Pacific coast to the East. The war itself is not the cause of the permanent reduction however. The cause lies further back, and is due to the increase in the number of railroads, the increase of business, the better facilities for handling traffic, or the better and cheaper traffic arrangements with connecting lines.

But in general a railroad war does much harm. It brings some of the roads to the very verge of bankruptcy; it jeopardizes the payment of interest on railroad bonds; it stops dividends; it causes panics in the commercial centres; and it unsettles business, finances, and general prosperity. True it is that while the war lasts, the persons using the railroads save considerable money in railroad rates. But this saving is offset partly by the fact that unnecessary travel is indulged in, and partly by the fact that the persons thus benefited form but a small proportion of the whole people. A general railroad war brings confusion and financial distress to railroads and business interests. Sooner or later the whole country is disturbed.<sup>31</sup>

But how are they to be prevented? It is clear that the railroads themselves cannot refrain from going to war. They have a quarrelsome and belligerent nature. When not engaged in fighting the people, they are prone to fight among themselves. There is no hope of relief from that quarter.

"War is the natural state of an American railway towards all other authorities and its own fellows, just as war was the natural state of cities towards one another in the ancient world."<sup>32</sup>

The railroads claim that pools are the surest preventives of wars. But the pool is worse than the war. Moreover, railroad wars broke out in spite of the pools and would do so again if pools were reestablished. The pool began when a war ended, and ended when a war began.

A railroad clearing-house has been proposed to prevent railroad wars. Such a clearing-house is an old institution in England, but is yet to be seen in America. Moreover, when once established in America, as it soon will be, it will be found to be nothing more nor less than a book-keeping concern. It cannot prevent railroad wars.

"It is the fashion to speak of the English clearing-house as though it had stopped rate wars. It undoubtedly had an indirect effect of this kind, but its indirect influence was small. In fact, the officials of the clearing-house have taken special pains to arrange this settlement in such a manner as not to be required to touch disputes between individual companies with regard to traffic questions."<sup>33</sup>

The railroads are beginning to claim that the Interstate Commerce Act should prohibit railroad wars, inasmuch as it prohibits railroad pools,—the preventives of wars. If the present tendencies continue, this apparently extreme view may come true, inasmuch as the time seems not far distant when the Interstate Commerce Commission will be given power to reduce railroad rates. There is much force in the argument that if the power

to reduce rates is given to that Commission, the power should also be given to prevent a sudden and extreme reduction of rates,—in other words, to prevent a war in rates.

Relief, however, is coming from another quarter, and by no means with a leaden heel. It is coming as it came in England and France. It will be by the unification and consolidation of competing railroads, and this will put an end to railroad wars peremptorily and beyond question. This subject is considered elsewhere.<sup>34</sup>

### Useless Paralleling of Railroads

Under the general laws prevailing in most of the States for the incorporation of railroads, only a certificate need be filed in order to obtain a charter. No legislature need be bribed or convinced; no State officers need be consulted; no large expense need be incurred for “influence”; and no hostile railroad can prevent the incorporation.

This ease of incorporation, together with the periodical eras of abundance of money in the market, of reckless speculation and inflation, and of “booming” times generally, has had a curious effect. It has enabled adventurers, promoters, and irresponsible speculators to build railroads parallel to old railroads for the sole purpose of compelling the latter roads to buy them out. This is blackmail on a gigantic scale. Not only this but the new railroad is often built to invade the territory of an old and valuable railroad, under pretence of building a competing line, but for the sole purpose of “floating off” on to the public great quantities of stocks and bonds.

If such railroad building resulted in an independent competing line the public would have no cause to complain. But such is not the case. Usually the new road is built to be sold to the old one, and even when it is not, the old road sooner or later absorbs the new one. This absorption generally takes place after a disastrous railroad war, that throws the new road into a receiver’s hands. If not in this way, then it takes place by consolidation.

The most notable instance of this was the West Shore and the Nickel Plate Railroads, one of which fell into the hands of its competitor after a railroad war, and the other by purchase and practical consolidation. By the laws of trade based on natural laws, which are stronger than the laws of men, two or more competing railroads sooner or later cease to compete, and they become a monopoly by agreement or by consolidation.<sup>35</sup>

And when the consolidation or agreement takes place the effect is ruinous. There are two railroads where there should be but one; two roads to be sustained; two roads to consume money for interest and dividends, and two roads for whose maintenance the rates must be kept up, instead of being reduced, as they could be if there were but one.

It is with reason that the Kansas Railroad Commissioners say of the railroads in that State:

“After the ‘boom’ the ‘boomerang.’ The companies found themselves confronted with fixed charges on non-paying trackage; the municipalities equally unhappy under a debt of aid bonds and extravagance in public expenditure. The one could not find relief through resort to excessive charges, nor the other through a repudiation of contract obligations; the majesty of the law would not permit it. Time, the one great healer of all curable wounds and ills, can alone set things right. Indeed, it has already done much to correct the errors and ills of this overdoing in Kansas enterprise. A phenomenal growth in population, agriculture and other productions, and rapidly accumulating wealth, together with the more prudent methods born of adversity, have done much already to relieve the strain, and will, we are confident, bring complete relief at no distant day.

“This recital of facts, connecting the evils of the present with their cause in the past, is not for amusement, but to invoke a more careful and intelligent action than comes of passionate appeal and vindictive assault. We have 1,500 miles of railroad which is worse than worthless to its owners, and a burden upon the commerce of the State as a whole, although a blessing to the country along its line. It came by invitation, encouragement, and support of the people, and cannot be ignored in the discussion of rate-making for the rest.”

In England such a thing” is impossible because in that country no railroad can be built until it has passed through the crucible of a parliamentary committee and has obtained a special charter from Parliament. But this restriction is worse than no restriction at all. Such an ordeal is ruinous to the new railroads, even to those which should be built. The parliamentary expense alone in England in getting a charter would be enough to build an American railroad. Nearly a half million of dollars have been paid for the parliamentary expenses of a single

railway in England—the Great Western. Hence it is that the old railroads in England have a monopoly that cannot easily be disturbed or broken. America will never go back to the old plan of granting special charters to railroads.

The established railroads of America are in favor of the consent of railroad commissioners before a railroad can be built. Already in New Hampshire such a restriction exists. No construction is permitted until the commissioners shall have decided that the new road is needed.<sup>36</sup>

The argument against giving such power to commissioners is a strong one. The unrestricted right to build railroads is a constant check on the high charges and poor service of all roads. It is a menace that induces the old road to reduce its charges rather than leave open the temptation of possible competition. And there is another objection to the New Hampshire plan. Restrictions by commissioners mean the corruption of those commissioners. The money, power, and influence of great systems of railroads are not easily withstood. By their tampering with the commissioners they soon would render new construction an impossibility. The history of what unscrupulous railroad methods have been in the past tells plainly what their methods will be in the future. The danger is that restrictions on construction will be worse than no restrictions at all. The railroads themselves will manipulate the re-strictors.

On account of these reasons there is little likelihood that many States will allow the railroad commissioners to veto the building of new railroads. The remedy for the useless paralleling of lines will be found in the consolidation of present systems and a consolidation to such an extent that the blackmailing projects will not dare to contend against the formidable strength of established roads.

## Foreclosures and Reorganization of Corporations

In an epigrammatic way it has been said that a new railroad is not in a sound physical and financial condition until the bondholders have closed out the stockholders and a receiver has closed out the bondholders. This is an extreme statement, and yet it is rare that a newly constructed railroad is able to avoid insolvency and foreclosure. The money for its construction is obtained from its mortgage bonds, while its stock is generally pure “water,” and represents nothing except a hope of future value. This hope is unfulfilled. Interest is not even paid on the bonded debt. Foreclosure of the mortgage takes place, and so often has this been the case that railroad bankruptcies, foreclosures, receiverships, and reorganizations have come to be looked upon in America as inevitable accompaniments of railroad construction.

The injury done by all this is great and incalculable. Heavy losses fall upon the investors; confidence in other securities is weakened; banks become frightened; credit is curtailed; a railroad war is frequently precipitated by the bankrupt road or its receiver; a panic and crash sometimes result; and, in all cases, general business is injured by the widespread distrust. When it is recollected that from 1876 to 1889 nearly four hundred and fifty railways in the United States were sold under foreclosure, the losses and injury therefrom may be imagined if not understood.

These foreclosures, however, do not proceed smoothly to judgment and sale. The stockholders and officers of the corporation interpose all manner of defences and dilatory proceedings in the suit, and frequently several years are consumed in completing a single foreclosure.<sup>37</sup>

The result of all this is great loss of property and disturbance of business, and these losses and disturbances have gone to such an extent that the question has arisen whether railroad foreclosures are not productive of more evil than good, and whether they ought not to be abolished altogether.

In England, foreclosures of railroad mortgages are not allowed, and receivers' certificates have no existence. Railroad mortgages are a lien, not on the property, but on the income. And the statutory law of England prescribes that when a certain proportion, generally two thirds of the stockholders and bondholders and general creditors of an insolvent railroad company, shall agree upon a plan of reorganization and a court shall approve of that plan, then the remaining one third are bound to consent, and the reorganization takes place.

In America no such law exists, but there has grown up a business settlement of these foreclosure suits. These settlements are called reorganization agreements, and they are fast supplanting the foreclosures of railroad mortgages. A reorganization is an agreement by which the stockholders and general creditors of an insolvent company agree to reduce the amount of their claims against the corporation and also agree to contribute

money towards reestablishing and carrying on the business. There is an infinite variety of plans of reorganization, and each plan differs in some particular from all others, but all reorganizations have the same general purpose.<sup>38</sup>

The object of a reorganization is to avoid foreclosure, and the prospect of a foreclosure is the cause of a reorganization. Frequently the reorganization is made after a foreclosure has been commenced, the object of the foreclosure being to cut off these persons who refuse to come into the reorganization. Sometimes the reorganization practically does away with the necessity of foreclosure, and this is the ideal condition towards which the times are tending.

The time probably will come when reorganization without foreclosure will be compelled by the law in America the same as in England. The very fact that American reorganizations have sprung from the necessities of business; that they have grown up outside of the law; that, though voluntary in their creation, they have supplanted foreclosures; and that they are fair and necessary to the business world, leads to the conviction that foreclosures of railroad-mortgages will soon be prohibited by statute, and that reorganizations under the sanction of the law will take their place.

## Stock Gambling

Tacitus, the Roman historian, writing of the Germanic races in the year 99 A.D. said: "In the character of a German there is nothing so remarkable as his passion for play. Without the excuse of liquor (strange as it may seem), in their cool and sober moments, they have recourse to dice, as to a serious and regular business, with the most desperate spirit committing their whole substance to chance, and when they have lost their all, putting their liberty and even their persons upon the last hazard of the die. The loser yields himself to slavery. Young, robust, and valiant, he submits to be chained, and even exposed to sale. Such is the effect of a ruinous and inveterate habit. They are victims to folly, and they call themselves men of honor."

It was from these Germanic tribes that the Anglo-Saxon race sprang. The daring propensities of the race have led to the enterprise and marvellous achievements of the English-speaking people, but these propensities have also been the cause of gambling, speculation, and frightful losses. Ever since shares of stock came into existence—nearly three hundred years ago—stock-gambling has been an evil among the people. As long ago as the year 1720, a whirlwind of stock speculation swept over England, and when the "South Sea Bubble" exploded, it unsettled the finances of the kingdom.

The periodical regularity with which the English nation goes into wild speculations and loses its money is remarkable. One of the most striking instances of this was prior to the panic of 1825. The *Annual Register* of that day described the scenes as follows:

"All the gambling propensities of human nature were constantly solicited into action, and crowds of individuals of every description, the credulous and the suspicious, the crafty and the bold, the raw and the experienced, the intelligent and the ignorant, princes, nobles, politicians, patriots, lawyers, physicians, divines, philosophers, poets, intermingled with women of all ranks and degrees, spinsters, wives, and widows, hastened to venture some portion of their property in schemes of which scarcely anything was known except the name."

In these latter days stock-gambling still prevails. It has assumed colossal proportions and has acquired a certain respectability by reason of its association with stock investment. Stock gambling and stock investment, however, are two very different affairs. The former is the purchase of stock in the hope that the price will quickly go up or down so as to yield a profit. The latter is a purchase of stock in order to hold it for dividends or for an eventual rise.

Stock gambling is carried on chiefly through two mediums—stock exchanges and "bucket shops."

A stock exchange is a place where stocks, bonds, and other corporate securities are bought and sold. The exchange consists of brokers. They alone have the privilege of buying and selling in a particular exchange, and frequently an exchange is composed of several hundred members. The amount of stocks bought and sold on one of these exchanges in a single day is remarkable. It sometimes reaches 1,000,000 shares. And yet it is estimated that only one eighth of these transactions is for investment, the remaining seven eighths being pure gambling.

That one eighth part, however, is of great consequence to the country. Without the stock exchange railroads and corporations requiring great capital could not sell their securities, and their construction on the modern scale would be impracticable. The stock exchange is the connecting medium between the unknown small investors and the great captains of industry. Through it, persons with a little surplus find convenient investments; those who have stocks, which they must convert into cash, find a ready market; staple prices for securities are made; violent fluctuations in the whole list of stocks are prevented; rascality in corporate management is exposed; full reports of the corporate condition are brought to light, scrutinized and criticised; information as to values is widely disseminated; probable changes in values are anticipated and prepared for; and through the stock exchanges, and the taking of stocks as collateral security, the conservative influence of the banks is felt in regulating the finances and business of the country.

Some idea of the magnitude and scope of the business of a stock exchange can be obtained from the following article which appeared in October, 1890:

“The magnitude of Wall Street monetary transactions sinks into insignificance when compared to the business daily done on the London Stock Exchange. The number and the quantity of the stocks handled in the British capital are remarkable. In this market the whole world is brought into financial proximity, and the business enterprises of the entire globe are made the medium of speculation. The reports of the business done on any day in the London Stock Exchange show this to be the truth. Indeed, the foreign and colonial securities dealt in here—governmental, railway, banks, and miscellaneous industrial—far outnumber those of the United Kingdom.

“In colonial government inscribed securities there are quoted above par those of Canada, the Cape of Good Hope, Natal, New South Wales, New Zealand, South Australia, Tasmania, Victoria, and Western Australia. In foreign government securities are found in one close neighborhood the Argentine Republic, Brazil, Buenos Ayres, Chili, China, Costa Rica, Egypt, France, Greece, Hungary, Italy, Mexico, Portugal, Russia, Spain, Turkey, Uruguay, the United States, and Virginia. Of these securities the United States 4 per cents lead all others in value. In railway securities, stocks, bonds, and obligations, the list is almost interminable, and the roads represented lace the globe.

“Every road in the United Kingdom is represented in the daily dealings, and the American list includes everything of prominence in the United States, Canada, Mexico, and Central America. There are quotations of no less than eight different Indian railways, and the names of the Bengal-Nagpur, the Bombay, Baroda, and Central India, the Rohilkund and Kumaon, and the Great Indian Peninsular are as familiar to the London stock-broker and the London speculator as the names of our own great railways are to the Wall Street operator. There are a dozen or more South American railways listed and liberally dealt in, and close beside them, in the quotations, are found the Ottoman, from Smyrna to Aidin, the South Austrian, the Dutch Rhenish, the Charkow-Krementschug, and many others that sound odd and strange to New York ears.

“In bank stocks the array is imposing, and the names suggest bonds of commercial interest between London and the rest of the world. There are the Anglo-Egyptian Bank, the Bank of Africa, the Bank of Australasia, the Bank of New South Wales, the Bank of New Zealand, the Bank of South Australia, the Bank of Tarapaca and London, the Chartered Bank of India, Australia, and China, the Hong Kong and Shanghai Bank, the Imperial Bank of Persia, the Imperial Ottoman Bank, the London and San Francisco Bank, and the London Bank of Mexico and South America. In mines the transactions are large and extend from the gold fields of South Africa to the silver diggings on the western slopes of the Rocky Mountains, and from the diamond mines of Brazil to the copper finds of Lake Huron, Telegraph and telephone stocks are dealt in, and the quotations show a juxtaposition of the Anglo-American, the Direct United States Cable, the Great Northern of Copenhagen, the Western and Brazilian, and the West India and Panama.

“Corporation stocks represent such distant places from London as Melbourne, Buenos Ayres, and the city of Mexico. In foreign stocks, bonds, etc., coupons payable in London or abroad, there are copiously represented the Argentine Republic, Brazil, Buenos Ayres, Chili, China, Colombia, Cordova, Ecuador, Egypt, Greece, Costa Rica, Guatemala, Hungary, Mexico, Nicaragua, Paraguay, Portugal, Russia, Spain, Sweden, Turkey, and Uruguay. Breweries are made a conspicuous means of investment and speculation, and we find the Chicago, Frank Jones, and St. Louis breweries quoted with those of Allsopp, Guinness, Barnsley, Ohlsson’s Cape, and Watney & Co.

“Commercial and industrial enterprises have a wide range, and extend from the forges of Leeds to the water supply of Buenos Ayres. Financial, land, and investment enterprises embrace concerns operating in America, Australia, New Zealand, the Transvaal, Peru, and numerous other countries remote from each

other, and having no interest in common except those created by the London stock market and existing on the London Exchange.

“In addition to these dealings in foreign securities, stocks, bonds, mines, railways, land investments, and commercial and industrial enterprises, the business done in British railways, banks, financial trusts, gas companies, insurance concerns, tramways, omnibus companies, water-works, and other domestic and local stocks is stupendous. The daily transactions of the London Stock Exchange disclose a marvellous diversity of interests spreading over the entire civilized globe, and yet focused in one place for the purposes of investment and speculation. It is a wonderful community of interests, a marvellous transformation of the business world into one close neighborhood, and it suggests the idea that the people of Great Britain not only have a great deal of money, but they are anxious to use it in either investment or speculation.”

But the gambling portion of the stock exchange business causes unutterable woe and ruin. Thousands of men fall into that maelstrom every year. Stock-gambling is a mania that unsettles the minds of men and unfits them for serious, earnest business. It breaks up homes, disgraces families, beggars the rich, and often leads to suicide. Men, whose legitimate income is decreasing and whose expenses are increasing, resort to the stock exchange in despair, and risk all on the venture. Moreover, the whole country is affected when a great syndicate are gambling in a particular stock on a colossal scale, and are jeopardizing vast business interests. The credit of banks and the solvency of railroads are the pawns with which they are playing. If their gambling does not win, there comes a collapse of their credit and business, a “run” on banks, railroad foreclosures and receiverships, wars in rates, and widespread disaster. The South Sea Bubble of 1720 has been frequently repeated, and one of the latest instances was the collapse of the West Shore Railroad syndicate, which created a panic in Wall Street and carried down the Metropolitan Bank.

The bucket shop is worse than the stock exchange, in that it has no redeeming features. It is purely and simply a gambling den and sink of iniquity. It is the kindergarten and hospital of the stock exchange. It does more evil than a stock exchange, because it is cheap, it deals in small stakes, and it establishes itself in the smaller as well as the larger cities, villages, and towns. It enables impecunious clerks and employees to gamble with facility. Moreover, it is never the medium of investment. There are about five thousand of these bucket shops in the country. They take stakes as low as five dollars, but their aggregate business amounts to millions daily. They get telegraphic quotations of prices from New York and Chicago, and they take orders from customers for the purchase of any stock. The customer does not pay for his purchase, but he deposits money to pay the loss in case his purchase declines in value before the deal is closed. If his purchase goes up, then the customer is entitled to the gain, in addition to receiving back his deposit. If it goes down he loses his deposit. It is gambling, and gambling of the worst type.

Various remedies have been tried to prevent stock-gambling. Statutes have been passed. In Illinois, Ohio, Pennsylvania, and other States, the courts favor these statutes, and by enforcing them have rendered stock gambling somewhat dangerous. In New York and other States the courts have lent little aid in the suppression of the vice. Recently, however, a new and stronger enemy of the bucket shop has been very active. The business of the stock exchange has been dwindling away. One cause of the decline is the flourishing condition of the bucket shops, which seem to be doing nearly all the business. Accordingly the exchanges are waging war on them by withholding quotations, and are trying to root them out. This curious and interesting struggle has the approval of the public.

## Strikes

One of the most important features of modern times is the rise of the laboring classes to political and industrial power. Their political power is seen in the passing of laws lessening the hours of labor, creating more holidays, prohibiting the competition of prison work, regulating the employment of women and children, and a host of lesser laws. This political power of the workingmen is due to the power of the ballot. Their industrial power is of more recent origin. It is due, not to co-operation or profit-sharing, or the saving and investment of wages, but to the power of the “strike.”

A strike exists when a number of employees quit work until their wages are raised, or hours of labor decreased, or some other grievance is righted. Formerly every strike was made by itself, and the group of

laborers involved in it were not aided by or connected with any other group of laborers. But within the past few years the laboring men have learned the power of organization. They have united, and the labor organizations of the present day possess a membership of hundreds of thousands, and have extended their power over the entire country. The Knights of Labor is the largest of these organizations, including in its ranks all grades of manual workmen. The Brotherhood of Locomotive Engineers is another widespread but more conservative organization. And there are others, fantastic in name, but similar in their purpose of increasing wages, decreasing hours of labor, and promoting the well-being of the members.

A strike is not always resorted to in order to accomplish these ends. Demands are first made upon the employers; then come negotiations and arguments; and compromises and arbitrations are often brought about. If all these fail, the strike follows. The men lose their wages, but the employers must stop their business wholly or partially. The question then is who can afford to wait the longer, the men or the employer. The employer seeks to employ other men, but these are generally unskilled and unsatisfactory. Moreover the strikers seek to dissuade the new men from working, and sometimes attack, terrify, and prevent them from continuing work.

Corporations are peculiarly subject to strikes, because corporations carry on the great enterprises of the country. Especially is the strike a common occurrence on railroads. The Pittsburgh strikes of 1877 led to riots, bloodshed, the interference of troops, and the destruction of \$30,000,000 of railroad property. The engineers' and firemen's strike on the Chicago, Burlington, & Quincy Railroad in 1887–8 lasted for months, caused a loss in the company's business of millions of dollars, and by reason of the employment of new men led to many fatal accidents and collisions. In both of these instances the strikers were beaten. But frequently they succeed. The statistics of the Bureau of Statistics of Labor of the State of New York, published in 1890, show that of all the strikes in five years, 47 per cent were successful, and 15 per cent were compromised. Of the strikes for high wages, and for or against changes in hours of labor, 54 per cent were successful, and 18 per cent were compromised. Of strikes against discharge of union men and others of this class, 34 per cent were successful, and 27 per cent were compromised.<sup>39</sup>

A successful strike is a gain to the laboring man. It enables him to work less hard, or for a shorter time, and it increases his wages, or gives him more time for recreation, self-improvement, and rest. All these things tend to improve the physical, social, mental, and moral life of the laboring people, and it is to be borne in mind that anything which tends to improve them tends to improve the character and protect the future of the American nation itself.

It is very doubtful, however, whether strikes or any other power can prevent the wages of the unskilled labor of America from going down to the level of European wages. The unskilled labor of all nations combined is like a vast sea which continually seeks a level. If wages are higher in America than in Europe, European labor will flow into America until a level in wages is reached, either by the raising of wages in Europe or the lowering of wages in America. A prohibitory law excluding immigration, such as excludes the Chinese, would prevent this flow and equalization of labor. But such an exclusion of European labor is impracticable, and the unskilled labor of all lands is destined to meet on a level. A protective tariff cannot prevent it. Neither can the strikes of American labor prevent it. The strikes may possibly aid skilled labor, and it may even improve, temporarily, the condition of unskilled labor. Education will lift to a higher level those who have its advantages, but eventually the natural increase of population and the great immigration from Europe will regulate wages. As against these powers the strike will sink into impotence and insignificance.

But, meantime, the strike is interfering with business, and is causing great loss to employer and employee. Hence one of the leading questions of the day is how to solve the problem of the strike.

State boards of arbitration have been proposed, and such a board exists in New York State. But the trouble is that the decision of the board is not binding on the parties. The board may compel witnesses to testify, but cannot compel the parties to submit to its decision. Public opinion may be affected by the decision, and a flood of light may be let in on the facts of a particular strike. But unless the parties voluntarily obey the decree, the decision of the board is worthless.

Insurance by the railroads of their employees against accidents, sickness, and loss of life, is being tried. The Pennsylvania, and the Chicago, Burlington, & Quincy Railroads, particularly, are making far-reaching experiments in this direction—experiments which, if successful, will in large part weld together the interests of railroads and their employees.<sup>40</sup>

Still another remedy is that of giving the employees some portion of the profits of the business. Various methods of effecting this result have been proposed, and some of them have been tried. In the case of manufacturing, mercantile, and industrial enterprises, a certain degree of success has been attained in this direction; but in railroads the employee is still far from being a stockholder. Nevertheless it is true that if the day ever comes when the wage earner is the wage sharer in railroads, the railroad strike will be a thing of the past.<sup>41</sup>

Finally another and radically vicious remedy has been proposed. It is, as usual, a plan for further legislation, with all the mistakes and incompetency that such legislation generally involves. It has been proposed that the legislature shall enlist railway employees as soldiers, and punish a striker as a deserter; or shall require notice of a strike to be given; or shall punish all railway strikes as penal offences; or shall give the boards of arbitration the power to enforce their decisions, and to punish a refusal to abide by them. But all these schemes ill accord with Anglo-Saxon ideas of personal liberty. The inherent right of a man to unite with others, and to go and come, and work when he pleases, is of greater consequence than the business prosperity of railroads or the convenience of the public. Although there are times when personal liberty must yield to the necessities of the state, yet never should it be sacrificed to the necessities of railroad transportation.<sup>42</sup>

“Two ways of dealing with these evils have been tried in Europe, either of which seems to be a partial remedy, but neither of which seems to commend itself to Americans. The first is to impose a heavy *per diem* fine, or even forfeiture of charter, upon any corporation that fails to perform its public functions. This forces the company to make terms of some kind with the strikers.... The second European method of guarding the public against the loss of strikes is to make it a misdemeanor for any employee to quit work without giving (say) five days’ notice.”<sup>43</sup>

If the legislatures will cease to interfere, the labor question will be solved by the American railroads themselves. Events are moving in that direction rapidly and effectively.<sup>44</sup> A solution is inevitable and must be had, and the intellect and clear vision of the railroad managers, brought to bear upon this question by their interest, are far more competent to deal with the problem than are the political time-servers of State legislatures.

The American public, with characteristic good-nature, endures the inconvenience and loss of business incident to strikes, and believes that the problem should solve itself; that State legislatures are neither intended nor competent to cope with it; and that there should be no legislation subservient to railroad interests.

## Frauds on Stockholders and Creditors

In these money-making and money-seeking times the immense gains and profits of corporations have not always been honestly preserved and administered for the benefit of those who are entitled thereto—the stockholders of the company. Corporations, with their vast capital stock, their great income, their rapidly changing personal property and their large purchases and sales, have proved to be a source of temptation which corporate officers are too often unable to withstand. These companies have been found to be efficient instruments of fraud, speculation, plunder, and illegal gain. In these latter days the spoliation of corporations and stockholders by the corporate directors and managers have been systematized into well-known methods of proceeding, and the carrying out of such plans has become a profession and an accomplishment. Skill, audacity, experience, and administrative talent of the highest order have reduced to a certainty the methods of diverting the profits, capital, and even the existence of the corporation itself, to the enrichment of the corporate managers and their co-conspirators. Corporations become insolvent and stockholders lose their investment, while individuals become millionaires. Illegitimate gains are secured and enormous fortunes are amassed by the few, at the expense of the defrauded but generally helpless stockholders.

The expense, difficulty, and delays of litigation; the power, wealth, and unscrupulousness of the guilty parties; the secrecy, skill, and evasive nature of their methods; and the fact that the results of even a successful suit belong to the corporation, and not to the stockholders who sue, all combine to baffle investigation and exposure, to discourage the stockholders, and to encourage and protect the parties guilty of the wrong.

In England, ever since the time of the South Sea Bubble, there has been a constant recurrence of “bubble companies” and dishonest promoters. The English reports are filled with cases of frauds of corporate directors, corporate agents, and corporate organizers. A system of jurisprudence has grown up from these cases. This

system, however, is as yet in a formative state; and there is no branch of the law more complicated, difficult, and uncertain than that growing out of the frauds of corporate directors.

In America the cases involving a breach of trust by the directors arise generally out of the management of corporations and not in their formation. These cases often involve vast transactions, and exhibit a remarkable talent for railway management and manipulation. They have commanded the stockholder's admiration as well as aroused his indignation. Mr. Acworth, the English writer, says that "hatred itself can deny to American railway management no title to glory except virtue."<sup>45</sup>

The American faculty for organization, executive management, and the invention and adoption of means to ends has been very largely engaged in the development and management of the American railroads. But this management has not always been honest. The ingenuity and fruitful cunning of adroit, experienced, and unscrupulous men have plundered and robbed the corporations and the stockholders, and have brought reproach on the management of the American railway. Great fortunes have been accumulated by wrecking great corporations. Railroads which were capable of earning a fair return upon the capital invested have been rendered insolvent by the fraudulent management and illegal gains of the corporate officers. The methods of accomplishing this result have been systematized and elaborated to a remarkable degree. The wrecking of a corporation is done in numberless ways.

Professor E. J. James says in regard to this subject:

"It was found again that the directors of the railroads, even where they have been constructed with some reference to honesty and economy, had interests which were not necessarily the same as those of the rest of the corporation or of the public. For example, the directors were often interested in manufacturing or trading enterprises where it was necessary to resort to the railroads in the course of their business. By giving to themselves, as directors, special rates and privileges, it was possible to build up their own business at the expense of rivals, thereby practically depriving the public of free competition in the particular branches of industry on the one hand, and cheating their fellow-stockholders on the other hand, by lessening by so much the possibilities of income, and consequently the frequency or size of dividends.

"It was, moreover, possible for the directors to form companies of all kinds for the purpose of supplying the parent company with supplies, or of doing certain kinds of business for it, and, in their capacity as directors of the parent companies, awarding to themselves as directors of the barnacle companies fat contracts of all sorts, which increased the expenses of the road, raised the charges of service, thus cheating the public on the one hand and the stockholders on the other.

"It was also found that directors could grant special rates to men who brought business to the railroad on condition that the latter would pay them handsomely as individuals for using their power as directors or officials for their benefit....

"As examples of the deals within the railway itself, none were more common than for some of the directors of a railroad to build a branch railroad, and then, after stocking and bonding it heavily, sell it out to the parent road at a high valuation. Among the minor though most common forms of this kind of illegitimate manipulating, should be mentioned that by which the directors of a road buy up real estate in a certain locality and then place a station there so as to enhance the value of their property; or where they charge more in the neighborhood of a large city for a fare to a near station where they do not own land than to a more distant one where they do own real estate which they are eager to sell."<sup>46</sup>

And Professor Warner says:

"Probably real-estate speculators are more often responsible for the building of superfluous roads than any other one class. The Lincoln Land Company has operated along the line of nearly all the extensions of the Burlington & Missouri River Railroad. It is made up largely of resident railroad officials, who are high enough up in the councils of the company to secure prompt information as to proposed extensions, and to have considerable weight in shaping the course of lines actually building. Members of such a company derive profit from all extensions whether called for or not; and while their interests as railroad managers may usually outweigh their interests as land speculators, yet this is not always true. The influence of such men upon the companies is seconded by the influence of local real-estate dealers in the districts through which a proposed road is to pass. Whatever may be the results of building a new line to the community as a whole, the owners of real estate along its route are sure to profit by its construction."<sup>47</sup>

In all cases, however, the object sought is to transfer the corporate assets from the corporation to the parties who are in control. The most common methods of accomplishing this result are by selling the corporate property at a low price; or purchasing property for it at a high price; or entering into contracts on ruinous terms; or mortgaging the property so as to cut off stockholders and unsecured creditors; or depriving the corporation of its business, profits, and assets, and precipitating a foreclosure and receivership which leaves little property even for the first mortgage bondholders themselves. In all these various schemes, the parties controlling the corporation are interested openly or secretly with those who are contracting with the corporation. The profits and property, which are lost to the corporation, its minority stockholders, and its creditors, are gained by those who control the corporation itself.

The law condemns these practices, but is inadequate to prevent them. Remedies have been proposed, more or less effective and severe. Some of them aim to reach the whole difficulty, but most of them attack only some specific wrong. It is well to consider these remedies separately.

A restriction on the borrowing and mortgaging power of corporations has been advocated, and with reason. By the common law, the directors borrow money and mortgage the corporate property. If they are dishonest, improvident, or have sold the stock "short," the stockholders are powerless and the corporation may be wrecked before another election takes place. It is with good cause that it has been proposed that the legislature should place the borrowing and mortgaging power in the hands of the stockholders and take it away from the directors.

Mr. Henry Hitchcock, of St. Louis, in the annual address before the American Bar Association in 1887, said as to this question:

"No private corporation should be permitted to create any bonded or mortgage indebtedness, as distinguished from current liabilities or floating debt, until the entire capital stock is paid up,—nor then without the consent of the stockholders specially given at a meeting called for that purpose (as now provided by the constitutions of several States), nor without proper restrictions both as to the total amount of such indebtedness, which the New York Business Corporation Act limits to one half the value of the corporation property, and as to the uses to which money so borrowed may be applied.

"No private corporation should be allowed, under any circumstances, to incur current liabilities or floating debt beyond a fixed proportion—not exceeding two thirds—of the actual cash market value of its unencumbered assets; directors permitting any violation of such requirement to be personally liable for the corporate debts."<sup>48</sup>

Cumulative voting should be allowed. By cumulative voting a man with one hundred shares of stock may cast five hundred votes for one director instead of one hundred votes for each of five directors, as under the old system. Cumulative voting gives the minority of stockholders a representative in the board of directors. Their representative, as a director, will know the innermost secrets of the corporation, and will be able to expose and prevent many of the frauds that are perpetrated by a board which represents the majority interest alone. Nine of the States have provided for cumulative voting in their fundamental law — the constitutions themselves. The system is just, fair, and satisfactory in its results. It should be and will be the law in all of the States.

Stockholders should be allowed to remove a director whenever they see fit. As the law now stands, a director, once in, remains in his office for a year and cannot be removed. Even though he may sell his stock, become interested in a competing concern, be reckless in administration, or utterly neglectful of his duties, nevertheless neither the courts nor the stockholders can remove him. He may even rob the corporation, and yet, though the courts may attack and stop the robbery, they cannot remove him. He is a fixture for a year. Such a rule of law is unjust, and has led to changes by statute. In national banks the acts of Congress provide that the stockholders may remove a director at any time, and some of the States are following this example. It is a reform that is to be commended. It will render the directors more responsible to stockholders, more in harmony with their wishes and interests, and will make directors more cautious, conservative, and honest.

Stockholders should be given greater rights to examine the books of the corporation. At common law this right exists theoretically, but practically the courts have taken it away. When it is considered that a corporation is only a highly developed partnership, and that a partner always has a right to examine the partnership books,

the natural rights of a stockholder become more clear. He should be allowed to know the condition, contracts, and plans of his corporation. Most of the States have provided by statute that the stockholder shall have this right. In England another plan is adopted, and it is provided by act of Parliament that a minority of the stockholders, representing a twentieth or a tenth of the stock, may demand a judicial investigation of the affairs of the corporation at any time when they have reason to suspect fraud or mismanagement.

Closely connected with this reform is the question of requiring frequent and detailed reports from directors. The common law does not require any report at all to be made. Statutes, however, generally provide for an annual report. But the tendency of the times is to go farther than this and to require directors and officers to make reports at frequent intervals, and whenever demanded by a stockholder or a certain proportion of the stockholders.<sup>49</sup>

The incorporators of a company should be allowed to insert certain provisions, restrictions, and regulations in their articles of association—their charter. In New Jersey, and under the National Banking Act, such special provisions may thus be made part of the charter of the company. Under the General Incorporating Act of New Jersey, the certificate of incorporation “may contain any limitation upon the powers of the corporation, the directors, and the stockholders, that the parties signing the same desire; provided such limitation does not attempt to exempt the corporation, the directors, or the stockholders from the performance of any duty imposed by law.”<sup>50</sup> So also the National Banking Act provides that the articles of association may contain any “provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs.”<sup>51</sup>

Again, as the general law exists to-day, the directors exercise all of the essential powers of a corporation, and the stockholders none. The stockholders elect the directors, enact by-laws, and perform a few other minor functions, but they cannot order a contract to be made, nor can they give orders to the directors. The tendency of the times is to enlarge the powers of the stockholders and to restrict those of the directors. Statutes for that purpose are being enacted by the legislatures of the various States. These changes, however, might better be left to the discretion of the stockholders themselves, and permission be given to them to insert such restrictions as they desire in their charter. Under such a freedom, corporation law would be given an elasticity which it does not now possess. By the inserting of special provisions, the minority may be protected, the powers of the directors limited, corporate debts restricted, officers made subject to removal, the giving of mortgages regulated, reports required, the right of inspecting the books conferred and enforced, cumulative voting provided for, and the important lines of policy peculiar to each corporation may be laid out and secured from variation and diversion. Incorporators would thus be allowed to legislate for themselves without the intervention of State legislatures. With a definite knowledge of what their interests require, the incorporators and investors would protect themselves more fully than they could be protected by others. They could frame their charter as they wished, and their judgment and ingenuity would do much towards preventing frauds on stockholders, creditors, and the general public.

Fraudulent prospectuses and fraudulent contracts between corporations and their promoters have become another of the great corporation abuses. In England, this evil became so great that in 1867 a statute was passed requiring a public registry of all contracts whereby stock was issued by a corporation in payment for property. In these latter days, corporate promoters do not hesitate to send out prospectuses and statements that the capital stock is all paid up and that the enterprise is fully afloat, when, in fact, the capital stock has been paid in, or is to be paid in, only by worthless patents or property purchased at a gross over-valuation. The money invested by the simple and the unwary is irretrievably lost. This evil is great and increasing, and the number of “bubbles” which are floated every year, and which are insolvent from the very start, is something appalling.<sup>52</sup>

Professor Warner says on this subject:

“Men organize companies, at times, for the sole purpose of unloading upon them an unprofitable business. Let the experience of Eastern capitalists with Western mining stocks be put in evidence, and no one will question this statement. Mining companies with a nominal capital of \$50,000,000 that have never declared a dividend are not uncommon, and very frequently the stock of mammoth companies sells at one cent on the dollar for some time before it becomes worthless. But the experience in mining is only an extreme case of what takes place in many departments of industry.

“In England, turning thither solely because the facts have there been made accessible and have not in this

country, it is found that certain men make a business of acting as 'promoters.' They are skilled in the writing of prospectuses of companies, and know all the arts by which stock can be sold. They devote their energies especially to small companies and small investors. For a time their activity was turned largely to organizing 'single ship companies,' the shares of which could be placed among country parsons, serving-women, and other classes of small investors likely to know very little about commerce, and therefore likely to believe anything a well-printed 'prospectus' might tell them. Many of these small companies never went so far as to build even a single ship, but enough ships were built by them to materially increase the number of 'ocean tramps,' and to call for much adverse criticism from the committee appointed 'to investigate the loss of life at sea.' The 'commission appointed to inquire into the depression of trade' also had much to say of the influence of the creation of such great numbers of limited liability companies, of the direct loss to investors, and of the general demoralization of trade resulting from it. In fact, many English investigators have laid great emphasis on the idea that over-speculation is due largely to the formation of joint-stock companies that have no real excuse for existence, except the furtherance of the personal aims of the 'promoters.' It is a little curious that, among the three hundred real or alleged causes of 'hard times,' brought to the attention of our National Bureau of Labor, the reckless creation of limited liability concerns was not mentioned. In 1886 a writer estimated that there were afloat in the English stock market fully two billion pounds of speculative securities, of which at least a fourth were mere gambling counters. It is to such a state of things that a recent law review attributes the fact that real investors now shun the stock exchange, and speculative operators are compelled to live on the plan of 'dog-eat-dog.'... None of the leading commercial countries seem to be quite satisfied with the attempts they have made to remedy such evils as these. Germany allows definite payment from the corporation funds for the trouble and expense properly incurred by the men who organize a joint-stock company, but guards very carefully against the illicit gains too often made by 'promoters.' The provisions for registering new companies are especially stringent in all cases where a private business or factory is to be sold to a corporation organized to buy and manage it. The fullest possible publicity is sought regarding all the initial acts of a new company, and some matters where the first decision must be final are reserved for a second meeting of the stockholders. Shares may run either to 'bearer' or to a particular name. The latter cannot be issued for a less amount than fifty thaler per share, and the former for less than one hundred thaler per share. By forbidding the issue of shares of less amount, it is hoped to make investors consider more carefully the subject of investing, and to prevent the floating of small shares in worthless companies, among the class of very small investors who are most likely to be swindled."

The tendency of the times is to impose heavy penalties on such acts, and the penalty should be that, if the statements of prospectus or contract whereby the stock is issued be false, then the directors shall be liable for all debts.

In England Parliament has recently enacted a law creating such a liability on the part of corporate officers, organizers, and promoters.<sup>53</sup> This bill met with great opposition in that country. Its enactment was due to a widespread conviction that the existing law was vague and too difficult of enforcement, as regards the liability of directors and promoters for fraudulent prospectuses. Both in England and America this evil and the remedy thereof constitute one of the questions of the day.<sup>54</sup>

Another abuse that often comes to light is the consolidation, lease, or sale of railroads without any protection of the rights of minority stockholders. Generally these consolidations, leases, and sales are allowed upon a majority or two-thirds vote of the stockholders, and this majority or two thirds are interested on both sides of the contract. The minority are compelled to acquiesce. Great frauds are perpetrated under this system. In one case in Con-necticut where a charter allowed a lease upon a three-fourths vote of the stockholders, the lease was upheld, although the rental from the lease was only enough to pay dividends on the preferred stock, leaving nothing whatever for the common stockholders. It may be remarked that when such acts are upheld by the law it is time for the legislature to interfere. Several of the States now compel the parties in control to buy out the dissenting minority in such cases at an appraised valuation of the stock. This is the law in Pennsylvania and New Jersey and under the National Banking Act. It enables great consolidations and reorganizations to be carried out, and at the same time protects the property of dissenting stockholders.

Finally, boards of directors should, by statute, be required to meet more frequently, and they should be well paid for their services, instead of serving without pay as they usually do now. They should be required to scrutinize and audit more closely, and a greater responsibility for results should be placed upon them, and less upon the active agents of the company. Such is the practice in England and with many of the larger companies

in America. The rule has worked well with some of the great insurance companies, and with others of marked success. It should be made the rule of all great corporations.

There are other changes in the law which are coming—and coming soon. Guaranties of the stock or bonds of one railroad by another railroad should be allowed only after a vote by the stockholders, instead of by the directors alone. Stockholders should have some voice in determining dividends, instead of the decision being entirely in the hands of the directors, as at present is the law. Branch railroads and extensions should not be built except upon consent of a majority of the stockholders, and, in general, a remodelling of the law so far as the protection of stockholders and creditors is concerned, is imperatively demanded. The ideal code of corporation law is yet to be written.

### Municipal Aid to Railroads

The American people are beginning to realize that municipal aid to railroad corporations is a mistake. It is a mistake because the municipal debt is a grievous mortgage on present and future generations, and because railroads will be built without it. There was a time when railroads were built very largely from the proceeds of municipal bonds, but those days are past. The protest and warning of some of the leading thinkers and jurists of America have convinced the people of the injustice, improvidence, and needlessness of this municipal aid, and the strong tendency of the times is against allowing cities, counties, and towns to bond themselves in order to make rich gifts to projected railroads.

The lament of Judge Dillon on this subject reminds one of the thoughts of Macaulay's New Zealander overlooking the ruins of London from the London Bridge. In his great work on "Municipal Corporations," the author says:

"If it be allowable to judge of a legal principle by its fruits, the dissenting and minority judges on this question will find much to confirm the conviction that their views were sound. But it is useless to fight that battle over again; it has been fought and lost. All that is left is the contemplation and contrast of what might have been and what is."<sup>55</sup>

The Supreme Court of the United States, in order to preserve the good name and financial credit of municipal bonds and American securities generally, held, and properly held, that the bonds issued by municipalities to aid railroads should not be repudiated, but must be paid. Under the protection of these decisions railroad promoters continued to build railroads by the aid of municipal bonds, and if the bonds were not forthcoming from one town, the railroad avoided that town and built to another and rival town.

"A railroad company approaches a small town as a highwayman approaches his victim. The threat 'If you do not accede to our terms we will leave your town two or three miles to one side,' is as efficacious as the 'Stand and deliver' when backed by a cocked pistol. For the threat of the railroad company is not merely to deprive the town of the benefits which the railroad might give: it is to put it in a far worse position than if no railroad had been built. Or if, where there is water communication, an opposition boat is put on: rates are reduced until she is forced off, and then the public are compelled to pay the cost of the operation."<sup>56</sup>

The burden of municipal debt and the exactions of the railroads at length became unbearable. Some remedy was imperative. Moreover, it had become clear that the remedy must prevent the issue of the bonds, rather than the repudiation of the bonds after they had passed into the hands of *bona fide* investors.

It was found that only a constitutional prohibition could cure the evil. The legislature could not be relied upon. Accordingly, in most of the States, these constitutional prohibitions have been enacted. And in this instance the provisions of a constitution have accomplished their purpose. The ingenuity even of railroads and corporation lawyers have been unable to circumvent this remedy. Municipal aid to railroads in States where these constitutional prohibitions exist is no longer attempted. Voluntary contributions may be obtained from the citizens, but municipal bonds—bonds that must be paid by the city or county—can no longer be issued in those States. The problem has been solved conclusively and satisfactorily.

## Limited Liability of Stockholders

The stockholders' exemption from liability for the corporate debts is the essential feature of modern corporations. If this limited liability were taken away, corporations would fall away with it. It is the limitation of possible loss that renders the corporation a favorite mode of doing business.

It is a question, however, whether or not this liability should be limited to the extent that it is at present. Under the general law a stockholder is no longer liable for the debts of the corporation after his stock has once been fully paid up. In some classes of corporations this limited liability has been found dangerous and unjust. It is now generally conceded that stockholders in banks should be liable doubly on their stock, once on the subscription, and again in case the bank becomes insolvent. Such is the liability of stockholders in national banks and in the banks of most of the States. It has seemed reasonable that the unprotected depositors, most of whom receive no interest on their deposits, should not bear the losses of an insolvent bank, but that the stockholders, who have had the benefit of those deposits, should take the risks of the business.

A desire also to protect those who most need protection against insolvent corporations has caused many of the States to provide that stockholders shall be liable absolutely for all debts due from the corporation to its laborers. Such is the constitutional enactment in Michigan as regards all corporations, and such is the statutory law of New York for the railroads within its borders.

But with these exceptions the attempts to make stockholders liable for the debts of the corporation have been failures. The State of Ohio, by constitutional provision, renders all stockholders in all corporations liable doubly on their stock, but the liability is one that is rarely enforced. In California stockholders are liable for all debts as in a partnership. In New York stockholders in manufacturing and business corporations are liable doubly until a certain certificate is filed.

Companies and investors avoid the States where stockholders are liable for debts, and betake themselves for incorporation to those States whose laws are more liberal. It is probable that adverse and restrictive incorporation laws drive out more capital in a year than the amount of money collected under the restrictions amounts to in five generations. Liberality in corporation laws is necessary, if corporations are to be kept at home, and if a State is harsh and restrictive in its statutes, it pays the penalty in seeing its citizens apply to more favorable States for the charters of their corporations. The past twenty years have demonstrated that an additional liability of stockholders drives capital from the State, is enforced with difficulty and generally not at all, is fatal to the extension and growth of corporations as a mode of doing business, and is dreaded by investors far beyond its value to the public.

And the same may be said of penalties and liabilities imposed upon directors. Such statutes as these are filled with pitfalls, and lead to great hardships. They rarely result in justice being done, but are prolific of lawsuits and losses by reason of mistakes and accidental oversights. The corporation of the future will be without them, except in cases of wilful neglect, fraud, or violation of plain duty.<sup>57</sup>

## Taxation and Exemption from Taxation

How to tax corporations, and how to tax them fully, yet fairly, is one of the most perplexing problems of the times. For fifty years experiments have been going on, and no satisfactory conclusion has yet been reached. Each State still has its peculiar mode of taxing corporations, yet none seems content with the system which it has.

The popular idea is that corporations cannot be taxed too heavily, nor too often, nor in too many ways. It has been truly said that a sort of Donnybrook habit of taxing every corporation that shows itself seems to pervade all State legislatures. The result is that corporations dodge around among the States, and obtain their charters in those States where taxes are lightest. New York State in 1886 enacted what is called the "Vedder Act," requiring every company to pay into the State Treasury a sum of money equal to one eighth of one per cent of its capital stock before it could become incorporated in that State. The result has been that comparatively few manufacturing and business companies incorporate in New York. This tax has driven them into other States. They go to New Jersey, West Virginia, Kentucky, Connecticut, or Maine. Pennsylvania and Ohio have taxation laws similar to those of New York. And the present tendencies of all the States are in the same direction, regardless of the fact that excessive taxation of corporations is unjust, drives away capital, is no preventive

of stock watering, is not based on protection to property, and is an incubus and partial veto upon the only mode of doing business on a scale equal to the requirements of modern times. An incorporation tax is worse than an income tax, because it taxes the corporation before its income has commenced.<sup>58</sup>

Moreover, unjust taxes on corporations do not end with the incorporation fee. In many States a heavy tax is levied annually both on the capital stock and on the personal property of corporations. The same property is taxed twice. Indeed, there are instances worse than this. In Connecticut in 1868 there was a method of taxing corporations by which the same property was taxed five separate times, and the courts upheld the taxation. Corporations were clearly not popular in Connecticut at that early day, except for taxation purposes. The fact is that there is no justification for a double tax on a manufacturing or business corporation. This class of corporations differs very little from partnerships and should be treated with equal favor.

The effort to devise a proper and fair method of taxing corporations has been prolific of litigation and experimental legislation. It is still far from a clear conclusion. Taxes may be levied on the franchise, or capital stock, or tangible property, or shares of stock of a corporation. A tax on the shares of stock is invariably unjust. It amounts to double taxation, inasmuch as either the franchise, or the capital stock, or the tangible property of the corporation has already been taxed once. The New York mode of taxing corporations seems to be that which is being adopted by many of the States. The tax is levied on the par value of the capital stock and the percentage of the tax varies according to the percentage of dividends that have been declared. If the dividends have been less than a certain amount then a fixed tax is levied on the market value of the whole capital stock. Even this mode of taxation, however, has been found difficult of application.

There are corporations, however, which should be taxed in divers ways and heavily. The railroad, gas, telegraph, telephone, electric light and waterworks corporations—the corporations which are natural monopolies and which have been given peculiar franchises,—these are fit subjects for the heaviest taxation.<sup>59</sup> And generally they *are* taxed more or less completely. They contend against the tax, influence the legislature and delay the enactment of the law. But sooner or later they are obliged to yield. There are few States more subject to railroad influence than the State of New Jersey, and yet New Jersey, after a long and bitter contest, has compelled its railroads to pay their full quota of the taxes of the State.<sup>60</sup>

As regards exemptions from taxation there is no longer any difference of opinion. These exemptions were granted with a lavish hand in the early days of railroads. The exemption was made a part of the charters themselves. The result was that the States soon found a vast property enjoying the protection of government without contributing to its support. Then the legislatures attempted to repeal the exemptions. But here the decisions of the Supreme Court of the United States blocked the way. The Dartmouth College case had decided that a corporate charter was a contract and could not be amended or repealed, except with the consent of the corporation itself. Behind the bulwark of this decision the corporations intrenched themselves and contended that their exemptions from taxation were not re-pealable. And the Dartmouth College case protected them.

Even so calm and judicial a writer as Judge Cooley says of this decision:

“It is under the protection of the decision in the Dartmouth College Case that the most enormous and threatening powers in our country have been created: some of the great and wealthy corporations actually having greater influence in the country at large, and upon the legislation of the country, than the States to which they owe their corporate existence. Every privilege granted or right conferred—no matter by what means or on what pretence—being made inviolable by the Constitution, the government is frequently found stripped of its authority in very important particulars, by unwise, careless, or corrupt legislation; and a clause of the Federal Constitution, whose purpose was to preclude the repudiation of debts and just contracts, protects and perpetrates the evil.”<sup>61</sup>

On the other hand, Mr. Justice Miller, in an address at the University of Michigan, said, regarding this case:

“The main feature of the case, namely, that a State can make a contract by legislation as well as in any other way, and that in no such case shall a subsequent act of the legislature interpose any effectual barrier to its enforcement where it is enforceable in the ordinary courts of justice, has remained.

“The result of this principle has been to make void innumerable acts of State legislatures, intended in

times of disastrous financial depression and suffering to protect the people from the hardships of a rigid and prompt enforcement of the law in regard to their contracts, and to prevent the States from repealing, abrogating, or avoiding by legislation contracts fairly entered into with the other parties.

“This decision has stood, from the day it was rendered to the present hour, as a great bulwark against popular effort through State legislation to evade the payment of just debts, the performance of obligatory contracts, and the general repudiation of the rights of creditors.”

Exemptions, consequently, became very valuable. Legislatures were bribed to grant them and a great injustice was done to tax-payers by reason of them. It was long before a remedy was found. But when the remedy came it was effectual. The Dartmouth College case and the exemptions were circumvented by constitutional and statutory provisions in the various States to the effect that all charters thereafter granted should be subject to alteration, amendment, or repeal at the will of the legislature. The exemptions have largely disappeared and are now becoming a thing of the past. The constitutions of most of the States of the Union prohibit the granting of special privileges, and under these prohibitions any future exemption from taxation would be null and void.

### Incorporating in One State and Doing All Business in Another State

One of the innermost business secrets of a corporation lawyer is the incorporation of companies in one State, although all of the business of those companies is to be done in another State. This is a common practice by reason of the fact that some States are liberal and favorable towards corporations, while others are harsh, restrictive, and hostile. The law says that it is legal to incorporate in one State with the intention of doing all the business in another State. Hence it is that those who are about to embark in a corporate enterprise compare the laws of the various States on the questions of what liability is attached to stock; for what kinds of business incorporation may be had; what the liabilities of the directors are; what incorporation fee is required; what taxes are levied; where corporate meetings must be held; what is the method of voting at elections; who may be directors; what capital stock is allowed; how much land may be owned by the corporation; what powers are conferred; and all the miscellaneous rights, duties, and liabilities which are created by constitutional and statutory provisions. He avoids New York, Pennsylvania, and Ohio on account of the incorporation tax and dangerous liabilities attached to the stock. He thinks twice before he concludes to incur the large annual tax levied by New Jersey. He has no fondness for the full liability of stockholders in California. And he finally incorporates in West Virginia, Kentucky, Florida, Connecticut, Maine, Illinois, or New Jersey.

These roaming and piratical corporations are generally the manufacturing or business concerns. A railroad, gas, or other corporation, which exercises the right of eminent domain, or uses the streets, cannot safely operate under a foreign charter. But the fact that numberless corporations may go into other States for their charters is having an influence on the old and conservative States. It is convincing them that their laws relative to corporations must be less restrictive, burdensome, and hostile. The law moves slowly, but ultimately it must follow the trend of trade, and especially is this so of the law of corporations.

Limitations on the amount of the capital stock have proved futile. The object generally is to prevent the issue of watered stock, but the limitation has lamentably failed to accomplish this object. The amount of capital stock should be left to the discretion of the incorporators.

So also as to the qualifications for directors. The statute often requires them to be stockholders, sometimes to be citizens, and sometimes to be residents of the State. Such restrictions as these serve no useful purpose. The stockholders are much better qualified than the State to know who will best serve them as directors.

The decided tendency of all the States is to allow incorporation for any lawful business whatsoever. There may be good reason for prohibiting the incorporation of construction companies for the construction of railroads, inasmuch as the construction company in case of failure causes hardship and loss to laborers. And there may be objections to the formation of large land corporations. But aside from these, the free incorporating act is destined to prevail. Individuals should be allowed to do any and all classes of business through the medium of corporations. It is the coming mode of doing business on a large scale. The progressive States are seeing this, and are allowing incorporation for any business that is lawful in itself. New York has done so within the past year.

The place of stockholders' meetings should be left optional with the stockholders themselves. The law at present is that these meetings must be within the State that granted the charter, unless the statutes allow them to be held out of that State. The enterprising little State of West Virginia saw the advantage of changing the old rule, and did so. Indeed, its corporation statutes are marvels of alluring attractiveness for the incorporation of enterprises located in other States. It allows incorporation for any legal business, except buying and selling real estate; the capital stock may be five million dollars or less; there is no personal liability of stockholders; any person may be allowed to act as director; the cost of incorporation and the annual tax are low; cumulative voting is provided for; the right of the stockholders to remove directors is given; and stockholders' meetings may be held anywhere the stockholders wish.

It is easy to see why men incorporate in one State although they intend to transact all the business of the company in another State.

## Special Charters

At the beginning of this century corporations were formed, not by filing a certificate under a general incorporating law, as at present, but by obtaining a special charter from the legislature. But soon it was found that this business occupied most of the time of the legislatures. They were being turned into mills to grind out special charters. It was found also that gross bribery of the legislators was being resorted to for the purpose of obtaining these charters. Corruption ran rampant, and the system became intolerable. Something had to be done to stem the tide of legislative demoralization.

A remedy has been found and adopted in most of the States. Constitutional prohibitions against the granting of any special charters by the legislature have been enacted. These prohibitions, followed by the general incorporating laws, which allow incorporation without any application whatsoever to the legislature, have cured the evil in those States that have adopted this remedy.

But many of the States still permit their legislatures to grant special charters. This is notably so in the South. But the most flagrant instance of this evil that still survives is found in the small but wideawake State of Connecticut. The granting of special charters still continues in Connecticut and is the chief part of the legislature's business. As a result, Connecticut is the tramping-ground for the projectors of all sorts of speculative and financial schemes. The grants from imperial magnates three centuries ago were a mere bagatelle as compared with the fabulous prerogatives to which a Chief Executive of Connecticut is now able to attach his signature in the way of special charters.

The following article, which appeared in 1889, throws light on the situation in Connecticut:

"Ten years ago the abuse of the joint-stock laws of the State had reached such a stage that heroic measures became necessary. In 1880 the legislature, in a spasm of reform, annulled the corporate existence of 1,246 joint-stock companies in the State which had failed to comply with the statutes in one way or another. Eighty-nine of these companies were in Bridgeport, 24 in Norwalk, and 17 each in Stamford and Danbury. In Hartford the number abolished was 149. New Haven led in the list with 189. At Middletown 38 companies were annulled, while the town of Derby furnished 52. Meriden ran one ahead of Middletown, while Waterbury scored a total of 63, and Norwich 57. The old whaling port of New London furnished only 16 companies for legislative decapitation. After the axe had fallen in 1880 there were less than 1,175 joint-stock companies left in the State. The legislature of 1881 was expected to prove conservative in the matter of legislating for corporations. A number of joint-stock companies, however, appeared asking for additional franchises. The speculative interests in the Republic of Mexico also furnished a tempting field, and before the session was through with, 29 companies were incorporated, with a capital of \$5,382,000 at the start. In the aggregate these companies were authorized to increase their capital to \$28,365,000. The International Construction Company was one of the organizations incorporated. Its capital was \$1,000,000, with authority to increase the amount to \$10,000,000. The Rapid Construction Company was also incorporated in 1881. Its capital stock was \$1,000,000, with power to increase to \$6,000,000.

"The legislature of 1887 was besieged with persons clamoring for corporate privileges. During the session 117 acts of incorporation were passed. Of this number, 54 were for companies engaging in business and speculative enterprises. The aggregate capital at the start was \$10,475,000. The authorized increase was fixed at \$55,060,000.... The International Company of Mexico, which was authorized by the legislature of

1885, received power to increase its capital stock to \$20,000,000 in 1887.

“These facts will show how deeply rooted the custom has become in the Connecticut legislature of granting acts of incorporation. Since 1880 it has developed into an agency of tremendous power. The current season is not likely to be less marked than the session of 1887 by corporate legislation. Within two weeks Gov. Bulkeley, by attaching his name to the Thomson-Houston Bill, extended to that company the right to increase its capital stock to \$10,000,000. Military and Grand-Army organizations throughout the State, secret societies of all kinds, and even the churches are also applicants for incorporation. The special privileges secured by charter seem to be the controlling motive in most cases. It is evidently the era of special legislation and the advancement of private interests. The evil effects, as in the abuses of the joint-stock laws, will be felt sooner or later. Prior to the war, the granting of a charter to a corporation was a matter for long and serious consideration. The interests of the public were not overlooked. The result was that the corporations receiving these exceptional prerogatives are among the strongest institutions financially in the State. Under the present wholesale system acts of incorporation exceed one a day during the session. Much of the legislation in this direction has been vicious. But little of it has received the searching supervision of the legislators.”

Even Connecticut, however, and the Southern States will tire of this abuse, and sooner or later all the States will, by constitutional enactment, prohibit their legislatures from granting special charters. The leading men of Connecticut are even now laboring to bring about a reformation in this regard. Such a prohibition has done much to purify legislative halls, and it has prevented the grants of exclusive and unjust franchises to the detriment of the people at large. It has dispensed with a corrupt lobby, and has rendered necessary a cheap, simple, and quick mode of incorporation, and it has remedied a great evil with certainty and directness.<sup>62</sup>

## Exclusive Privileges and Monopolies

An exclusive privilege is a monopoly granted by a legislature to a corporation. It generally is given to a railroad, gas company or water-works company. It forbids the building of any competing concern for a given number of years, and sometimes it is an exclusive privilege that is to last forever. It has been a prolific source of legislative corruption, and has been one of the worst abuses that has come upon a free people.

The history of the English-speaking people has been that of a long and arduous struggle against governmental usurpation and monopoly. The word “monopoly” formerly had a restricted meaning. The kings of England, from an early date down to James II, were accustomed to grant a monopoly or exclusive privilege to particular persons to manufacture or sell articles of commerce specified in a grant. The English people and parliament contended that the king had no power to grant such a monopoly, and that Parliament alone could legally give these exclusive privileges. The courts sustained the position of Parliament, and the ancient grants of monopoly by the king were declared to be illegal and void.

In recent times, however, the word “monopoly” has been given a broader meaning. It is applied to the exclusive privileges of railroad, gas, electric-light, water-works, and bridge corporations, whereby the construction of competing works is forbidden. During the first half of this century the granting of these exclusive privileges was of constant occurrence. But in the course of time they became a grievous burden which could not be done away with. Having a monopoly they charged extravagant prices, gave poor service and misused the public. The courts were hostile to them, and yet were obliged by law to uphold their exclusive privileges. The legislature could not repeal them because the Dartmouth College case blocked the way.

Hence it was, as already stated, that two constitutional provisions were devised and enacted by most of the States. The one ordained that all charters should be subject to alteration, amendment, and repeal at the will of the legislature. The other provided that no exclusive provisions should be granted at all. The latter provision goes to the root of the difficulty, but the former is a safeguard where the latter provision does not exist. Under these provisions the monopolies of exclusive privileges are passing away. They no longer constitute an issue of the day.

Monopoly, however, is a hydra-headed monster that reappears in new forms. One of the great problems of the times is how to deal with the natural monopoly which every railroad, street railroad, gas, telegraph, telephone, electric-light, and water-works corporation is the owner of to-day. This class of monopolies, however, is considered elsewhere.<sup>63</sup>

Another of the great problems before the people is the monopolies which are being created by the “Trusts,”—the industrial combinations and consolidations which are springing up day by day. This subject also is considered elsewhere.<sup>64</sup>

### Political Corruption

The amount of deserved and also undeserved abuse that has been heaped upon corporations for the political corruption ascribed to them would fill many books. That such corruption exists, and exists to a frightful extent, there is not a particle of doubt, and that a very large part of it is due to corporations is also unquestionably true. That it should exist is no surprise, when one considers the controversies which have already been referred to. The reason why corporations resort to political corruption is because those controversies exist. Corporations, in order to protect themselves and to succeed in their schemes of aggrandizement, have resorted to money, bribery, political corruption, and unmitigated rascality. Their corrupt control of legislatures and municipalities have in large part been the means of their safety, their power, and their success. And there is nothing strange in the fact that the corporations interfere with and seek to control government. Property protects itself and works for itself always. If politics can injure or aid property, then property interferes with and strives to control politics. Especially is this the case with railroad property or manufacturing property, both of which are affected by the favorable or unfavorable action of government. Government may make or unmake the manufacturing corporation by increasing or decreasing a protective tariff. Government may make or unmake a railroad by granting or refusing new franchises, or by allowing or reducing high charges for traffic. For many years Congress has held in its hands the future of the Union Pacific Railroad by reason of the power of Congress to foreclose or continue the mortgages which the national government holds upon the railroad itself. It has a similar power over other roads as regards the forfeiture of land grants. Who can wonder that corporations have interfered with government, and have interfered so much, that the very word “corporation” has become with many people a synonym for corruption? The extent of that corruption—its ramifications into legislatures, municipalities, the halls of Congress, and the judiciary—is a subject too vast, too vague, and too much a matter of abuse and of charges, undoubtedly true but largely without proof, to tempt one to enter upon it. The corruption exists. The problem is how is it to be cured.

“That already the legislative bodies of the States of the Union are as wax in the hands of the modeler, under the manipulations of these great corporations, is a truth which in all the more densely populated States, in the North and the East, the people have been made to feel. How to get back their control, and yet not change it into a control of a very dangerous character, by adding the supervision of the expenditures of the enormous revenues of the railways to the supervision of the enormous revenues of the United States, and of State and local administrations, administered as they are in the main by politicians not much, if any, above the status of the railway magnates, is probably the most serious problem which, since the abolition of slavery, has confronted the people of the United States.”<sup>65</sup>

### The Remedy

Sometimes blindly, sometimes intelligibly, but always persistently, a solution of all the questions to which corporations have given rise is being sought. Many of the evils have been cured by a specific remedy. But this is not enough. “The Corporation Problem” in its entirety has become one of the great social questions of the age. It is a problem which the present generation meets face to face.

There have been theories, experiments, and worldwide movements, having for their purpose the disposition of these questions. And, yet, all the efforts of thinkers, philosophers, and statesmen seem to come to naught. A solution of “The Corporation Problem” seems to be coming, from the natural march of events, even in spite of legislative enactments and hostile interests. As will be seen hereafter, the solution is to be by consolidations on a colossal scale.

## Chapter III: Remedies for the Railroad Problem

The various abuses and problems, growing out of railroads and other corporations, have been discussed in the preceding chapter. The specific remedy for those abuses has also been pointed out in cases where such a remedy exists. But in addition to these there have been proposed and tried a few more general and more comprehensive modes of solving "The Corporation Problem." Most of them apply to railroads particularly, inasmuch as the railroad problem is the chief part of the corporation problem. These sweeping remedies have from time to time excited wide discussion. They have been tried or are being tried in Europe and America. They are the most important subjects connected with social science, and are among the greatest living questions of the day.

In addition to the remedies set forth in this chapter, still others have been proposed. Hudson, in his work on "Railways and the Republic," advocates the plan of separating railway ownership from the business of transportation—that is, giving the railroads the station-houses, freight-houses, terminals, and tracks; allowing any persons to own cars, and run those cars over any tracks; and permitting the railroads to charge for the use of the tracks. This plan is very old, and has been found impracticable. It was adopted in the first days of the railway. From 1825 to 1835 the mistake was made that, like the canal, the railway would be built by one class of capitalists and the transportation part of the business would be carried on by another class of capitalists or by the public generally. In New York the early charter of the Ithaca and Owego Railroad contained the following provision:

"Sec. 12. All persons paying the toll aforesaid may, with suitable and proper carriages, use and travel upon the said railroad, subject to such rules and regulations as the said corporators are authorized to make by the 9th section of this act."

But the plan did not prove feasible, and if adopted now it would leave the railway problem still unsolved. It would create two monopolies where but one now exists. There would be a corporation to own the tracks and appurtenances, and a corporation to own and run the cars. Mr. Hudson's plan has been dead for fifty years.<sup>66</sup>

### Co-operative or Profit-sharing Associations and Railroad Insurance as Remedies.

John Stuart Mill once said:

"I must repeat my conviction that the industrial economy which divides society absolutely into two portions, the payers of wages and the receivers of them, the first counted by thousands and the last by millions, is neither fit for nor capable of indefinite duration."

And he also added:

"The possibilities of changing this system for one of combination without dependence, and unity of interest instead of organized hostility, depend altogether upon the future developments of the partnership principle."

Suffice it to say as a corollary to this that the partnership principle has developed into the corporation, and that the corporation is to-day being used for co-operative enterprises and profit-sharing.

Professor Richard T. Ely says:

“Corporations and co-operative enterprises will become more and more nearly assimilated until they can scarcely be distinguished. The captains of industry will yet be found at the head of co-operative enterprises.... When corporations become more truly co-operative with respect to the labor element, the captains of industry will not disappear.”<sup>67</sup>

And the corporation is well fitted for carrying out the plan of co-operation. The business is done by a board of directors; these directors are elected by the shares of stock; and profits remaining after wages and interest are paid belong to these shares of stock. The machinery for co-operation is perfect, and if the employees own the shares of stock, and if they elect men of ability and honesty for directors, and if money can be borrowed by the company to carry on the business, then the success of co-operation and profit-sharing, is assured. But each of these steps has its difficulties. The employees have not the money to own the stock; they cannot obtain or are unwilling to employ the best talent to manage their enterprise; and they cannot induce capitalists to loan money to the enterprise on the mere security of the enterprise itself. Nevertheless there have been many attempts at such a co-operation, and in some instances these attempts have been successful.

The recent transformation of the great dry-goods house of H. B. Claflin & Co., into a corporation, and the sale of a majority of that stock to the employees of the house, and the sale of the remainder of the stock, first to the patrons of the house and then to the public, is a remarkable instance of co-operation through a corporation. The stock was subscribed for many times over, and the general public received only five or ten per cent of the amount it applied for. How the enterprise will succeed cannot yet be told, but it is to be noted that the stock already commands a premium.

Another recent and attractive instance of this kind is that of the Illinois Central Railroad Company. This railroad is one of the oldest in the country, its charter dating back into the fifties. Its stock is dividend-paying and always has been. The company has had no stock for sale, but it proposes to assist any of its officers or employees to buy one share at a time, at a fair market price, to be fixed when the purchase is made, the purchaser to pay for his share in sums of five dollars or multiples thereof. On the sums so paid interest is to be credited at the rate of four per cent, and when the sum at the credit of any purchaser amounts to the sum at which the stock was bought, he will receive a certificate for his share of stock, and can then, if he wishes, begin the purchase of another share. The purchaser may, however, at any time, have his contract cancelled and his money returned to him with interest. Thus the company assumes the entire risk of a fall in the price of the shares and the expense of doing the work. The only possibility of loss will be in the event that the Company becomes insolvent. This proposition of the Illinois Central is but another indication that the railroad corporations are striving to do away with strikes and labor troubles, and that co-operation is being resorted to in order to end the hostility now existing between employer and employee.

Mr. Abram S. Hewitt in an address delivered October 1, 1890, said on this subject:

“It should be a matter of congratulation that the formation of trades unions contemporaneously with the rapid growth of large corporations, whose stock is divided into such small shares as to admit of easy distribution, clears the way for the new era when every self-respecting workman will insist upon being an owner, and every well-managed corporation will see that its workmen are directly interested in the results of the business. To effect this desirable end, no compulsory legislation and no addition to the powers of corporations are needed.

“It is, however, by no means necessary that all workmen should thus become shareholders. There will always be a considerable element of an unstable and unintelligent character whose participation in the ownership is neither desirable nor possible; but I think the time is near when it will be discreditable to a workman not to be also an owner in the establishment in which he works, and that all workmen of the better class will have such an interest. It is quite conceivable that the workmen may ultimately acquire the preponderating interest, in which case the best possible solution will have been reached, in which labor hires capital at the

lowest possible rate and thus becomes the main factor in the conduct of industry.”<sup>68</sup>

But in many other instances the enterprises were unfortunate and ruinous, and co-operation was not a success.

“Certain employees of the Philadelphia & Reading, who a few years ago accepted shares of the company’s stock in part payment of wages, came out at the little end of the horn. In Massachusetts there is a special law permitting corporations to contribute to funds of this kind and protecting all moneys thus paid in. Such a law is eminently reasonable and should be provided in every State. No Massachusetts company has as yet taken advantage of it, however.”<sup>69</sup>

The Manchester *Textile Recorder* speaks of the system of profit-sharing as merely the offering of a bribe for good behavior. And this undoubtedly is true of those enterprises wherein the capitalist gives a small proportion of his profits to his employees. But it can hardly be said to be true of those enterprises in which all of the profits go to the employees; in other words, the completely co-operative enterprises.

Herbert Spencer has no faith in co-operation, and in his article on “The Coming Slavery,” says:

“No form of co-operation, small or great, can be carried on without regulation, and an implied submission to the regulating agencies. Even one of their own organizations for effecting social changes yields them proof. It is compelled to have its councils, its local and general officers, its authoritative leaders, who must be obeyed under penalty of confusion and failure. And the experience of those who are loudest in their advocacy of a new social order under the paternal control of a government, shows that even in private voluntarily-formed societies the power of the regulative organization becomes great, if not irresistible; often, indeed, causing grumbling and restiveness among those controlled. Trades Unions which carry on a kind of industrial war in defence of workers’ interests versus employers’ interests find that subordination almost military in its strictness is needful to secure efficient action; for divided councils prove fatal to success. And even in bodies of co-operators formed for carrying on manufacturing or distributing business, and not needing that obedience to leaders which is required where the aims are offensive or defensive, it is still found that the administrative agency gains such supremacy that there arise complaints about ‘the tyranny of organization.’ Judge then what must happen when, instead of relatively small combinations, to which men may belong or not as they please we have a national combination, in which each citizen finds himself incorporated, and from which he cannot separate himself without leaving the country. Judge what must under such conditions become the despotism of a graduated and centralized officialism, holding in its hands the resources of the community, and having behind it whatever amount of force it finds requisite to carry out its decrees and maintain what it calls order. Well may Prince Bismarck display leanings toward State-socialism.... The final result would be a revival of despotism. A disciplined army of civil officials, like an army of military officials, gives supreme power to its head—a power which has often led to usurpation, as in medieval Europe and still more in Japan—nay, has thus so led among our neighbors, within our own times.... That those who rose to power in a socialistic organization would not scruple to carry out their aims at all costs, we have good reason for concluding. It would need but a war with an adjacent society, or some internal discontent demanding forcible suppression, to at once transform a socialistic administration into a grinding tyranny like that of ancient Peru: under which the mass of the people, controlled by grades of officials, and leading lives that were inspected out-of-doors and in-doors, labored for the support of the organization which regulated them, and were left with but a bare subsistence for themselves.”

The fact seems to be that when an employee has developed to a point where he is capable of carrying on a co-operative enterprise, he is capable of rising above the position of employee and of becoming an employer himself. The result seems to indicate that co-operation and profit-sharing may ameliorate the condition of the weak, but that they will not to any great extent take charge of the industries and railroads of America.

There is another and very recent phase of this question which is important. The railroads of the country have come to fear the discontent and the strikes of their employees. The bonds of sympathy and unity of interest between the railroad owners and the employees are few and weak. Strikes occur; traffic is stopped; wages are lost; interest and dividends are not paid; violence and even crimes are perpetrated. The necessity of a remedy became evident long ago, and in the course of time the talent and ingenuity of the railroads devised a remedy. It

was inaugurated by the Baltimore & Ohio Railroad Company immediately after the Pittsburgh strikes and riots of 1877. Later still, the Pennsylvania road adopted the Baltimore & Ohio plan and improved upon it. Later still, after the great strike on the Chicago, Burlington, & Quincy Railroad in 1888, the latter company adopted the Pennsylvania plan. It is substantially a plan of cooperative insurance—the railroad company being the collector and disbursing officer of the fund, and the employees being the persons paying assessments and receiving fixed sums in case of injury or death. The membership is entirely voluntary, and any member can withdraw at any time. The company defrays all operating expenses, and takes charge of the funds, allowing four per cent interest. For the first six months employees were to be admitted without regard to age or physical condition, except that they were to be in sufficiently good health to perform their duties. After that, none over 45 years old were to be admitted. The dues vary from 75 cents to \$3.50 a month, and the benefits from 50 cents to \$2.50 per day. The death benefits vary from \$250 to \$1,200. An employee injured in the service does not lose his right to sue the company, but if he sues he is not to enforce his claims against the association.

The railroad has seven out of the thirteen directors: the employees the other six. The employer performs a distinctly generous act toward its employees, and binds itself to keep it up continually. It takes the risks of the first few years—the most difficult obstacle of mutual-benefit associations,—and it renders payment certain. It insures careful and talented management, and provides faithful and efficient officers.

“The whole scheme constitutes a constant and tangible evidence to the men that they are not working for a wholly soulless and impersonal organization or machine, and thus it secures a sort of fidelity that is universally regarded as more valuable than that given for mere money.”<sup>70</sup>

This plan has succeeded under the management of the Pennsylvania Railroad Company, and probably will be adopted by all of the great railroad systems of the country. And it is a curious fact that while Bismarck in Germany has been causing the state to insure the laboring classes against accident and death, the railroads have been doing a similar service in America. The effect probably will be to make the employee more steady and more content with his lot. It will also tend to increase the power of the railroads themselves. Further than this it will not go. It will not solve the railroad and corporation problem.<sup>71</sup>

### State Socialism as a Remedy

There is a large and growing class of thinkers who believe that the important industries of a people should be managed and carried on by the government. They believe that the railroad, banking, insurance, and in large part the manufacturing business should be carried on not by private corporations, but by the State. They advocate state socialism, and believe that the evils and dangers which now arise from corporations and wealth will disappear, if state socialism prevails. They say that of all the forces which civilize a people, the most potent one and the only one capable of solving present difficulties is the power of government.

The opposite school of thinkers do not believe in this. They say that a nation is civilized and developed, not by its government, but by entirely different influences and forces,—influences such as the printing-press, with its books, pamphlets and publications; commerce with its interchange of merchandise, food, comforts, and luxuries; travel, introducing new ideas and disclosing the relative importance of men and things; machinery and inventions, decreasing hours of labor, increasing comforts, cheapening the cost of living, and enlarging the thoughts of men; gunpowder, rendering war short, costly, and rare; education, science, literature, art, philosophy, and religion, — these are the civilizing forces of the world. This class of thinkers say that government is not a proper organizer and leader, but is merely the protector of the nation; that at all times it is merely a reflection of the character of the people; that it lags behind their growth, instead of creating it; that its use is only in protecting life, liberty, and property,—a negative duty; and that when government goes outside of this sphere and assumes the task of directing and hastening the development of a people, then government not only becomes oppressive and corrupt, but checks the growth and deadens the vitality of the nation.

Why is it that whenever a social difficulty arises or is imagined men seek a remedy through government? Government has been formed to protect rights, not to create them. And government has proved to be the most incapable leader that civilization has known. Its whole history has been one long record of war, rapine, interference, mistake, incompetence, and usurpation. It is the most dangerous force that enters into civilization. It has

clogged and misdirected progress in numberless instances, and has rarely aided that progress. It is one of the forces which makes a nation a highly civilized people, but the part that it plays is subsidiary and small. Government is not the power that can solve the problems of the times.

One of the greatest thinkers of the age, in a searching examination of this question, has demonstrated that the State is incompetent to do more than protect life, liberty, and property. Herbert Spencer, on “*The Man versus The State*,” says:

“*The Westminster Review* for April, 1860, contained an article entitled ‘Parliamentary Reform; the Dangers and the Safeguards.’ In that article I ventured to predict some results of political changes then proposed.

“Reduced to its simplest expression, the thesis maintained was that, unless due precautions were taken, increase of freedom in form would be followed by decrease of freedom in fact. Nothing has occurred to alter the belief I then expressed. The drift of legislation since that time has been of the kind anticipated. Dictatorial measures, rapidly multiplied, have tended continually to narrow the liberties of individuals; and have done this in a double way. Regulations have been made in yearly-growing numbers, restraining the citizen in directions where his actions were previously unchecked, and compelling actions which previously he might perform or not as he liked; and at the same time heavier public burdens, chiefly local, have further restricted his freedom, by lessening that portion of his earnings which he can spend as he pleases, and augmenting the portion taken from him to be spent as public agents please.”

The same author, in his article on “*The Sins of Legislators*,” says:

“Government, begotten of aggression and by aggression, ever continues to betray its original nature by its aggressiveness; and that which on its nearer face seems beneficence only, shows, on its remoter face, not a little maleficence—kindness at the cost of cruelty. For is it not cruel to increase the sufferings of the better that the sufferings of the worse may be decreased? It is, indeed, marvellous how readily we let ourselves be deceived by words and phrases which suggest one aspect of the facts while leaving the opposite aspect unsuggested.”

And also

“Perpetually governments have thwarted and deranged the growth [of trade] but have in no way furthered it, save by partially discharging their proper function and maintaining social order. So, too, with those advances of knowledge and those improvements of appliances, by which these structural changes and these increasing activities have been made possible. It is not to the State that we owe the multitudinous useful inventions from the spade to the telephone; it was not the State which made possible extended navigation by a developed astronomy; it was not the State which made the discoveries in physics, chemistry, and the rest, which guide modern manufactures; it is not the State which devised the machinery for producing fabrics of every kind, for transferring men and things from place to place, and for ministering in a thousand ways to our comforts. The worldwide transactions conducted in merchants’ offices, the rush of traffic filling our streets, the retail distributing system which brings everything within easy reach and delivers the necessaries of life daily at our doors, are not of governmental origin. All these are results of the spontaneous activities of citizens, separate or grouped. Nay, to these spontaneous activities governments owe the very means of performing their duties. Divest the political machinery of all those aids which Science and Art have yielded it—leave it with those only which State officials have invented, and its functions would cease.”

Buckle, the most profound historian that ever analyzed the elements of national greatness, summarized his belief concerning government, as follows:

“Well may it be said of Adam Smith, and said too without fear of contradiction, that this solitary Scotchman has, by the publication of one single work, contributed more towards the happiness of man, than has been effected by the united abilities of all the statesmen and legislators of whom history has preserved an authentic account....

“The accusation which the historian is bound to bring against every government which has hitherto existed is, that it has overstepped its proper functions, and, at each step, has done incalculable harm.... To

maintain order, to prevent the strong from oppressing the weak, and to adopt certain precautions respecting the public health, are the only services which any government can render to the interests of civilization. That these are services of immense value, no one will deny; but it cannot be said that by them civilization is advanced, or the progress of man accelerated. All that is done is, to afford the opportunity of progress; the progress itself must depend upon other motives...

“In France, as in every other country where the protective principle is active, the government has established a monopoly of the worst kind; a monopoly which comes home to the business and bosoms of men, follows them in their daily avocations, troubles them with its petty, meddling spirit, and, what is worse than all, diminishes their responsibility to themselves; thus depriving them of what is the only real education that most minds receive—the constant necessity of providing for future contingencies, and the habit of grappling with the difficulties of life.

“The consequence of all this has been, that the French, though a great and splendid people, a people full of mettle, high-spirited, abounding in knowledge, and perhaps less oppressed by superstition than any other in Europe—have always been found unfit to exercise political power.... Men can never be free unless they are educated to freedom. And this is not the education which is to be found in schools, or gained from books; but it is that which consists in self-discipline, in self-reliance, and in self-government.... The old associations of the French all point in another direction. At the slightest difficulty they call on the government for support. What with us is competition, with them is monopoly. That which we effect by private companies they effect by public boards. They cannot cut a canal, or lay down a railroad, without appealing to the government for aid. With them the people look to the rulers; with us the rulers look to the people. With them the executive is the centre from which society radiates. With us society is the instigator, and the executive the organ. The difference in the result has corresponded with the difference in the process. We have been made fit for political power by the long exercise of civil rights. They, neglecting the exercise, think they can at once begin with the power. We have always shown a determination to uphold our liberties, and, when the times are fitting, to increase them; and this we have done with a decency and a gravity natural to men to whom such subjects have long been familiar. But the French, always treated as children, are, in political matters, children still. And as they have handled the most weighty concerns in that gay and volatile spirit which adorns their lighter literature, it is no wonder that they have failed in matters where the first condition of success is, that men should have been long accustomed to rely upon their own energies, and that before they try their skill in a political struggle, their resources should have been sharpened by that preliminary discipline, which a contest with the difficulties of a civil life can never fail to impart.”<sup>72</sup>

At the present time Germany represents the tendency towards state socialism. In Germany the Reichstag has recently passed the third of a series of measures which lead up to state socialism in a comprehensive and radical way. By these measures the state insures all employees in the kingdom against accident, sickness, disablement, old age, and death; the insurance is compulsory, and the cost is collected from the employers and employees.

“It may be as well to recall the chief stages in the social legislation of the last eight years. The first installment, a measure of insurance against sickness, became law in 1883. In return for a payment of not more than 1½ to 2 per cent of the normal local wage, as ascertained by the civil authority in consultation with the officers of the commune, medical attendance, medicine, and medical appliances are supplied for the insured in case of sickness. The patient receives during the period of sickness (not more than thirteen weeks) one half of the normal local wage. If it be necessary to remove him to a hospital, his immediate dependents (if any) receive one half of his allowance. Insurance is compulsory, but is not yet extended to agriculture, forestry, commercial employees, or to domestic servants. Contributions are made through the employers, who themselves pay one third of the amount. Self-government in independent local unions (averaging about six hundred members) is the rule. Workmen and employers are represented on the boards in the proportion of two to one.

“After several fruitless attempts, the first installment of the law for forced insurance against accidents passed the Reichstag on June 27, 1884. It began with trades exposed to especial risk, and has since been extended to the building trades, to agriculture, and to sailors of the inland and maritime traffic. The measure still awaits its extension to those engaged in smaller industries and to domestic servants in the towns. The whole body of industries and trades is divided into trade associations. With a view to equitable mutual insurance those trades are combined which offer an equal degree of risk. In 1886 there were sixty-four such,

comprising between 3,000,000 and 4,000,000 workers. Payments are made by the masters in proportion to the number and average wage of their men and to the risks of their industry. In 1888, independently of the contributions to the reserve fund, the payments in compensation reached four per mille of the total wage, while the expenses of administration amounted to one per mille. The total annual expenditure will ultimately reach a much higher figure.

“But the advantages are considerable. For complete disablement, two thirds of the actual wage (if exceeding four marks, a diminishing fraction); for partial disablement, an equitable proportion of the same is granted as pension. In case of death by accident, twenty days’ wage is given as burial money, and an allowance to the widow of 20 per cent of the wages of the deceased, with 15 per cent to each child under fifteen years—the whole not to exceed 60 per cent. Dependent ascendants have also a secondary claim. If the injured man is removed to a hospital, the wife draws her allowance as in the case of death. The masters who supply the funds also conduct the administration, but representatives of the workers sit on the Board of Central Control and act as assessors to the arbitration courts. Elimination of risk is directly encouraged by self-interest and mutual supervision, and necessary measures of prevention can be defrayed from the common purse.

“Such are the chief provisions of these two complicated acts. The former is considered successful; the latter can hardly yet be finally judged, though it is expensive in working, and its growing burden is regarded with some anxiety. But the measure now sanctioned is of quite a different character. In its scope are included almost without exception all persons above the age of sixteen, male and female, working in a dependent position for regular hire. The line between dependent and independent workers is not always clearly marked; so a certain discretion is allowed to the Federal Council to admit, in particular trades, by special order, subcontractors for large firms, and even independent workers not themselves employing workmen. Existing state and communal arrangements for similar purposes are respected, stipulation being made that equal advantages shall be granted. The contribution offered by the State is secured for such establishments when they have obtained the approval of the Federal Council. Eleven millions of persons will at once come under the compulsion of the act when its operation begins (probably in 1891). The capital value of the obligations incurred directly by the State by this connection is reckoned at 77.8 million pounds; the total obligations will hardly be less than three times as much.”<sup>73</sup>

This sweeping and far-reaching policy of the German Empire is an outgrowth of the German tendency toward the paternal system of government. It is intended as a check to nihilism. It seeks to bind the masses to the support of the government, and it is a long stride toward a state socialism which will not only embrace the railroads, but will include most of those enterprises which in other countries are carried on by private corporations.

“Every one is familiar to a greater or less degree with the extent to which the European nations have ventured in the direction of paternalism. It is known that they are common carriers, stationers, and printers, that they run theatres, public markets, and slaughter-houses, edit and print newspapers, transmit messages, keep lodging-houses, own warehouses and race-tracks, are pawn-brokers, manage express companies, and so on; but perhaps it is not so well known that in addition they teach stammerers, work coal mines, peat-bogs, smelting houses, and iron mines, hire out hearses and horses, have lime quarries, run apothecary shops, vineyards, and wine cellars, and manufacture china, tapestry, tobacco, and matches. Many of these industries they are obliged to carry on as a direct consequence of the mere fact of administration; and others, the more important class, are prompted in their conception evidently by the belief that it will not do to intrust to interested private action the management of an industry which entails important public responsibilities.”<sup>74</sup>

Mr. Bellamy in his novel, “Looking Backward,” draws an ideal picture of state socialism. Indeed, ever since Sir Thomas More’s “Utopia,” written in the sixteenth century, these ideal communities have been the subject of many books. Mr. Bellamy, however, brings forward the idea that the modern corporation is to be the highway along which America is to travel into state socialism. But when it is considered that ever since Sir Thomas More’s time the functions of government have been steadily decreasing, it hardly seems probable that government is to be the agent that will remedy the social woes of modern times. Indeed, German state socialism has not yet affected other nations. It will, even at the present rate of progress, be ages before the socialists can in Germany or any other country set up a legislature strong enough to put the state in possession of the industries

of the country. The socialists will win many victories so long as the owners of property are not seriously alarmed. But the rights of property are deeply rooted in human nature and human society, and the socialists will be astonished to find what a resistance property is capable of when these attacks are made upon it.

The traditions and settled policy of the Anglo-Saxon nations are opposed to this theory of government. England and America have relaxed somewhat from the principle of no interference by the state with business, but England and America still believe that such interference is disastrous, unwise, and demoralizing both to the government and to the governed. They believe that self-reliance and independence—the safeguards and guaranties of liberty and progress—are undermined by state socialism. They are aware that government may temporarily bring about splendid and imposing results, but those results are artificial in their origin, ephemeral in their nature, and deadening in their effects upon the growth of a people. The evolution of a higher, a different and more durable civilization will never come through the instrumentality of government. Government creates nothing new. It burnishes up the armor of the past. Great thoughts, great solutions of social problems, and great development of the nations of the earth are evolved, not by government, but by the creative and spontaneous genius of the people—the people untrammelled and free to follow the course designated by nature.

### State Ownership of Railroads as a Remedy

The state must rule the railroads or the railroads will rule the state. This is the conclusion to which a certain school of thinkers in Europe and America has come.

In Continental Europe this belief has led to a greater or less state ownership of railroads. In England and America the same belief has led to a governmental regulation of railroads.

All civilized nations have felt the necessity of dealing radically with this newly risen power—the railroad. For nearly fifty years remedy after remedy has been tried. Each nation has fluctuated in its policy, but has worked towards some end which accords best with its institutions and people. For the most part there has been a blind groping in the dark. Even yet the policy of some of the nations is vacillating and full of doubt. But experiments have been tried on a gigantic scale, and the endeavors of Europe to solve the railway problem are full of instruction for all the world.

In France in 1842, railroads were built at the joint expense of the government and private persons. They were then turned over to the corporations to be operated, but to be returned to the state as the property of the state, at the end of a period of time, averaging thirty-six years. The revolution of 1848, and the advent of Napoleon in 1851 changed the policy of the government, and the reversion of the railroads to the state was extended to ninety-nine years. In 1859 the state assumed greater control. It furnished the greater part of the funds, and guarantied the bonds. The state assumed the regulation of rates, but allowed the corporations to earn interest, declare reasonable dividends, and accumulate a sinking fund to pay stockholders when the time came for the railroads to revert to the state. In 1865 the state began constructing new lines at its own expense, owing to the impossibility of inducing capitalists to undertake the work on the terms offered. The six great lines radiating from Paris, which then operated the railroads of France, had refused to construct the desired new lines. In 1883 the financial embarrassments of the government forced it to surrender to the old railroads; the new lines were turned over to them; the government agreed not to construct more lines, but to aid the old companies in such construction; the state gave up its right to all the railroads at the end of ninety-nine years, and the railroads agreed to repay gradually the moneys advanced by the state. The state retained the right to regulate railroad rates. Such is the situation to-day.

In Prussia in 1837 the railroad policy was inaugurated of chartering private corporations to build railroads, but levying a state tax of a moderate amount on the profits, and this tax was to be used by the state to purchase the stock of the railroads. The state reserved the right to purchase the railroads at any time after thirty years from the time of construction, at a price twenty-five times greater than the average dividend for five years prior to the purchase, the state assuming the corporate debts. Under these terms few railroads were built, until the state guarantied the capital required. Many lines however were constructed by the state itself. Bismarck, after the war of 1870, inaugurated the policy of complete state ownership of railroads, and to-day Prussia owns practically all of the railroads within its boundaries. The paternal system of government and the perpetual preparation for war in Prussia have determined its policy towards the railroads.

In Italy, up to 1875, the railroads were built and owned by private corporations, aided by state grants and guaranties. In 1875 the state purchased the lines. In 1879 it began the construction of additional roads. But in 1885 the difficulties of state ownership and the desire for money on the part of the state brought about a change of policy. The railroads were leased to private corporations for sixty years, with the privilege to the state to terminate the leases at the end of twenty or forty years. The rolling stock was sold to the companies for cash, but the state agreed to pay interest on this cash, and the state is to do certain repairing and improving.

In Austria the state owns part of the railroads, and is constantly building new ones. Part of the railroads are owned by private corporations, which, however, are subject to governmental control.

In Belgium the state owns about three fourths of the railroads, and is constantly acquiring the lines owned by private companies.

In Holland the state built the railroads and leased them to private corporations.

In Hungary in 1867, out of 1,418 miles of railroad, only 78 belonged to the state. In 1887, out of 6,293 miles of railroad, 2,746 miles were owned by the state, and 925 miles were guarantied by it. The government within twenty years has expended \$95,000,000 on the railroads, and the state roads earn about 3.93 per cent on their cost.

In Australia the railroads were built and are still owned and operated by the state.<sup>75</sup>

It will be seen that the tendency of Continental Europe is towards state ownership of railroads. The incentives which have led to this result have been not only to do away with the abuses which are incident to private ownership, but also to centralize and increase the power of the government, and to build roads which private enterprise would not build.

In England, on the other hand, for fifty years there have been investigations, discussions, and legislation in the attempt to solve the railroad problem. The first policy adopted was to allow corporations to construct and own the track, but to allow all persons to own and run cars over the track for a compensation, the maximum amount of which was specified in the charter. A few years, however, demonstrated that it was impracticable to allow any and all persons to run their own cars over the line, and it was found also that the maximum rates of charges were crude, unmanageable, and excessive.

In 1845–46 came the financial panic and crash, due to the craze for railroad building. In 1854 an act was passed prohibiting all unjust discriminations. In 1863 traffic agreements and consolidations between railways were prohibited, except such as were approved by the Board of Trade, an official body. In 1867 the railroads were required to publish their rates, and statutes were enacted regulating the keeping of their accounts. In 1873 the act still further regulating railroads and creating a Railroad Commission was passed. And in 1888 the Railway and Canal Traffic act was enacted, whereby the policy of state regulation of railroads was completely carried out. The English policy has become a settled and distinct one. It is neither the policy of state ownership on the one hand, nor of total separation of railroad and state on the other. It is the policy of governmental regulation of railroad abuses.

In America the question whether the States should own the railroads arose early in the history of the railroads. A very few years, however, demonstrated that state ownership of railroads was not desirable, and there are now very few advocates of the idea that each State should own the railroads within its jurisdiction. The experiment has proven to be a failure.

Professor Adams says:

“Michigan was admitted into the Union in January, 1837, and it might be imagined, from the proceedings of her early legislatures, that the purpose for which she sought the privileges of a State was to build canals, railroads, and turnpikes, and to improve rivers and harbors. The legislature, in its first session, appointed a Board of Commissioners on Internal Improvements, and directed them to take the necessary measures for executing the following public works: They were to survey three lines of railroads across the State—called, respectively, the Southern, the Middle, and the Northern routes, and one shorter road, called the Havre Branch Railroad. They were also to undertake three important canals—the Clinton and Kalamazoo, the Saginaw or Northern, and a canal about the St. Mary’s River. In addition to this the Grand, the Kalamazoo, and the St. Joseph rivers were to be improved. The total extent of these works, entered upon by the first legislature, amounted to 1,100 miles of highway, of which 557 miles were to be railroads 731 canals, and 321 improvements of rivers. The population of the newly admitted State was at this time 175,000, from

which it appears that the legislature projected one mile of improvement for every 150 of the inhabitants.”<sup>76</sup>

But during the past ten years a vigorous advocacy of federal ownership of railroads has sprung up. The United States Government is being called upon to purchase and operate all the railroads of the country. The advocates of such ownership are not the masses of the people, nor the political parties, but are some of the leading thinkers of the times. And their cause seems to be growing. The railroads themselves seem not to be averse to a profitable sale to the government. America is yet far distant from federal ownership of railroads, but all the arguments for such ownership are now being brought into prominence. The arguments for and against State ownership of railroads have been stated and restated many times over. They are presented in the following pages at some length.

The most remarkable advocacy of federal ownership of railroads has been that of the president of the Chicago & Alton Railroad in his report of February, 1890.

The report reads:

“It is said that we should not complain unless prepared to suggest a remedy. We will therefore suggest the ownership of railroads by the National Government and the organization of a corps of railroad operators, who shall remain in the service during good behavior, and be in no greater degree under the influence of politicians or political parties than the army militant.”

Briefly stated, President Blackstone’s suggestions are that the National Government should acquire the ownership of all the railroads in the United States now used for interstate traffic, by the exercise of its right of eminent domain or by purchase, payment being made by an issue of government bonds, bearing interest at a rate not exceeding three per cent per annum; the bonds to be redeemed by the annual application of a sinking fund equal in amount to one per cent, of the whole amount of such bonds issued; the annual interest and sinking fund to be paid from the net earnings of the railroads, and the rates for transportation from year to year to be reduced so as to provide no more money than shall be needed for such payments. It is needless to say that this plan has not been favorably received.

Professor Hadley thus sums up the arguments *pro* and *con* in regard to state ownership of railroads.

“The arguments advanced by the advocates of government ownership start from the idea that government means of transportation will be managed, not with a view to high profits, but for the good of the community. They will thus, it is said, offer low rates, based upon cost of service, and equal facilities without discrimination. The evils of speculation will be avoided. There will be no waste of capital, no construction of two lines where but one is needed. Capital will be put where it will do the most good for the development of the country. Finally, we shall no longer be, at the mercy of combinations of capitalists who manipulate and tax us for their own interests. It is further urged that the post-office shows how government secured to all men low rates, equal facilities, and security against extortion; and it is claimed that the same result might be secured with a government telegraph, or perhaps with government railroads.

“On the other hand, the Italian Commission sums up the arguments on the other side by saying, first, that it is a mistake to expect lower rates or better facilities from government than from private companies. The actual results are just the reverse. The state is more apt to tax industry than to foster it; and when it attempts to tax industry, it is even less responsible than a private company. Second, state management is more costly than private management, and a great deal of capital is thus wasted. Third, political considerations are brought into a system of state management in a way which is disastrous to legitimate business and demoralizing to politics.”<sup>77</sup>

Sir. R. Hill, in the report of the English Royal Commission on Railways, 1867, gave the following among other reasons why railways should belong to the government.

(1) That the formation of competing lines, while not producing, but rather preventing, permanent reduction of rates, has grievously injured the interests of existing companies, and tended to check the useful extension of lines and other improvements.

(2) That railways, being shown by experience to be essentially monopolies, cannot be advantageously left to independent companies, but should be in the hands of those who are charged with the interests of the country

at large, viz.: the government.

(3) That, nevertheless, government should not itself attempt the immediate management of the lines, but should lease them to companies or individuals, though retaining the power to enforce the observance of all regulations necessary for public safety and convenience.

(4) That the state should, therefore, gradually purchase the whole railway system, with the exception, perhaps, of a few lines, on terms to be agreed upon with the several companies.

(5) That such purchase does not necessarily involve any outlay on the part of government, seeing that the transfer may be made on such arrangements as are generally adopted when a line is transferred from one company to another, so that no increase of the national debt is implied.

(6) That, while the rent demanded for a line must be sufficient to cover the payments by government in dividends, interest, etc., to the previous owners, preference amongst competent applicants should be given to the one who offers to adopt the lowest traffic charges.

(7) That government purchase of railways may be expected to secure the following advantages, viz.:

(a) A pecuniary gain to the state.

(b) A gain to shareholders and others in steadiness and security of income.

(c) Security against parliamentary contests, now so costly.

(d) A reduction (eventually large) in fares, freights, etc.

(e) Greater efficiency of management.

(f) Increase of postal facilities.<sup>78</sup>

The Royal Commission of 1867, however, denied the soundness of most of these claims, and reported that it would be difficult to find lessees who would run the railroads on the terms that would be offered; that the low interest at which the government could borrow money would be more than offset by the large price which it must pay in order to buy out the railroads; and that the huge government loan could not be floated at low rates.

Charles Francis Adams has said:

“Because in the countries of Continental Europe the state can and does hold close relations, amounting even to ownership, with the railroads, it does not follow that the same course could be successfully pursued in England or in America. The former nations are by political habit administrative, the latter are parliamentary; in other words, France and Germany are essentially executive in their governmental systems, while England and America are legislative. Now the executive may design, construct, or operate a railroad; the legislative never can.”<sup>79</sup>

And Edward Everett Hale has said:

“A railway stoppage for a fortnight would almost mean famine in most Massachusetts towns, so steady is the daily river of food by which God now answers our prayers for daily bread. Now, as soon as the tendency which has brought out this state of things comes so far that the railroad service is needed by one man about as much as by another, so soon will the government take the railroads. In my judgment it ought to. But whatever be the judgment of any individuals, what is certain is, that it will.

“‘It will make a very bad mess of it,’ says some grumpy cynic, who has no faith in the people, curses trial by jury, and hates universal suffrage. ‘A mere put-up job it will be—all along.’”

“I do not see that, and I do not believe it.

“On the other hand, certain facts must be noted.

“Thus, 1. The administration of the post-office, by the United States Government, is the wonder and despair of the rest of the world. Read any study on ‘Administration’ by a French expert, and see what he will say.

“2. The experiment of the success and the honesty of the ‘Receivers’ who are now doing this very thing, under infinite difficulties, speak a great deal as to the power of government to employ the right men.

“3. There is not a town in America which has tried water-supply by the public where any man would dare to propose the sale of the works to a corporation. In my own home, Boston, the engines used by the city are the finest pieces of machinery. They are among the lions of the town. The water service is so good and cheap that a few years ago the city had to lower the rates and pay us back rates which it had overcharged by accident.

“4. There is, on the whole, an immense advantage in publicity. State ownership means the printing, from day to day, of every account and transaction where any light is needed.

“5. As for jobs, there are jobs everywhere. I have heard of the nephew of a large stockholder being placed in a position which he ought not to have filled. I have heard of such a man running away with money which did not belong him. There can be little doubt that the loss of Massachusetts or of the United States by dishonesty is as slight as is that of any large corporation.

“6. The uniform civility of officers of the state is a point of great value. Think how civil post-office officials are always, and how rude the majority of telegraph operators are. This is simply because you are one of the post-office clerk’s employers, while the telegraph operator hates you because you make her work when she is tired. She does not look to you for her salary as the post-office man does.

“7. And it is certainly a great advantage that the state at the outside needs earn but three per cent to pay interests on its investments, while the corporation has the privilege of earning ten.”<sup>80</sup>

Professor Richard T. Ely presents his views as follows:

“Our present policy is one which inevitably leads to political degradation. To maintain pure government in a country like the United States with railways private property, but controlled by courts and legislatures, would require a population of angelic character, or of superhuman wisdom, if not of both. There inevitably arises a struggle between two vast and not altogether unequally matched powers, and this struggle must continue as long as our policy continues. The general public and railway owners and managers are the two parties, and they struggle for supremacy in government, sometimes openly, often secretly. The railways must seek political power for private ends. They must have their agents in courts and legislatures to protect themselves; but they do not stop with self-protection. They are aggressive and seek complete control for the promotion of their private interests, and they corrupt legislators with free passes, offices for themselves or friends, retaining-fees, sometimes direct gifts of money, and in every city hall and State capitol they maintain a disreputable lobby.”<sup>81</sup>

Herbert Spencer, in his article on “The Coming Slavery,” takes an entirely different view of this subject and says:

“Then, again, comes state ownership of railways. Already this exists to a large extent on the Continent. Already we have had here a few years ago loud advocacy of it. And now the cry, which was raised by sundry politicians and publicists is taken up afresh by the Democratic Federation which proposes ‘State appropriation of railways, with or without compensation.’ Evidently, pressure from above joined by pressure from below is likely to effect this change dictated by the policy everywhere spreading; and with it must come many attendant changes. For railway proprietors, at first owners and workers of railways only, have become masters of numerous businesses directly or indirectly connected with railways; and these will have to be purchased by government when railways are purchased. Already exclusive letter-carrier, exclusive transmitter of telegrams, and on the way to become exclusive carrier of parcels, the State will not only be exclusive carrier of passengers, goods, and minerals, but will add to its present various trades many other trades. Even now, besides erecting its naval and military establishments and building harbors, docks, break-waters, etc., it does the work of shipbuilder, cannon-founder, small-arms maker, manufacturer of ammunition, army-clothier and boot-maker; and when the railways have been appropriated ‘with or without compensation,’ as the Democratic Federationists say, it will have to become locomotive-engine builder, carriage-maker, tarpaulin and grease manufacturer, passenger-vessel owner, coal-miner, stone-quarrier, omnibus proprietor, etc. Meanwhile its local lieutenants, the municipal governments, already, in many places, suppliers of water, gas-makers, owners and workers of tramways, proprietors of baths, will doubtless have undertaken various other businesses. And when the State, directly or by proxy, has thus come into possession of, or has established, numerous concerns for wholesale production and for wholesale distribution, there will be good precedents for extending its function to retail distribution: following such an example, say, as is offered by the French Government, which has long been a retail tobacconist.”

The view taken of this subject by Mr. Ashby, the lecturer of the National Farmers’ Alliance, an organization that is practically in control of several of the Western States, is as follows:

“Rome had her great highways built at public expense. These roads were the arteries for her commerce, and the nerves which kept up the communication between Rome, as the head, and her members, the provinces. Those highways were public; they belonged to the state. What the great ‘ways’ as they were called, were to Rome and the Romans, the railways are to the United States and its citizens. They have superseded the State road and the turnpike. Our railways have been built at public expense as public highways. But our highways, the railroads, have been surrendered to private corporations.

“We have our great ‘ways’ but they are controlled by the lust of private greed; our Roman ‘ways’ are not of the public, but of the corporation. Whoever controlled the great ‘ways’ of Rome was master of Rome and the Romans. Such must be our fate as well. The railways are our veins and arteries of commerce. Whoever controls the commerce of a country as the railroads control ours, will be the masters of the country. This is the inevitable. Shall it be the people, through their government? Shall it be the lords of the rail, through the government they will set up? Shall it be the people, or plutocracy?”<sup>82</sup>

It may truly be said, however, that there is an instinctive feeling on the part of Americans that state ownership and management of railroads are hostile to sound principles of government. Ever since the year 1215, when the barons at Runnymede forced Magna Charta from King John, the English speaking people have been jealous of any increase of government functions. The tyranny of the state is prevented by restricting the work of the state. It is true that the federal government has gone far in the Interstate-Commerce Act, but this act was merely a prohibition against railroad abuses. An enlargement of the functions of the United States Government by giving it the ownership and operation of 160,000 miles of railroad is not within the range of probabilities. The state is kept pure by the simplicity of its duties. State ownership of railroads means a transfer of inordinate railroad wealth and power to the state. Railroad tyranny would pass to state tyranny and would be increased a thousandfold. A republic which endures with difficulty the tension and strain caused by the exercise of its present governmental functions could not and would not long survive federal ownership and management of railroads. Such ownership of railroads might temporarily leave to the people the nominal control of the government, but the real control of that government would be with the corporation classes.<sup>83</sup>

### Periodical Leasing of Franchises by the State as a Remedy

Closely related to the question of whether the state shall own and operate the railroads, is the question of whether the state shall own and lease those railroads. As will be shown hereafter, the American cities have wasted their birthright in giving away the franchises of street railways, gas-works, electric-light plant, water-works, electric lights, telephones, telegraphs, ferries, wharves, and other natural monopolies.<sup>84</sup>

If these natural monopolies had not been granted at all, or had been granted for a few years only, with the right to the city to retake them, or had been sold or leased to the party that offered the highest percentage of gross receipts, or had been operated by the municipalities themselves, the financial gain to the municipalities would have been almost incredible.

It is a serious question, however, whether the same policy would have been possible with the railroads. There are the same objections to a state ownership and leasing of railroads, and to a state ownership and frequent reselling of the franchises without state ownership of the property, that there are against state ownership and operation of railroads. Indeed, state leasing of roads is worse in some respects than state ownership of roads. The former plan means a constant corruption and disturbance of the government by the corporations which are operating or seeking to obtain the franchises. When France possessed the right of reversion of all its railroads, the railroads waited until the government became impecunious, and then forced it to give up its reversionary interest. Illinois, Michigan, and Georgia, and possibly some other States have tried the plan of State ownership, and in some instances leases have been made of the roads to private corporations. It is true that when these leases entitled the State to a proportion of the gross receipts, the State derived a large revenue from this source. But in all such instances there has been a constant clashing of corporate interests with State government. Sooner or later, by corruption, bribery, and manipulation of conventions, the corporations will manage to control the State, and then the rental is reduced or is abandoned altogether, or the franchises and interests of the State are made over to the corporations.<sup>85</sup>

## State Regulation of Railroads as a Remedy

England and America have instinctively refrained from state ownership of railroads. The policy and tendency of Continental Europe in this respect have not been followed. Nevertheless, in both England and America the abuses and dangers of corporate ownership of railroads have been felt *as* fully as they ever were felt in Continental Europe. These abuses and dangers have already been pointed out. They include discriminations, extortionate charges, watered stock and bonds, free passes, pools, frauds on stockholders and creditors, municipal aid, special privileges, exemption from taxation, and the dire evils of railroad bankruptcies, foreclosures, receiverships, and reorganizations. They include also the constant corruption of the state by railroad corporations seeking to obtain new franchises, or to modify or protect old ones. England and America have both felt the full weight of these troubles.

Nevertheless, for the most part, America has been constant to the Anglo-Saxon idea that the true function of government is to protect life, liberty, and property, and that when government attempts to do more than this, it does more harm than good. For the most part, the English-speaking nations have ceased prescribing by statute how many coats a man shall own, what food he shall eat, what he shall drink, how many servants he shall employ, what speculation in merchandise he shall enter into, what business methods he shall adopt, and what opinions he shall hold. State regulation of such matters is hostile to personal liberty.

It has been largely on account of this feeling that the railroads have not been more seriously interfered with. From 1830 to 1870 there was a separation of railroad and state, as wide as the separation of Church and state. And the railroads, particularly in the West, made the best of their opportunities. They levied extortionate rates, defied municipalities and legislatures, paid no attention to the complaints of the people, and conducted themselves generally as the owners of the country and the fulness thereof. The railroads as well as the people assumed that the State should bear the same relations towards railroads that it bears towards other business—namely the duty to protect life, liberty, and property, and to do nothing more.

But this theory failed. Railroad practices, railroad wealth, and railroad power became insolent, usurping, and corrupt. The railroads were not only discriminating and levying oppressive charges for traffic, but they were controlling legislatures, influencing judges, corrupting public officers, and absorbing the press. All the avenues of expression and the bulwarks of the people's supremacy were falling into the hands of the railroads. The time had come for a change. The old theory that State interference with business was wrong and that consequently the State should not interfere with the railroads was found to be too narrow. It had become clear that either the State must rule the railroads or the railroads would rule the State.

Hence it was, as already stated,<sup>86</sup> that in 1870 various Western States enacted statutes which greatly reduced the charges which the railroads had been collecting. The railroads refused to obey the statutes and claimed that such statutes were contrary to that provision of the Federal Constitution which declares void any statute of a State which impairs the obligation of a contract. The railroads contended that their charters, being contracts between them and the State, were violated by the statutes, which reduced railroad charges. A series of cases, called the "Granger Cases," were commenced to test the constitutionality of these statutes. The Supreme Court of the United States sustained the statutes and since that time the railroads have necessarily complied with them. But other abuses arose and soon became unbearable. The railroads gave rebates, secret reductions, and all kinds of discriminations to favored shippers. The report of the Hepburn Investigating Committee to the New York Legislature in 1879 uncovered an appalling mass of illegal and dishonest practices. New statutes were passed and State Commissioners were appointed and authorized to rectify the abuses. Most of the States of the Union now have these railroad commissions. The powers granted to the commissioners vary in each State. In Massachusetts their power is simply that of investigating and recommending. In New York it is about the same. But in Iowa, Kansas, Missouri, Florida, and several other States the commissioners are given power to order the railroads to reduce their rates. In nearly all the States the commissioners have power to prescribe and enforce regulations concerning speed of trains, obstructions at crossings, precautions against collisions and other accidents, adequate depot accommodations and facilities for shipment, the construction and maintenance of cattle guards, road- and farm-crossings, side-tracks to mines and manufacturing establishments, improved switch and signal systems, and the prevention of fraud or unjust discrimination in the weighing, billing, and transportation of freight; severe penalties being often prescribed or authorized for their enforcement. But in regard<sup>87</sup> to all this

legislation an unexpected difficulty arose. The Supreme Court of the United States decided that a State statute which affected freight passing from State to State was void because it interfered with the exclusive right of the federal government to regulate interstate commerce. After this decision there remained but one remedy. Congress was called upon to enact a law prohibiting interstate railroads from continuing the abuses which then existed. In 1887 such a law was enacted by Congress. It prohibited interstate railroads from giving discriminations; from issuing free passes; from charging more for a short haul than for a long haul, excepting in a few cases; and it created a commission of five judges to expound and administer this law. Such is the present situation of the railroad problem in America.

In England also the regulation of railroads by means of a commission is the policy that now prevails.

But England and America are still very far from having settled the railroad and corporation problem. These commissions may possibly prevent discriminations and excessive rates. Congress may even proceed to reduce and regulate the rates charged on interstate commerce. But State or national regulation does not touch the deeper questions and difficulties that exist between the railroads and the people. Indeed, these commissions will tend to increase rather than decrease the corruption of the government by the railroads; increase the inducement of the corporations to control and dominate the State and nation; and increase the tendency of wealth and corporations to use that control, not for the protection of the people and of republican institutions, but for grasping more wealth, wielding more power, and protecting and enlarging the franchises, and privileges which they already possess.

Adams on "Railroads" says in regard to these unsatisfactory results:

"The final result is probably yet quite remote, and will be reached only by degrees. When it comes, it will assuredly work itself out; probably in a very commonplace way. The development will then unquestionably be found to have been correspondent,—that is, consciously or unconsciously, the government on one side and the railroad system on the other will have worked towards each other."<sup>88</sup>

At present, it is very doubtful whether even the Interstate Commerce Commission is capable of solving any of the difficulties of the railroad problem. The effects of the Interstate Commerce Act have given rise to wide discussion and great difference of opinion. The railroad advocates claim that the anti-pooling provision and the prohibition against charging more for a short haul than a long haul are disastrous; that these provisions are ruining the small railroads, and leading to the absorption of small lines by great lines; that the prohibition against free passes and the secret sales of tickets at a discount are not observed and cannot be enforced; that the prohibition of pools promotes railroad wars and secret discriminations, rate-cutting, rebates, and under-billing;—in short, that the act has demoralized the railroad world, and made things worse than they were before.<sup>89</sup>

Answers, however, have been given to all of these objections, and these answers are of vital importance because the movement to repeal the Interstate Commerce Act is a strong one. They are as follows: The prohibition of the pool may promote railroad wars, yet railroad wars existed before pools, and would arise if the Interstate Commerce Act were repealed. Railroad wars will always exist in this country until consolidation takes place. When only great trunk lines remain to compete for business, they will divide the business, parcel out the country, and railroad wars will be heard of no more. Until then railroad wars will occur. Even though the Interstate Commerce Act accelerates the process of the absorption of the small lines by the great lines, nevertheless the act should remain. Pools delay the natural course of events, and since the pools retard the manifest solution of the railroad problem, pools should cease. Nor should the long- and short-haul provision be repealed. The effect of the enactment has been to cause the rates between the great commercial centres to be maintained at a higher point, and the local rates to be reduced. It has prevented small lines from cutting through rates because a low through rate necessitates equally low local rates. It has caused the railroads to give better accommodations to local business. It has decreased the attention which railroad officers have given to through business,—a prolific source of the whole list of railway abuses. It has caused small towns, cities, and villages to obtain equally good rates with the larger places, and has prevented the growth of the latter at the cost of the former. It is true that the act has aided the greatest commercial centres, while injuring the smaller commercial centres. New York thrives under it. Smaller cities, such as Omaha and Detroit, are injured. The cities that have been serving as middlemen between the great metropolis and the small towns have suffered. The middlemen

are no longer needed. The rate from the great commercial centre to the small town is lower, or as low, as the rate from that centre to another city added to the rate from the latter city to the small town.

America will not abandon its policy of State and national regulation of railroads. It will not repeal the Interstate Commerce Act. A few of the cities and all of the railroads may favor that repeal; but the great mass of the people, particularly in the West, will not allow it. The act is here to stay.<sup>90</sup>

Charles Francis Adams, in December, 1888, said of the Interstate Commerce Act:

“Under the operation of the act, the smaller local railroads throughout the country are being ground out of existence. It is the long haul which brings in the profit. The smaller independent railroads cannot have the long haul, and can only be operated profitably in connection with the larger railroads. They are thus, one by one, becoming unremunerative, and being forced, whether they like it or not, into the maws of the few great systems into which the railroads of the country are rapidly crystallizing.... Just as the small local railroads are crushed out of existence by the anti-pooling clause, so the local points of distribution and second-class business centres throughout the country find themselves, because of the long and short haul, unable to compete with the great commercial centres. Traffic, under the provisions of the act, must inevitably seek the railroad having the long haul to the most distant and largest centres. The operation of the law in this respect is now beginning to make itself felt upon the smaller distributing points. They are deprived of their markets; for those who formerly bought of them can get the same goods on better terms from the larger and more distant centres. The old local system of distribution is broken up in favor of the centralized system. This fact is now making itself apparent to the manufacturers and jobbers of the smaller cities and towns as against Chicago, St. Louis, or Cincinnati; but, as sure as the law of gravitation applies to all places and works under all circumstances, this same long- and short-haul clause will next make itself felt against Chicago, St. Louis, and Cincinnati, and in favor of New York. In other words, contrary to every design of those who framed the act, its provisions have lent a new impetus to just those forces which it was intended to hold in check. Instead of building up the local road and the small distributing centre, it is working the sure destruction of both.... If that act were totally repealed to-morrow, it would produce but a temporary and stock-jobbing relief. For a few days things might be apparently better; but they would be sure to drop heavily back again into their present bad state, unless the knife of reform went deeper and cut at the root of the evils I have referred to. The railroad system must heal itself; no act of Congress, or repeal of any act of Congress, will greatly help it.”<sup>91</sup>

## Railroad Consolidations as a Remedy

“Where combination is possible, competition is impossible.” The truth of this terse statement of an economic principle has been demonstrated by the railway history of the past twenty years. Not only this, but very probably the most striking feature of the railroad situation to-day is the swift and uncontrollable tendency towards consolidation. Trunk lines are being united, while short and disconnected roads are being absorbed. Scarcely a month elapses without some great consolidation being announced. A few great transcontinental systems of railroads are beginning to assume enormous proportions, and when their work has been accomplished it will be found that all other roads have been absorbed. It is being done by leases, sales, consolidations, mergers, absorptions, and amalgamations, aided by railway wars, railway wrecking, and railway bankruptcies, foreclosures, receiverships, and reorganizations. The country is being parcelled out among a few great trunk lines, which ultimately will reach from ocean to ocean. Each system will have exclusive possession and control of the traffic in its district, and each will respect the territory of the other. In England, out of two hundred and sixty-two companies only eleven remain. For thirty years Parliament tried to stem the tide of consolidation, and then abandoned the effort. In France six companies remain out of forty-eight. In America it takes twenty-seven pages of Poor’s “Manual of Railroads” for 1889, and thirty-one pages in 1890, to give merely a list of railroad companies which have become merged into others. The 167,000 miles of American railroad are owned by 1,705 companies, but the operations of all these are controlled by 436 organizations that are independent of each other. Thirty-three systems control more than a thousand miles of road each, and these same systems control forty-nine per cent of the total railroad mileage of the country.

Railroad consolidations are inevitable. Constitutional and statutory prohibitions cannot prevent them. They are due to the certainty of increased profits and to the impossibility of maintaining competition among natural monopolies. They are the product of the laws of trade, and the laws of trade are stronger than the laws of

men.

The consolidations here referred to are where one road becomes permanently united with another by union, purchase, merger, or long-time lease. Recently another method of consolidation has been advocated,—the railroad “trust.” No such trust on a large scale has yet been attempted, and probably none ever will be. A railroad trust would encounter the hostility and adverse legislation of every State in the Union. Its legality would be doubtful, especially in the light of the recent decision against all forms of trusts. Moreover, such a trust would be difficult to bring about, owing to the caution and large interests of the stockholders. It would be subject to that objection to all trusts, namely, the unrestrained, secret, and unlimited power of the trustees. It would be liable to fall to pieces and be dissolved by consent, dissensions, disasters, or judicial interference. A consolidation, on the other hand, is permanent, reliable, and effective. The railroad trust would seem to be unworthy of serious consideration. It may be formed. It cannot endure.<sup>92</sup>

The *Railroad Gazette* has well said:

“A consolidation which actually stands is worth ten times as much as a trust which totters from the beginning and takes the first opportunity to fall to pieces.”

And the Interstate Commerce Commission has said concerning this subject:

“Anything equivalent to consolidation of all the roads of the country under a single head, or even those of a considerable section, whether by merger or by the formation of a confederation which should have powers of legal control, or by the creation of what is now technically denominated a trust, could hardly be supposed possible even if the parties were at liberty to form it at pleasure. If the parties could come into harmony on the subject an arrangement of the sort would be so overshadowing, so powerful in its control over the business interests of the country, and so susceptible of being used for mischievous purposes in many ways that public policy could not for a moment sanction it, at least unless by statute it were held in close legal restraints and under effectual public supervision and control.<sup>93</sup>

Again, competition as a remedy for railroad abuses has proved a failure. Mr. Stickney clearly describes the results of competition between railroads when he says:

“Competition may for a short period illegitimately reduce rates, but its great province is to produce unjust discrimination, taking by stealth what rightfully belonged to one and giving it to another. It takes from the poor and gives to the rich; from the many and gives to the few. It does not permit men *in* the ordinary walks of life fairly to compete with one another. At the command of the favorite it drives multitudes of men from their chosen vocations and independent business pursuits, thereafter to occupy positions as clerks and employees. While the favorite becomes rich, they become poor. It affects the value of real estate, making that of farms and village property in non-competitive districts less, and in increasing that of competitive districts. It affects the value of personal property, making it greater in the hands of large shippers, who are granted cut rates, than in the hands of small shippers who are not thus favored. It forces population along with manufactories and commerce to the large cities. Instead of allowing the artisan to live in the smaller town, where it might be possible for him to own his home, and with moderate expenses rear his family in the quiet and amid the virtues of the country, it compels him to live in the vicious tenement-house of the crowded city. His children have reeking pavements instead of green fields for a playground, and their ears are greeted with coarse profanity and vulgar language instead of the songs of birds. The air is laden with the disgusting odors of the ginshop instead of the perfume of clover blossoms, and instead of the peaceful scenes of nature they are made familiar with vulgarity, brutality, and crime. By congesting population it indirectly promotes disease, ignorance, and crime. It destroys independent occupations and forces the whole people into classes; employers and employees, masters and servants, autocrats and menials akin to slaves. Why should the people longer worship the monstrosity of discrimination because perchance it has been called competition, or mourn over its destruction?”<sup>94</sup>

And Mr. Acworth summarizes the results of railroad competition in America as follows:

“Wholesale bankruptcy of companies, with enormous loss to innocent shareholders; reckless discrimina-

tion between local rates and competing rates; flagrant dishonesty in preferences given to big traders over smaller rivals; secret rebates and discounts which have sapped the very foundations of commercial morality; and uncertainty which has made what should have been legitimate trading often little better than mere Stock Exchange gambling. This is strong language, so it is perhaps as well to produce some evidence to justify it. As for the bankruptcy of companies, let this one fact suffice: Between Chicago and Cairo, a distance of 367 miles, there are twenty-two railway companies whose lines cross that of the Illinois Central. Eighteen out of the twenty-two have passed into the hands of a receiver since the year 1874.”<sup>95</sup>

There have been various attempts to promote competition and to stop the combination and consolidation of railroads. In Pennsylvania a constitutional provision prohibits the consolidation of competing railroads. When the South Pennsylvania railroad was being constructed in 1884, the great Pennsylvania Railroad arranged to purchase it and thus dispose of a dangerous competitor. But the State interfered and enjoined the purchase. Nevertheless the South Pennsylvania railroad has not been completed, and the failure to complete it is due to the Pennsylvania Railroad. The State prevented a consolidation, but it prevented also the completion of the competitor. Various other States have this same prohibition against the consolidation of competing lines, but the march of events has not been, and cannot be, stopped by them.

In England as well as America the conclusion is being reached that consolidation is inevitable and cannot be stayed.

Charles Francis Adams speaks of this as follows:

“Nowhere is the present tendency towards the concentration of railroad interests in a few hands more apparent than in England. The mill of competition has there about fulfilled its allotted work. The whole English railway system has now passed into the hands of a few great companies, by whom the country is practically divided into separate districts. These are literally in the hands of monopolies.”<sup>96</sup>

There is no doubt that the objections to these consolidations are grave and of great might. Nevertheless the law of industrial development is stronger than human statutes and constitutions. It is time to admit this fact, and to ask what good and what injury will come from the few great railway systems which are destined to own the railroads of America.

That there will be some benefits is undeniable. First and foremost there will be greater honesty on the part of the railroads. It is beginning to become clear that honesty in the management of competing railroads is impossible.<sup>97</sup>

Traffic goes to him who cuts the rates, under-weighs the shipment, or bribes the shipper in some one of the numerous methods practised by railroad men. The manager who deals fairly with the public and all shippers, who gives equal rates to all, and secret favors to none, soon sees his business departing and soon loses his own position. He is replaced by a “live man.”

Railroad consolidation will do away with all this. It is true that by these consolidations railroad rates will not be reduced, nor will issues of watered stock and bonds be prevented, nor will the conveniences of trade be studied, nor will the bribery of public officials cease. But the cutting of rates and the discriminations which now exist will stop. There will no longer be any occasion for them.

The railroads themselves will be the chief gainers from consolidations. And in these days when “gentlemen’s agreements” and “presidents’ conferences” are endeavoring to bind competing railroads together,<sup>98</sup> it is well to remember that pools, traffic contracts, and associations to regulate rates are transient and worthless. Consolidation absolute and complete is the only solution. It may be that in order to bring about such consolidation, there must be railroad wars, loss of dividends, cutting of rates, and a demoralization of business. It may be that the weaker roads must be crushed until they are absorbed by the greater. All this will involve frightful loss and hardship. Possibly it may be avoided by gradual purchase, absorption, and consolidations. But certain it is that the feeble hand of the proposed railroad associations merely delays the fierce process of consolidation by means of railroad wars and foreclosures. The necessity of that process cannot be obviated by such makeshifts and hollow truces.<sup>99</sup> Consolidations and consolidations alone will accomplish the result which is sought. Discriminations will decrease; rates will be more uniform; disastrous railroad wars will cease; legislative lobbying and free pass bribery will diminish; the construction of useless roads will be prevented; foreclosures,

receiverships, reorganizations, losses, and financial wrecks of railroads will be averted, and the material wealth and financial stability of the country will be enhanced.<sup>100</sup>

Consolidation is the only available solution of the railroad problem. State ownership is hostile to Anglo-Saxon instincts and settled ideas of government. State socialism, such as Germany is fast drifting into, is out of the question in America. Federal or State regulation of rates and abuses does not cure the evils or remove the danger that the railroads will dominate the State. Co-operation or profit-sharing is impracticable. The present tendencies are toward a further regulation of railroads on the part of the federal government, and more rapid consolidation on the part of the railroads themselves. When these two tendencies shall have reached their natural conclusion, and when a concentrated railroad power is subject to regulation by the federal government, then the question will arise which is the greater, the railroads or the State. The question then will be—shall the State rule the railroads, or will the railroads rule the State?

At present the work of consolidation is going on. These are the days of railroad crystallization. A new power is arising and is overshadowing all others. The only great objection to it is the danger which it brings to a republican form of government. The future relations of the State towards the railroads cannot be foreseen nor foretold, and yet those relations are being formed to-day and are entering into the very warp and woof of American institutions. The problem whether the people or the corporations shall rule the republic is one of the greatest problems of the age. It is the subject of a subsequent chapter of this work.<sup>101</sup>

## Chapter IV: Corporations as the Owners of Natural Monopolies

### What Is a Natural Monopoly?

A monopoly that is necessarily such from the nature of the case is called a natural monopoly. Its monopolistic character results from the limited number of possible competitors, the limited space that is available for the business, or the limited number of franchises within the gift of the people.

A natural monopoly is found in a railroad, street railroad, telegraph system, telephone system, waterworks, gas-works, electric lights, irrigation reservoirs, wharves, and ferries. It differs from other business in the following respects: the people give to it the right to take private land and the public streets for its use; it charges a toll instead of a profit; it is free from permanent competition; it rapidly increases in value, and this increase is due not to its owners, but to its monopolistic character; its value does not decrease with the decease of its owners, as is the case with a large manufacturing business or professional pursuit; and an increase of population increases its income, but does not bring new competitors.

These are important distinctions.

A natural monopoly originates generally in a grant from the people. A railroad can be built only by the people authorizing it to take private land under the power of eminent domain. A street railway, gas-plant, electric lights, telegraph, telephone, and waterworks are granted the right to use the public streets. Wharves are built on the seashore which belonged to the state, and ferries are authorized by municipalities or by the state. These privileges granted by the public to natural monopolies are called franchises. This kind of franchise, however, is to be clearly distinguished from a franchise to act as a corporation. As regards corporations there are two kinds of franchises; one consisting of the power and privilege to exist as a corporation; the other consisting of the additional peculiar privileges mentioned above. All corporations have the former—the franchise to act as a corporation. This last-mentioned franchise enables the corporation to sue and be sued in its own name instead of in the name of its members; to buy, sell, and hold property in that name; to have directors to do the business; to make by-laws and contracts; to limit the liability of its members as regards creditors of the corporation; to allow its members to transfer their interests to another; and to use a corporate seal in its deeds and contracts. All these constitute one kind of franchise—a franchise to exist and act as a corporation. But many corporations have two kinds of franchises: the franchise to act as a corporation; and additional franchises not essential to their corporate existence, such as franchises to use the public streets, to take private land for their purposes, and to collect tolls from the public. A manufacturing or business corporation has the former of these franchises. Railroad corporations and all other natural monopolies have both.

There is reason for using this term, natural monopoly.

It is well to examine the history and various uses of this word monopoly. In olden times under the English kings a monopoly meant an exclusive privilege granted by the king. It was a grant by the king and not by Parliament. In the formative industrial period of England, the government wished to secure the establishment in that country of certain trades and industries that were then successfully carried on in foreign countries, especially in Flanders. Foreign artificers, tradesmen, and manufacturers were invited to come over and establish

their industries in England, and as an inducement the king gave them special privileges, such as the exclusive right to carry on a particular industry, or the exclusive right to certain markets, or to trade exclusively with certain countries or colonies. But these monopolies soon restricted progress, shut out competition, and became odious to the people. Moreover, the crown abused its power to create monopolies. They were given as gifts to royal favorites, and were sold for money, which the crown then employed to subvert the constitutional liberties of the people. Consequently there arose a great contest. The right and prerogative of the king to create monopolies were denied. The Parliament, the courts, and the people carried on the contest against the crown, and Lord Coke, in the great Case of the Monopolies, declared these crown monopolies to be void. Nevertheless the king continued to create them and to sell them. One of the charges against Charles the First was his unlawful creation of monopolies. But finally the crown abandoned its claim, and at the present time no one but Parliament has power to create such a monopoly, and even if such a thing were attempted by Parliament, the unwritten constitution of England and the settled principles of the English people would soon cause the act to be repealed.

In modern times the word monopoly has, by usage, been given a wider meaning. It means the power of a corporation or person or combination to control prices. It is a monopoly in a particular business. It is a monopoly for the present, even though in the future there may arise competition. The monopoly may be in the manufacture or sale of a commodity, or in the control of the rate for the transportation of persons or merchandise, or it may consist of exclusive privileges granted by a legislature—privileges conferred by statute.

The past fifty years have been prolific in the production of monopolies. They exist to-day in three different forms: monopolies in which the government has prohibited competition; monopolies by the combination of competitors, as in the case of trusts; and third, natural monopolies. They will be considered in the order named.

Monopolies in which the government prohibited competition were freely granted fifty years ago. They were generally granted to bridges, ferries, railroads, water-works, gas-plant, and turnpikes. A bridge company would be given exclusive privileges, and no other bridge for a certain number of miles above it or below it was to be erected. So also with ferries and railroads. A railroad would be given a charter, and that charter would prohibit the building of any other railroad for a certain number of miles on either side of it. Water-works in a city would be given the exclusive privilege of supplying that city with water. Gas-works would be accorded a similar monopoly as to gas. And even turnpikes were given exclusive privileges. As will be shown hereafter, these various enterprises are natural monopolies in themselves. But the point to which attention is now called is that the legislatures have added to their monopolistic character by making them statutory monopolies also.

All these monopolies were legal and constitutional. They could not be granted by municipalities unless the latter had express power to grant them. But they could be granted by the State legislatures, and were upheld by the Supreme Court of the United States, when the States afterwards attempted to repudiate their reckless gifts. A State, however, could not grant a monopoly as to water transportation, because Congress had exclusive power over interstate commerce. The monopoly granted by New York State to certain persons relative to boats propelled by steam was declared void.

But the injustice, improvidence, and bad results of these statutory monopolies granted to bridges, ferries, railroads, turnpikes, gas-plant, and water-works soon became apparent. It became clear that a little delay would have brought all these improvements without the statutory monopolistic grants. The monopolies themselves became unbearable. They gave poor service, neglected repairs, refused improvements, disregarded protests, acquired bad manners, and became a nuisance. Attempts were made to break the monopoly by starting a competitor. But the courts sustained the monopoly on the ground that it was a contract. The new competitor was enjoined. The courts, however, went a long way in construing away the special privileges. Unless the monopoly was clearly granted it was overthrown. It was limited by construction as much as possible. Moreover, new kinds of competition were favored. The courts held that a gas monopoly did not exclude an electric-light competitor, nor did a bridge monopoly exclude a railroad bridge. But this remedy was not enough. The people were hostile to monopolies, and this hostility took form in constitutional prohibitions against monopolies. Massachusetts led the way, and now all of the advanced constitutions of the various States contain a provision that no special or exclusive privilege or immunity shall be granted to any corporation.<sup>102</sup>

The second class of monopolies, those created by the combination of competitors, have come to be called trusts. They are considered elsewhere.<sup>103</sup>

The third class is the natural monopoly. This is a monopoly originating in a statute, and afterwards becom-

ing a monopoly by the very nature of things. It is a right given by statute, and yet the statute does not make it an exclusive right. It becomes exclusive and a monopoly by reason of the character of the business itself. It includes all franchises to collect toll—railroads, canals, street railroads, gasworks, electric lights, telegraphs, telephones, wharves, ferries, turnpikes, bridges. It is true that there is nothing in the law to prevent competition, but such franchises as these are monopolies nevertheless. They are so because competition is restricted by the great cost, great risk, and great danger of loss, or because from the circumstances of the case competition is impossible. They are monopolies or soon become such from the very nature of the business.

### Natural Monopolies as the Source of Great Fortunes

It is curious to note how the different kinds of property have a different relative importance in the course of time. Five hundred years ago real estate was the only property that brought wealth and standing to its owner. Personal property was of little consequence, and not much of it was in existence. But during the past two hundred years personal property has risen to the ascendancy. The banker, merchant, manufacturer, and capitalist, have become wealthier than the landowner. The moneyed classes have supplanted the landed classes in importance. The banker millionaire is greater and more powerful than the ducal landlord.

During the past thirty years, however, a still different source of wealth has sprung into existence. It has risen to the first importance, and has created moneyed kings greater, stronger, richer even than the banker himself. A new financial era has been entered upon. Land, the old source of centralized wealth, inordinate power, caste privileges, and hereditary rights, no longer maintains its pre-eminent importance. In its place has come the natural monopoly and a new order of men are in control. Crassus and Croesus were poor men compared with the modern Vanderbilts.<sup>104</sup> A consolidated railroad has become greater than a dukedom.

Professor Bryce speaks of the railway magnates as follows:

“These railway kings are among the greatest men; perhaps I may say are the greatest men in America. They have wealth, else they could not hold the position. They have fame, for every one has heard of their achievements, every newspaper chronicles their movements. They have power, more power—that is, more opportunity of making their personal will prevail—than perhaps any one in political life, except the President and the Speaker, who after all hold theirs only for four years and two years, while the railroad monarch may keep his for life. When the master of one of the greatest western lines travels towards the Pacific on his palace car, his journey is like a royal progress. Governors of States and Territories bow before him, legislatures receive him in solemn session, cities and towns seek to propitiate him; for has he not the means of making or marring a city’s fortunes.... Probably no career draws to it, or unfolds and develops, so much of the characteristic ability of the nation; and I doubt whether any congressional legislation will greatly reduce the commanding positions which these potentates hold as the masters of enterprises whose wealth, geographical extension, and influence upon the growth of the country and the fortunes of individuals, find no parallel in the old world.”<sup>105</sup>

It is easy to understand why natural monopolies are valuable. They increase in value with the increase of population, while the profits of other business have an opposite tendency. The price of merchandise goes down as population increases. This is because the cost of producing the merchandise is decreased. But with a natural monopoly, a railroad, street railroad, telegraph, telephone, water-works, gas-plant, electric lights, irrigation reservoir, wharf, or ferry, there is no such reduction of price. Reductions are sometimes made in the charges, but these reductions are insignificant compared with the increase of business. The cost of operating the monopoly does not materially increase with the increase of population, but that increase of population brings a rich and ever swelling volume of money into the coffers of its owner. The profits become so large that even the owner dare not declare the rate per cent which he receives on his investment. In order to conceal his real profit, he pretends that he has invested far more than he has, and by watered stock and bonds, he covers up his profits. Into his coffers come sooner or later the surplus earnings of the toiling millions. His wealth grows with the population. The large risk and capital involved in starting a competing concern leave him without a competitor. This fact, together with the fact that the streets of a city are not wide enough to admit many competitors, and that these competitors inevitably combine, soon renders the natural monopoly complete. The merchant, the lawyer, the doctor, the manufacturer, the laborer—all are subject to competition. But the street railway, the railroad, the

ferry, the wharf, the gas-plant, the electric light, the telephone, the telegraph, the water-works—all are natural monopolies. There is a limit to the competitors—a limit fixed not by the ability to do the work, as in other business, but a limit fixed by the limited space or the certain absorption of competitors. All other kinds of business have a rise and fall. If the energies of the participants are relaxed, the business droops. When A. T. Stewart died, his immense business fell away. But a natural monopoly does not depend on the talent of men. It never dies, but it grows with the growth of population. It is free from permanent competition, and it is handed on from one generation to another.

It is well to examine with some care the growth and value of these different natural monopolies.

There is the railroad. It rarely pays in the beginning. As a rule, the builders of a railroad lose all they put into it. The bondholders take it, and even they generally lose a part of their investment. This is so generally true that comparatively few railroads are now built except by the old lines. They can afford to hold the enterprise and wait until it becomes a paying investment. But sooner or later the railroad begins to pay and its income increases with the population. In the course of time it pays interest and dividends on many times its actual cost. And it increases without any particular additional outlay or exertion on the part of the railroad. The increase is due to the inherent value of the franchise—the franchise that was granted by the people, and which derives its increased value from the increase of the people. A man with a few thousand dollars may begin the manufacture of matches, and possibly may compete with the Diamond Match Company's monopoly. A man with a few hundred thousand dollars may construct a sugar refinery and compete with the Sugar Trust monopoly. A man with a few million dollars and a talent for a certain method of doing business may construct an oil refinery and compete with the Standard Oil Trust monopoly. But such is not the case with railroads. A new road paralleling an old road is certain to lose money. The truth is that a railroad is a natural monopoly. To construct a parallel competitor involves great capital and great loss. The day of paralleling railroads has gone by. The disastrous results of the West Shore and the South Pennsylvania railroads have been a costly warning. That the railroad is a practical monopoly is due to the fact that a parallel and competing line is soon absorbed or else is driven into bankruptcy and then bought up. The greatest fortunes that the world has ever seen have arisen from the wealth-producing power of the railroad monopoly.

The Duke of Maryborough, in the *Fortnightly Review*, says:

“It is not a flattering thing, perhaps, to our national pride, but if the truth is told our English railways are toy systems and our rolling stock are toy freight carriers compared to the trains that are run all over America. The immense haulage of American lines done on single pairs of rails is marvellous, and these systems must continue to grow to meet the wants of increasing population and the large centres of permanent industry and manufacture that exist everywhere. It must be noted, however, that the great main arteries of these systems are now permanently marked out. It will be practically impossible to make new main routes, except at fabulous cost, with approaches to the coast. The strategical positions are seized and occupied, and whoever can possess himself to-day of a controlling interest in a main through route and allied feeders across the great central basin of the Northern States, cannot be deprived of a gigantic monopoly in the present and in the future.”

So also with the street railways. When first constructed the street railway pays little or nothing. But soon it begins to be valuable. The people become educated up to using it. The town grows to be a city, and the city becomes a commercial centre. The street-railway franchise—the right to collect tolls—the natural monopoly given by the people to a corporation—becomes more and more valuable. Sooner or later its income pays an extraordinary interest on the original capital invested. The corporation has not materially increased its outlay. But the income has grown with the growth of the town.

So also with gas-works, telegraphs, telephones, electric lights, ferries, wharves, water-works, and irrigation reservoirs.<sup>106</sup>

The history of water-works is another instance of what a natural monopoly is capable of becoming. It is impossible to ascertain the amount of water there is in the stock and bonds of water-works companies, but certain it is that where the works are owned by a corporation, the practice is to construct the works by the sale of the bonds at less than par, and to have the stock free of cost; in other words, all water. Even then it is rare indeed that a waterworks company goes into insolvency. It is said that only three foreclosures of mortgages on

water-works have taken place in this country.

In England one of the seventy-two shares in the New River Company, which supplies London with one quarter of its water, recently sold for \$614,000, although the par value of that share was only \$500. This enterprise was commenced in 1609, and the company was organized a few years later. It built on dry land the New River to conduct water for twenty miles by a route of about forty miles to the city of London. King James I originally owned one half the shares, but in 1613 sold them for an annual income of £500. This sum is still paid yearly. The net return on the whole capital stock for the year 1888 was £187,920. The dividend on a single share in 1888 was £2,610. The shares are now generally divided into many parts. It is three centuries since a full undivided share has been sold. For nineteen years after the company was formed the annual income was barely 12s. a share. In 1634 one might have been had for a very moderate price, since its income did not amount to more than £3 4s. 2d., while its profits were practically nothing. By 1636, after a bad year or two, each moiety brought only £115 10s. of profit, and toward the close of the last century the return was no more than £431 8s. 8d. As late as the second decade of this century a share was thought to have attained an extravagant figure when it sold for £11,500 at auction. But now its value is unquestioned. In the rounded sentences of its owners, it may well be said that it “comprises all the elements desired in the employment of capital—security, regularity, and realizability. It combines the simplicity of a government annuity, the profits of a trading corporation, and the prestige of landed proprietorship. Inasmuch as it includes the corporate ownership of farms in Hertfordshire and estates in London, and conveys the right to vote both in the city and the country, with the possibility of a seat at the board, and the qualification for a place on the bench, the fraction of the Adventurer’s moiety may be said to ‘embody the potentiality of growing rich beyond the dreams of avarice.’”

Another remarkable instance of private waterworks is found in New Jersey. For ten years Jersey City, Newark, Passaic, and adjacent towns have been complaining that their water supply was polluted and unfit for use. The source of supply was the Passaic River, below the great falls at Paterson. The cities had many plans for reaching the upper waters of the Passaic River, but nothing was done. About the year 1885 a group of New York capitalists took the matter in hand, obtained the right to the entire flow of the Passaic watershed at the falls, and to the control of every lake and stream in a watershed of 877 square miles, including Lake Hopatcong and Greenwood Lake; consolidated all private interest, giving a storage capacity of billions of gallons, and arranged to bring from the mountains about 450,000,000 gallons of pure water daily. They then offered to pipe and furnish water to the various cities at a fixed rate per million gallons, or to sell to any city such part of the plant and pipe as would give to that city an adequate supply. Popular hostility ran very high, and statutes were passed enabling the cities to circumvent this private corporation. But it was of no avail. One by one the cities of Montclair, Passaic, Paterson, Newark, Bayonne, and Jersey City have capitulated to the corporation. Most of these cities have agreed to pay a fixed price per million gallons; Bayonne, for instance, paying \$80 per million gallons. Jersey City has been offered the rate of \$40 per million gallons. Newark adopted the other plan and paid \$6,000,000 for a complete plant and pipe line and a supply of 275,000,000 gallons daily, for ten years. As regards the corporation it is said that over \$20,000,000 have been invested in this colossal private water-works project, and that it has proved a profitable venture.

In America the water-works are just starting on their career of money-making. And there is so much water in their stock and bonds it is impossible to tell what rate of profit they are actually paying. But the facts which are at hand prove the value of the monopoly even at this early stage of its growth.<sup>107</sup>

There is still another natural monopoly and one which is just beginning to attract the attention of the country. It is the storage and distribution of water for irrigation in the West. Whole rivers are being diverted for this purpose. States lying along the lower courses of rivers are complaining of the disappearance of all the water before it reaches their borders. Vast reservoirs for storage of water are being built, and Congress is being asked to take charge of the irrigating business. English companies own a large part of these reservoirs. The spirit of speculation is becoming interested in the tolls which hereafter can be levied on the farming and land-owning communities of the West. Immense tracts of land are sterile without this artificial water irrigation, while with it they are as fertile and productive as the banks of the Nile. The value of such a natural monopoly as this is almost incalculable, and it is a monopoly that will grow with the years.

“The laws of the Western States and Territories everywhere recognize and protect the rights of the first or

'prior appropriator' of water. If the first settler on the banks of a stream draws off, in his ditch, one half or the whole of the customary flow to irrigate his farm, he has the right to take this one half or the whole flow forever, to the entire exclusion of any subsequent settler. But the same rule applies to rivers of large size. As the quick-witted Westerner stands by the side of one of the great rivers and looks over thousands of acres of desert land along its banks, he sees a fortune in the situation. Only get capital enough together, organize a great company, dig an immense canal which will 'appropriate' all the water in the river, and you command the whole valley. It is the position of the Western railroads repeated. Instead of waiting for settlers to come and dig little ditches as they need them, an immense capital digs one huge canal, watering thousands of farms, and then draws settlers by advertisement and boom. So all over the West, throughout Colorado, in Central and Southern California, in Montana and Idaho, on the Salt and Gila Rivers, in Southern Arizona, there are great companies, with capitals running into the millions, putting this idea into effect. The canals they dig are twenty, thirty, or even fifty miles long. The largest are a hundred feet wide and ten feet deep, very rivers in themselves. They follow the contour of the country, running back farther and farther from the river as the latter falls away. The main canal gives off lateral branches at frequent intervals, and by an ingenious system of gates, crossings, and ditches sends water to every foot of arable ground between it and the river. The land belongs to the Government, and is taken up by individual settlers at merely nominal prices under the 'Desert Land Act.' But the water belongs to the Canal Company, and it is this water that the settler really pays for."<sup>108</sup>

## Remedies of the Public

For the most part the natural monopolies of America have passed into the hands of corporations. The State legislatures and the municipalities have wasted and given away that which might have been of almost incalculable value to the public if properly preserved. Privileges and franchises which belonged to the people and which grow in value year by year have been given away to become the instruments of corporate greed and gain. And all this has been done, not from settled views of public policy, but quietly, without discussion and often by corruption of public officials.

During the past few years the fact has become clear to the public that natural monopolies are becoming exceedingly valuable. That which was granted to aid the growth of a city is now found to be an instrument of extortion and restriction. The wealth derived from the natural monopoly is used to prevent any competition whatsoever. The comfort, accommodation, and rights of the public are disregarded. Hence it is that public opinion is at work demanding some relief. It is somewhat late to apply a remedy to the mistakes that have been made, but nevertheless several remedies have been proposed.

Taxation has been tried, but has not been a success. The most conspicuous failure of this method of preserving to the public some part of the money value of the natural monopolies has been in the effort to collect license fees from street-car lines. Generally these license fees were fairly respectable as originally fixed, but invariably by methods well known to corporate officials, these licenses have been reduced by the city authorities and usually have disappeared altogether.

In Cleveland, Ohio, the street-car companies charters paid originally a license fee of seventy-five dollars a car and one cent a passenger, but this has been reduced to five dollars a car. In Baltimore the companies originally paid twenty per cent of their gross income to the city, but this has been reduced to nine per cent. At that rate they paid to the city in 1885 the sum of one hundred and fourteen thousand dollars. In Chicago the companies which have been chartered since 1865 are obliged to pay an annual tax of fifty dollars a car. In Boston very little is realized to the city from the franchise tax. In San Francisco there is a license fee of fifteen dollars a car, and an annual tax on the franchises. In Philadelphia there is an annual license tax of fifty dollars a car and a tax on the franchises.

Moreover, it has been found generally that it is wellnigh impossible to collect the tax. The companies evade it, and pay only at the end of long and strenuous litigation. To such an extent is this evasion carried in New York that in some cases the tax has been abandoned, and a statute has been passed requiring the company to pay to the city a certain percentage of its gross receipts.<sup>109</sup>

The plan of compelling the companies to pay to the city a certain percentage of its gross receipts is an improvement on the license fee for each car. It is levied on the gross receipts, because, if levied on the net profits, the company might manage to defraud the city by paying high salaries and figuring out little or no net

profit. The tax on gross receipts may be levied not only on the gross receipts of street railways, but also on those of water-works, gas companies, and other monopolies. Many of the States have statutes compelling railroads, street railroads, express companies, telephone and telegraph companies, and other *quasi* public corporations, to pay to the State a certain percentage of their gross receipts.<sup>110</sup>

But there are fundamental defects in all of these statutes. They are difficult to enforce because the companies conceal the full amount of their receipts. Not even the right of the State or city to investigate the amount of receipts is sufficient to prevent these frauds. Moreover, the amount received in taxes is infinitesimal compared with the value of the natural monopoly itself.

And yet taxation is one method of redeeming for the people a small part of the value of the franchises which they have given away. But in order to accomplish this, the present rate of taxation on corporations owning a natural monopoly will have to be greatly increased. A small tax may bring large returns, but it is trivial compared with the value of the franchise which produces it. Theoretically, the tax should take all of the annual income, except such as will pay the reasonable expenses of the corporation and a fair return on the cost of the plant. It is impossible now to levy such taxes on present monopolies, but it is possible to provide for the future ones. The present tendency of legislatures is to place all taxes on corporations. And so far as taxes are placed on corporations which own these natural monopolies, such a rule is right. The law allows the tax to be levied on the capital stock, on the dividends, on the franchise, on the gross receipts, on the net receipts, on the cars, on the shares of stock, on the market value of the stock, or on the estimated value of the corporate property. Each of these methods of taxation has been tried with varying success. Most of them have had, and all of them should have, for their object the levying of a tax on the natural monopolies owned by the corporations. So far as these taxation statutes have applied to corporations doing a manufacturing, mercantile, or similar business, they are unjust, disastrous, and indefensible, but so far as they form a part of the charters of the corporations operating a natural monopoly they are right and are to be commended.<sup>111</sup>

The day is not far distant when State and municipal taxes will be largely if not entirely defrayed by the taxes levied upon corporations owning natural monopolies. In Vermont for many years the railroads have paid all State taxes. In Wisconsin and Mississippi a similar plan is being adopted. The State of New Jersey also has recently modified her taxation statutes so that the corporations now pay practically all of the State taxes. Such also is the law in New Hampshire.<sup>112</sup>

But taxation has failed to restore to the people a fair part of the annual income from natural monopolies. Hence another remedy has been tried. In New York, in 1885, the bribery of the board of aldermen, whereby the Broadway street-railway franchise worth a million dollars, was obtained, led to a popular demand for a change in the laws. Accordingly the legislature enacted that thereafter all street railway franchises should be sold at public auction to the one who offered the highest percentage of the gross receipts.<sup>113</sup> This statute, has checked the building of lines, yet it has led to some surprising results. At one sale the successful bidder was obliged to give 26½ per cent of the gross annual receipts to the city in order to get the franchise, and in another sale 35 per cent was the price at which the franchise was sold. It is safe to say that if this statute had been passed fifty years ago and had applied to all franchises which involve a natural monopoly, the city of New York would be free from debt to-day and the greater part of the expense of governing the city, which is now upwards of thirty millions of dollars annually, would be met by the income from these natural monopolies. The present enormous tax of about two per cent on all taxable property in that city would not be levied.<sup>114</sup>

But there is an improvement which should be added even to this plan of a public sale of the franchises. The sale should be for a specified number of years only—ten, fifteen, twenty, or twenty-five. At the end of that length of time it should be provided that the city be allowed to purchase the property at the actual cost of replacing the plant, or the franchise should be again sold at public auction, the purchaser to purchase the old property at the actual cost of reproduction. Such is practically the plan adopted in Louisiana, England, and Canada.<sup>115</sup>

But the most effectual remedy is that each city shall own all of the street railways, water-works, gasworks, electric lights, telegraph and telephone lines, wharves and ferries within its limits. This plan is that each city shall own them, not necessarily for the purpose of operating them, but for leasing them on short periods of time. In Europe such a mode of owning natural monopolies has gone much farther than in America. There are comparatively few of the American cities which own their gas-works, and none at all which own their street-car

lines. New York City owns its water-works and most of the ferry privileges, and is acquiring the wharves.<sup>116</sup> It leases a part of the ferry privileges. But for the most part the natural monopolies of that city are owned absolutely by corporations. And, indeed, in all American cities this private ownership has gone to such an extent that the most advanced and vigorous thinkers and political economists of the times are steadfastly advocating city ownership of all natural monopolies within city limits.

In regard to this movement Professor Warner says:

“When, in 1873, Adolph Wagner read before the German Verein für Socialpolitik an elaborate paper on joint-stock companies, he made many suggestions as to the reform of corporation law. But he concluded by defending the thesis that, while the reform of corporation law was indispensable, this alone, however perfectly accomplished, could not suffice to eliminate the evils of corporate management of property; he contended that corporations must continue to be mischievous until they are restricted to a narrower field of activity than that now occupied by them; that the State, in its various branches, must assume control of those enterprises that are of necessity monopolies.”

The *New York Record and Guide* presents the following facts and figures:

“A careful estimate has been made which seems to show that the people of this country are paying ten per cent annual dividends on \$150,000,000 of fictitious gas stock, and yet our cities go on without a change of policy, apparently continuing to think that competition will regulate prices in business where competition is demonstrably nothing but an expense and a nuisance. Only five cities in the whole country are known to own their gas-works—Philadelphia; Richmond, Danville, Wheeling, and Alexandria, Virginia. Yet of these five, the one that has managed least wisely has succeeded in obtaining gas at a lower rate than almost any of the cities supplied by private companies and considerably below the average for such cities. There is no example of sustained and healthy competition between gas companies in the United States. Even a ‘gas war’ that lasts for a considerable time is merely ‘a fight to the finish,’ and duplicate gas-plants must eventually be paid for by double dividends....

“We published some time ago a list of eighteen cities owning and very successfully operating their own electric-light works, Chicago being one of the number. All but one of these are west of the Alleghenies.

“If we desire to find a contrast to this state of things we must look outside our country, but need not look farther than England. Of the 155 tramways in the United Kingdom twenty-seven belong to the local authorities, yielding an annual revenue of £81,980. In the financial year of 1883–4, which is the last for which the figures are at hand, the amount of money received from water-works by municipal boroughs was £1,628,585; by urban sanitary districts, £267,810; by rural sanitary districts, £19,166. From gas-works the municipal boroughs received £3,056,559; the urban sanitary districts, £307,489.”<sup>117</sup>

Professor Ely said in Boston in January, 1889:

“I oppose private monopolies. What I favor is the management of certain monopolies by public authorities and in the interests of the public. Monopolies are the field for public activity. Competitive pursuits are the field for private activity. It is thus that I draw the line, and it is, as I hold, clearly and sharply drawn.... I will simply enumerate the more important natural monopolies: gas supply, water supply, and electric lighting, street railroads of all kinds, steam railroads, telegraphs, telephones, all public roads, the express business. These businesses never can be conducted except as monopolies, and any phenomena which appear like competition are temporary and illusory. The gas business serves well as illustration. I suppose competition has been tried over a thousand times, and it never has yet been permanent, and it can be demonstrated almost mathematically that it never can be permanent.... Certain monopolies are local in their nature—*e.g.*, street cars, electric lights, gas supply, water supply, and for these I favor the principle of municipal self-help, as opposed to the perpetual interference with private corporations which render these services. There are two principles, one of which must be violated in these matters. One is the ‘keep-out’ principle—the other is the ‘let-alone’ principle. The keep-out principle means that government should not perform industrial functions. The let-alone principle means that government should let private parties manage their own business in their own way. Now, I believe in this let-alone principle. Its violation brings about an intermingling of private and public interests which is most demoralizing, and which is to-day the chief cause of corruption in public life. The keep-out principle can be violated with greater safety. I say then that cities should pursue a policy

looking to the ultimate ownership and management of all local monopolies. This is most intimately connected with local taxation. One of two methods may be pursued. 1. These monopolies may be worked for a profit, and by profits taxes may be reduced; or, 2, charges may be reduced, and increased general prosperity will furnish a more plentiful source of taxes, and thus allow a reduction of the tax rate. Enormous waste is thereby obviated.... Natural monopolies owned and controlled by cities always work well, and you may search the world over for an exception.... The worst instance of municipal works has proved better than ordinary private works, and probably less demoralizing politically.... Public works will always be in politics. The only question is whether it shall be open and above board or concealed.... By the application of correct principles in the treatment of natural monopolies we could have reduced taxes in Baltimore one third, I suppose in New York two thirds, probably in Boston at least one half.”

The example set by Birmingham, England, in the way of city ownership and operation of natural monopolies, is a remarkable instance of what a city is capable of. That city has recently acquired nearly all of the natural monopolies within its limits. The two gas monopolies, which had supplied the citizens with an inferior and costly article, were bought out of existence and consolidated into a department of the city council. The profits to the city are about \$100,000 a year, although the price charged is sixty-two and fifty-eight cents per thousand. The waterworks are owned by the city. The street railways are leased by the city to corporations. The city lays down the tracks, keeps them in repair, and the corporations pay a mileage rent. Overcrowding is illegal and fines are imposed for violations.

And yet there are grave objections to all this. It may be true that if these natural monopolies were owned by the cities, the people would get the income therefrom; that the service would be better; that it would be cheaper; that more improvements would be made; and that less controversies between the corporations and the people would exist. It may be true that the income from the natural monopolies would pay municipal debts, pay the annual expenses of local government, build great public improvements, and reduce the rates charged for service to the public.

Notwithstanding this the thoughtful citizen has doubts about the expediency of such a course. The making or saving of money is not the chief aim or end for which government is given power by the governed. The argument against the centralization of power in government is not applicable here, because the power here considered is that of the municipalities, and such government never has and probably never will be too greatly centralized. But the objection is that such a bureaucratic and paternal system of government, even of local government, would teach the American people to look to and depend upon government for the transaction and regulation of business. Worse than this, the municipal governments, even now, with their limited power and patronage, are spectacles of unmitigated corruption and mismanagement, and it seems impossible to wrest them from lawless bands of politicians. If the cities acquired all of the natural monopolies, these too would become subjects of plunder. A city government would then become the El Dorado of political freebooters and mountebanks.

## Chapter V: Trusts

### Causes of Trusts

During the past fifteen years there has been a rapid growth of manufactories. This growth has extended into all branches of manufacturing business. It has created competition, caused an over-production, and reduced prices frequently below the cost of the article produced. Several years ago it became evident to manufacturers that they must pursue one of two courses. They must continue the war of prices until the weaker concerns went to the wall and a few great establishments arose on the ruins, or they must combine, limit production, and control prices. The latter plan was adopted.

There are other causes at work. America has been and is increasing in population and wealth with wonderful rapidity. The imperial destiny of the country is manifest. It is becoming the commercial centre as well as the granary of the world. Its sixty-three millions of people consume an amount of manufactured products which is growing year by year. As a result the manufacturing industries have been developed with remarkable speed. This fact has put into vigorous operation the law of trade, that, as an industry grows in volume, it tends to centralize and become focused into great establishments. This is natural, because the great establishments produce in large quantities and thus produce more cheaply; they buy raw material more cheaply, save in expense of selling, utilize inventions, employ the best talent, and they can sell at prices which ruin and drive out the smaller concerns. The talent, business capacity, carefully invested capital, energy, and reliability of great concerns give them the supremacy. Hard times may intensify and shorten the struggle. Close competition may for a time prevent profits and even cause a loss to all. But sooner or later the weaker concerns drop out, prices are restored to a normal basis, competition between the surviving great houses prevent an undue enhancement of those prices, and trade settles down to a healthy basis—fair to the public, and fair to itself. Such has been the history of European manufacturing industries, and such is the natural development of all productive enterprises. It is so with the mining and mercantile business, with water transportation, banking, and manufacturing. It is the law of nature and of trade.

These two causes—too many concerns and the natural tendency of all large business to concentrate — were enough ultimately to bring about the rise of great concerns in each branch of business and the fall of the small competitors. The fact is, that competition is a benefit not only to the consumer but also to the deserving producer, the manufacturer. To the consumer it gives reasonable prices. To the manufacturer it is a benefit by periodically winding up the decrepit and incapable concerns. A vigorous and growing manufacturing establishment has no need to fear. It may at times have its profits cut down by low prices caused by excessive competition, but after the tottering and worn-out concerns have gone to the wall, trade revives on a new and paying basis.

But the natural process was not fast enough for the restless American. The law of the survival of the fittest works too slowly for his temperament. Instead of allowing the weak concerns to die, and the strong, talented, energetic ones to survive, he has stopped the workings of the natural laws of trade and has substituted his own makeshift. And his device has been bold and swift. It is the device of trusts.

The trust has been a creation of very recent times and one of the chief reasons why so many adopted this remarkable mode of combination was that a great monopoly in oil had devised it and had prospered. This monopoly in oil had amassed millions of money, and had practically crushed out all competition. It had succeeded beyond the dreams even of those who originated it, and had worked out the trust plan and policy of organization. The Standard Oil Trust proved a success, and the mode of organization which it adopted set an example for manufacturers which they were not slow to follow.

### Definition and Explanation of the Various Kinds of Trusts

A trust is a combination of many competing concerns under one management, which thereby reduces the cost, regulates the amount of production, and increases the price for which an article is sold. It is a monopoly or an endeavor to establish a monopoly. Its purpose is to make larger profits by decreasing cost, limiting production, and increasing the price to the consumer. This it accomplishes by presenting to competitors the alternative of joining the trust or being crushed out.

The term trust has been popularly applied to all of the modes of effecting combinations. These combinations have varied in their organization, according to the property involved, the objects to be attained, and the willingness of the parties to place their property in the hands of others. Hence it is that many different plans of combining have been attempted. The first plan was by contracts, whereby all the parties were to sell at a fixed price or through a common agent. Five years ago these contracts existed in many branches of business. They corresponded in principle and purpose to the railroad pools, but like them they were a failure. The courts would not enforce or sustain them, and the members would not live up to them. They were short-lived. The parties would not act in good faith. Secret breaches were made, or the whole agreement was openly repudiated. They fell to pieces. Self-interest was the only cohesive bond, and self-interest sooner or later induced one or more to abandon and compete with the combination pool.

It became evident that a stronger method of effecting a combination must be found. It must be a method which would bind fast all who once entered into it. It must take the management and ownership of the business out of the hands of the various discordant elements which constituted the combination. It must be based not on a moral obligation or mere agreement, but on an absolute right of property, possession, and ownership, vested in the combination itself. The old method of combination had failed, because it required the continuous assent of its numerous members. The new combination could succeed only by depriving the parties of the power to withdraw their assent. A scheme that would fulfil these requisites was not easy to discover. But it was found, and exists in the latest form of trusts.

This latest and perhaps most efficient method of organizing the trust is for each of the parties to incorporate his own establishment. The stock of these various corporations is then turned over to certain persons called trustees. In payment therefor the trustees issue to each party trust certificates, similar to shares of stock in corporations. By these exchanges the trustees hold a majority or all of the stock of each of the separate corporations. The trustees thereby elect the directors, place their agents in charge, prevent all clashing of interests, and so control the market. They then have the power to cause one concern to be closed, limit the production of another, consolidate the different establishments, or centralize production at one point. The various parties are not injured thereby, since their part of the profits comes from the whole trust, and not from their particular establishment. The trustees are annually elected by the certificate holders. The trust certificates themselves are watered up to a point where the vast profits of the trust will make only a reasonable dividend on all the trust certificates which have been issued. These certificates are bought and sold on the market like shares of stock.

The Standard Oil Trust, the American Cotton-Oil Trust, and the Sugar Trust have been the most prominent examples of this mode of forming a trust.

The term trust has also been applied to any great corporation that has been formed to purchase the concerns of many competitors in a particular line of business. The most celebrated of this class of corporations is the Diamond Match Company. It purchased and still owns nearly every match manufactory in this country. Such a corporation *is* a combination, and its purposes are the same as those of the regular trust. It differs essentially, however, from the latter in certain particulars. These particulars will be pointed out hereafter.

There are still other uses for the word trust. In England it is applied to a legitimate investment enterprise,

where the trustees are authorized to invest the funds of the trust in the stocks and bonds of miscellaneous corporations, the amount invested in any one company being generally limited. That which is lost in one investment is expected to be made up by large profits in another. It is a mode of investment on a large scale, and is conducted on the principle of an average gain or loss. Again, in America the American car trust exists, and this also is unobjectionable in its operations and plans. It is practically an agreement of several owners of cars to place them in the hands of an agent to sell on the instalment plan, the agent having the power to issue certificates representing an interest in the instalments. In America also there has arisen the railroad voting trust. Such a trust is created by transferring a majority of the stock of the railroad company to trustees, who shall vote it and hold it, but shall issue trust certificates therefor to the parties who turn in their stock to form the trust. The objection to such a trust as this is, that it gives power without responsibility.

The Reading Railroad is controlled and its officers elected by a voting trust of this kind. The *Railroad Gazette*, speaking of the proposed voting trust for the Atchison, Topeka, & Santa Fe Railroad, has said:

“A trust, in this sense of the word, is an arrangement by which the stockholders part with their voting power for a term of years, and during that time lose all control over the management. The object of such a scheme is to protect each individual investor from the effect of changes of policy which might arise if a majority interest in the stock should change hands. In an ordinary corporation this is an ever present liability. But if the stock, or a majority of such stock, is placed in the hands of trustees, who give in return a set of trust receipts entitling the holder to all dividends on his stock, the investment and the management become separated. If the trust receipts change hands the dividends go to the new holder; the management remains where it was before, namely, under the control of the trustees. “Such is the recognized character and purpose of voting trusts. Their object is to secure permanence of management without sacrificing transferability of shares.

“The opposition to a proceeding of this kind is usually based on legal technicalities. But it really has wider and stronger economic ground. If a concern is owned and managed by its stockholders, the power and responsibility belong in the same hands. If some of the existing owners secure permanent tenure of management by means of a trust, and then sell their interest as investors to others, power and responsibility are at once separated. If a man wishes to make himself trustee in his own behalf, there *is* often a presumption that he wishes to retain the power and avoid the responsibility, and that his motives in so doing are questionable. Looked at from the standpoint of the community, the gain in stability of management is more than offset by the loss of safeguards against mismanagement. From this point of view a voting trust is wrong in principle.”<sup>118</sup>

A trust of this kind prevents, the owner of stock from voting the stock, and for this reason it is generally dissolved by the courts upon the application of a trust-certificate holder.

But the original and simon pure trust is a unique piece of handiwork. It is well fitted to baffle investigation and to work out its schemes secretly, silently, and effectively. Its structure bears witness to the ingenuity displayed in its construction. It is a labyrinth that is a puzzle to the investor and a peril to the public. It controls the wealth and concentrated power of a corporation, but for the most part avoids the publicity and restraints which a wise public policy has placed upon corporate acts. It is a skilfully constructed intricate machine, and is the product of the highest order of business talent and executive ability.

One of the chief objects of organizing a trust instead of a single great corporation is that by the trust the business is subdivided into many parts, and the insolvency or rascality of one of the constituent companies does not bring ruin upon the entire enterprise. It is admirably constructed for use as an irresponsible and “dark-lantern” affair. Its proceedings, books, and operations are not open to the public, nor certificate holders, nor creditors. The law has placed certain safeguards around corporations. But the trust gives practically absolute power to the trustees, and these trustees act secretly and silently, and refuse to give information even to the certificate holders themselves. They are neither corporations nor well-defined common-law trusts; no charter or statements need be filed for public inspection; no reports need be made or published; it may carry on any business it desires; the principles of *ultra vires* acts do not check it; no limit is placed by statute on its capital stock; no law prevents an increase or decrease of its trust certificates; no tax is laid on its charter or franchises or capital stock; no limit is placed by the public on the powers and discretion of its trustees; no publicity is given to its acts; and there is no liability for debts. It may move from State to State; it may evade taxation, and defy the

powers of courts; and yet it may act secretly, silently, and with all the enginery of irresponsible power and unlimited wealth. It has been well said that power without responsibility is the darling of the human heart. The trustees of some of the modern trusts possess it. They have practically no limit placed upon their powers in conducting the business; no necessity of accounting and disclosing the condition of things; and no lack of opportunity to use their information for the purpose of making a fortune on the stock exchange.

### The Legality of Trusts

There is no longer any doubt that a trust formed by a combination of manufacturers is illegal. The decisions are clear and emphatic. There is a long line of cases to this effect running back to Lord Coke, who, in the famous Case of the Monopolies, slid that there were three inevitable results of monopoly: "(1) That the price of the same commodity will be raised; (2) that the commodity is not so good as before; (3) that it tends to the impoverishment of divers artisans, artificers, and others."

The recent decisions in Illinois against the Chicago Gas Trust, and in New York against the Sugar Trust are to the same effect. The State will annul the charter of any corporation that unites or is united with another corporation in forming a trust. The law declares that such combinations are against public policy and are illegal and void. The courts have set a face of adamant against the trusts, and their days are numbered. Men cannot afford to be doing business in an illegal way. Moreover, the express ban of the law is being put upon them. Congress in 1890 enacted a statute against them; fourteen of the States of the Union have passed similar laws during the past two years, and five other States by constitutional enactments have prohibited trusts absolutely and in unmistakable terms.

### The Tendency of Business Towards Large Concerns, Combinations, and Consolidations

The industries of America are expanding with the growth of the wealth and population of the country itself. A nation that doubles its population every twenty-five years, and its wealth in still less time, necessarily has a trade that grows the immense proportions. As already remarked, the natural development of such a trade causes great establishments to supplant the numberless small ones. It is a law of nature. These great establishments arise gradually by the course of trade and the genius of particular individuals, or they are hastened in their formation by the combinations and consolidations of competing concerns. If they arise by the former process, they contain no dead limbs, but every part is replete with vigorous, healthful life. If they arise by the latter process, by combination or consolidation of competing concerns, some of those concerns are generally weak and decayed, and to this extent the great establishment is crippled.

It is best to be candid and fair in considering a subject which has been the occasion of such wide discussion, intense feeling, and bitter litigation. It is an established principle of economics that the displacement of numberless small concerns by large ones is not only a natural process but is beneficial in its results. These great concerns arise because by doing business on a large scale they can do it more cheaply; they not only can manufacture more cheaply but can sell more cheaply; they use machinery and improved processes; investigate, experiment, and develop inventions which are beyond the reach of individuals or small organizations; utilize in every way the modern forces of steam, electricity, machinery, and capital; produce and distribute on a vast scale; combine capital and engage skilled persons; add factory to factory; use every device that cheapens products; reduce the cost of transportation; dispense with multitudes of officers, superintendents, travelling salesmen, and expensive advertisements; purchase raw materials at low figures; employ the highest order of administrative ability; prevent over-production; ensure certain returns on capital; prevent insolvencies; and build up large and new enterprises which require great capital, incur great risks, and call for the best administrative talent. These are the reasons why, in the natural course of events, the great establishments displace the small ones. America is now going through this process, and her industries are being revolutionized.

It has become clear that the natural growth and existence of great concerns, doing all or most of the business in a particular line, are a benefit.

## Are Trusts to Be Justified as a Legitimate Mode of Doing Business on a Large Scale?

Nevertheless all this does not lead to the conclusion that the artificial formation of those great concerns by the combination or consolidation of many competitors is a benefit. There are legitimate and there are illegitimate methods of combining capital. It is true that the wonderful success of modern business is dependent upon combination; that by combination capital is obtained, enterprises of magnitude conducted, great results accomplished; and that every partnership and every corporation is a combination. But these arguments do not justify the trust mode of combination any more than arguments in favor of a standing army would justify the existence of a band of bandits. The trust is a *nefarious* mode of forming a few great establishments—nefarious because those establishments arise, not by outstripping competitors through a reduction of cost and of prices, but by destroying competition and making possible still higher prices. And they are unnatural creations in that they load down the vigorous and prosperous concerns with the weight of the unprofitable and failing ones. The law of the survival of the fittest in manufacturing is one thing; the trust plan of turning strong establishments into a poorhouse for the preservation of weak concerns is quite a different thing. There is less progress under the latter than under the former law. If competition is allowed to do its work, the capable concerns survive; they are not handicapped by the weak; they eventually reduce the cost of production to the lowest possible limit; they are obliged to create, seek, and use new inventions and processes of manufacture; they can afford to sell cheaper because they can produce cheaper, and they are obliged to sell cheaply in order to prevent the rise of new and strong competing concerns. In short, the trust is not a natural mode of doing business on a large scale. It is not to be justified as a natural development of trade.<sup>119</sup>

### The Monopoly Feature of Trusts

A trust is an organized effort to establish a monopoly. This is its chief object, and if it were not for the prospect of making this monopoly more or less complete, the trust would not be formed. It is idle for its defenders to say that the trust is created in order to cheapen the cost of manufacture and reduce the price to the public. Incidentally, in a few rare cases, both of these results occur. But the chief object of a trust is a monopoly of the market.

A monopoly of the market means a control of prices, and such a control is always unjust and oppressive, whether created by a king or by a combination of men. It raises prices, persecutes those who refuse to come into the combination, crushes out competition, punishes or ruins single independent producers, lowers the price paid for raw material, restricts production, and renders fair competition impossible.

Sir John Colepepper, in a speech in the Long Parliament, thus spoke of monopolies and “pollers of the people”: “They are a nest of wasps—a swarm of vermin which have overcrept the land. Like the frogs of Egypt, they have gotten possession of our dwellings, and we have scarce a room free from them. They sup in our cup, they dip in our dish, they sit by our fire. We find them in the dye fat, washbowl, and powdering tub. They share with the butler in his box. They will not bate us a pin. We may not buy our clothes without their brokage. These are the leeches that have sucked the commonwealth so hard that it is almost hectic.” This was the same Parliament that sent Charles the First to the block. One of the chief grievances against him was his creation of monopolies in wine, coal, salt, starch, the dressing of meats, beavers, belts, bone-lace, leather, pins, and other necessaries, and even the gathering of rags. Prior to that time even Queen Elizabeth yielded to the indignant protest of the English House of Commons and repealed the monopolies which she had granted on iron, coal, oil, vinegar, lead, starch, yarn, leather, and glass.

There are certain natural monopolies which have already been considered. They are the railroads, street railways, telegraph, telephone, gas, electric lights, and others. These are not popular or desirable so far as their monopolistic feature is concerned. But the hostility against them is mild and trifling compared with that against the trusts, the monopolies in the necessaries of life, in sugar, oil, coal, and the articles of daily consumption. It is asserted, and with reason, that these trust monopolies press hardest on the great masses of the people, those who are least able to bear the exactions; that they are a burden which is borne, not by the rich and powerful, but by the poor and weak; that they are monopolies in the necessaries of life of the farmer, the mechanic, and the laboring man, and that the exactions fall upon those who work for their daily sustenance. A monopoly in those things which the plain people consume day by day, those things which they eat and wear and use in their daily life, is a menace to the future of the nation itself, inasmuch as it affects the character of the next generation.

There is a general principle of business ethics which may be laid down without much fear of contradiction. The moment an individual, partnership, corporation, or combination seeks a monopoly, that moment his or its business methods become iniquitous. Especially is this the case where the *sole* object of a combination is to establish a monopoly. It is not surprising, therefore, that the trust has demoralized business ethics. Its chief object is to put up prices and put down competition. These objects are pursued by fair means and foul. Iniquitous bargains are forced or made with railroads. Legislatures are tampered with. Resort is had to threats, fear, dishonesty, bribery, discriminations, and even crime. Business morals are corrupted. Dishonesty ceases to be odious. Chicanery, trickery, and fraud are excused, provided the desired results are attained. The great wealth and splendid talents of the trust are coupled with unscrupulous methods and a greed for gain. The end is made to justify the means. Unscrupulous devices and sinuous ways are overlooked or applauded if they are successful. The history of the trust has demonstrated that when a body of men seek a monopoly, they begin to abandon honorable business methods.

Mr. S. C. T. Dodd, the solicitor for the Standard Oil Trust, in defending that organization in a speech made at Boston, January 8, 1889, said that the Standard Oil Trust had used capital which only a large combination could command, in opening markets for petroleum throughout the civilized and uncivilized world; that it had decreased the price by enlarging the output and making large gains out of small profits; that it had further decreased the price by cheapening the methods of transportation, by building cars for carrying oil in bulk, and by erecting pipe lines; that all the persons in the combination have the benefit of combined knowledge and experience, and the best and cheapest methods of manufacture, as well as the use of patents; and that in consequence thereof the actual cost of manufacturing refined oil has been reduced 66 per cent in fourteen years. Mr. Dodd said nothing about the business practices of his organization. Judge Thomas M. Cooley, however, on the same occasion said:

“A few things can be said of trusts without danger of mistake. They are things to be feared. They antagonize a leading and most valuable principle of industrial life in their attempt not to curb competition merely, but to put an end to it. The course of the leading trust of the country has been such as to emphasize the fear of them, and the benefits that have come from its cheapening of an article of commerce are insignificant when contrasted with the mischiefs that have followed the exhibitions in many forms of the merciless power of concentrated capital. And when we witness the utterly heartless manner in which trusts sometimes have closed manufactories and turned men willing to be industrious into the streets in order that they may increase profits already reasonably large, we cannot help asking ourselves the question whether the trust as we see it is not a public enemy; whether it is not teaching the laborer dangerous lessons; whether it is not helping to breed anarchy.”

The *Contemporary Review* says:

“No future treatise on political economy will be complete without an exposition of modern trusts, which have attained such alarming proportions in the United States of America. The growth of these combinations is one of the most remarkable economic developments of the time. The great staples of the country are fast falling into their clutches, and some of the necessities of life are already under their control. Trusts are illegal corporations, born of rapacity and maintained by the exercise of tyranny. Their organization is secret, their workings dark, silent, and subtle. They stretch out their tentacles—quietly and stealthily—until whole industries are in their grasp. They are contrivances to create a monopoly by throttling all competitors. They squeeze the people at both extremes of the commercial scale—grinding down those who furnish the raw material and supply the labor to the lowest limit, and exacting the highest possible price from the consumer. Once established, trusts soon become strong—almost impregnable—citadels of capital. The highest business capacity is employed in organizing and maintaining them. They laugh at public opinion, ride rough-shod over legislative enactments, and baffle the law courts. They bridle newspapers with subsidies, and send members to Congress. They have their agents in every legislature and bills are passed in their interest. They tamper with judges, they ally themselves with political leaders, and hire professors of political economy to defend them. But the people are at last awakening to the dangers of trusts, and see in them not only an interference with trade, but a menace to political liberty. Trusts stand in the forefront of the protectionist breastworks. They are the crux of the tariff question. It is round them that the battle rages most fiercely, and tariff reformers are bent before all things on clearing them away.”

Professor Bryce says:

“He who considers the irresponsible nature of the power which three or four men, or perhaps one man, can exercise through a great corporation, such as a railroad or telegraph company, the injury they can inflict on the public, as well as on their competitors, the cynical audacity with which they have often used their wealth to seduce officials and legislators from the path of virtue, will find nothing unreasonable in the desire of the American masses to regulate the management of corporations and narrow the range of their action. The same remark applies, with even more force, to combinations of men not incorporated, but acting together, the so-called trusts—*i.e.*, commercial rings or syndicates.”<sup>120</sup>

## The Dangers Which Are Besetting the Trusts

The country has just passed through an epoch of trusts. The success of the chief combinations dazzled the minds and set on fire the imagination of men. It is believed that trusts have existed in over thirty of the necessities of life.<sup>121</sup>

And the list is growing day by day.

But there are powerful forces at work which are bringing disaster to the trust mode of doing business.

Most of these trusts will fall to pieces of their own inherent weakness. The tie which binds together the members, who formerly were competitors, is not strong enough to endure. Trusts which consist of mere agreements to keep up prices are destined sooner or later to go to pieces. Unless there is a union of property as well as an agreement to act together, the agreement will be broken. Witness the former pools of railroads, often made and always broken. Unity and single ownership of all the property of all the competing concerns is the only assurance of long life to a trust. Hence it is that most of the trusts now existing, being merely contract agreements to act together, will be broken up by the acts of the members themselves, who will secretly or openly violate their contract.

There is another rock upon which many trusts will go to pieces. It is the discovery that the strong concerns make a fatal mistake in uniting with the weak concerns. The trust is the salvation of the weak competitor. It enables him to become established; to build up business and reputation; to weather the first financial storms; and to avoid that certain bankruptcy which awaits him, if the war of competition goes on. A few years of the trust puts him fairly on his feet. He then is able to stand alone. He is ready to meet the break up of the trust, and the war of competition. Meanwhile the strong concerns have gained little. They have received greater profits, but have caused weak competitors to become strong competitors. The inevitable war of prices and competition has been delayed for a few years, but the delay has raised up new powers against the old and well established concerns. When, finally, the trust goes to pieces, and competition again decrees that only the fittest shall survive, a long and disastrous struggle will occur. Out of this struggle a few great establishments will arise on the ruins of the many competing concerns. But the trust will have proved a delusion and a snare. Such has been the history of the railroad pool, and such will be the history of the majority of the trusts.

There is another pitfall for the trust. It is the certainty of new competitors. Competing concerns, content with reasonable prices, will supply the market. Even after a trust becomes an absolute monopoly it is never safe. Its vast profits are a tempting prize, to be contended for by the wealth and enterprise of all men. Capital, ever ready to make daring ventures in the hope of great returns, is a power that cannot be suppressed by the trust. It will be unceasing in its menace and it cannot be subdued.

One of the leading journals of London, speaking of American trusts, said, in May, 1890:

“A more powerful remedy than that of any penal code, however, exists in the practical impossibility of cornering being carried on to any serious lengths without great peril to those who resort to it. It is difficult to conceive of any body of capitalists being sufficiently powerful to monopolize an article in general demand, and to use their monopoly for any length of time to the serious hurt of the public. Directly prices became prohibitive there would be a formidable movement in the opposite direction, and the monopoly would break down. Only in remotely possible cases could a corner enjoy a prolonged triumph over the needs of the public.... Natural laws, after all, are more potent factors than all the contrivances of selfish and unscrupulous men.”

A world-wide trust—a trust embracing all lands and all peoples, is yet to be seen. It was attempted in the French copper trust, but that gigantic concern went down and brought ruin upon its members. Its recent collapse, even after it had been operated with almost unlimited capital, temporary success, and great ability, shows that the markets of the whole world are too great and competitors too numerous to be collected or controlled by a single trust.<sup>122</sup>

The two great things which a trust fears are: (1) the decisions of the courts forfeiting the charters of the constituent corporations; (2) new competitors on a large scale, either at home or abroad. Whether it is best by free trade to sacrifice various branches of American manufacturing, in order to destroy the trusts, is a question not yet conclusively decided. The people differ in opinion as to the merits of a protective tariff and free trade. But there is no inclination to protect the trusts. If it is finally concluded that the protective tariff laws create and foster the trusts, then the protective tariff laws will be repealed.

Hon. John Sherman, in a speech delivered in the United States Senate on September 29, 1890, said, concerning the recently enacted protective tariff act:

“The great obstacle and menace that stands in the way of the success of this tariff bill, that which more than all else will determine the length of its life, that which will test its wisdom hereafter, is the question which has been discussed heretofore in the Senate, whether the manufacturers of this country are willing to maintain free and fair competition in their various productions, so that the people may have the benefit of that which they claim as their right—free and full competition in domestic markets of domestic products. The great danger of this tariff and of all schemes for building up domestic industries by law is that the beneficiaries themselves, capitalists and laborers alike, will not be content to realize the advantages they enjoy, but will combine and confederate in order to cheat the people of that which they have the right to enjoy... This protective policy must not degenerate into monopoly—into trusts or combinations to raise prices against the spirit of the common law.... If.... the notion prevails that it is right and just for people who engage in the same pursuit to pool their issues, to appoint a trustee to manage their affairs, to deprive themselves of the powers which they enjoy as citizens and as corporations in order to make corners and by various devices to cheat the people, then the protective tariff system will disappear as rapidly as it has sprung into existence.”<sup>123</sup>

But the laws of competition and changes in the protective-tariff system proceed slowly. The trust has the power to delay all these. Its wealth mounts into the hundreds of millions of dollars. It employs tens of thousands of men. It has destroyed hundreds of competitors. It ignores the press, the legislature, and the law. Its powers are not limited by charter or public opinion. Its policy is directed by the highest order of executive and legal talents. Its movements are secret, silent, unerring, and all powerful, and it extends into all branches of industry. It has no fear of Congress or State legislatures.

The courts, however, are doing more than all else to drive out the trusts. They are forfeiting the charters of the constituent corporations which make up the trust, and are appointing receivers of the property. The decisions in Louisiana, Illinois, and New York have settled the law beyond controversy. The trusts have at length realized that they are illegal and must go. And the question with them now is, What shall they do next?

### Transformation, Reorganization, and Disappearance of Trusts into Large Corporations

The first great trust in this country was the Standard Oil Trust. The first great combination of manufacturers into a monopoly, however, was the Diamond Match Company. The purpose was the same—the creation of a monopoly. The mode of organization was different, the former being a genuine trust—that is, the placing of all the shares of stock of many corporations in the hands of trustees who issue certificates therefor; while the Diamond Match Company’s mode of organizing the monopoly was to organize one single huge corporation and have it purchase and own all the competing manufactories, payment therefor being made chiefly in shares of stock.

The law has decided that the trust mode of organizing a monopoly is illegal. Hence it is that the numberless trusts are hastening to adopt the other mode of organization—the corporation, the plan of the Diamond Match monopoly. Already the Sugar Trust and the American Cotton Oil Trust have dissolved and become New Jersey corporations, and other-trusts are following the example.<sup>124</sup>

What is to be said about these great corporations?

One thing may readily be conceded. It is better to have the large corporation than to have the trust. There is something inherently vicious and dangerous in the powers which are given to the trustees of a trust. The secrecy of their operations and orders, the concealment of the condition of the business, the power to refuse all information, and the unrestricted irresponsible powers of the trustees renders the trust mode of doing business intolerant and intolerable.

These particular evils do not exist to such an extent in a corporation. The safeguards, checks, and regulations which have been thrown around corporations for the protection of stockholders and creditors are many and valuable. They limit the powers of the directors; provide for statements of the business; allow stockholders to investigate and examine the books, and enable the public as well as stockholders and creditors to know something of what is going on.

But is the public satisfied with this new method of combining competing concerns, of organizing a monopoly—the method adopted by the Diamond Match Company, the method of uniting in one great corporation, the method that is now being adopted by all the trusts?

It will be difficult to annul the charters, because the charters may be obtained in a State which will not interfere with the trusts. It will be difficult to legislate against them because, although a State may legally exclude a foreign corporation from doing business within its boundaries, yet it is extremely difficult to enact laws which accomplish that result.

Nevertheless the courts are refusing to enforce the contracts of such corporations and are annulling their charters. In Michigan, where several persons turned over their match factory to the Diamond Match Company, a corporation formed to obtain a monopoly, and these parties contracted to divide their profits in a certain proportion, the Supreme Court of the State refused to enforce that contract, and refused because the purpose of it was to aid in creating the match monopoly. In Illinois the charter of a corporation formed to own and control the shares of stock of competing gas companies was annulled by the State, the court holding that the charter was invalid. Judging from these cases, the prospects of this latest form of trust are not flattering or reassuring.

The first campaign of the warfare with the trusts has been fought out. The victory has been with the people. The trusts have been routed and driven to a second line of defence. They are entrenching themselves under the cover of corporate charters. Whether they shall be driven from these remains to be seen. Certain it is that unless they justify their existence they will be annihilated by the courts, legislatures, and new competitors.

## Chapter VI: Corporations and the Republic

There are numberless instances in which corporations have corrupted the government. They have controlled nominating conventions; carried elections; dictated appointments; tampered with aldermen and municipal authorities; bribed legislators, judges, and other public officers, and made their influence felt in Congress and every branch of the national government. These are facts known to all. And it will serve no useful purpose to pass in review the details of the notorious record. The evil has existed and still exists. It cannot be abolished by denunciation nor by statute. There is a cause for its existence, and it will not pass away until the cause is removed.

Among the problems before the American people there are none more important than these: Why is it that corporations seek to control government; how is their corruption to be stopped; what are the real dangers, if any, which the corporations have brought upon government; and how are those dangers to be met? For many years to come America will be interested in these questions.

It is not remarkable that corporations seek to control government. The reason why they take part in politics; manipulate caucuses and conventions; use money, power, and votes in elections; bribe and influence national, State, and municipal officers, judges, and legislators; and often control States and cities, is plain. Corporations do all this to protect and increase their property. Politics and bribery are to them a matter of business. They are not seeking glory, or honor, or even power for the sake of power. They are seeking property. Usually the ambition of those who enter politics is not mercenary; it is to acquire reputation, or wield power, represent large bodies of men, or gratify an innate fondness for leadership—all for the mere pleasure of so doing, and all leading to money losses rather than to money gains. But these are not the motives which actuate corporations. They are in politics for business only. As already stated, they are there to protect and increase their property. And if government could afford to have nothing to do with their property, they would have nothing to do with government.

Already in the prior pages of this book the various controversies between the corporations and the government have been pointed out. Government is seeking to rule the corporations, and the corporations are seeking to control the government. Indeed, it seems as though every important property interest of a corporation involves it in a contest with the legislative, executive, or judicial part of the national, State, or municipal government. What wonder is it then that corporations are constantly interfering with government? Is it anything strange or inexplicable that they should do so? They have vast property interests at stake. Naturally they are more active and aggressive than men who take part in government from motives which are merely partisan or theoretical. So long as the business of corporations is affected by government, just so long will corporations continue to bribe, brow-beat, and dominate public officials.

This source of political corruption, however, will decrease as time goes on. The points of controversy between the corporations and government will grow less and less. And as these disputes diminish in number and intensity, so also will diminish the motives and reasons of the corporations for interfering with government. Thus, when the various States prohibited the granting of special charters to corporations, the corporations at once withdrew very largely from the legislatures. And, hereafter, when the consolidation of the railroads into a

few great systems has taken place, the contest between the railroads and the government over secret discriminations, rebates, free passes, and a whole cohort of evils will cease. The consolidated roads, being without competition, will have no occasion to resort to these particular abuses. The existing controversies between the corporations and the government are many in number, and seem to be increasing rather than decreasing. Questions which formerly were between the corporations and individuals are now between the corporations and the government, the latter having taken up the unequal fight which was formerly carried on by individuals. But these controversies will gradually be adjusted by statutes, decisions, consolidations, and mutual concessions. And when so adjusted, then the present corruption of government by corporations for the purpose of protecting and increasing corporate property will come to an end.

But there is another phase to this problem of the corporations and the republic. The republic has an old and never-ending danger—plutocracy,—a danger that is common to all advanced forms of government. Plutocracy always has and always will seek to control government. Government gives to it worldly honors, social position, fame, power in the affairs of men, and greater opportunities to amass wealth. Plutocracy undermines a republic by undermining the character of its citizens. It makes money and pleasure the objects of existence and the tests of success. Whatsoever is an aid to plutocracy is a danger to the republic.

The corporation is the ally, the agent, the representative of plutocracy. To a small extent corporation bonds and stocks are owned by the many. But the control, the management, and the ownership of the great corporations of the land are to-day in the hands of the wealthy few. Plutocracy has appeared in a new guise, a new coat of mail—the corporation. The struggle of democracy against plutocracy—a struggle that is coming to the American people— will be between democracy and the corporation. The people are beginning to recognize their old plutocratic foe in its new corporate form.

And the corporation is no mean ally. It gives to plutocracy a power which it never before possessed. Private fortunes in corporate form, and by legal sanction, have rapidly and enormously increased, until now the American Republic has to deal with aggregations of capital, such as the world has never before beheld. There has resulted a concentration of wealth that past ages never dreamed of, and private fortunes exist which surpass those of Babylon and Rome. The corporations have made the plutocrat more wealthy and more powerful than ever before.

Nor is the corporation tempered by any of the amiable weaknesses of plutocracy. There is a great difference between wealth as used by the owner himself and wealth as used by the corporation. When the capitalist invests and administers his wealth himself, his humanity asserts itself; his sympathy, generosity, gratitude; sense of wrong, sensitiveness to public criticism, and aversion to public dislike—all tend to prevent harshness and injustice in the use of his power. But with the advent of the corporations, these restraints are passing away. Fifty years ago wealthy men were identified with their investments. To-day, with a few exceptions, the great enterprises are not connected in the public mind with individual names. Corporations have separated the investor from the investment. The millionaire uses the corporation to invest his property. He owns the stocks and bonds; controls the corporation, and makes it do his bidding. But all acts in the management of the property are done not in his name but in the name of the corporation. If corrupt and unscrupulous, the odium and disgrace rest upon the corporation and not upon the individual. Take it all in all, the corporation is as perfect and heartless a money-making machine as the wit of man has ever devised.

The corporation *is* dangerous to the republic. It has become the tool of plutocracy. It has increased the historical dangers to government from the concentrated wealth of the few. It has been instrumental in increasing that concentration of wealth and in shielding its owners from risks and opprobrium arising from its illegal use. It is without moral responsibility or feeling. It can do more harm than individuals, and, in so far as plutocracy is a danger to the republic, the corporation has increased that danger.

And yet the corporation, as an ally of the plutocrat, is fickle, unreliable, and vulnerable.

The plutocrat cannot always be sure of his corporation. It rarely represents one capitalist alone. It is controlled by several acting in union. The wealth of each, so far as it is invested in that corporation, cannot be used for his personal purposes. It must be used to further the corporate ends—the making of money. It cannot long be used to further the political aspirations of one of its members, however great a plutocrat he may be. The others will not allow it. He is deprived of control.

The corporation is withdrawing the plutocrat from the field of politics. It is engrossing him in business.

The colossal schemes of the age are more attractive than the position even of a United States senator. A railroad president is a man more courted, has more power, enjoys more excitement, and has greater opportunities for the display of ability, energy, and ambition than the governor of a State. Corporations are absorbing the wealthy as well as the wealth of the nation. They are furnishing an outlet for the ambition as well as the ostentation of the plutocrat. Moreover, to the extent that they absorb the wealth of the wealthy, to that extent the plutocrat does not use his money in extravagance, waste, the demoralization of the people, and the corruption of government. The Roman plutocrat bought an empire; Vanderbilt buys systems of railroads.

But the most important fact of all remains to be mentioned. The corporation holds its life subject to the will of the people. It is a creature and creation of the state. Its powers may be changed, its duties increased, its charter may be repealed and its existence ended. It is sensitive to the very breath of public opinion. It is vulnerable. Plutocracy in the form of the individual is largely beyond the reach of legislatures and the law. But plutocracy in the form of the corporation is open to attack. It can be regulated, restricted, and annihilated.

Plutocracy acting through corporations is obliged to be cautious and conservative. The vast interests which they represent, the wealth which they manage, and the size to which they have grown, render it dangerous for them to incur the hostility of the people. The plutocrat gives bonds to keep the peace when he acts through the corporation. It is by reason of this that the great corporations of the land are gradually passing into the hands of conservative men—men who realize the risks and responsibilities of these creatures of the state.

Notwithstanding all this, the great majority of the American people look upon corporations and their colossal aggregations of capital as dangerous to the republic. A vague and indescribable dread and suspicion of them pervade the minds of men. There is reason for this distrust. And yet it is to be borne in mind that the history of the republic gives no occasion for gloomy forebodings of ill. Whenever a national crisis has occurred, whenever a political regeneration has become necessary, whenever the national existence has been imperilled, whenever corruption has become dangerous, whenever the leaders have been in despair and have run hither and thither in doubt and confusion, the great masses of the people have been equal to the emergency.

And so it will be in regard to the corporations. They will continue to vex the minds of men and to appear as ominous spectres and omens of ill. But the American people, clear in their intellectual powers, honest in their purposes, and decisive in their acts, have no need to fear them. "The Corporation Problem" will be solved, and the solution, when it comes, will be satisfactory, thorough, and complete.

## Notes

1. The argument is sometimes made that the amount of railway capitalization has but little influence upon passenger and freight charges, and that those charges are determined by the competition of waterways and other railways, and by the rates of connecting railroads into other States and foreign countries.

This may be true, but, as will be shown hereafter, when with the growth of population the business of a railroad increases to such an extent that its charges, governed though they may be by the above causes, pay an extravagant rate of profit on its cost, then the watered stock and bonds conceal the real rate of profit that the railroad is paying, and consequently a reduction of rates becomes almost impossible. The railroad contests the reduction, first in the legislature and then in the courts, and its plea always is that its existing rates pay no more than interest on the bonds and fair dividends on the stock, when the fact is that part of the bonds, and generally all of the stock are "water."

2. For instance, in January, 1890, shelled corn was selling in Kansas at sixteen cents a bushel, while at the same time it was selling in Chicago for twenty-eight and one half cents a bushel. Twelve and one half cents went to the railroads. At sixteen cents a bushel the farmer made little or no profit.

The Interstate Commerce Commission says in its reports (vol. iv. p. 76) that "the price paid for Nebraska corn by the buyer in Eastern markets is in the larger part paid for transportation charges."

3. Prof. Amos G. Warner in the *Political Science Quarterly*, vol. vi, No. 1. In the report of the Union Pacific Railroad Company for 1888 is given the distribution of that company's stock. Out of a total in round numbers of 600,000 shares, one third is held in New England and one third in New York. Of the States through which the road runs, 500 shares are owned in Nebraska, 100 in Utah, 27 in Wyoming, and 5 in Colorado. Thus all the States last-named own but one tenth of one per cent of the stock of this company.
4. *Railroad Gazette*, March 15, 1889.

There are many ways of distributing profits without declaring dividends. In fact, whenever it is an object for a railroad to observe a limit on its dividends, it is remarkably successful in doing so. For instance, ever since the incorporation of the Wilmington and Weldon, the Raleigh and Gaston, and the North Carolina Railroad Companies in North Carolina more than fifty years ago, these corporations have been exempt from State and county taxation until their dividends amount to eight per cent. One of the many attempts to show that more than eight per cent, has been made by these corporations was by a legislative committee in 1890. There was a great hue and cry by the Farmers' Alliance against the three companies mentioned, and this organization insisted that this exemption should not exist any longer. Without regard to future tax, the Raleigh and Gaston Company paid into the State treasury \$17,000, and stopped the investigation into its affairs.

A still more decisive proof of the failure to accomplish any good by limiting dividends is that of the New York Central Railroad Company. Formerly this Company was practically limited to ten per cent dividends on its stock, and was prohibited from increasing its capital stock. Nevertheless, in 1868, an "interest certificate" dividend, being the same thing in effect as a stock dividend, was declared. It amounted to \$23,036,000, being an eighty per cent dividend. At a later date the "interest certificates" were called in, and full paid shares of stock were issued in exchange. See *Bailey vs. R. R. Co.*, 22 Wall, 604.

5. Adams on "Railroads," pp. 127, 128.

6. Among other reasons, showing that this rule is impracticable, the Commission says:

"But over and beyond all this the attempt to apply the rule suggested would be absolutely futile for the reason that the rates prescribed for one road would necessarily affect all others that either directly or indirectly came in competition with it. If, therefore, of two roads competing for business between important points, one were very largely indebted, so

that at rates fixed by the official board it were barely able to pay running expenses and interest, and the other were free from indebtedness and able to pay large dividends, any action of the public authorities whereby the rates of the last-named road were reduced, and at the same time the rates of the other not affected, would be plainly and obviously impossible. The one must put down its charges when the rates of the other are forced down.”—“Fourth Annual Report,” p. 18, etc.

The Interstate Commerce Commission in its decisions (vol. iv., pp. 65, 73) says: “The Chicago, Santa Fe, and California and the Chicago and Alton roads run side by side between Chicago and Kansas City. The Alton is capitalized at \$46,000 per mile, the Santa Fe at \$92,000. Their rates must necessarily be the same. Must they be such as to yield income on the basis of the Alton’s capital and obligations, or on the capital and obligations of the Santa Fe which are double as much? The bonded debt and capital of the Burlington and Missouri River in Nebraska is \$37,000 per mile, and of the Tremont, Elkhorn, and Missouri Valley \$36,000. They parallel on either side of the Union Pacific, capitalized at \$105,000 per mile. The bonded debt of the Union Pacific per mile is \$71,840 and is nearly double both bonded debt and capital stock of either of the other two roads. The three must of necessity carry on the same terms. The bonded debt, saying nothing of the capital stock of the Union Pacific, is double its original cost, or the cost of replacing it with its \$17,000,000 terminals.... The New York, Lake Erie and Western with a bonded debt of more than \$132,000 per mile could make rates on the same basis with the Chicago & Northwestern or the Chicago, Burlington, & Quincy with funded debts but slightly exceeding \$20,000 per mile for one and \$24,000 for the other. The funded debt of the Illinois Central but little exceeds \$23,000 per mile, and the Chicago, Rock Island & Pacific less than \$16,000. That of the New York Central is \$85,000. Their reported tonnage cost and capitalization are nearly in like proportion. The reported cost of service is less on the Illinois Central and more on the Rock Island than on the New York Central.”

In Michigan the highest court has recently decided to be constitutional a statute by which all Michigan roads whose gross passenger earnings are \$3,000 per mile per annum shall charge passenger fares of not over 2 cents a mile; those whose earnings are between \$2,000 and \$3,000, 2½ cents, and all others 3 cents, special exceptions being made, however, for upper Peninsula roads.

7. The Interstate Commerce Commission goes a great ways when it says in its decision In the Matter of Excessive Freight Rates (4 Interstate Com. Rep., 64): “Iowa farmers make no impertinent inquiry when they ask why they should pay 7 cents a bushel more to market their corn than is paid by their Illinois neighbors. Seven cents to them is more than five millions of dollars on the year’s surplus. Nor is it surprising that corn growers west of the Missouri should be urgent in demanding the reasons which require them to pay double as much as their neighbors in the corn States east of the Mississippi pay to reach a common market in which all must sell at the same price. There is nothing in these very proper inquiries to justify any imputation that they imply menace to the property rights of investors in railroad property.”
8. Second annual report, p. 63. Mr. Poor said in 1885 that the actual cost in money of all the roads in the United States did not exceed \$3,787,000,000, and that the fictitious capitalization was \$3,708,000,000.
9. As already stated elsewhere, the New York Central Railroad Company in 1868 declared a stock dividend, but called it an “interest-certificate” dividend, of \$23,036,000, it being a dividend of eighty per cent on the capital stock. See *Bailey vs. R. R. Co.*, 22 Wall, 604.
10. Alexander on “Railway Practice,” p. 37.
11. “Investor’s Notes on American Railroads,” p. 42.

Atkinson on “The Distribution of Products,” 2d ed., 1885, p. 259, says: “The elimination of what has been called ‘watered stock and bonds,’ against which the silly crusade of the so-called anti-monopolists has been directed, is, therefore, in process of accomplishment by methods far more potent than any possible legislative acts, namely by the triple competition of: water-ways; second, the competition of one railway with another; third, the competition of product with product in the great markets of the world.”

The *Railroad Gazette* of June 27, 1890, speaking of the charge that shippers are charged an unnecessary amount in order to pay dividends on watered stock and to cover liabilities on unprofitable sections of railroad or unwise lines of business in which the company has engaged, says:

“The objection concerning dividends on watered stock needs but brief notice. ‘My dear boy,’ said the minister, ‘don’t you know that it is wrong to catch fish on Sunday?’ The boy looked sadly at his basket and simply said, ‘Who’s catching any fish?’ The whole theory that a railroad man makes his rates high because he has high nominal capital, or large outside burdens, or unprofitable branch lines, has no relation to the facts. The roads with the lowest rates are quite generally those that are apparently worst off in these respects. The Baltimore & Ohio does not charge high rates on account of its branch lines, nor the Erie on account of its water. They must charge rates low enough to keep their lines profitably occupied with traffic, and they do, in fact, charge very low ones.”

The *New York Evening Post* says:

“When a new road has brought settlers and given value to farm lands or village lots otherwise worthless, it is not correct to say that the ‘increment’ in its own value, produced through the increasing traffic, is ‘unearned,’ for in a

commercial sense the road has itself created the business from which both farm and railway values spring. The same is true to a certain extent of older States also. A single illustration may be given. The census of 1880 gives the average value of improved land in Central Illinois at less than \$37 per acre. The report of the Illinois Board of Agriculture for 1890, in its estimates of cost of production for the various crops, puts the use of land at \$3.68 per acre, or a valuation of not less than \$50. Making allowance for any over-estimate by the Board, it is probable that the farming lands of Illinois have increased in value 20 or 25 per cent during the decade. An increase in railroad dividends during this period would, therefore, only show a profit corresponding to other enterprises in the State; and if made through an issue of unpaid stock, might still be without prejudice to any farmer's interest.

"But all stock-watering is not as innocent as this. There are many instances in our railroad history where issues of share capital have been so made as to give large and illegitimate gains to the operators, or else to turn control of a railway over to men who have paid little or nothing for it."

12. Attorney-General Leese of the State of Nebraska, in his report to the Governor, December, 1890, voices the radical sentiment of that State when he says:

"The rates charged to-day are large enough to yield a dividend amounting in some cases to 8 per cent on stock that cost the stockholders nothing whatever but the printing; and the officers of these roads use every effort and strain every point to have the stockholders of their roads receive their annual dividends, and they have to do this to hold their jobs. It is a notorious fact that the roads in Nebraska are now openly violating the plain provision of our fundamental law embodied in section 5 of article 2 of the constitution, which provides that no corporation shall issue any bonds or stock except for money, labor, or property actually received and applied to the purpose for which the corporation was created, and that all stock dividends, and other fictitious increase of capital stock or indebtedness of any such corporations shall be void. It is an admitted fact that the railroads in this city have outstanding stock to a very large amount that has not been issued for money, labor, or property, and the several reports of these roads show dividends on all such stock.

"I would recommend a law forbidding any railroad corporation from issuing any mortgage bonds or stock until an itemized account of the cash, labor, or property, duly sworn to, has been presented to some officer of the State for examination, and if found to be a true account of the money, labor, or property received, to register and certify to the same as issued in pursuance of law, and as constituting a part of the capital stock of such corporation. Such a law would strike out all fictitious increase of capital stock of all roads now in operation as well as those to be formed hereafter."

On the other hand the report of the Railroad Commissioners of Kansas states that the Chicago, Kansas, & Nebraska Railroad Company, comprising 1,388 miles, cost for road and equipment \$21,083 per mile; that there is no "water" in this cost; and that the Kansas lines as a whole have cost more than this. "It is quite common, however, for inflated orators to assert that from \$8,000 to \$10,000 per mile is all that a railroad legitimately costs and that all capitalization above that is water." The Board then shows that during the year the total net income of all Kansas roads sufficed to pay 4¼ per cent upon the bonded debt, leaving the stock out of the account entirely. The Board adds: "A railroad thrown down upon the prairie at a cost of \$10,000 or \$12,000 per mile is no criterion of the cost of a road over which immense trains run with safety thirty or forty miles an hour."

13. "Encyclopaedia of Political Science," vol. iii., p. 519.

For a very full and detailed statement of the manner in which special rates, rebates, drawbacks, underbilling, and reduced classifications were granted by railroads to favored shippers, prior to the Interstate Commerce Act, see the first annual report of the Interstate Commerce Commission, pages 5-7.

Concerning the existing practices of the English railways in allowing rebates and underbilling, see an article from *The Financial Times* in 8 Ry. & Corp., L. J., 519 (1890).

14. Lest this statement should seem incredible, reference is made to the opinion of Judge Baxter of the United States Circuit Court in *Handy vs. Cleveland, &c.*, R. R. Co., 31 Fed. Rep., 689 (1887).

15. *Harper's Magazine*, August, 1886.

16. Hudson in his work on "Railways and the Republic," p. 362, says in regard to the Hepburn investigations:

"It was the result of a searching investigation which occupied nearly eight months. The committee took some five thousand pages of testimony, made a report, which was recognized as one of the ablest presentations of this question yet given to the public, and accompanied it by bills which were embodied in the New York anti-discrimination bill of 1880. The essential provisions of this bill were: First, requiring publicity of rates. Second, prohibiting preferential rates. Third, prohibiting drawbacks and rebates. Fourth, enacting that no more should be charged for a shorter haul than for a longer one over the same line. Fifth, declaring pools illegal, and sixth, establishing a board of commissioners to see that these provisions are enforced, to investigate complaints, and to secure justice between shippers and carriers."

Alexander on "Railway Practice," however, takes the following view on this question (p. 59):

Discrimination between individuals "can only be abolished by removing the temptation to commit it. This can only be done by division of territory, by pooling, or by consolidation."

17. In regard to the English Act of Parliament prohibiting railroads from giving better rates to one description of traffic or

one person than another, Jeans on "Railway Problems," p. 521, says: "It is not pretended that these enactments have been scrupulously observed. On the contrary, they are broken every day, by nearly every railway company in the country. Their strict observance has, in effect, been declared to be impossible, even by Commissioners and Committees appointed to inquire into their operation."

18. For instance, the railroads, prior to the Interstate Commerce Act, gave Council Bluffs a rate of from \$25 to \$45 per car to Chicago on hogs and cattle, while other Iowa towns on these same roads were forced to pay \$70 per car for a less service.
19. "On the first day of January, 1887, there were, according to the Chief of the Bureau of Statistics, 33,694 railroad stations in the United States, of which 2,778 were junction points, *i.e.*, are points where there are more than one railroad, leaving 30,916 stations where there is but one railroad."—Senator Cullom's speech, January, 1887.
20. "The Railways and the Traders," p. 221.
21. The Interstate Commerce Commission, in its second annual report, p. 15, says, concerning this subject: "It can hardly be for the public good that carriers by water should be subjected to unreasonable and excessive competition; they ought, as much as the carriers by rail, to be allowed to charge remunerative rates; and the carrier by rail does not therefore make out a complete case, when called upon to justify extraordinary differences between his rates at a point of water competition and at other points, when he shows that at the former he made the very low rates because otherwise he would not have obtained the business. It may be that when the case is examined in the light of the public interest it will be manifest that he ought not to have had it; that in taking it he had pressed the competition to an extreme which, while it harmed the carrier by boat, was harmful also to points on the railroad by reason of the great disparity in rates which it created, and also because of its producing so little revenue that the burden upon other traffic was increased in consequence."

For the opinion in general of the Interstate Commerce Commission on this subject of discrimination against towns, see the first annual report, p. 7.

22. By far the ablest presentation of the right of railways to discriminate against places is presented by Mr. Alexander, in his work on "Railway Practice," pp. 8–10 (1887). His argument is that Nature has discriminated against places, and that railroads are continually decreasing that discrimination. Discrimination "is almost universally the result of natural features or geographical locations." As regards places located on waterways, he says: "Nature has, so to speak, discriminated in their favor, and given them what we may call natural transportation. But she has discriminated against inland places, and left them dependent entirely upon artificial transportation, by horse or man power, slow and expensive. In fact, the railroad is built, in general, only for the service of the inland party, and it sells, as it were, its surplus power to the maritime party for any price it will bring. An example will illustrate. New York and San Francisco have always enjoyed water transportation, for freights from one to the other, slow, but very cheap. No one would ever dream of building a railroad between those cities for the sake of through business it could get in competition with the ocean. But between them lie wide stretches of lands against which nature has discriminated in the matter of transportation, while endowing them with great and varied wealth in agricultural, mineral, and other resources. Her discrimination was so heavy that only narrow margins of this vast territory could be utilized and developed with ordinary land transportation. To overcome this natural discrimination, railroads were built into the interior in every direction, and with their gradual improvement in machinery and in methods of work, they have pushed into the remotest sections, and, making connections in each direction, at last we have through lines from New York to San Francisco.

"As the railroads advanced, they enormously reduced the discriminations of nature throughout this inland territory. Thirty years ago it cost over a dollar a pound to carry from New York machinery and tools to work the mines of Utah, and the trip consumed the whole summer, during which the purchaser lost the use of most of his money. Now the trip requires but two weeks, or less, and the rate is about two cents. Comparing these rates, and considering the character of the present service as compared with the old, it is not an exaggeration to say that the railroads have removed about ninety-nine one-hundredths of the discrimination against Utah which nature ordained in surrounding her with deserts and mountains."

23. Charging what the traffic will bear "adjusts the burdens where they can be borne, and develops a vast amount of business which could not otherwise exist." — Hadley on "Railroad Transportation," p. 76. Compare, however, an article in the *Railroad Gazette*, March 29, 1889, to the effect that charging what the traffic will bear is perhaps wrong; that charging on the cost of service is not advisable; and that charging according to the necessities of the case is the true rule.
24. Jeans on "Railway Problems," p. 524.
25. The Interstate Commerce Commission says in its decisions, vol. iv, p. 75: "We think no better rule applicable to the matter Under investigation than that applied by railroads themselves, in accordance with which rates are so adjusted as to secure the largest interchange of commodities. This rule is approved by its frequent application in the movement of Western grain through the voluntary action of the roads. Put such a rate on corn as will encourage and warrant its movement if such a rate is fairly remunerative. While rates should not be so low as to impose a burden on other traffic,

they should have reasonable relation to cost of production and the value of the transportation service to the producer and shipper.”

The Interstate Commerce Commission has considered and discussed this subject very carefully in its annual reports, and has recognized the fact that the solution of the question of classification of freight in respect to the rates charged for its transportation requires time, care, experience, and labor. It is a question which the Commission is earnestly endeavoring to settle. See the fourth annual report of the Commission, p. 14, etc.; also pp. 31–36. And for a vigorous criticism thereon, see *Railroad Gazette*, Dec. 19, 1890, p. 878.

26. The following statement appeared in the *Railroad Gazette* late in the year 1890:

“The Chicago roads have made an agreement for passes for 1891, the principal features of which are: No annual or time passes to employees of roads except upon request of officials; half-fare permits to be good in only one State; no time passes to agents of roads engaged in the sale of coal or other commodities; no passes, mileage tickets, or other forms of transportation to be issued to influence either freight or passenger business. The regulations concerning trip passes are somewhat less rigid than the above. The World’s Fair commissioners, Grand Army officers, and employees of refrigerator car companies are specially cut off in both sections of the agreement.”

Concerning the abuses growing out of the free-pass system, see also the first annual report of the Interstate Commerce Commission, pp. 7, 8. The subject of free passes is considered also in the third annual report of the Interstate Commerce Commission, pp. 9–13.

27. Hadley on “Railroad Transportation,” p. 76, says that a pool exists where competitors agree (1) to divide the field, (2) to divide the traffic, or (3) to divide the earnings; and that a railroad pool is generally a mixture of the last two.

28. Jeans on “Railway Problems,” p. 517.

Alexander on “Railway Practice,” pp. 23–24, says that the pool is justifiable as “removing the temptation to give rebates,” and that “not only are the rates lower, more uniform to all shippers than ever before, and less liable to fluctuations, but uniformity of classification is increasing, and harmonious arrangements between different lines are promoted, which greatly facilitate business.”—p. 30.

The *Railroad Gazette*, December 28, 1888, says:

We are told that ‘the pool was never an adequate preventive against rate wars.’ Very true. The pool was never allowed sufficient legal recognition to give it adequate power for the purpose. In those countries where it has been given adequate powers, it has proved an adequate preventive. Where it has been tolerated, it has proved a partial preventive. Now that it is totally forbidden, we have no preventive at all, short of actual consolidation.... The prohibition of pools was intended by the majority of those who favored it to make the maintenance of rate agreements more difficult; in other words, to increase the liability to their violation. That it has had that effect we see not the slightest reason to doubt.” It is also said that if a person “will take the trouble to look into the history of European railroads, where pooling experiments have been carried much farther than here, he will find that permanent agreements have tended to check new construction, while their absence has been accompanied by a marked, and often disastrous, increase of such construction.”

29. First annual report, p. 34.

30. See Chapter III. Since the enactment of the Interstate Commerce Act prohibiting pools, there have arisen certain agreements between the railroads for the purpose of regulating rates. These agreements also are explained and considered in Chapter III.

For the railroad argument that pooling should be legalized, see the letter of George R. Blanchard, Chairman of the Central Traffic Association, 8 Ry. & Corp. L. J., 518 (Dec., 1890).

31. A very full and detailed statement of the evils arising from railroad wars and unreasonably low rates is given in the second annual report of the Interstate Commerce Commission, pp. 19–24; and the fourth annual report, p. 21, etc.

32. Bryce’s “American Commonwealth,” vol. ii., p. 514.

33. *Railroad Gazette*, Feb. 1, 1889, and the same journal, January 11, 1889, says:

“Apart from the question of rates, the existence of such a clearinghouse is of great value to almost all parties concerned. To the railroads it saves the necessity of partial payments on shipments of through freight, and enables the different companies to settle with one another by book credits and balances, instead of by actual cash payments. In short, it does for the whole system of freight accounts what a fast-freight line does for the settlement of car-mileage balances. We are so used to the existing system that many of us fail to appreciate the unnecessary work involved in the collection of back charges; but it is an antiquated and cumbrous method of doing business, and it is astonishing that it should have been allowed to continue so long.

“To railroads and shippers alike a clearing-house furnishes a welcome means of locating loss or damage, and even of tracing lost articles. In these respects the existing freight lines are far from satisfactory. It sometimes seems as if nobody were responsible for anything. In these respects the old-fashioned freight line, like the Merchants’ Dispatch, was better than all the modern co-operative ones.

“But all this does not prove that the clearing-house can maintain rates. As far as the facts go, they prove the contrary. The managers of the English clearing-house have habitually taken the utmost care not to interfere in rate agreements. It not only makes no rates, it does not even take the initiative in dividing them.”

34. See Chapter III.

35. See Chapter III.

36. See Chauncey M. Depew’s testimony before the Senate Committee on this subject, in the *Railroad Gazette*, May 10, 1889.

37. Concerning this subject, see an article in *I Ry. & Corp. L. J.*, 97 (1887).

38. Among the most recent and favored plans is one whereby the bondholders cancel their bonds wholly or partially and take in exchange the preferred stock of the corporation. This plan resembles the present policy of many strong railroads to take up and pay off their bonds from moneys received by new issues of stock. As regards this the *Railroad Gazette*, February 8, 1889, says

“In a general way, it is a good thing that railroad investment should be, as far as possible, in the form of stock. The stockholder exercises more immediate control over the management than the bondholder can. He is thus able to look out for himself, and take risks with his eyes open. Bonded debt ought, in theory, to be so small as to be subject to very little risk. The moment the margin of safety is approached, a conflict of interest arises between stockholders and bondholders; and the stockholders, having the board of directors under their more immediate control, are at an unfair advantage.”

The advantages to the railroad are: the decrease of its debt, the changing of its liability for interest to a liability to pay dividends in case they are earned, the increased value of all the stock by reason of the cancellation of debts, the avoidance of future foreclosures, the being prepared for hard times and for railroad wars of rates, and the possibility of borrowing more money and giving a new first mortgage to other persons in the future.

39. The *New York Record and Guide* for September 6, 1890, says: “The business of transportation is among the very few industries in which strikers usually inflict greater injuries than they suffer. From twenty-two thousand strikes investigated by the National Bureau of Labor, it was estimated that the employees suffered a loss aggregating about \$51,800,000, while from the same strikes the loss suffered by the employers was only about \$30,700,000. These strikes were distributed through thirty-eight industries, and in all but three or four of these the balance of loss was on the side of the strikers. Among the few in which the balance was on the other side, almost the only important industry was that of transportation. In this industry, the aggregate loss to employees was \$2,089,494, while to the employers the loss was \$6,267,558.”

40. The details of these insurance plans are given in Chapter III.

Charles Francis Adams suggests as a remedy for strikes: (1) the establishment of an employees’ fund, (2) railroad educational institutions, and (3) a tribunal consisting of a small committee of the employees to meet the directors in reference to disagreements and complaints. See *Scribner’s Magazine*, April, 1889.

41. See Chapter III, *infra*, on this question of co-operation.

42. A special report of the New York State Board of Arbitration, in 1890, urged the enactment of a law that entrance into railway service shall be by enlistment for a definite period, upon satisfactory examination as to mental and physical qualifications, with oath of fidelity to the people and to the corporation; that resignations or dismissals from such service shall be permitted for cause, to be stated in writing and filed with some designated authority, and to take effect after a lapse of a reasonable and fixed period; and that any combination of two or more persons, to embarrass or prevent the operation of a railroad in the service of the people, shall be a misdemeanor. See *Ry. & Corp. L. J.*, Feb. 7, 1891.

It may be well to consider whether such a body of industrial soldiery would be conducive to the continuance of republican institutions and the independence of these citizens themselves.

43. Professor Amos G. Warner, of the University of Nebraska, in the *Popular Science Monthly*, July, 1890.

The *New York Record and Guide* for Sept. 6, 1890, says:

“In some European countries it is against the law for a workman to quit work without giving five days’ notice. If he violates this law he is subject to fine or imprisonment. After the Burlington strike, one of the religious weeklies wrote to, or interviewed, various leading railway men and labor leaders regarding the feasibility of introducing such a law in this country, coupled with a provision for compulsory arbitration. The representatives of the labor organizations, among whom were Messrs. Powderly and Arthur, seemed more willing to accept the double proposition than the railway men. The latter held that the part of the law tending to curb the workmen could never be enforced, and that, therefore, the advantage from the double enactment would be all on the side of the laborer; if the arbitrators to whom a matter in dispute was given decided favorably to the men, the road must abide by the decision, but if the decision favored the road, the men could not be compelled to abide by it.”

44. See Chapter III.

45. “The Railways and the Traders,” p. 9.

46. James on “The Railway Problem.”

47. *Political Science Quarterly*, vol. vi., No. 1.

48. Professor Warner says in regard to this: “Abuse of the borrowing power is certainly a very common sin among artificial persons, and especially among American railways. When the holders of a small amount of stock, only partially paid in, build a road with borrowed money, the limitation of their liability shields them from personal loss; while their power of voting themselves salaries, and of concluding profitable contracts either with themselves or friends, gives them great opportunities for personal profit irrespective of the success of the road. The last report of the statistician of the Interstate Commerce Commission shows that many of the minor and branch lines of the country have been built wholly with borrowed money—that is, they are bonded to their full cost value. Many of the longer and independent roads are bonded at half to three fourths of their entire capitalization. The total bonded debt of the railroads of the United States is actually greater than the total of their share capital; and this, although the amount of water in the stocks is much larger than in the bonds. As the possession of the majority of the stock gives control over all the capital invested in the roads, it follows, from the figures given in the statistician’s report, that the ownership of \$1,932,234,128, or 23.77 per cent of the total railway capital, insures complete direction over \$8,129,787,731 of railway capital, or 136,883.53 miles of line. Massachusetts law forbids the bonding of a road to an amount exceeding the total of paid-up share capital, and this regulation is being introduced by other States.”

49. Mr. Hitchcock, speaking of this subject has said: “Every private corporation should be required to file, not only with the Secretary of State, but in some convenient public office at its place of business, at least once in three months, a particular account, on oath, of its assets and liabilities, such as will enable creditors and others interested, without application to its officers, to learn its true position. Railroad and other corporations affecting public interest should also be compelled to publish, monthly, such statements so that the public should at least have the opportunity of forming their own judgment as to the value of the stocks, which, in the absence of such information, are the playthings of speculators, and too often the ruin of *bona fide* investors.”

Professor Warner says: “The advantages of business secrecy to the individual business man who practises it are abundantly manifest; but its advantages to the public at large, while also manifest, are countervailed by very serious disadvantages. Experience seems to have demonstrated, quite conclusively, that a being at once so vulnerable and so powerful as a corporation cannot afford to keep its affairs entirely to itself; and if it could afford to do so, the public cannot afford to let it. There is said to be a strong tendency toward ‘socialism’ in this wresting of business secrets from the great managers of the world’s industries, and bringing the most private of business transactions to the bar of public opinion. Many will no doubt answer that ‘the charge is true, and we glory in its truth.’ Many more will be inclined to say, with the present writer, that, while this objection should be given its due force, it has not nearly force enough to overrule the strong necessities of the case. The chief danger that legitimate enterprises have to fear from complete publicity is that of over-taxation. The wealth of the corporations lying fully exposed to public view, it is so easy for the politician to fill the public coffers from that source, that we already find certain classes of corporations driven out of certain States by excessive taxation. But it may be doubted whether taxation is as likely to be excessive when the state of a company’s accounts is definitely known, as when the politician and his constituents are free to draw upon their imaginations for the amount of wealth in the corporate coffers. In other words, it seems probable that in this country, as yet, we have less to fear from wilful injustice than from mutual misunderstandings, begotten of secrecy on the one hand, and suspicion on the other.”

50. N. J. Revision, p. 180.

51. R. S., §5133.

52. The *New York Record and Guide*, November 23, 1889, says: Parliament “has distrusted the limited liability principle ever since the Bubble craze in 1720, when companies were formed for all possible and impossible purposes, from the invention of perpetual motion to the melting down of sawdust and the manufacture of knotless boards from the product. No general law for the incorporation of limited liability companies was passed in England till 1855, though a similar law had been passed by the State of New York as early as 1811.

“From 1,500 to 2,000 joint stock companies are registered each year in England, of which about 50 per cent die at birth—a singular commentary on the legal doctrine that corporations are immortal. Out of 1,440 companies registered in London, with a nominal capital of £143,000,000, no less than 430 died at birth, while 360 were wound up within two years. Out of 26,000 companies registered during twenty-nine years the proportion of unsuccessful ones was about 64 per cent.... The same expounder of statistics concluded that £328,000,000 of capital had been wiped out so far as the *bona fide* investing public was concerned.”

53. See Chapter 64, Laws of 1890.

54. Professor Richard T. Ely, in *Harper’s Magazine*, July, 1887, p. 265, says:

“Men who wish to form a corporation should be compelled to issue a prospectus, signed with their names, giving a full and complete statement about the business to be pursued, the capital to be invested, any existing property to be taken in lieu of money, any property to be acquired of promoters, with its history for the preceding two or three years. This prospectus should be made a matter of public record, and any dishonest statement should be regarded as fraud.”

55. Dillon on "Municipal Corporations," 3d ed., p. 508, n. See also Cooley's "Constitutional Lim.," 5th ed., 265, etc.

"The cities, towns, and States, have not been alone in granting aid to railroads. The federal government some twenty-five years ago commenced making grants of land to trunk lines of railroad to be constructed to the Pacific Coast. The total grant made to the Union Pacific Railway was 13,000,100 acres; to the Kansas Pacific, 6,000,000; to the Central Pacific, 12,100,100; to the Northern Pacific, 47,000,000; to the Atlantic and Pacific, 42,000,000; to the Southern Pacific, 9,520,000. Great subsidies of money exceeding \$60,000,000 were also granted by Congress to the first transcontinental lines. The land-grants usually consisted of alternate sections; in the earlier cases, of five to the mile along the line."

See Bryce's "American Commonwealth," vol. ii., p. 507, n.

The "Encyclopaedia Britannica," p. 254, states that 200,000,000 acres of land and \$13,000,000 were given at one time and another by Congress to the railroads between the Missouri River and the Pacific Ocean.

Adams on "Public Debts," p. 356, note, says that previous to 1880 Congress had granted 215,000,000 acres of land to railroads and canals, of which titles were secured to 150,000,000 acres.

56. George on "Progress and Poverty," bk. iii, ch. iv.

57. Professor Warner advocates a greater liability of directors. He says:

"In this country the principle of limited liability is almost invariably the same for the director as for an ordinary stockholder, though the director is personally liable for all illegal or unauthorized acts. There has been a great deal of agitation of late for the introduction of the French plan of protecting ordinary stockholders by the grant of limited liability, but leaving the directors liable for the corporate debts to the full amount of their respective fortunes. The experience of France with these societies en commandite has proved that responsible men can be found to manage any legitimate enterprise under this plan. A recent English act permits the formation of such companies in England, but the companies decline to adopt this principle under mere permissive legislation. To make this form of organization mandatory upon certain selected classes of our corporations is an experiment that ought to be tried, and is much better than going back to the old plan of unlimited liability for stockholders, as California has done."

58. Yet during the past fiscal year (1890) New York received from incorporation fees \$220,719.94, an increase of \$21,737.60 over the previous year.

On April 6, 1891, President Michael Coleman of the Tax Department of New York City, one of the most accomplished and experienced Tax Commissioners that New York ever had, testified, before the Senate Committee, that from January, 1890, to January, 1891, companies with \$320,000,000 of capital had been incorporated in two counties alone in New Jersey, although doing their business and having their offices in New York City; that of these from fifteen to twenty per cent had previously been incorporated under the laws of New York; and that of personal property to the amount of \$1,727,318,188 assessed in New York City, \$1,400,000 had been stricken off as not subject to taxation because it was incorporated out of the State. Mr. Coleman recommended that foreign corporations be taxed on their gross receipts, that the tax on New York corporations be largely reduced, and that the Philadelphia system of taxing corporations be adopted.

59. See Chapter IV on Natural Monopolies.

60. See Chapter IV concerning this subject further.

61. Cooley's "Constitutional Limitations," 5th ed., 338, n.

62. In *Wells & Co. vs. Northern Pac. Ry. Co.*, 23 Fed. Rep., 469 (1884), the court said: "Everybody who is familiar at all with the history of the growth and organization of corporations in the United States knows that this rule, requiring corporations to be organized under a general law, is the growth of some years, and has grown out of the confusion, corruption, the partial and inequitable legislation that was the result of allowing parties to go before the legislature, and ask for a special charter. The time of the legislature was unnecessarily consumed by it; the integrity of the members of the legislature was unduly exposed; or, through the ignorance or carelessness of the legislature, and the astuteness and diligence of designing and overreaching men, there were constantly coming to light obscure clauses in these acts of the legislature, giving powers and granting privileges which were unjust, inequitable, and which would never have been done with the knowledge of the legislature."

In *Nelson vs. McArthur*, 38 Mich., 207, the court said in regard to the constitutional provision for general incorporating acts: "The great purpose of this provision was to introduce a system of legislation in regard to the institution of corporations, which would exclude the corruption and party favoritism which had too often accompanied the method previously in vogue, and to secure as far as practicable for all the people of the State an equality of opportunity, and a guard against sectional discrimination."

63. See Chapter IV.

64. See Chapter V.

65. "Cyclopaedia of Political Science," vol. iii.

Jeans, on "Railway Problems," says, p. 40: "The amounts that have been expended in the United Kingdom in

promoting and opposing [Railway] bills in Parliament have been enormous. According to a return presented to the House of Commons in 1883, a total expenditure of £3,924,712 had been incurred on this account between 1872 and 1882. As the increase of railway capital in the United Kingdom during the same period was 198 millions, it follows that the amount spent over Parliamentary battles was two per cent, of the total addition to capital expenditure in these ten years. If it were correct to assume that the same percentage of the total capital expenditure had been wasted in Parliamentary contests over the whole of our railway history, the aggregate sum so spent would amount to about sixteen millions sterling. It is probable, however, that the actual expenditure has been greater even than this, since the fights were much fiercer, and more costly in proportion to the capital involved, in the earlier history of the system than in its later stages of development." And on pp. 429, 430: "The Parliamentary expenses incurred in obtaining the Act for the Great Western Railway, as originally constructed, amounted to £87,197, or about £775 per mile. For the London and Birmingham line Parliamentary expenses amounted to £72,868, or £662 per mile. In many other cases, the cost of fighting for the Acts under which the lines were constructed involved a correspondingly lavish scale of expenditure.... There is not much published information respecting the prices that have actually been paid for the land acquired by railway companies." And on p. 32: "That very large sums were expended in conciliating opposition over and above the amounts actually spent in consideration of the supposed or adjudicated value of the land, is one of the best known facts in English railway history." And on p. 430, Mr. Jeans quotes to the effect that "The first Eastern Counties line was said to have paid £12,000 per mile for land through an agricultural country, being about ten times its real value. This habit of exaction has been perpetuated to our own day. As an every-day instance, I may mention that only a few months ago a gentleman of great wealth was selling to a railway company, which he had supported in Parliament, thirty acres of grass land, of which the admitted agricultural value was £100 an acre, and three acres of limestone, of which the proved value to a quarryman was £300 an acre. There was no residential damage, and the railway skirted the outside of the estate. The price of the whole in an auction-room would have been about, £4,000. The proprietor's agents, supported by a troop of eminent valuers, demanded £25,000." Mr. Jeans figures "that in respect of the land acquired for the present railway mileage of the United Kingdom—which at the end of 1885 was approximately about 19,000 miles,—the expenditure incurred would be about one tenth of the total capital cost of British railways to the same date, or, in more exact figures, 76 millions sterling." In America the cost of the land for railroads, including the buildings erected upon the land, is an average of £235 per mile, while in England it has been £4,000 per mile. On p. 35, Mr. Jeans says that the railroads owned part of all the land in the United Kingdom, but that this part has cost the railroads "about one twelfth of the estimated current agricultural value of the whole land of the country."

66. Professor Henry C. Adams would take a long step backwards in order to remedy the evils arising from corporations. In a paper read before the American Economic Association, in Washington, December, 1890, he took the position that when industries are small and dealings are with personal friends, indifference to the public good results in personal loss, but in corporations with world-wide business, claiming privileges and rights intended for the individual, methods and practices immoral and injurious to the public weal go unpunished. Accordingly he advocated the following propositions: 1. The granting of corporate privileges should be limited to those in which the necessity of the public overbalances the necessity of the individual. 2. In the case of the latter, incorporation should be made obligatory. 3. Such corporations should be forced to make reports sufficient to give opportunity for public regulation and control by government, which is the great corporation out of which all others arise. 4. Other business not suffered and compelled to incorporate should be subject to inquiry, but not control. Unless these principles are accepted, Professor Adams thought we might be forced into a complete State socialism, wherein we would lose the incalculable advantages of individual initiative and enterprise.

This remedy has also been recently advocated by Judge N. M. Hubbard, of Cedar Rapids, Iowa, as follows: "All private corporations for pecuniary profit should be abolished, except only those of a quasi-public character, such as railroad, telegraph, telephone, insurance, banking corporations, and the like; and these should be under the control of public law, or else owned and managed by the Government. Railroads are already under the control of public law. The short reason is that corporations destroy individual competition in the acquisition of wealth."

And in support of the same idea it has been said: "The corporation was invented to do something that the public needed to have done, and that private effort could not well do—to secure limited liability in undertakings so vast that men could not afford to invest in them without some protection against the unlimited liability of a partnership.

"From this simple object the device has been perverted to purposes of oppression, corruption, and monopoly. It is used as a means of escaping from moral as well as financial liability. It excuses stockholders in a factory, for example, from all the responsibility they once felt, as owners, for the condition and treatment of their employees.

"It is the instrument of monopoly, injustice, political corruption, and all forms of conspiracy to put up prices and levy tribute upon the necessities of the people.

"The power which created the monster is bound to restrain its evil tendencies, and it is a very serious question whether this can be done otherwise than by limiting the use of the corporate device to those quasi-public undertakings

for which it was originally intended.”

It is folly to talk about abolishing the corporation merely because it can be used in a few instances as an instrument of wrong. Of the vast number of corporations in the land, manufacturing, mercantile, banking, insurance, mining, commercial, and business, there are very few which are guilty of the wrongs complained of. The quasi-corporations are the very ones which have led to abuses and the destruction of “individual competition in the acquisition of wealth.” The small corporations—the honest ones—are to be abolished, while the large ones—the guilty ones—are to remain. It is not true that the “simple object” of the corporations originally was “limited liability.” That was by no means the only object. The advantages, objects, and necessity of the corporation as a mode of doing business are set forth in Chapter I of this book. The remedy of abolishing the corporation would be a long step backward instead of forward. It will not be taken.

67. *Harper's Magazine*, July, 1887, p. 260.

68. See also a work on “Profit-Sharing” by N. P. Gilman, 1889.

69. *Railroad Gazette* March 22, 1889.

70. *Railroad Gazette*, March 22, 1889.

71. Concerning this question of insurance funds and the relation of corporations and their employees, see also the third annual report of the Interstate Commerce Commission, pp. 102–104.

72. Buckle's “History of Civilization in England,” pp. 155, 203, 453, 454.

73. *London Times* Berlin Correspondence.

74. *N. Y. Record and Guide*, July 13, 1889.

75. See the report (January, 1887), of Simon Sterne as Commissioner of the Federal Government, to investigate the relations of the governments of Western Europe to the railway systems within their jurisdiction. See also on this subject, Hadley on “Railroad Transportation,” chapters viii., ix., x., xi., xii.

76. See Adams on “Public Debts,” pp. 325, 326.

Between 1830 and 1840 several States undertook to construct railways on their own account, but most of these attempts ended in disaster, and the railways were completed by companies, if completed at all. There remain, however, two State railways, one 138 miles long, owned by Georgia, which it leases to a corporation for working, and the other by Massachusetts, the latter railroad being mostly in the long Hoosac tunnel. The Massachusetts railroads are run under charters, which give to the legislature the right to purchase the roads for the State, by paying therefor the full cost with such sum as, with the profits which shall have been received, will be equal to ten per cent per annum on the said cost. There is little or no inclination, however, to exercise this right of purchase.

77. Hadley on “Railroad Transportation,” pp. 252, 253. For a still further argument against state ownership of railroads by Professor Hadley, see *Atlantic Monthly*, March, 1891, p. 388.

78. Jeans on “Railway Problems,” p. 458.

79. Adams on “Railroads,” p. 115.

80. *The Independent*, Aug. 20, 1890.

81. *Idem*. Professor Ely's argument has been summed up as follows: The evil influence of corrupt capitalists is especially dangerous because it is underhand and approaches unawares. State management would bring the conflicts into the light. Where one person has suffered from dishonest or inefficient government management of finances, one hundred have suffered from dishonest or inefficient management of railroads. Improvements in the details, politeness of employees, etc., would surely follow, and small places would be accommodated more on a par with large cities, as was the case when the government of Great Britain took the telegraph lines in that country. No more parallel lines would be constructed. The inhumanity of railroad managers who adopt safety appliances to save money, but not to save the men's lives, is enlarged upon. Grade crossings in cities would be abolished. In Prussia the financial success of government ownership has surpassed anticipations. Public ownership would be the death of the spoils system in politics, for it could not live when its real significance became so plain. It has been the peculiar misfortune of political economy rarely to advocate any reform until it has been accomplished, but the number of political economists who favor government ownership is increasing.”

82. “The Riddle of the Sphinx,” p. 282.

83. Senator Carlisle of Kentucky stated these objections forcibly in May, 1891, when after showing that the railroads of America would cost the government about fourteen millions of dollars, he proceeded to say:

“Are you ready to tax yourselves to raise this money? Then, after you have got the property, are you ready to tax yourselves to operate it, for the Government never yet succeeded in doing business at a profit? Consider another effect; such a plan would add perhaps 1,200,000 men and women to the roll of Government employees. How would you ever succeed in turning out of power an administration with such resources at its command? The more corrupt it was the more difficult it would be to displace it.”

84. See Chapter IV.

85. The *Railroad Gazette* points out still another objection as follows: “Mr. Baker’s plans are not absurdly wild, like those of Mr. Hudson; but, as far as they go, they would tend to have somewhat the same effect. He would have the government acquire the title to the franchise, permanent way, and real estate of all the railroads of the country, the money for this purpose being raised by issue of bonds; and he would then lease these roads in perpetuity to a few large corporations, each having a monopoly within its district. The rates should be under direct government control, and should be fixed in such a way as to allow the operating companies from four to eight per cent dividend, according to circumstances. This is substantially the French plan, though the details are a little different. The combination of government payment for roadbed, district monopoly of operating companies, and government control of construction and rates, has been consistently tried on a large scale and with all the conditions in its favor. The results have been so bad that if Mr. Baker had been familiar with them he would not have recommended us to follow the French example. While every other country has made great reductions in rates, France remains substantially where she was twenty years ago. With a large and rich population her volume of railroad business has not developed. The normal trade Incentives have been taken away; the hope of government control to take their place has proved illusory. Great as may be the evils of the American system, exemption from them would be dearly purchased if it involved the loss of efficiency for the present and progress in the future.”

See still further on this subject Chapter IV.

86. See Chapter II.

87. So far as State railroad commissions are concerned, however, the farmers are already becoming dissatisfied with them. The lecturer of the National Farmers’ Alliance says: “The question was complex, the corporations ever alert, and the granger was soon overreached. Instead of law he accepted a compromise in the form of railway commissioners to act as a sort of board of arbitration. The salaries of this board were paid by the railway companies,—their appointment, more often than otherwise, dictated by them. These commissioners practically became figure-heads, either through false sympathies, or because powerless to execute their own orders.”—“The Riddle of the Sphinx,” p. 132.

88. Adams, page 146.

89. See the *Railroad Gazette*, Nov. 23, 1889; Dec. 14, 1889; Feb. 1, 1889; Feb. 22, 1889; and Dec. 7, 1888.

90. George B. Roberts, President of the Pennsylvania Railroad, recently testified before a committee of the Senate, substantially as follows: The condition of railroad matters has been bettered since the passage of the Interstate Commerce law. Evasion of the law is still practised; but this should be expected, as the government suddenly thrust a great change upon the conditions of doing business. Some law should have been enacted long ago. The time was certainly ripe for some sort of government control. The old pools cost a great deal of money, and did not fully serve their purpose. They tended to increase the construction of competitive lines. If the United States Government took a more paternal interest in the roads, if the State governments should act in a more friendly manner toward them, and if capital might be diverted from building unnecessary roads, the railroads of the United States would prosper more. He was not prepared to admit that legalized pooling was advisable. Pools tended to prevent the natural development of railroads. He preferred well-regulated competition, under proper laws, to any form of combination. The Pennsylvania Railroad had for years been subject to the long- and short-haul law in the State of Pennsylvania. See report in *Railroad Gazette*, May 17, 1889.

91. The question of what effect the Interstate Commerce Act has had upon various classes of cities and towns is considered to some extent in the second annual report of the Interstate Commerce Commission, pp. 30–34.

For the opinion of the Interstate Commerce Commission concerning this demand of the railroads for the repeal of the anti-pool provision, and concerning the conduct of the railroads generally when asked for information, see fourth annual report, pp. 21–27.

For a review of the effects of the long- and short-haul clause, and a reference to many statutes by the States in reference to that subject, see the fourth annual report of the Interstate Commerce Commission, PP. 37, &c.

Mr. A. B. Stickney, Chairman of the Board of Directors of the Chicago, St. Paul, & Kansas City Railroad Company, in a work on “The Railway Problem,” p. 211, advocates the following remedy: that whenever the chief executive officer of the federal government having charge of the enforcement of the interstate commerce laws becomes satisfied that any railroad company is persistently disobeying the laws, he shall have power to take possession of the property and manage it through the intervention of a receiver or otherwise until he can have satisfactory assurances that the law will thereafter be obeyed. The trouble with this remedy is: (1) that if enforced it would very soon place all the great railroads in the country in the hands of the governmental receiver, Mr. Stickney’s road included; (2) the question of fact as to whether a railroad was or was not persistently violating the law would be even more difficult than it is now, and litigation resulting therefrom would destroy the effectiveness of the remedy; (3) after the receiver’s administration was finished there would be little property to turn back to the company; (4) this is another plan of interference by government with all the incompetency, dishonesty, vacillation, superficial treatment, and temporary relief that governmental *nostrums* involve; (5) the remedy is not a permanent cure; it is only an emetic.

92. As regards the form of organization of the Wisconsin Central Company and the Richmond and West Point Terminal,

see Chap. V, under the heading "Definition of Trusts," notes.

93. Second annual report, p. 26.

94. "The Railway Problem," pp. 224–226. This book is filled with original ideas and vigorous thought. It is remarkable, in that its author, one of the brainiest railroad men in the country, justifies the reduction of rates by the legislatures.

95. "The Railways and the Traders," pp. 152, 153.

96. England for sixty years has been trying theory after theory for the solution of the railroad problem. In 1872 a Parliamentary Committee made an elaborate and exhaustive report on the subject. The substance of this report is well stated in Adams on "Railroads," pp. 88–94, as follows:

"The committee examined in detail the various parliamentary theories which had, at different stages, marked the development of the railroad system. The highway analogy was dismissed in silence; but of the 'enlightened view of self-interest' theory, it was remarked that experience had shown that as a regulating force this was to be relied upon 'only to a limited extent.' The principle of competition was next discussed, and the conclusion of the committee was 'that competition between railroads exists only to a limited extent, and cannot be maintained by legislation.' Of the great Gladstone Act of 1845, looking to the ultimate purchase of the railroads by the government, it was remarked that 'the terms of that act do not appear to be suited to the present condition of railway property, or to be likely to be adopted by Parliament in case of any intention of Parliament at any future time to purchase the railways.'... The committee reported that amalgamation 'had not brought with it the evils that were anticipated, but that in any event long and varied experience had fully demonstrated the fact that while Parliament might hinder and thwart, it could not prevent it, but it was equally powerless to lay down any general rules determining its limits or character.'... Finally the committee examined all the various panaceas for railroad abuses which are so regularly each year brought forward as novelties in the legislatures of this country. These they passed in merciless review. Equal mileage rates they found inexpedient as well as impossible; the favorite idea of revision of rates and fares with a view to establishing a legal tariff sufficient to afford a return and no more on the actual cost of the railroads, they pronounced entirely impracticable; tariff of *maxima* charges incorporated into laws, they truly said had been repeatedly enacted and as often had failed; periodical revisions of all rates and fares by government agents they found to be practically impossible, unless some standard of revision which had not yet been suggested could be devised."

97. Judge Cooley, speaking before the annual convention of State Railroad Commissioners, in March, 1891, summarized his conclusions as follows:

"The railroad problem is certainly not to be found in the legislation authorizing the building of railroads, or in that which prescribes the terms and conditions under which the building shall be carried on and completed. The railroad problem is also not to be found in the conditions in which the roads may be put by their projectors or managers, or the manner in which they are equipped for the purpose of operation.

"The relations between the railroad corporations and their employees do not present the railroad problem that is troubling the country. The railroad problem is not to be found, exclusively at least, in the diversities which exist between the legislation of the several States when compared with each other, or between the same legislation when compared with that of the Federal Government.

"The railroad problem is not to be found altogether in the fact that railroad rates are supposed by the public to be in a great many cases much too high, or that there is unlawful discrimination in the transportation of freights and of passengers, and that many persons are carried free who are not entitled to it by law, or that in the cases in which exceptions are made by the law to the general rules which are prescribed, the railroad corporations contrive to increase these exceptions, in inadmissible or unwise ways, to the detriment of their own revenues, or to the increase of the charges that are made against the community in general. The problem, without question, is present here, but not in its entirety.

"This is the 'railroad problem.' There are mischiefs in railroad service that are outside of it, but we distinctly indicate the main source of difficulty when we place our finger upon the power, as it exists now, to make and unmake the rates for passenger and freight transportation. So long as 500 bodies of men in the country are at liberty to make rate sheets at pleasure, and to unmake, or cut and recut them in every direction at their own unlimited discretion, or want of discretion, and with little restraint on the part of the law, except as it imposes a few days' delay in putting changes in force, the problem will remain to trouble us; the mere existence of the power making losses, disorder, and confusion constantly imminent. The authority to reduce rates when they are found to be excessive, is but a slight corrective, and reaches the evils only on the public side; and I need hardly remind you who understand it so well that, in this matter of rates, the power on the part of the public authorities to compel the railroads to do what is just to each other in respect to observing rates which they have once made, and to adhering to rate sheets until there is reasonable ground for changing them, is so very slight that it may really be regarded as too insignificant to be spoken of as possessing substantial value."

Isaac H. Bromley says: "It has not been possible, since the first application of the law of eminent domain in the grant of a railroad franchise, to manage a railroad with absolute honesty without driving it into bankruptcy, and then, through a

receivership, into more practical and less scrupulous hands. The differences in railroad management are in degrees of crookedness only. Straight and level lines are possible, no doubt, in building railroads; equally possible in managing them. That they are not so built or so managed is due to an unevenness and irregularity on the outside of the globe and the inside of man. It might be both possible and practicable for a man to build a short railroad on his own estate and manage it with absolute honesty. It is a different thing when he goes to a legislature for a franchise. Sinuosity begins there, and never ends. This sounds like cynicism; it is not. Things are growing better all the time. But the discussion of the railroad problem needs fresh air.”

98. The latest plan of uniting by a loose and unenforceable agreement a large number of competing railroads is the proposed agreement of December, 1890, between the trunk lines west of Chicago to the following effect:

“*Resolved*, That the Presidents here assembled agree to recommend to their respective Boards of Directors the passage of the following resolution;

“*Whereas*, It is to the benefit of the public and of the railway companies whose lines are situated west of Chicago and St. Louis that they should co-operate closely with each other in the management of their properties for the purpose of securing uniform, reasonable, and stable rates for transportation, and such economies in the operation of their properties for the better accommodation of the public as will insure equitable returns from the capital invested; therefore be it

“*Resolved*, 1. That a new association shall be formed between the several companies whose lines are situated west of Chicago and St. Louis, or such of them as may now become or may hereafter be admitted as members thereof.

“2. That the affairs of this association shall be under the management and direction of an advisory board, to consist of the President and one member of the Board of Directors of each company.

“3. That the advisory board so constituted shall have power to establish and maintain uniform rates between competitive points, and to decide all questions of common interest between the members of the association. It shall also have entire charge, through properly constituted representatives, of all outside agencies for the securing of traffic at competitive points. If any officer or representative of any company shall authorize or promise, directly or indirectly, any variation from established tariffs, he shall be discharged from the service, with the reasons stated.

“4. The rates established and the policy adopted by the Advisory Board at any time shall continue in force and be binding upon all companies comprising the association until altered by subsequent action of the board.

“5. A vote of at least four fifths of the members of the association shall be required to make its action binding upon all.

“6. That the Advisory Board shall appoint proper arbitrators, commissions, and other representatives, and adopt by-laws to carry out the purposes of the association.

“7. That no company shall withdraw from the association except after ninety days’ written notice by resolution of the Board of Directors to every other member of the association, with the proviso, however, that the association shall continue for at least six months from Jan. 1, 1891.

“8. That under existing conditions it is expedient for this company to set in operation the policy and plan indicated in the foregoing as early as practicable.

“9. That the President and Mr. ———, one of the Directors of this company, be and they are hereby appointed to be the representatives of this company in such advisory board, with full power to act for this company in carrying the foregoing preamble and resolution into full effect.”

This agreement is an outgrowth of an existing agreement between the New York Central and Pennsylvania railroads, to the following effect:

*Whereas*, It is for the best interest of this company, as well as for the public benefit, that general harmony shall be maintained by and between the New York Central and Hudson River Railroad Company, the Pennsylvania Railroad Company, the Pennsylvania Company, the Lake Shore and Michigan Southern Railway Company, the Michigan Central Railroad Company, and the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, for which object it is proposed to create an Advisory Council, consisting of the President and one Director of each of said companies, with power to decide all questions of common interest, to avoid wasteful rivalry, and to establish uniformity of rates between competing points.

“Such decision of such Advisory Council, when made by the affirmative vote of the representatives of five of said companies, and the rates and policy thereby established, to continue until altered by a similar vote at a meeting of such council, unless thirty days shall have elapsed without a meeting, after a request therefor shall have been made in writing by any one of such companies; now, therefore, be it

“*Resolved*, That under existing conditions, it is expedient for this company to set in operation the policy and plan indicated in the foregoing preamble.

“*Resolved*, That the President and one of the Directors of this company be, and they are hereby appointed to be, the representatives of this Company in such Advisory Council, with full power to act for this company in carrying the

foregoing preamble and resolution into full effect, this company reserving the right to withdraw from this arrangement upon resolution of its Board of Directors and after ninety days' notice in writing shall have been given to every other company."

Mr. Walker, in a letter of November 20, 1890, to the railroad presidents in advocacy of the above-mentioned general agreement, said:

"Competition as it now exists among carriers is simply war, and the situation pleases the unreflecting public.... In fighting each other the various lines are rapidly destroying themselves. There is no occasion for aggressive action by those who represent an agrarian policy. All they need to do is to watch the progress of the strife among the roads, and drop in an occasional peg as the cards are played. The corner has already been turned, and the pegs are coming toward home. During the past fifteen years about one third of the railway mileage in the United States has been reorganized or passed through foreclosure proceedings. One line after another steps one side, and a portion of its capitalization disappears. Is this suicidal process beyond control? I do not believe it. But radical changes are required for the purpose."

99. Mr. C. P. Huntington, President of the Southern Pacific Railroad, said concerning the presidents' agreement of December, 1890:

"I repeat that I think this plan a very good thing. It does not go far enough, but it is in the right direction."

"How far would you have it go?"

"To the point of joint ownership. I would like to have a single company operate all of the railroads; then, instead of a lot of warring, self-destroying elements, we would have a homogeneous and prosperous body. I don't mean a trust or anything like that, but a concentration of ownership of railroad properties. For instance, there are thirty different railroads in the Southern Pacific system. The stock of each one is owned by the Southern Pacific Company. Now suppose we go a step higher and put all of the big roads into the hands of one great corporation. We would then put a stop to rate-cutting, ruinous competition, and many useless expenditures. The money that now goes for special commissions, drawbacks, or rebates, and for salaries for unnecessary agents, would be saved to the shareholders. Joint ownership of all the railroads is the only thing that will make uniformity of rates absolutely certain."

100. Atkinson on "The Distribution of Products," p. 38, has said: The late Cornelius Vanderbilt may be taken as an example of a communist in the true sense. He consolidated and perfected the railroad service in such a way that a year's supply of meat and bread can be moved one thousand miles from the Western prairies to the Eastern workshops at the measure of cost of a single day's wages of a mechanic or artisan in Massachusetts."

Alexander on "Railway Practice," p. 59, says that consolidations promote economy and efficiency, and that this political power is limited by jealousy of the press and popular prejudice.

101. See Chapter VI. Professor Adams on "Public Debts," pp. 392, 393, says:

"The present standing of private corporations before the law contradicts the rule that all concentrated power should be exercised under strict accountability. The American people deceive themselves in assuming to think their liberties endangered only by the encroachments of government. The centre from which power may be exercised is of slight importance; it is the fact of its irresponsible exercise which may justly occasion apprehension. The growth of private corporations is a step in the development of our social constitution. They arose upon the ruins of the States as centres of industrial administration, and it is because the States have failed to retain a proper control over them that they now menace the permanency of popular government. It is true that about 1873 the right of legal control was judicially affirmed, but, so far as railroads are concerned, the measures adopted by the various legislatures served only to disclose the impotency of the States. These corporations are practically irresponsible to the people by whose favor they exist, and whom they pretend to serve. Popular liberty could be menaced by no greater danger."

102. See Chapter II.

103. See Chapter V.

104. Professor Adams on "Public Debts," pp. 339, 340, says: "The withdrawal of the States from the domain of internal improvements marks the rise of corporate power in the United States. As in 1830, the Federal government abandoned the thought of direct control over remunerative public works, giving up the field in favor of local governments; so, during the years from 1842 to 1846, a revulsion of sentiment turned all this business over to individuals. So far from realizing the programme of Jacksonian democracy, according to which the States were to recover their administrative importance, this experiment resulted in the establishment of a new power, unknown to the founders of our government, yet intrusted with truly sovereign functions. The rise of the corporation marks an epoch in the history of inland commerce. The material advancement the United States since 1850, no one can nor does one care to deny; yet the industrial, the political, and the social influences that have been introduced into national life by the unprecedented growth of corporate power, are the occasion for grave apprehension. Cities have been unnecessarily crowded, real-estate values have been arbitrarily distributed, a social dependence is being introduced not surpassed in its evil tendencies by any previous form of servitude, politics are being run in the interests of profit to those already gorged with profit; while, from the political point of view, it is to the encroachment of private corporations as much as to the centralizing tenden-

cies of the Federal government that the present impotency of the State government is due.”

105. Bryce’s “American Commonwealth,” vol. ii, p. 515.

106. Still another illustration of a natural monopoly that will give trouble in the future is the underground system of conduits in the streets of New York for containing the telegraph, telephone, and other wires which formerly were strung on poles overhead. A private corporation has constructed these conduits and now owns them. A toll is levied by this corporation on all persons or corporations who run wires through the conduits, and of course all wires are now obliged to go underground by statute. This conduit corporation has passed under the control of one of the great telephone and telegraph monopolies of the country by the ownership of sixteen thousand out of thirty thousand shares of stock. This great monopoly, by methods well known to the corporation lawyer, can easily make the capital stock and bonded debt of the conduit company so large that in order to pay interest and reasonable dividends on the same, very high tolls must be charged by the conduit company. This, in itself alone, will suffice to keep new competitors in the telegraph, telephone, etc., business out of the city of New York.

Since the above was written the trouble with this underground monopoly has commenced. The various corporations using the system in September, 1890, complained to the City Board of Electrical Control that exorbitant charges were demanded and that the Edison Company, being owner of six thousand shares of stock, had the inside favors and would probably exclude all other electric light companies by reason thereof.

The scale of prices asked were: For 4-inch ducts, \$1,250 per mile per annum; for 3-inch ducts, \$1,000 per mile per annum; for 2½-inch ducts, \$850 per mile per annum for 2-inch ducts, \$700 per mile per annum; for 1½-inch ducts, \$550 per mile per annum; for 1¼-inch ducts, \$500 per annum: for distribution ducts, 1 to 4 inches, \$1,000 per annum.

The subway company filed a statement to the effect that up to January 1, 1890, 501 miles of telegraph and telephone ducts and 515 miles of electric-light and power ducts had been constructed, making a total of 1,016 miles of ducts, the cost of maintaining and constructing which was \$4,827,647.97 from 1886 to 1890. Only 404 miles of subways were occupied, producing at present rates an annual rental of \$388,771. The yearly expenses of the subway company were placed at \$826,382, and an annual deficit of \$437,611 was figured out.

107. From the “Manual of American Water-Works for 1888,” published by the *Engineering News*, it appears that up to that date there had been constructed in the United States 1,642 water-works at a cost equal to something more than a tenth of the bonded debt of all the railroads in the country up to the same time, and supplying 14,854,612 of the population, or an average of 8,900 per works. Of the total works 715 are owned by the city, town, or village, as the case may be, and 927 by companies or individuals.

108. From “Water Storage in the West,” by Walter Gillette Bates, in *Scribner*.

109. See the case, *Mayor, etc., v. Twenty-third St. Ry. Co.*, 113 N. Y., 311 (1889) sustaining the constitutionality of a statute which ordered a company to pay to the city one per cent of its gross receipts instead of an annual license fee of fifty dollars a car.

110. The State of Illinois turned over the Illinois Central Railroad to a corporation, but it reserved an interest in the profits.

The following is an extract from the message of the Governor of Illinois to the legislature in 1891:

“Under the wise provision which retained to the State an interest to the extent of 7 per cent of the gross earnings of the road, to be paid annually into the State treasury, there has been paid to the State, all told, for the years from 1855 to 1890, inclusive, the sum of \$12,365,618. Upon the \$40,000,000 of capital stock of the company paid in there was paid as dividends in the same period the sum of \$64,782,357, showing that an amount slightly exceeding 19 per cent, of the total paid as dividends has been turned into the State treasury; or a sum equal to 16.03 per cent of the whole sum paid both to the State and upon stock. The last year the State’s 7 per cent of gross earnings paid amounted to \$486,281, and on said \$40,000,000 of stock were distributed as dividends \$2,400,000, the State’s portion being nearly 17 per cent of the whole amount so paid. The showing for the last six months ending October 31, 1890, gives the State as its 7 per cent of earnings \$257,219, or at a rate which would make the income of the State from this source over half a million per year, exceeding in amount any other half year in the history of the road. On the whole, I think the rapid increase in the State’s revenues from this source, in late years, rising as they have from \$367,799, in 1885, to \$486,281, in 1890, presents an encouraging prospect, and speaks well for the efficiency of the present management of the company. The further building of new competing lines of railroad having entirely ceased, there seems cause to hope for a gradual and healthy growth in the revenue of the lines in which the State will share with the owners of the stock.”

111. The following table relative to railroads is taken from the United States Census Report of 1880.

	Gross Earnings.	State and Local Tax.	Per Cent of Tax on Gross Income.
New Eng. States.	\$ 46,942,000	\$1,601,000	3.4
Middle	283,173,000	5,945,000	2.1
Southern	49,172,000	616,000	1.3
Western	130,608,000	3,267,000	2.5

Pacific	70,554,000	1,855,000	2.6
Total	580,450,000	13,284,000	2.3

In Prussia, the General Railway Code of 1838, S. 39, levies a tax on railways in proportion to the profits on the total capital subscribed, after deducting all the expenses of repair, the cost of carrying on the business, and the yearly sum to be appropriated to the reserved fund.

There is also a tax levied upon the net profit after deducting management, maintenance, working expenses, reserve funds, and interest and sinking, funds to pay off loans. The rate is:

If net profit is 4 per cent.— 1/40 thereof.

If net profit is 4 to 5 per cent.— 1/20 thereof.

If net profit is 5 to 6 per cent. — 1/10

If net profit is 6 per cent.—2/10 thereof.

The tax is used by the state to buy the stock of the road, and thus by degrees the state becomes its owner.—Jeans on "Railway Problems," p. 174.

112. See Ely on "Taxation," pp. 435, 436.

At an early period the State of Maryland required the Baltimore and Ohio Railroad to agree to give to the State twenty per cent, of the gross income from passenger traffic over the line from Baltimore to Washington, as compensation for the franchise to build the road. See *R. R. Co., vs. Maryland*, 21 Wall, 456 (1874).

In the city of New York, in 1888, the local tax on the corporations was at the rate of 1.9483 per cent, on \$57,623,060 making a tax of 11,120,365.80, The whole amount of tax collected was \$34,329,860-12. The city is entitled to 5 per cent, of the net income from one of the elevated railroad companies. In 1889 the city received from all the surface and elevated railroads \$225,990, in addition to the regular taxes. Of this over \$80,000 was for unpaid license fees for previous years.

The total State taxes levied by all the States and Territories in 1889 Were \$109,543,870. Ely on "Taxation," p. 453.

The total gross income of all the railroads of the country was about \$1,000,000,000.

113. See Ch. 642 L. 1886, as amended by Ch. 622 L. 1887. The price must be at least 3 per cent, for the first five years, and 5 per cent thereafter.

114. Comptroller Myers, of the city of New York, said, in October, 1890, that "it would pay any man to take a contract to run the city government without levying any taxes, provided he could get possession of all the franchises which the city had in former times given away, together with those franchises which it controls to-day. I stated that all those franchises are now so valuable that if their present incumbents were reasonably taxed, a sufficient revenue would be obtained to meet the expenses of city government, thus permitting of the abolition of taxes on property."

115. In Louisiana, where after twenty years the street railways revert to the city, the estimated value of the plant being paid to the company, the city at the expiration of the twenty years may sell the franchise. —*Canal, etc., R.R. vs. New Orleans*, 2 South Rep., 388 (1887).

In New Orleans alone have the rights of the public been carefully protected. In that city the policy of granting short charters, and, at the expiration of these charters, reselling the franchises for large amounts, has been carefully pursued. The New Orleans companies make large incomes for the city, are run cheaply, have little watered stock, and yet pay good dividends. In 1886 thg sale of a single franchise met nearly one eighth of the total municipal expenditures for the year.

In Chicago charters granted prior to 1865 run for one hundred years. In Cleveland the charters are perpetual, and practically so in Boston. In Philadelphia and Baltimore the charters are unlimited, but the city may buy out the corporation at the end of the first or any subsequent fifteen years.

Professor Richard T. Ely, in *Harper s Magazine*, July, 1887, says: "All charters for performing the functions of a natural monopoly should be limited to a brief period, with the reversion of the entire property to municipality, state, or federal government, either without compensation or with compensation at an appraised valuation for actual outlays."

In Berlin "the street-car lines pay a portion of their revenue to the city, keep the streets through which they run well paved from curb to curb, and in 1911 they become the property of the city without compensation. Had New York City—a municipality of about the same size—followed this example, taxation would in a no distant future be reduced very considerably, and fares lowered from five to three or even two cents.... An act of Parliament allows no municipality to grant a charter to a street-car company or an electric-light company for more than twenty-one years, and it must always be granted with the reserved right of purchase before the expiration of the charter, and at expiration, with compensation for land, buildings, and plant, but none whatever for good-will, expectation of future profits, or for compulsory purchase."

A striking illustration of the dangers of this plan, however, is found in New York City. The City every few years gives a new lease of its ferries, the last lease being in 1887, by which the city was to receive 12¾ per cent of the gross revenues from the operation of the ferries. The lease provided that upon its termination in 1891, if the old lessees did not

take a new lease at the next letting in 1891, the new lessees should buy the plant of the old lessees at an appraised valuation each party appointing one appraiser. The appraisers were appointed and valued the plant at \$3,803,000. This figure was so high that no one except the old lessees could afford to bid at the letting in 1891. Accordingly, before the new letting was made, certain parties who wished to bid caused suit to be instituted to set aside the \$3,803,000 appraisement, alleging that \$1,520,000 was all that the old plant is worth. This suit is still pending.

116. In 1889 New York City received \$1,521,602 from dock and ship rents.

117. Prof. E. W. Bemis, in a paper read before the American Economic Association recently, stated that nine cities now own and operate gas-works in this country: Philadelphia; Wheeling, West Virginia; Bellefontaine and Hamilton, Ohio; Henderson, Kentucky; and four cities in Virginia, Richmond, Danville, Charlottesville, and Alexandria. Philadelphia now manufactures gas at a cost of 74 cents per thousand feet, or if five per cent interest and two per cent, as taxes, which a private company would have to pay, is included, \$1.02 per thousand feet. The cost of manufacturing gas in Richmond is, allowing six per cent interest and two per cent for taxes, \$1.04 per thousand feet.

It seems that all of the ferry privileges between New York and Brooklyn are owned by New York, and that Brooklyn has no interest therein. This ownership runs back as far as 1730. The right to operate the ferries is sold every ten years by the city of New York to the highest bidder. The present operators of five of the lines pay 12¾ per cent of the gross receipts to New York. In the year 1889 these five ferries earned \$815,404. New York received from ferry rents in 1889, \$326,559.

118. The same article goes on to say, however, that where, as in the case of a railroad like this, the stock is worth only one seventh of the whole value of the property, a different question arises:

“Under these circumstances the trust seems to afford the best and simplest means of giving the bondholders an assurance that the road will be run in their interest. Instead of offering chances for dishonest manipulation, it goes far to remove them. Instead of separating power and responsibility, it may really tend to unite them. If the result proves good it is not unlikely to furnish a precedent for subsequent reorganizations.

“Had our railroads been built with stock instead of bonds the question would not have come up in its present form. Had the stockholders furnished three quarters of the capital, as is the case in England, it is doubtful whether a railroad trust of this kind could be justified on grounds of public policy. If investment and management were actually in the same hands, there would be no good excuse for separating them. But they are not in the same hands. They are already separated by the existence of the large investment in the form of bonds, whose owners have no direct voice in the management.”— *Railroad Gazette*, January 3, 1890.

A still different and yet peculiar trust is the Wisconsin Central Company. It is a corporation formed for the purpose of purchasing and holding shares of stock in railroad corporations. It controlled about eight hundred miles of railroad, and recently has leased its lines to the Northern Pacific Railroad Company. “It is organized under the several laws of the State of Wisconsin, but operates in the same way that the trusts do, and is in fact a trust. The stocks and bonds of the various companies acquired are vested in the trustees, who issue their non-voting trustee certificate against them. The trustees have power to fill vacancies in their own body upon the joint nomination of the surviving trustees, approved in writing by the holders of a majority of the stock of the company covered by the trustees’ certificates, both common and preferred. This approval is the only interference in the affairs of the company allowed from outside the trustees, who are empowered to vote ‘for all purposes whatsoever, upon every question raised at each and every meeting of said company, whether annual or special.’”

The Richmond & West Point Terminal Railway & Warehouse Company is also a corporation owning the stocks of other companies. The *Railroad Gazette* of January 11, 1889, says in regard to it:

“The dangers involved in the form of combination of which the Richmond & West Point is the most prominent type are to be looked for in other directions. This company is, in substance, a financial concern which controls railroads by ownership of a majority of their securities. The Pennsylvania and other roads have done the same thing in times past, but the difference is that the Pennsylvania is a railroad while the Richmond & West Point is not. This gives the operations of the last named company a more distinctively financial character. It also creates a danger that minority rights may be sacrificed for financial purposes. Not that the Richmond & West Point has done so; its conduct in this respect has been so straightforward as to be an important element in its success. The continuance of Gen. Alexander in the presidency of the Georgia Central gives added reason to believe that this policy will continue. But there is none the less a possibility of great evil in this direction, and we trust that the courts will see the danger, and the necessity of throwing additional safeguards over the rights of minority stockholders. Apart from such protection, a minority stockholder in a case like this is even more helpless than he is anywhere else.”

119. In reply to the argument that the massing of capital in the form of trusts “has made it possible to organize industrial enterprises on a scale so extensive, and to employ labor-saving machinery so largely, that the cost of production, including the cost of transportation to markets, has been enormously, almost incredibly, reduced within the last twenty years,” a Pittsburg journal says: “The benefits of the massing of capital in cheapening the cost of production and

transportation, although it is often cited to defend the trusts, has no cogency for three reasons: (1) The corporation laws of the country afford abundant opportunity for the concentration of capital necessary to perform any industrial operation, and no one objects to the incorporation of either \$25,000,000 honest and unwatered capital to build a railroad, or \$25,000 to build a factory. (2) No trust puts any new capital into an industrial enterprise, but only combines the capital already existing for purpose of preventing competition and exacting arbitrary profits. (3) Except for the illegitimate profits secured by the suspension of competition, the trust organization produces no saving, but, on the contrary, takes away the penalty of waste, negligence, and recklessness, as has already been shown by recent disclosures.”

Chauncey M. Depew, in an address before the International Brotherhood of Engineers, in Pittsburg, Pa., in October, 1890, said:

“In the United States our pace is so rapid and our development so phenomenal, that without due consideration we rush rapidly to extremes. This is true both of capital and labor. The money required to construct telegraphs, to build railroads, to establish banks, was beyond the power of the individual, and so the State permitted aggregated capital, representing the contributions of many, to perform these works. At the same time, through commissions, departments, and State officers, the hand of the government was constantly upon them for the protection of the public against extortion or discrimination. But within a few years everything from pine lands to peanuts, and from steel rails to sardines has been organized into some form of corporation or trust. This universal effort to absorb the individual, to divide the people into employing companies and employees, and to destroy competition will inevitably end in disaster. Hostile legislation and the laws of trade will leave only the legitimate enterprises surviving.”

The *New York Times*, the great journal which has been first and foremost in the warfare against trusts, makes the following argument on this point:

“Certain trusts are maintaining in the field of production manufacturers who have fallen behind in the race for lack of business ability or of the latest improvement in machinery, just as the Copper Syndicate enabled the owners of poor mines and lean ores to continue production when natural laws and free competition would have shut them out. And they are doing this by exacting an artificial ring price for their products. There are trusts that are heavily loaded with old factories and antiquated machinery, capitalized at three or four times their value, and that are trying to make the public support this rubbish and the owners of it.

“Such schemes retard the natural elimination of unfit machinery and processes that would take place if the action of natural laws were not prevented. Under free competition old machinery gives place to new, and old processes are discarded when better ones are discovered and utilized. The lazy, the wasteful, and those who are otherwise unfitted for the struggle yield to the energetic, the thrifty, and the skilful. Inventive genius is stimulated and rewarded, and industries show steady growth and progress as the old is cast off to give place to the new, and processes are improved.

“The effect of trust methods—the suppression of competition in prices and sales, the over-capitalization of idle and antiquated factories in practical consolidation with those that are active and well equipped, and the discouragement by intimidation, or otherwise of new and independent enterprises—is frequently to retard the natural growth and improvement of an industry, in order that rubbish may be made valuable, while the people are taxed for the support and enrichment of producers who are incompetent and who would be forced, under the working of competition, to show new proof of ability and good management or make way for better men. It is true that the results of free competition are not always satisfactory to all the producers concerned. Some will suffer loss, and, when overproduction has been caused by laws that interfere with the natural course of trade, the readjustment may cause serious disturbance. But, while there are hardships for some in the ceaseless contest, competition is far better for the people and the world and the good of the race than absolute or qualified monopoly caused by a suppression of it, and whenever the question has come before our courts of last resort, this doctrine has been strongly supported in the interests of sound public policy.”

120. Bryce’s “American Commonwealth,” vol. ii., p. 705.

121. The *Shipping List* prints the following list of trusts in existence in the United States:

Match Trust, Steel-Rail Trust, Jute-Bag Trust, Cordage Trust, Kerosene (Standard) Oil Trust, Borax Trust, Cotton-Seed Oil Trust, Linseed-Oil Trust, Paper-Envelope Trust, Nail Trust, Barbed-Fence Trust, Lead Trust, Nickel Trust, Sugar Trust, School Book Trust, Gutta-Percha Trust, Copper Trust, Zinc Trust, Slate-Pencil Trust, Iron Nut and Washer Trust, Oil-Cloth Trust, Ultramarine Trust, Whisky Trust, Gas Trust, Dressed-Beef Trust, Distillers’ and Cattle Feeders’ Trust, Starch Trust, Cigarette Trust, Straw Braid Trust.

122. At the time the French copper trust was in the height of its power the French government proposed to attack it through the French law against combinations. The immense profits, however, coming into France through the operation of the trust caused the government to stay its hand. But when the trust collapsed a different view was taken of the situation, and M. Secretan, the most prominent man in the trust, was sentenced to six months’ imprisonment and a fine of 3,000 francs, as a punishment practically for his failure to make the trust a success.

Judge Thompson, of St. Louis, thus describes the copper trust: “It was my fortune to have for a ship companion on a transatlantic voyage a member of that so-called trust, and he was good enough to explain to me how it was organized

and what had been its results. The scheme consisted in nothing less than forestalling or ‘cornering,’ to use a modern expression, the market of the whole world in copper for the period of three years. This it attempted to accomplish, and did for a time accomplish, by buying up the out-put of all the copper mines in the world for that period, under contracts by which they agreed to pay the mine owners thirteen cents per pound, and one-half of whatever the so-called ‘syndicate’ should be able to get for the copper in excess of thirteen cents per pound. The immediate effect of this gigantic crime against commerce was to advance the price of copper in the United States from nine to sixteen cents a pound; so that, where the mine-owners were realizing, before the formation of the trust, nine cents per pound, they soon after found themselves realizing fourteen and one-half cents per pound. But the syndicate did not take the precaution to buy up all the old scrap copper in the world, nor to buy all the metal that could be substituted in the arts in the place of copper, nor to arrange with those who were consuming copper that they should continue to consume it in the same quantities, notwithstanding any increase of price which the syndicate might demand. The result was that the gigantic scheme collapsed, dragging down with it one of the great banking institutions of France, bankrupting an untold number of individuals, and, what was of less consequence, driving to suicide the ‘Napoleon of Finance’ who had organized the crime.”

123. Judge Thompson, of St. Louis, recommends the following treatment of the trusts:

“My idea is that, as a general rule, men should be free to combine for their own interest and profit; that both the trust and the trades union should be let alone; but that, if the evils produced by these combinations become unbearable, government should proceed with rigid impartiality against both.

“1. As a general rule, we may safely” trust to the operation of natural laws and to the inherent weakness of every human combination for a sufficient remedy.

“2. But if this remedy proves inadequate in any case—if men, by combining, acquire in business struggles undue advantage over those who do not combine, the remedy is first to be sought outside of the law—outside of government—by individual action, by counter movements of some kind. If capital combines against labor, labor must combine against capital. If manufactures combine against agriculture, agriculture must combine against manufactures. If the common carrier combines against the farmer, the manufacturer, the merchant, and the laborer, then all must combine against the common carrier. Meet combination with combination; strike with strike; lockout with lockout; fight the devil with fire.

“3. Withdraw all governmental aid, in the form of protective tariffs or otherwise, from combinations which threaten to suppress competition in any trade, or to engross the market in any commodity. Apply this principle impartially against combinations of capital and against combinations of labor; repealing on the one hand tariff laws, not needful for revenue, and, on the other hand, laws which hamper the importation of foreign labor, not needful for the exclusion of undesirable immigrants.

“4. Withdraw corporate franchises from every corporation which attempts to suppress competition and engross the market in any commodity, and leave every adventurer in such an enterprise liable as a partner. No matter how small his holdings in it may be, let it be known that he involves his whole fortune in the crime against society which he and his confederates attempt, and that if their attempt goes down, he goes down.

“5. If these means fail, level against the individuals—not against the corporations—the machinery of the criminal law.”

Charles Francis Adams, writing in March, 1891, said concerning trusts: “So far as my judgment, observation, and study go, I have found that business combinations and trusts are mainly dangerous to those who are, so to speak, inside them. If left absolutely alone by the government, they will work nothing but good; unless they are perverted to some purpose opposed to the laws of trade, in which case they inevitably, soon or late, bring about the ruin of those concerned in them. I think there is no exception to this rule. Every trust, so called, exists even, on condition that it supplies that which it controls cheaper than any one else can afford to supply it.”

124. The Linseed-Oil Trust is now incorporated in Illinois with a capital of \$18,000,000. It owns fifty-two works. The Distilling and Cattle-Feeding Trust is also now incorporated in Illinois with a capital of \$35,000,000. It owns seventy-two works. The American Tobacco Trust is now incorporated in New Jersey with a capital of \$25,000,000. It owns five works. The American Straw-Board Trust was incorporated in Illinois in 1888. It owns twenty-one factories, of which eighteen are running.