

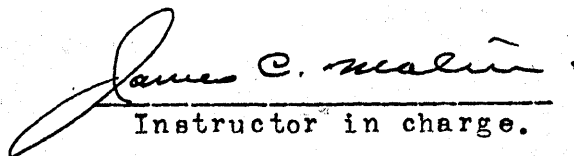
THE TRUST QUESTION, 1890-1900

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Submitted to the Department of
History and the faculty of
the Graduate School of the
University of Kansas in partial
fulfillment of the degree of
Master of Arts.

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12 November 1929
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It is the purpose of this chapter to discuss the Chicago Trust Conference and its results. The conference was held in Chicago, Illinois, on October 1, 1911, and was attended by representatives of the various trusts and industries of the country. The conference was organized by the Chicago Trust Association, which was formed in 1909. The conference was held in the city of Chicago, Illinois, and was attended by representatives of the various trusts and industries of the country. The conference was organized by the Chicago Trust Association, which was formed in 1909. The conference was held in the city of Chicago, Illinois, and was attended by representatives of the various trusts and industries of the country. The conference was organized by the Chicago Trust Association, which was formed in 1909.

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Before the conference of August 1911, the various trusts and industries of the country were in a state of confusion and uncertainty. The conference was held in the city of Chicago, Illinois, and was attended by representatives of the various trusts and industries of the country. The conference was organized by the Chicago Trust Association, which was formed in 1909. The conference was held in the city of Chicago, Illinois, and was attended by representatives of the various trusts and industries of the country. The conference was organized by the Chicago Trust Association, which was formed in 1909.

CHAPTER I

Introduction

The agitation against the trust may be divided definitely into two distinct movements--the movement against the trust as a business organization, and the movement against the trust as a monopoly or restraint of trade.

In the first case, the term "trust" was used in the technical sense. Such business organizations were formed by having competing corporations place a majority of all their stock in the hands of a board of trustees. These trustees managed the business of the several corporations and secured harmony of action. The original stockholders received trust certificates in exchange for their stock and received dividends proportionate to the certificates. The Standard Oil Trust of 1882 was the earliest combination of this kind.

In the second case, the term "trust" lost its technical use and, in the popular mind, became identified with the term "monopoly" or "restraint of trade".

Before the enactment of special legislation on the subject, the states attacked the trust as a form of business organization. This attack was based on the ground that these corporations had exceeded their charter rights. The first case of this type was brought by the state of Louisiana against the American Oil Trust early in 1887 in an attempt to have that combination declared an illegal association, so far as its operations in the state of Louisiana were concerned, and to secure the

liquidation and winding up of its affairs. Soon afterwards, a suit was brought by the state of New York against the North River Sugar Refining Company. Almost simultaneously therewith, the same trust was assailed in the superior court of California. In 1890, the state of Ohio began an action against the Standard Oil Company of Ohio, and in the same year, Nebraska brought suit against the Nebraska Distilling Company, which had become a member of the Distilleries and Cattle Feeders Trust. Finally, in 1891, a federal court declined positively to prevent a corporation by means of an injunction from violating a covenant made by it in consideration of its admission to a trust. (1)

In order to make perfectly clear the grounds upon which the illegality of the trust, as a business organization, is based, excerpts from some of these decisions have been included.

State Ex Rel. Attorney v Standard Oil Company. (2)

Statement

Defendant is an Ohio corporation. Its stockholders and the stockholders of many other oil companies transferred their stock to a board of trustees, and received in return trust certificates.

The state brings suit for the forfeiture of defendant's charter.

The defenses are:

1. The illegal acts are not those of the corporation, but those of the stockholders.
2. The statute of limitations has run.

Opinion, Minshall, J.

Three questions arise upon the pleading:

1. Should the defendant, The Standard Oil Company, be regarded as a party in its corporate capacity to the agreement constituting the Standard Oil Trust.
2. Had the company power to become a party to such an agreement.
3. If so, is the right of the state to demand a forfeiture of its corporate franchise, or of the power to make and perform such agreements barred by lapse of time.

1. It will be observed on reading the answer, that while the defendant denies that it entered into or became a party to either or both agreements in said petition set forth, also "denies that it has at anytime or in any manner acquiesced in, or observed, performed or carried out either or both said agreements; it does not deny the averment of the petition that "all of the owners and holders of its capital stock, including all the officers and directors of said company, signed said agreement." Nor could it have been the intention to do so, as the answer proceeds to admit, "that it", the corporation, "is informed and believes that the individuals in their individual capacity and were not designed to make corporate agreements". The claim is based upon the argument that the corporation is a legal entity separate from its stockholders, and that in it are vested all the property and power of the company, and can only be affected by such acts and agreements as are done on its behalf by its corporate agents acting

within the scope of their power.

Therefore, the real questions we are now to determine is whether it appears from the face of the pleading, giving effect to all the denials of facts contained in the answer, that the exception of the agreement set forth in the petition should be imputed to the association constituting the Standard Oil Company acting in its corporate capacity.

The agreement provides in the first place that the parties to it shall be divided into three classes; the first class to embrace all the stockholders and members of such corporations and limited partnerships, the defendant, the Standard Oil Company, being one. It is then covenanted by the parties, that, as soon as practicable, a corporation shall be formed in each of the separate states under the law thereof, Ohio being one to mine for, produce, manufacture, refine and deal in petroleum and all its products; with the proviso, however, that instead of organizing a new corporation, any existing one "may be used for the purpose when it can be done", and in Ohio, the defendant has been so used.

In a subsequent part of the agreement, nine trustees are selected, their power and duties are defined and provisions made for succession.

It was made the duty of the parties to the agreement, to transfer their stocks or interests in their respective companies or firms to these trustees, who hold the same in trust, but

with the power to vote on the same as though the real owners; in consideration of which, trust certificates are issued to the owners, who, as the owners of such certificates, elect the successors of the trustees.

It is then provided that all the property, assets and business of the corporations and limited partnerships embraced in the first class "shall be transferred to and vested in the said several Standard Oil Companies", and in order to accomplish this purpose, it is provided that "the directors and managers of each and all of the several corporations and united partnerships mentioned in class first, and members thereof, to sell, assign, transfer, convey and make over, for the consideration herein after mentioned, to the Standard Oil Company or companies, of the proper state or states, as soon as said corporations are organized and ready to receive the same, all property, real and personal, assets and business of said corporation and limited partnerships". ...

Applying then the principle that a corporation is simply an association of natural persons, united in one body, and vested by the policy of the law with the capacity of acting in several respects as individuals, and disregarding the mere fiction of a legal entity, there can be no room to doubt that the act of the stockholders and officers should be imputed to them as an act done in their capacity as a corporation. We believe that all such associations are contrary to public policy, and in this state are

void.

2. Whether the agreement should be regarded as amounting to a partnership, it is clear that its observance must subject the defendant to a control inconsistent with its character as a corporation. Under the agreement all but seven of the shares of the capital stock of the company have been transferred by real owners to board of trustees, who in return issued trust certificates. The defendant is controlled and managed by the Standard Oil Trust, an association, with its principal place of business in New York City, and organized for a purpose contrary to the policy of our laws. Its object was to establish a virtual monopoly of the business of producing petroleum, and of manufacturing, refining and dealing in it, throughout the entire country. All such associations are contrary to the policy of the state.

(Salt Co. V. Guthrie; (3) Emery V. Ohio Candle Co.).... (4)

(5)
State V. Nebraska Distilling Company, 1890.

"This is an action of quo warranto brought in this court to obtain a forfeiture of the defendant's corporate franchise...."

Section 123 of Chapter 16, Compiled Statute, provides that "any number of persons may be associated and incorporated for the transaction of any lawful business". It also provides in Chapter 15 that "So much of the common law of England as is applicable and not inconsistent with the Constitution of the United States, with the organic law of this territory, or with

any laws passed or to be passed by the legislature of this territory, is adopted and declared to be law within said territory". These provisions of the statutes were passed before the admission of the state into the Union and have been in force since. "A Corporation therefore, can only be organized under our laws for a lawful purpose and any acts done by such corporations for the accomplishment of a purpose not lawful is unauthorized; in excess of its power, and therefore, illegal and void."

The Supreme Court of the United States, in speaking of the proper construction of articles of association of corporations organized under the general laws says: "We have to consider when such articles become the subject of construction, that they are, in a sense, ex parte. Their formation and execution-- what shall be put into them as well as what shall be left out--do not take place under the supervision of any official authority whatever. They are the production of private citizens, gotten up in the interest of the parties who propose to become corporations. The question is always to be determined upon just construction of the powers granted therein"....

Therefore, we conclude that a corporation can exercise no powers except such as are granted to it by charters under which it exists.

It is no part of the powers of the Distilling Company to sell all its property, real and personal, together with its franchise and powers necessary to properly carry on the business. The fact that the corporation has authority to put an end to its existency by a vote of a majority of its stockholders, in which event it may proceed to settle up its affairs, is a power of its

property, and divide its capital stock and surrender its charter to the state, does not authorize it to terminate its existence by a sale and disposal of all its property and rights.

"The findings show that the object of the Distilling Company in entering into the illegal combination was to destroy competition and to create a monopoly.... any contract entered into with such an object in view is under the laws of this state, null and void, and the conveyance from the Distilling Company to the trust was in contravention of the authority conferred by the statutes on that company in excess of the powers granted by its charter and no title passed by the conveyance."

(8)

People V. North River Sugar Refining Company

Statement.

"The defendant and many other sugar refining companies handed their stock over to a common board of trustees and received in return trust certificates. Said board managed the business of all the companies and profits were distributed pro rata to the holders of the trust certificates.

Opinion of Court of Appeals:

Finch, J.: "The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought is itself a fiction, and has been appropriately described as a figure of speech.... as between the corporation and those with whom it deals the matter of its exercise usually is material, but as between it and the state, the substantial inquiry is only what that collective action and agency has done; what it has, in fact, accomplished, what is seen to be its effective work. The state

gave the franchise, the charter, not to the Nebulous fiction of our thought but to the corporations, the active living men to be used for them, to redound to their benefit and to add energy to their capital. If it is taken away, it is taken from them as individuals and corporations and the legal fiction disappears. The benefits are theirs, the punishment is theirs and both must attend and depend upon their conduct, and when they act collectively without least exception, and so acting accomplishes purpose clearly corporate in character, we cannot hesitate to conclude that there has been corporate conduct which the state may review, and not be defeated by the assumed innocence of a convenient form."

"In this state corporations must remain single as they are created, or all form into one corporation as provided by statute. There can be no partnership of separate and independent corporations. The foregoing combination indirectly forms such partnership, and is, therefore, illegal. Judgment of dissolution was granted."

Prior to the year of 1899, there had been little or no legislation directed against the trust either as a monopoly in restraint of trade or as a form of business. Perhaps the earliest distinctly anti-trust provision, either constitutional or statutory, may be found in the following provision of the Georgia Constitution adopted in 1877: "The General Assembly shall have no power to authorize any corporation... to make any

contract or agreement whatever with any (other) corporation, which may have the effect or be intended to have the effect to defeat or lessen competition in their respective business or to encourage monopoly; and all such contracts and agreements shall be illegal and void".⁽⁹⁾ This provision, however, was aimed directly at railroad combinations rather than at trusts in general.⁽¹⁰⁾

But the investigation carried on in 1888 by committees appointed by the United States House of Representatives, by the New York Senate and by the Canadian House of Commons, resulted in a widely prevailing view that stringent legislation on the subject was necessary. This fear of the trusts and combinations in 1889 bore fruit in a plentiful crop of statutes. In 1889, no fewer than thirteen states took action. In Kansas, Maine, Michigan, Missouri, Nebraska, North Carolina, Tennessee and Texas "anti-trust" statutes were enacted; in the states of Idaho, Montana, North Dakota, Washington and Wyoming constitutional provisions to the same effect were adopted. In 1890, Iowa, Kentucky, Louisiana, Mississippi and South Dakota besides the territory of Oklahoma enacted anti-trust statutes. In Kentucky, in 1891, and Mississippi, in 1890, constitutional provisions to the same effect were adopted. In 1891, Alabama, Illinois and Minnesota enacted such statutes besides the territory of New Mexico. In 1893, two more states, viz: New York and Wisconsin, enacted anti-trust laws. In 1893, too, an anti-trust statute was enacted in California confined in its application to live stock; and also

one in the state of Nebraska confined to coal and lumber. By 1894, statute books of about twenty states showed legislation of one kind or another looking toward the suppression of trusts, pools and other combinations; and by 1899, the number had increased to thirty-three.

Of the thirty-three states, eight states had passed laws forbidding the trust form of combination. They were as follows: Kansas in 1887-89; Louisiana, 1890; Mississippi, 1890; Missouri, 1891; Iowa, 1890; Illinois, 1891; Michigan, 1899; Maine, 1889. These states expressly forbade the owning or issuing of trust certificates, and Mississippi and Michigan positively forbade the combination to place the management of the business in the hands of a board of trustees. These statutes also prohibited combinations which tried to restrain trade among the several states and
(11)
between the foreign nations.

Far the greater bulk of legislation was silent on the trust as a form of business organization and was directed toward the trust as a monopoly in restraint of trade; New York, Law of
(12)
1899, Chapter 690.

"An act to prevent monopolies in articles or commodities of common use, and to prohibit restraint of trade and commerce, providing penalties for violation of the provisions of this act, and procedure to enable the attorney-general to secure testimony in relation thereto."^m

The Act provides the following: (1) "Every contract,

agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity is or may be restrained or prevented or whereby for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such articles, the pursuit in this of any lawful business, trade or occupation, is declared against public policy; (2) Every one who shall make or enter into such arrangements in section one of this act, shall be deemed guilty of a misdemeanor and on conviction thereof shall, if a natural person be punished by a fine not exceeding \$5,000. or by imprisonment for no longer than one year or both; and if a corporation, by a fine not exceeding \$5,000.00."

(13)

Illinois, Laws of 1891.

This act provides the following: (1) "If any corporation organized under the laws of this or any other state, or any partnership, individual or any other persons or associations become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other to regulate or fix the price of any article of merchandise or commodity shall be adjudged guilty of a conspiracy. (2) It shall not be lawful for any corporation to issue or to own trust certificates nor to place the business in the hands of trustee or trustees, with intent to limit or fix the price or lessen the production and sale of any article of commerce or diminish the

the manufacture or output. (3) If corporation, company, firm or association shall be found guilty, it shall be punished by a fine in any sum not less than five hundred dollars, (\$500.), nor more than two thousand dollar, (\$2000.), for the first offense; and for the second offense not less than two thousand, (\$2000.), nor more than five thousand, (\$5000.), and for the third offense, not less than five thousand dollars, (\$5000.), nor more than ten thousand dollars, (\$10,000.); and for every subsequent offense and conviction thereof, shall be liable for a fine of fifteen thousand dollars, (\$15,000)."

The following cases illustrate the judicial interpretation of these statutes:

John G. Walsh and G. Wells Walsh V. J. Dwight et al (14).

Statute Construed:

"Every contract or combination in the form of a trust or otherwise, made after the passage of this act, whereby competition in the state of New York in the supply or price of any article or commodity of common use in the said state for the support of life and health may be restrained or prevented.

Statement:

"Defendants are manufacturers of Dwigths Cow Brand Saleratees and Soda. They agreed with the jobbers and dealers to give them a discount on prices if they would not sell any saleratees for less than the price fixed on the Dwigths Cow Brand. Plaintiffs, rival manufacturers of saleratees by this scheme lost much trade, as they claim \$50,000, worth. To recover damage

this suit is brought."

Opinion

Inghram, Judge, speaking for the court says:

"This act did not have the effect of preventing a manufacturer from fixing the price at which his articles should be sold, or from making an agreement with these persons at a less price than that at which his products were sold. This act was evidently intended to prevent manufacturers or dealers in any article or commodity of common use from combining to advance the price of such articles by which the supply or price of the same would be restricted or regulated."

"Plaintiff cannot recover."

(15)

Ford et al V. Chicago Milk Shippers Association.

Statute construed:

"Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding section of this act shall not be liable for the price or payment of such commodity and may plead this act as a defense to any suit for such price or payment."

Statement:

"Defendant is a corporation having for its object the control of the milk business in Chicago. It made an agreement with all its members whereby they were not to sell milk

in Chicago for less than the price fixed by the defendant. The plaintiff contracted with the defendant in April for milk to be furnished during the following summer. The following July the trust law went into effect, and after that, under contract made in April, milk was furnished plaintiff by defendant. For this milk, plaintiff refused to pay. Defendant sued and plaintiff pleaded in defense, violation of the trust law.

Opinion:

" An agreement between a corporation and its stockholders is essentially like an agreement between a corporation and strangers; therefore, this combination was unlawful.

Plaintiff was not bound to pay defendant for the milk until it was supplied and the milk was not supplied until after the law was passed; therefore, the law did not impair the obligation of any contract and is constitutional.

" Defendant cannot recover for the milk supplied."

By enacting the Sherman Anti-Trust Law, July 2nd, 1890, congress assumed an aggressive policy toward big combinations. Heretofore, the states had legislated in this field in which there was practically no federal interference. Congress received authorization to enter this field through the commerce clause. By the terms of the constitution, congress is given power "To regulate commerce with foreign nations and among the several states?" (16) It is also given power "To make all laws

which shall be necessary and proper for carrying this power into execution." (17) By early established principle, a corporation is considered as the creation of the state. The powers, therefore, which the states of the Union have over corporations are not founded upon constitutional provisions, but are sanctioned by common law and historic usage. In the collision of these powers of the state with the federal government, the state must yield to the plenary power of congress over interstate commerce. This commerce clause gives congress practically a free hand in legislation on the subject of business organizations except in the limitations placed by the court.

The first federal act known as the Sherman Anti-Trust Act, July 2nd, 1890 provided for the following: (18)

(1) "Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, (\$5000.), or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

(2) "Every person who shall monopolize or attempt to monopolize any part of the trade or commerce among the several states or with foreign nations shall be deemed guilty of mis-

demeanor and punished by fine or imprisonment.

(3) "Every contract, combination in the form of trust or otherwise, in restraint of trade and commerce in any territory of the United States or of the District of Columbia or restraint between any such territory or territories or states or the District of Columbia or with foreign nations is hereby declared illegal.

(4) "Any person who shall be injured by any person or corporation by reason of anything forbidden to be unlawful by this act is entitled to recover three fold damages."

The following decisions of the United States Supreme Court are included to make clear the progress of those decisions in making the statute effective.

(19)

In the E.C.Knight case the statute was fully considered in the supreme court for the first time. (20) This case was decided in January, 1895. The bill alleged that the American Refining Company, the defendant, was engaged in the refining and sale of sugar. The other defendants were four corporations separately engaged in refining and dealing in sugar at Philadelphia and that they were competitors of the American Sugar Refining Company. Further that prior to March 4th, 1892, the American Sugar Refining Company had obtained control of all sugar refineries of the United States with the exception of the refineries of the four defendants and of the Revere of Boston; and that the American Sugar Refining Company had entered an

unlawful scheme to purchase the stock, machinery and real estate of the other four defendants in pursuance of the contract made on March 4th, 1892, by which shares in the stock of the American Sugar Refining Company were exchanged for the shares of stock of these four companies.

Thus, it was averred that the American Sugar Refining Company, which refined at least ninety-eight per cent of the sugar in the United States, monopolized its sale and controlled the price; and that the combination was a conspiracy in restraint of commerce in refined sugar among the several states and foreign nations.

The opinion of the court, delivered by chief Justice Fuller, was:

"The contracts and acts of the defendants related exclusively to the acquisition of the refining companies at Philadelphia and bore no direct relation to commerce between the states or with foreign nations. The object was manifestly private gain in the manufacture of the commodity but not through the control of interstate or of foreign commerce."

"The bill alleged that the products of these refineries were sold and distributed among the several states, and that the companies were engaged in trade and commerce with the several states and with foreign nations; but this was no more than to say that trade and commerce served manufacturing to fulfil its functions...."

It does not follow that an attempt to monopolize or the actual monopoly of the manufacture was an attempt, whether executing or consummated to monopolize commerce, even though in order to dispose of the products the instrumentality of commerce was necessarily invoked.

"There was nothing in the proofs to indicate any intention to put restraint upon trade and commerce. The subject matter of the sale was shares of manufacturing stock and the relief sought was the surrender of property which had already passed and the suppression of the alleged monopoly in manufacture by the restoration of the status quo before the transfer."

This was an important decision in the interpretation of the act because the distinction was made between commerce and manufacturing. This decision made clear what could be done under the act. To the popular mind, the decision was a great discouragement, (21) as is shown by the recommendations to congress by both Mr. Olney and Mr. Cleveland that the evil must be fought by state legislature.

A second important step in the interpretation of the act is made by the Trans-Missouri Freight Association case. (22) The two important points decided in this case were: (1) Whether the anti-trust law in regard to combinations applied to interstate commerce carriers which had been especially provided for in the Interstate Commerce Act; (2) Whether, assuming the contract to be valid at common law, the statute was to be construed to strike at

only restraint of interstate commerce trade which would be held to be unreasonable, at common law. In the first question, a majority of the court held that the Commerce Act and the Trust Act were consistent with each other, and therefore, the Trust Act applies to railroads just as if there were no commerce act.

On the second point, it was held that since the Trust-Act says every contract in restraint of trade, the courts have no right to confine the scope of the Act to contracts in unreasonable restraint of trade since it includes all contracts in restraint of trade whether reasonable or unreasonable.

A third important case marking a step forward in the interpretation of the Sherman Anti-Trust Act is the Addyston Pipe Company case. (23)

The bill of complaint was against a contract between six corporations, manufacturers of cast iron pipes. Except for the contract, these were independent companies and retained their separate corporate identity. An association was formed whereby they agreed not to compete with each other, and the agreement was to be carried out as follows: A committee of a representative from each corporation set the price for each job, and the corporation that would give the largest bonus for the job got it, and the others put in higher bids to make an apparent competition.

It was held that since a large part of the sales necessarily involved interstate commerce, the agreement was certainly a restraint within the jurisdiction of Congress. The

subject matter in the contract was not acquisition of title to the property; it was actual and intended sales in interstate commerce. The relief sought was injunction against contrivance of the combination, and the right to such a remedy was plain.

The importance of these later decisions is that they cleared up many difficulties that were presented in the opinion of the Sugar Trust case in enforcing the act. The Trans-Missouri Freight Association case having made clear the consistency of the Commerce Act with the Sherman Anti-Trust Act, and the Addyston Pipe case having applied the law to restraint by combinations upon sales from one state to another, the vast possible application of the law became evident. (24)

The second and last piece of legislation in regard to trusts between 1890-1900 was the Act of 1894. (25) This act was a rider attached to an act to reduce taxation and provide revenue for the government and for other purposes. The bill was not returned by the President to the house of Congress in which it originated within the time prescribed by the constitution of the United States, and became a law without his approval.

This act provides the following:

(1) "That every combination, conspiracy, trust, agreement or contract is hereby declared to be contrary to public policy,

illegal and void; when the same is made by or between two or more persons or corporations either of whom engaged in importing any article from foreign countries into the United States and when such combination, conspiracy, trust or otherwise is intended to operate in restraint of lawful trade or free competition in lawful trade or commerce or to increase the market price in any articles imported into the United States.

(2) "Every person who is or shall be engaged in the importation of goods from any foreign country in violation of this act is guilty of a misdemeanor and shall be fined in a sum not less than one hundred dollars, (\$100.), and not exceeding five thousand dollars, (\$5000.), and shall be further punished by imprisonment in the discretion of the court for a term not less than three months nor exceeding twelve months.

(3) "Every person who shall be injured in his business or property by another person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States and shall recover three-fold damages and cost of suit."

To summarize: by 1899, thirty-three states had passed anti-trust laws, eight of which specifically attacked the charter rights of the trusts forms of combination as well as a combination in restraint of trade. Besides the state legislation, two federal laws had been enacted which definitely

announced an aggressive policy of the United States Government toward big business combinations.

In brief, Professor Jeremiah Jenks makes the following observations on the statutes and decisions of the period: (26)

(1) "Practically all these statutes were framed with the same purpose in view: To prevent the formation of combinations in trade which might become dangerous to the public, and to destroy such as already exists. In a few cases, an attempt is made through special powers granted to prosecuting officers to secure information regarding these organizations, and then to strike them down if they are seen to be monopolies in the common-law sense.

(2) "None of these statutes aim especially at securing publicity regarding the business of the large industrial combinations through detailed reports, in order that the publicity itself may prove a remedial measure.

(3) "In several of the states an attempt has been made to exempt from heavy penalties of the law dealers in certain products (agricultural products and live stock) and certain classes in the community (the farmers and laborers) on the ground that such combinations are not injurious to the public.

(4) "The common law is sufficient to enable learned judges to protect the welfare of the people against monopolies

that can be clearly proven to be against public policy. The proof needed to establish monopoly varies with the locality.

(5) "The statutes, by defining, in specific terms referring to modern conditions, what is the act objected to, put people and prosecuting officers more on the alert regarding their rights and duties. It is probable, too, that through the statutes the principles of the common law are fitted more rapidly into modern conditions and that they have been somewhat extended.

"Possibly at times the fear of a new form of business organization may have led to the extension of legal privileges of interference with private business beyond what the public welfare demands. Some of these statutes, if read literally, would seem to forbid many perfectly innocent associations, but the courts seem invariably to have assumed that only monopoly, at least virtual monopoly, was attacked, and the decisions have been made accordingly. The courts in most instances have not entered upon the discussion of the more difficult question as to whether the monopoly in question was against public policy; but in some few cases that has been the basis of the decision.

(6) "The courts, both state and national, very generally uphold the anti-monopoly statutes. Those unconstitutional have been generally so declared on only minor points.

(7) "There is a tendency on the part of the courts to put combinations of labor and of capital into the same class before the law, unless special exceptions have been made."

The text of the page is extremely faint and largely illegible. It appears to be a continuation of a discussion or report, possibly related to the quote above. The text is too light to transcribe accurately, but it seems to follow a similar structure to the quote, discussing legal or economic principles. The words are mostly indistinguishable from the background.

CHAPTER II

Analysis of the Thought Predominate in the Anti-Trust
Agitation (1890-1900)

As has been seen, the movement against the trust both as a business organization and as a monopoly resulted in a definite policy being announced by the passage of the Sherman Anti-Trust Act. This Act was of purely punitive nature. It becomes evident that this policy was not satisfactory to the public through the comparison of the bills and petitions introduced in Congress before and after the passage of the Act itself. From December 5, 1888 to March 2, 1889, sixteen bills to prevent formation and operation of trusts were introduced; three resolutions to investigate; one to prevent the control of patented articles by the trust; one to declare trusts unlawful, and two petitions. In the following congress, 1889-1891, twenty bills to prevent the formation were introduced, three in the Senate and seventeen in the House of Representatives; one to prohibit the enforcement of contracts, and fifty-eight petitions from the citizens to prohibit the formation of trusts. From 1891 to 1893, twenty bills were introduced to the same effect; three resolutions to report a plan for the destruction of combinations and one to amend the constitution. While from 1893 to 1895, eleven bills were introduced to prohibit the formation; one to define and tax; two as amendments to the Act of 1890, and one amendment to the Constitution, and four memorials from the legislature of Wisconsin praying for an amendment to the Constitution in

regard to trusts. From 1895 to 1899, sixteen bills to prohibit the formation of trusts were introduced, while from 1899 to 1901, there were thirty-two such bills introduced; eleven as amendments to the Act of 1890 and to the United States Constitution; ten to regulate and control corporations and associations and eleven to prohibit the shipment of articles controlled by the trust.

In this dissatisfaction and agitation against the trust, two distinct lines of thought can be traced. The first looked to competition to solve the problem, while the second group looked to governmental regulation. However, those attempting to restore competition were definitely divided as to the way in which competition should be restored. One group held to the laissez faire theory; a second group advocated the complete annihilation of the trust.

The laissez faire theory was diametrically opposed to governmental regulation of the economic activities of the individual. According to this view, unrestricted industrial liberty would result in a proper adjustment of business conditions. Combinations (27) were declared to be inevitable in the present age. This was the predominate policy until 1890. The defense for this theory may be illustrated by the following quotations:

Mr. Andrew Carnegie gave the following explanation of (28) the trust:

"The appearance, growth, and environment that produce trusts must be considered. Their genesis is as follows: A demand

exists for a certain article beyond the capacity of the existing works to supply it. Prices are high and profits are tempting. Every manufacturer of that article immediately proceeds to enlarge his works and increase their producing power. The unusual profits attract the attention of the principal managers. These communicate the knowledge of prosperity to the others. New partnerships are formed, new works are erected, and before long the demand for the article is fully satisfied and prices do not advance. In a short time the supply becomes greater than the demand, the prices begin to fall. Many expenses are fixed charges of which stoppage would only increase. The brother manufacturer is in the same condition. They become willing to try any form of combination. A meeting is held and they decide to take united action. Each factory is rated as being worth so much. Officers are chosen and the trust is formed. This is the genesis of the trust.

"Trusts are confined to no country, and are not dependent on fiscal regulation. Trusts are the products of human weakness, and this weakness is co-extensive with the race. They are not a source of serious danger. They are mere passing phases of unrest and transition; the more successful, the surer the off-shoots sprout. Every victory is a defeat. Every factory that the trust buys is the sure creation of another and so ad infinitum until the bubble bursts. The sugar firms have tried to get more for capital than capital yields in general. The factories and managers that can

produce to the best advantage close the less competent. Capital wisely managed yields its legitimate profit. When the growth of demand enables capital to receive an unusual profit, fresh capital is attracted. Given freedom of competition, and all combinations or trusts that attempt to exact from the consumer more than a legitimate return, write the charter of their own defeat. The proper epitaph^{hr} for these ephemeral creatures is:

'If I were so soon to be done for,

I wonder what I was begun for'

"There is no possibility of evading the great law, providing capital is free to embark in competing lines. There can be no permanent extortion above an average return from capital, nor monopoly." (29)

He further concludes that the irresistible tendency toward aggregation cannot be arrested or even impeded. "Consolidation is merely obeying the great law of aggregation. The public need not be alarmed because: (1) Few trusts have a monopoly; (2) Competition is never completely stifled; (3) Impossible for trusts to exact extortionate rates; (4) Monopolies carry the seed of failure and competition cannot be suppressed." (30)

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The question is also asked by Henry Wood, "Can trusts destroy competition or are there in the business world natural laws that will bind 'the strong man'". He answers this question by saying that "we must not condemn every organization without regard to its inherent character. We ought to examine any system on its

merits rather than on its popular abuses. Their magnitude is a question of expediency and economy and is not of ethical quality. Society could not exist were it not for these large economic units. There is much greater economy in the movement of one great wheel than in several small ones. If trusts are condemned they must be on some ground rather than magnitude.

"They have rendered services more cheaply and comfort has been enhanced. Combinations cannot rise superior to supply and demand; action and reaction world-wide competition and all natural forces, which though silent, are sovereign and continuous. There are penalties for violation of natural laws and they are sure because they are inherent.

"The power of great combinations to restrict production and to advance prices of products to a point above the normal standard, may temporarily prevail, but sooner or later the obstructions are overcome.

"Attempts to regulate prices and hours by statute are not only useless but harmful. Natural, elastic and self-regulative principles cannot be displaced by artificial unyielding legislation without causing a derangement. The true function of legislation is not in the compulsory making of new contracts, but in the enforcement of existing agreements voluntarily gone into."

The supposedly inherent weaknesses of the trust are
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 further analyzed by George P. Rich. He points out that many

believed that the inherent weaknesses of the trust organization were sufficient to insure the public, but that the politicians and legislators had rubbed this aside as so much rubbish and proceeded to attempt by statutory enactment what an early pope had tried by bull--to stay the operation of natural law. The failure of enforcement of the anti-trust laws and the increase of these combinations in the face of popular opposition answers how well the government has succeeded. The prediction which was rejected is receiving its verification in the development now taking place among great organizations of capitalist and industries."

The most effective of the corrective agents as Mr. Rich demonstrates is the unequal conditions brought about by the union of the weak establishments with the strong ones, and the certainty of competition. "The apparent success dazzled many and led to the formation of other combinations. This movement for consolidation began with the Civil War. The return of capital to normal led to over stimulation and possible production was in excess of possible consumption. Combinations were formed which were made up of both weak and strong establishments. They were loaded down with old factories and antiquated machinery and capitalized at three or four times their value. If these combinations were in full control of the market and were their products such that no substitute could be found for them, they might count on

success, but this was impossible; independent operations entered the field."

Mr. Rich illustrates these weaknesses in the lead trust, linseed oil trust and the copper trust.

"In case of the lead trust, in 1892, the trust had control of all the lead works in the country with the exception of two small establishments--one in Boston and one in Philadelphia, and even these were bound by iron-clad contracts. Large profits were possible, but capital was attracted to the field. As a result, new plants were started until there were works outside the trust equal to its out-put. The plants of the trust were capitalized for thirty million dollars and the independent plants equal in capital represented an investment of only two million dollars." (33)

Mr. Rich cites the linseed oil trust as analogous to the lead trust. In 1877, the trust controlled between sixty and seventy percent of the output of the product. The price of linseed oil was raised. In the report of the president in 1891, he said: "It is not considered advisable to publish a detailed statement of the affairs of the company, because the publicity of our last annual statement caused the building of new works and new competition."

Further, "that the trust mode of doing business as a means of getting large capital and realizing the economic consequence of intensive production may be a success, but as a means of

practicing extortion upon the public, it is doomed to failure. Natural laws are after all, stronger than the contrivances of man".

The futility of legislating against the trust is well expressed by the following: "The trusts flourish like the green-bay tree and multiply like the seeds of Abraham. When the vast aggregations of capital descend on legislators like Zeus upon Danae, they are irresistible. The average politician does not lay claim to super-human integrity; but, to do him justice, in the very moment of yielding, he cries out against the wickedness of the tempter. Satan may get him but as he is carried off, he will kick and denounce the methods of the evil ones. We much not begrudge our politicians the privileges of utilizing to the fullest extent the advantages to be derived from stentorian denunciations." (34)

Mr. Logan G. McPherson makes the following comments on the cause and effects of trusts. (35)

(1) "That specialization of function and co-ordination of similiar functions become more pronounced with the growth of population.

(2) "That a powerful factor in this industrialization is the force of competition.

(3) "This specialization and combination are of benefit to all individuals of the nation in that they bring the control of the processes of production to the men best fitted under whose direction great bodies of men are co-ordinated to the greatest

advantage and under whose direction the accumulation of great members of people can be used with profit to the investor and to the nation.

(4) "Industrial combinations have caused a differentiation in the ranks of the producers forming elements known as capital and labor. As a result labor organizations were formed which helped to attain and maintain that equitable relation, which constitutes industrial equilibrium."

Thus, he says--... "from every standpoint arguments go to prove that industrial combinations are the product of natural forces, ministering eventually to the highest good of the individual, and to the community as a whole. In domestic and international interest alike, the law makers should have one care, that in an effort to rid the tree of poisonous growth, they do not interfere with the life giving sap. The object of legal enactment should be the maintenance of justice between man and man without hampering beneficent activities, that will be driven into proper channels by the same forces that gave it existence."

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This theory is further advocated by Mr. Loyd Bryce.

In part, he says:

"The law of limitations runs against all combinations. Combinations cheapen unheard of luxuries and put luxuries of one generation in the hands of all. Not only luxuries are cheapened, but the average wages have risen sixty per cent since 1870,

at the same time the accumulations of wealth per head has been seventy-six per cent more than in the period from 1850 to 1870, which shows that the rise in wealth and increase in wages go hand in hand."

Mr. Bryce shows that at the present the public secures the benefits of competition to the fullest extent that economic conditions warrant, and that the effect of passing penal laws to enforce unrestrained competition would drive many out of business. Unrestricted competition would mean that the hands of the manufacturer would be practically tied. He could make no effort to counteract competition that might be ruining him because his profits were supposed to be incidental.

He concludes by saying that in the largest output is the largest and most stable profits. The concerns enjoying the best profits can afford to pay good wages, and it will in the long run, for it is a matter of policy to keep the working man satisfied, and the large concern is best able to maintain the policy.

"Trusts enter politics generally for self-protection. The more laws passed the more inducement for them to remain in politics.

"Consolidation of capital and empire spring from the same causes, and the political union enjoyed in the U.S. is based on the same principle. Combinations merely modify the hardships of the industrial system, and many industries are allowed to share

capital in a consolidated form.

"Legislation would have had the opposite effect to what it was intended. In short, these pools and contracts are but another form of co-operation which is the eventual development of all the industries which depends on large outputs. The principle behind the movement is---In union, there is strength, and this principle cannot be affected by hostile legislation."

Mr. Charles J. Bonaparte, attorney of Baltimore, ably
(37)
defends the trust. He regards the tendency toward combination as an inevitable feature of modern civilization from which no country can escape, and that ~~it~~ cannot be prevented except at the price of liberty and civilization.

Mr. Bonaparte says that "emphatically no legislative action in regulation or restraint of combinations, whether by Congress or by state legislature, is desirable. The attempt will be highly demoralizing to all concerned, the practical altogether nugatory."

Thus, we see that the chief defenders of this theory are found among the commercial classes and like-minded groups. Besides the above groups, this theory was also supported by the anarchists. Their attitude is very aptly expressed by Benjamin
(38)
Tucker. He begins by saying: "That the right to co-operate is unquestionable as the right to compete; that the right to compete involves the right to refrain from competing; that co-operation is often a method of competition; and that each is a

legitimate, orderly, non-invasive exercise of the individual will under the social law of equal liberty; and that any man or institution attempting to prohibit or restrict either by legislation or by any other form of invasive force, may be judged as an enemy to society and progress.

"It is per se an unassailable institution. The trust denies competition only by producing and selling more cheaply than those outside of the trust. All have a right to deny competition by competing.

"The trusts instead of growing out of competition have been made possible only by absence of competition; only legislation in the arbitrary limitations in law which created privileges and monopolies.

"The anarchists hold that monopolistic profit is due to that denial of liberty which takes the shape of patents, copyrights and tariff protection. Anarchism discountenances all direct attack on trusts; all interference with them and all anti-trust legislation.

"If they are not at the present baneful, it is because they are symptoms of a social disease originally caused and persistently aggravated by a regime of tyranny and quackery. Liberty is the remedy for every social evil."

Legislative interference is also viewed with alarm from the political science standpoint. This opinion is given by Mr. John W. Burgess, editor of Political Science Monthly. He says

in part:

"From the standpoint of the masses, combinations are viewed as some alien monster that has nothing in common with people and lives upon the sacrifices which it imposes upon them--some Juggernaut that mercilessly crushes the people to the earth under the wheels of his terrible chariot---some Moloch in whose firey embrace, men, women and children are ruthlessly consumed."

"From the political science point of view, a private business is a group of human beings usually belonging to the best class of citizens associated for the prosecution of some great enterprise, and endowed with certain privileges and obligations." Mr. Burgess states that modern political science favors the greatest possible limitation of governmental powers consistent with the sovereignty of the state; and favors keeping open for private enterprise the widest possible domain of business. "It absolutely demands that all institutions, through which the truth is discovered and ideal of civilization are brought to light shall be perfectly free from governmental action. Further, that political science is very suspicious of state socialism, and if the government assumes or controls any business previously pursued through private enterprise, the government shall be obliged to show: first, that it has the authority to do so under the existing political system; second, that the welfare of the people will be served in a higher degree by private supervision."

Thus, it is seen that the non-interference policy either in management or regulation was generally by the commercial and industrial classes. This was the paramount policy of both state and federal government before 1890.

The second group of people advocating unlimited competition held to the annihilation theory. This theory holds that big business combinations are not the inevitable results of industrial evolution, and that they are indefensible. The very magnitude of combinations was looked upon as being inimical to society. The remedy sought was to restore competition by breaking up the big combinations.

It must be kept in mind that the annihilationist who advocated government ownership, did this with the aim of breaking up big business organizations. Therefore, the plan of the agriculturist and laboring classes must not be confused with the socialist's plan of government ownership. The former were striving for the complete destruction of trusts, while the latter was looking forward to a time when there would be only one big trust, with the management in the hands of the government.

This theory was definitely announced as a policy in 1890 by the passage of the Sherman Anti-Trust Act.

The strongest defenders of the theory of annihilation came from the laboring and agriculturist classes. In order to make clear their defense and demands a few of the views of the

different outstanding labor organizations are included.

Mr. J.W.Hayes, Secretary and Treasurer of Order of
(39)
Knights of Labor, regards combinations as a social enemy. He maintains that the question goes beyond the trivial matter of production and prices, and rises to the higher plane of governmental policy which involves the question of human rights. Further, that "they are inimical to our popular form of government....and should be treated as armed invaders or armed revolutionists aspiring to dictatorial power. They are the enemy of society and should be destroyed as a common enemy.... Man is the slave of necessity, and he who controls the necessities has the power of a despot; and that the establishment of a trust transfers the citizens into a servile dependent upon the despotic will of the corporation, which is governed by mercenary greed and selfish desire.

"The fraud, corruption and bribery of legislators, the open defiance of executive authority, the corruption of courts, the legal assumption of rights, the struggle to compel many hours of labor and low rate of wages indicates the character of the trust. The trust will end by destroying itself as well as the government that gave it birth.

"The field is monopolized by combinations of wealth. The clerk must remain a clerk. His opportunity is further limited by being forced into competition with helpless women."

Mr. Hays concludes by saying that "the policy of trust is an aggressive invasion organized against the best interest of society, and destructive to free institutions; a breeder of treason against the government, involving the overthrow of our system, and the destruction of our liberties."

Mr. J.D. Chamberlain, ex-commissioner of Order of Knights of Labor, attempts to voice the opinion of labor on the trusts. In his opinion, the "handful of speculators and absorbers of labor's products are not the ones to rescue the people from economic ills... but rather the thirty millions of farmers who have remained closer to the foundation principles of the republic." He describes the conferences on trusts as a place where speakers discuss "at trusts", and daintily talk all around them, of classifying and placing them under control; a place where people philosophize on molecules and evolution of trade, and the benefits to be derived from stealing and murder and the plunder of a people, all of which are ineffectual as a penal statute in governing a cyclone. Mr. Chamberlain attempts to show that the trusts are all related and that the family of trusts own the nation, i.e., it has control of every line of industry, manufacturer, the higher courts, carrying trade, the channels of thought and pockets the products of the soil. "Money has been made the god and labor the slave."

Further, he portrayed the trusts as embodying all the evils that make a nation the pest house of humanity and as rapidly

changing the republic to a monarchy. "It was generated in greed and special privileges, animated by robbery, sanctioned by deception and fattened on the sweat and toil of honest industry. It was conceived in a desire to defraud and was born ^{of} illegitimate parents. To shield and defend a monopoly is to give aid and comfort to any enemy in time of public danger."

He concludes by stating that the so-called trust or monopoly today is a mutiny in society, an enemy of the nation, a conspiracy against civilization; and the good secured to us by the trust method is small, incidental and only for the legal monster. The evils are great, universal, national and loaded with decay which is fatal to a few people. They are made legal by statute for the sole purpose of stealing the products of labor's (40)

From the standpoint of the farmer, as discussed by Mr. S.H.Greeley, "money is a giant besides which law is a pigmy, and to attempt to control the present greed for wealth by law is like trying to make Niagara's waters run back and climb the precipice over which they now flow. They respect neither the matter nor the individual and have reached a point where they can no longer be tolerated except with great danger to our own institution". He suggests that we have not any trouble in conquering a foreign enemy, and asks why we should not do the same with domestic enemies even though they are magnificent in capital and water. Mr. Greely places the blame on the railroads, stating that

they have consummated the enslavement of a majority of the people.

"The relief offered is to protect the value of the farm products by preventing unnatural conditions which overcome the laws of supply and demand and depress values to the end that railroads may earn freight and elevators collect storage. Kill trusts and combinations by cutting the tap-root--railroad discrimination."
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Mr. Cyrus G. Luce, ex-governor of Michigan and a former farmer, attempts to explain the alarm of the farmer. He states that it is idle to claim, as some do, that these combinations, clothed with unlimited power would suddenly become so good, just and humane that they would mete out even-handed justice to all. Monopolies would result; the prices of articles which must be purchased would be forced down, and the price of products made for sale would be raised. Mr. Luce prophesies that if the trust reaches the height of its ambitions, the great army engaged in agricultural pursuits will be driven to desperation.

He then shows, that while the farmers themselves entertain decided opinion in relation to the central question, yet, because of their isolated condition and want of organization, they do not contribute toward molding public opinion in proportion to their numbers and magnitude of their contributions to society. "Hence, an earnest appeal must be made to all agencies that contribute so largely to forming public opinion for the enactment and

enforcement of just laws."

Mr. Luce concludes that the farmers do not believe that the trust has or will become so great in strength of power that it cannot be overthrown. Hence, they have no sympathy with the sentiments that the trust has come to stay and cannot
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be dislodged from power.

There was alarm not only among the laboring people, but among the religious bodies. The following excerpt from Reverent Dr. William Barry is included to illustrate this opposition.

"The Moloch of Monopoly is an amazing spectacle, where we see great multitudes plowing the fields, raising the harvest, digging the mines, smelting the ores, building great factories and filling them with machinery, weaving and fashioning all manners of beautiful and useful things by means of machinery that they have made, running the railroads, launching the ships, carrying the produce of their toil to the world's end and bringing thence in exchange what other multitudes have in like manner created. The banquet of civilization is spread and the company sit down. Are they the toilers of the land and sea whom we beheld so busy? Do these eat the fruits of their labor? No. They have withdrawn out of sight to their dog-kennels, otherwise called hired tenements, and to their festering scraps, too often raked out of the refuse, in the strength of which they are free to live to propagate and create fresh capital. Homeless, landless, and moneyless

is literally their condition. The monopolist bids them compete, not with him but with one another. That is the true law of supply and demand. Supply the number of those who work for wages or starve, and demand the least amount on which they can contrive. This is the system that confiscates for the few the land of the whole.

"It is not the monopolist ^{who} invents, or explores or adds to the world's resources. Give him, when he can claim it, the benefit of the idea, but do we not see for ourselves that the great benefactors of mankind have lived and died in poverty?" (43)

Agitation for abolishing the trust also manifested itself in the platforms of political parties. In the following pages, it will be seen that the Populist openly advocated annihilation of the trust, while the major parties did not take a definite stand until 1900. Then, for the first time the question became clearcut issue between the major parties. The position of the political parties can best be shown by the analysis of the platforms from 1888 to 1900.

As early as 1884, a party was formed known as the Ant-Monopolist Party. The platform of the party advocated the following:

(1) "That corporations, the creation of the law, should be controlled by the law.

(2) "That it is the duty of the government to immediately exercise its constitutional prerogative to regulate commerce among the states. The great instruments by which this commerce is carried

on are transportation, money and transmission of intelligence. They are now mercilessly controlled by giant monopolies, to the impoverishment of labor, the crushing out of healthful competition and the destruction of business security. We, therefore, hold it to be imperative and the immediate duty of Congress to pass all needful laws for the control of the great agents of commerce.

(3) "That these monopolies, which have exacted from enterprise such heavy tribute have inflicted countless wrongs upon the toiling millions of the United States, and no system of reform should commend itself to the support of the people which does not protect the man who earns his bread by the sweat of his face."⁽⁴⁴⁾

In 1888, the Prohibition party definitely denounced combinations of capital for controlling and increasing products for popular consumption. The Union Labor party in the same election harangued the Democratic and Republican parties for creating and perpetuating these monstrous evils and declared that the paramount question was the abolition of every monopoly and trust.

The United Labor party denounced the Democrats and Republicans as hopelessly and shamelessly corrupt by reason of their affiliation with monopolies and equally unworthy of the suffrage of those who do not live upon public plunder.

The Republican platform declared opposition to all combinations of capital, organized as trusts or otherwise to

control arbitrarily the condition of trade among the citizens; and recommended to Congress and state legislatures, such legislation as would prevent the execution of all schemes to oppress the people by undue charges on their supplies, or by unjust rates for the transportation of their products to market.

The Democratic platform condemned trusts and combinations as unduly enriching the few who combine, and robbing the body of citizens by depriving them of benefits of natural competition. (45)

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In the election of 1892, the Democratic platform stated that the trusts and combinations, which were designed to enable capital to secure more than its just share of the joint products of capital and labor, a natural consequence of the prohibitive taxes which prevent the free competition which is the life of honest trade, to be unlawful and contrary to public policy; and since the worst evils could be abated by law, they demanded the rigid enforcement of the laws made to prevent and control them, together with such further legislation in restraint of their abuses, as experience many show to be necessary.

The Republican party re-affirmed their opposition as stated in the platform of 1868, to all combinations of capital organized as trusts or otherwise and asked for such further legislation as might be required to render existing laws more effective.

The Prohibition platform declared that speculations in margins, the cornering of grain, money and products, and the manipulation of the market by speculators in the country and manipulation of the market and storage of the products necessary for the people's consumption, and the hoarding of such commodities

formation of trusts and pools and combinations for the arbitrary advancement of prices should be suppressed.

The National People's platform denounced the Republicans and Democrats for having "agreed to drown the outcries of a plundered people with the uproar of a sham battle over the tariff so that the capitalist, corporation, national bankers, rings and trusts and wattered stock might be lost sight of; that they propose to sacrifice our homes, lives and children on the altar of Mammon; to destroy the multitude in order to secure corruption funds from the millionaires." As a remedy it was proposed that the government own and manage all railroads and that all persons engaged in government service be placed under a rigid civil service restriction.

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In the election of 1896, the Democratic party demanded enlargement of the powers of the Interstate Commerce Commission and such restrictions as would protect the people from the robbery and oppression through the absorption of wealth by the few, the consolidation of our leading railroad systems and the formation of trusts and pools or other arteries of commerce.

The Republican platform did not emphasize the trust question but instead laid stress on the tariff issue.

The People's Party platform stated that while there was political independence, the financial and industrial independence was yet to be attained by restoring to the country the constitutional control and exercise of the functions necessary to a people's government, which functions had been basely surrendered

by public servants to corporate monopolies. Government ownership of railroads was advocated.

The Democratic party emphasized the money question and did not devote attention to the trust question.

In 1900, the question of trusts really became a clear
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out issue between the parties.

The Democratic party denounced private monopolies as indefensible and intolerable. They were said to destroy competition, control the prices of all the materials and of the finished products; thus, robbing both the producer and consumer. Also, that they lessen the employment of labor and arbitrarily fix the terms and conditions thereof and deprive individual energy and capital of their opportunity for betterment. Further, that they are the most efficient means yet designed for appropriating the fruits of industry to the benefits of the few at the expense of the many, and unless their insatiate greed was checked, it was predicted that all the wealth would be aggregated in a few hands and the Republic destroyed.

The Democrats then proceeded to denounce the Republican party as fostering and paltering with the trust evils and attempted to prove that they were the product of republican policies. The party pledged an increasing warfare in the nation, state and city against private monopoly in any form. Existing laws were to be enforced and more stringent laws were to be passed, providing for publicity as to the affairs of corporations engaged in interstate commerce, requiring all corporations to show, before doing

business outside the state of their origin; that they have no water in their stock and they have not attempted and are not attempting to monopolize any merchandise; and the whole constitutional power of Congress over interstate commerce be exercised by the enactment of comprehensive laws upon the subject of the trust.

The placing of products of the trust upon the free list was offered as a remedy to prevent monopoly under plea of protection.

They also denounced the Republican administration as insincere for not having attempted to prevent or curtail the absorbing power of trusts and illegal combinations or to enforce the anti-trust laws already on the statute books. The Dingley Tariff Law was denounced as a trust breeding measure skillfully devised to give the favors which they do not deserve and to place upon them many burdens which they should not bear.

The Republican party came out in 1900 with a reform platform. They recognized the necessity and prosperity of the honest cooperation of capital to meet new business conditions and especially to extend the rapidly increasing foreign trade, but condemned all conspiracies and combinations intended to restrain business, to create monopolies, to limit production or to control prices, and they favored such legislation as would effectively restrain and prevent all such abuses, protect and promote competition and secure the rights of producers, laborers and all those

engaged in industry or commerce.

The People's party platform in 1900 denounced the trust as the overshadowing evil of the age; the result and culmination and control of three great instruments of commerce- money, transportation, and transmission of information. The remedy offered for the trust evil was ownership and control assumed and exercised by the people. It was further suggested that all tariffs on goods controlled by the trust be abolished.

To cope with the trust evil, it was advocated that the people must control directly without the intervention of representatives, who might be controlled or influenced. Direct legislation was demanded, giving the people the law-making and veto power under the initiative and referendum.

The People's party (Middle of the Road) platform affirmed opposition to the trust, and denounced the contention between the old parties on the monopoly question as a sham battle and offered the principle of public ownership of public utilities as a solution.

The Silver Republican party platform stated that combinations, trusts and monopolies were contrived and arranged for the purpose of controlling the prices and quantity of articles supplied to the public and that they were unjust, unlawful and oppressive. Not only were these conspiracies denounced as the fixers of the prices of commodities in many cases, but the invader of every branch of state and national government with their polluting influence until society was actually imperiled. This platform demanded the most

stringent laws for their destruction; the most severe punishment of their promoters and maintainers, and the energetic enforcement of such laws by the courts.

Thus, we see that the general tendency of the Populist party was to advocate the annihilation of big business combinations, while the major parties were indefinite as to their position on the question before 1900. At that time the Democratic party definitely asserted that such combinations were indefensible and should be abolished by law, while the Republican party advocated control rather than the complete destruction of the combinations.

The second line of thought centered about the theory of governmental regulation as a solution for the problem. This theory held that industrial combinations are the inevitable consummation of an evolutionary industrial process, and that there are benefits to be derived as well as evils to combat. Those holding this theory maintain that the benefits should be retained to the people and the evils be restrained by the government. This theory is largely defended by the economist and socialists, and is recognized as the inevitable by the industrialist and the laboring classes of 1899.

The pioneer in this movement was Henry D. Lloyd. His profound influence justifies a brief account of his life and works.

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Mr. Lloyd was born in New York, May, 1847,. He was a graduate from Columbia University and later became a lecturer on political economy in New York schools. He studied law and

was admitted to the New York bar in 1869. He served as secretary for the American Free Trade League. Mr. Lloyd is the author of the following books: A Strike of Millionaires Against Miners, 1890; Wealth against the Commonwealth, 1894; Labor Court-ship, 1898; Country without Strikes, 1900, and also a number of essays.

Wealth Against Commonwealth was not published until 1894, but he had been busy writing since 1881. His first noted contribution, The Story of a Great Monopoly, was published in 1881. It was a presentation of the evils wrought by the railroads and growth of the Standard Oil Monopoly. Seven editions of the Atlantic Monthly in which it was published were exhausted before the demand ceased. As a supplement to the above material, Wealth Against Commonwealth was published. The book appeared with the memorable paragraph:

(50)

"A small number of men are obtaining the power to forbid any but themselves to supply the people with fire in nearly every form known to life and industry from matches to locomotion and electricity. They control our hard coal and most of our soft; stoves, furnaces, steam and hot water heaters, the governors on steam boilers and the boilers; gas and gas fixtures; natural gas and gas pipes; electric lighting and all the appurtenances. You cannot free yourself by changing from electricity to gas or from the gas of the city to the gas of the fields. If you fly from kerosene to candles, you are still under the ban."

For the time being, the practical effect of Mr. Lloyd's work was to concentrate public attention upon the growing power of the corporations, to reveal the huge evils of railroads, rebates and discrimination and to arouse a spirit of revolt which from that time forward never ceased to grow. Charles Edward Russell points out that Mr. Lloyd was the first, the most patient and conscientious of investigators. He had a great function in supplying facts and arguments to soldiers in the same cause that were not so well equipped. Mr. Lloyd's material was readily appropriated by the editorial writers. As the Standard Oil articles in the Atlantic Monthly became the armory of every person willing to fight for industrial freedom; so Wealth Against Commonwealth in later years became the source of information for able campaigners. Mr. Lloyd's greatest desire was that his country should be informed of existing conditions. Mr. Lloyd was in favor of governmental regulation.

The most extreme type of governmental regulation was advocated by the socialist. Lawrence Gronlund, editorial staff of New York Journal, expresses the view of the socialist as follows:

"Let us at the start understand that it is impossible to crush trusts. The politicians who propose that remedy are either supremely ignorant or down right demagogues. The trusts are not the outcome of prohibitive discrimination. They are economic necessities due to our concept of civilization. Trusts are not to any causal cause, not to wrong headedness, and not to vicious business principles. It is an irresistible tendency. To try to

crush trusts would be like the attempt by a dam to stop the Mississippi. The trust is a phenomenon at which to look fearlessly, and to utilize for the public welfare. They are not at all monsters, and we do not believe as yet, that they have seriously lowered wages or raised prices.

"The damages from the trust lie in two facts: When every considerable industry has come under one head what power will such a chief not have? What power especially will he have for mischief? When all owners virtually abdicate all their powers in favor of the manager, the capitalist holder will become useless."

The remedies suggested by Mr. Gronlund are: (1) "Look forward to the future public ownership and management of private enterprises, but let the change proceed slowly.

(2) "Protect labor against the trust by organization of Unions in a thorough democratic fashion, so that every workman will have a note that counts.

(3) "Education for the boys--training in specialization.

(4) "While public control of what is now strictly next centering the control of so-called public utilities, such as municipal ownership and management of water works, power works, etc., should immediately be entered upon."

A less radical and more conservative group were the economists. The ourstanding leaders of this group were Professor Gunton, Professor J.P.Weaver, Professor J.W.Jenks, and Professor Baker.

(53)

Professor Gunton points out the error in using the word "trust" as synonymous with the term "Monopoly", "Corporation", "Corner", "Conspiracy", etc. He defines monopoly as simply an exclusive control, while a trust is a combination of different firms or corporations under one management without dissolving the individuality of the firms. As most of these have dissolved and formed simple stock corporations, the problem resolves itself into one of corporations. Further, corporations are economic instruments for doing a specific kind of work, and have grown to their present proportion in accordance with the principle of economic utility.

Mr. Gunton concludes by saying:

- (1) "Trusts as a distinct organization have ceased to exist; hence, the question is one of corporations.
- (2) "That the public criticism is not against corporations per se but against monopoly.
- (3) "That monopoly rarely exists.
- (4) "That whatever actual or potential competition can operate, the benefits of invention and organization will be more equitably distributed through community by free action.
- (5) "That the corporations which received special privileges in the form of charters and franchises which shields them from the influence of economic competition may properly be subjected to some degree of supervision."

(54)

Mr. Baker views the death of competition in a great proportion of industries as inevitable. He maintains that it is beyond

question that the public interest can be served by the abolition of competition in many fields of industry provided the public can be protected from abuse of the trusts power. Mr. Baker holds that governmental regulation is likewise inevitable as the only possible protection of the people against industrial bondage. Moreover, that this regulation can best be applied not from the outside, as in universal practice, but from the inside through the representation of the public in the governing bodies of corporations which own and manage all the great monopolies of the present day. Further, that this regulation would involve not greater interference of the government with industrial affairs than is authorized by law, but would not offer an effective means of control.

Mr. Baker submits the following definite plan of control:

(1) "Every trust should be compelled to make absolutely public all its affairs.

(2) "An amendment to the Internal Revenue Act should be passed increasing largely the tax on every transfer of stock in an incorporated company.

(3) "The charter of every trust should be revoked and re-organization should be compelled under a new and stringent charter, closely defining its powers and privileges and its duties to the public.

(4) "There should be placed upon the Board of Directors of every corporation one or more men to represent the people and to see

that the affairs of the company are conducted in the public interest as well as in the interest of the stockholders."

Other plans of control were offered, the most constructive of which was the plan offered by Mr. Bryan. His plan is as follows:

"First, that the state has, or should have, the right to create whatever private corporations the people of state desire.

"Second, the state has, or should have, the right to impose such limitations upon an outside corporation as the people of the state may think necessary for their own protection. This would protect the right of the people of the state to say, first, what corporations they shall organize in their state, and second, what corporations they shall permit to come from other states to do business in their state.

"Third, that the federal government has, or should have, the right to impose such restrictions as congress may think necessary upon any corporation which does business outside of the state in which it is organized".

In other words, he would preserve to the people of the state all rights that they now have, and at the same time have congress exercise a concurrent remedy to supplement the state remedy.

(55)

Mr. Bryan asserts that the trust can be annihilated, but he confuses the term "trust" with the term "monopoly". His policy is not one of annihilation but one of control through

the issue of license by congress to a corporation, which desires to do business outside the state in which it is created. He suggests three conditions on which the license should be issued:

(1) "That the evidence should show that there is no water in the stock;

(2) "That the evidence should show that the corporation has not attempted to monopolize any branch of industry or any article of merchandise; and

(3) "Providing for that publicity which every body has spoken of and about which everybody agrees."

(56)

Mr. Bird, S. Cole, Comptroller of the City of New York, offers a plan embodying regulation. In part he says:

"Whatever the state creates it should either supervise or control. Every corporation should have a definite period of existence and the right of renewal should rest with the state. Business that requires secrecy of management should not be entitled to protection by the state. No corporation should be allowed to issue securities except for actual value; the accounts of every corporation should be kept open; and the government should exert all its power to protect capital and confine the use of it to legitimate business and the employment of labor. Other outstanding plans might be included, but regardless of the variety of plans, each seek some form of government control."

To summarize: Before 1890 the predominate policy of the government was that of non-interference with economic activities, but due to the alarm caused by such rapid strides in combinations,

public opinion was sufficient to force the government to announce an aggressive policy toward the big business organizations. There was a feeling of dissatisfaction with the policy, and agitation increased for further action. One group of people advocated the restoration of competition by destruction of the trust; the other advocated regulation by the government of big business combinations. The first line of thought was dominant from 1890 to 1894, and after that time advocacy for the governmental regulation became stronger. The results of this agitation will be seen in the Chicago Trust Conference.

The Chicago Trust Conference was held in Chicago, Illinois, on October 15, 1894. It was the first of a series of conferences of this kind, and its success was due to the fact that it was held at a time when the public mind was already prepared to receive the message of the conference. The conference was held in the Chicago Trust Building, and its results were as follows:

First, the conference was held in a building which was the property of the Chicago Trust Building Company, and its success was due to the fact that it was held at a time when the public mind was already prepared to receive the message of the conference. The conference was held in the Chicago Trust Building, and its results were as follows:

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CHAPTER III

Chicago Trust Conference

The Trust Conference held in Chicago September 13-16, 1899, under the auspices of the Civic Federation, was called for a purely educational purpose, i. e., to throw as much light as possible on the subject.

(57)

Mr. Frank P. Head, President of the Federation stated the object of calling the Conference as follows:

"The Federation had realized that the most talked of subject was designated as "trust", and on no other subject was there such wide spread ignorance, and in response to the crying need for education, an education which would show the broad distinction between various trade combinations and trusts, and to promote such, the conference was called."

Further, "the Conference was not intended to be a trust or an anti-trust conference, but a conference in search of truth and light. With this end in view the attendance of men of every shade of opinion on the subject was solicited. The program was arranged to have the subject discussed from every angle: (1) By those who regarded trusts and trade combinations as a standing menace to our prosperity and even to perpetuity of our system of government; (2) by those who felt that trade combinations and large aggregations of active capital are simply a natural evolution in the development of our industrial and commercial life, and that such aggregations are absolutely necessary to enable us

to compete with vast accumulations and experience of other nations; (3) and by those who believed in the value of combinations properly organized, but who recognized the reckless and excessive capitalization of many such combinations - a peril leading to wide-spread panic from such inflated stocks being absorbed by the small investors whose sayings might be lost." The topic was discussed from the viewpoint of the workmen and was an attempt to throw light upon the difference between the class of trusts which tend to monopolize and the industrial combinations which in many cases seem to be to the advantage of all. The trust was also considered from the standpoint of the effect on advance of prices, i.e., how much of their advance was due to combinations and how much due to the vastly increased demand. As a plan to obtain a clear and fair statement of the economical doctrines which were prevailing it was a complete success; every party was represented. States, financial organizations and universities, every important social group had some one present fully qualified to convey the values of the constituency which he represented, and was given an opportunity to express those views. It is true that every individual member had not the opportunity to state his particular shade of opinion; it would have been impossible to hear more than four hundred orators in three days; but no important economic interest was left unrepresented, and all the speakers were allowed to express their sentiments with perfect freedom. The practical

politician, the labor leader, the single taxer, professors of political economy, reformer, journalist, banker, clergyman, railroad man, farmers, congressmen, ex-governors, ex-supreme court judges, attorney generals, manufacturers and commercial dealers were all of one company.

Among the outstanding representatives were: Henry C. Adams, Statistician of Interstate Commerce; William Jennings Bryan, J.B. Connor, Chief of Bureau of Indian Statistics; M.M. Garland, Ex-President of Amalgamation Association of Iron and Steel Works, Samuel Gompers, President of American Federation of Labor, George P. Gunton, Publisher of Gunton's Magazine; J.W. Hayes, General Secretary of Knights of Labor, Byron W. Holt, New England Free Trade League; J.B. Clark, Columbia University; S.H. Greeley, National Grain Growers Association, Laurence Groland, Socialist; J.C. Hanley, National Farmers Alliance; J.W. Jenks, Professor of Political Economy, Cornell University; J. Sterling Norton, Ex-Secretary of Agriculture, Clem Studebaker, Manufacturer of South Bend, Indiana, etc., In short, the conference was the epitome of American people; democratic, no clan excluded, and none assuming to dictate or dominate.

(57)

The orators attracted more attention than the professional economists. Such is to be expected when the galleries are crowded with a multitude of eager listeners whose opinions may be already fixed and who are ready to applaud the speakers holding the same opinions as themselves, and uttering these opinions in forcible and impassioned oratory. But all undue manifestations of

partisanship were at once rebuked by Judge Williams Wirté Howe,
 (58)
 Chairman of the Conference. Both Hon. Bourke Cochran and Colonel
 William Jennings Bryan were received with great enthusiasm, and
 often the applause came from political opponents who admired the
 orator and gentleman, although differing from him in political and
 (59)
 economic tenets .

Perhaps, on account of this extreme impartiality, the
 results proved unsatisfactory to many persons who had expected
 definite conclusions from an assembly which comprised so many
 men of superior ability. It soon became evident, however, that a
 perfect fusion was impossible. Many delegates had been instructed
 by their constituencies or by the governor of the state to which
 they belonged, not to commit themselves to any line of policy and,
 moreover, the views were so varied and so divergent that it would
 have been very difficult to have arrived at harmonious conclusions.
 The conference was not a deliberative assembly, much less a legis-
 lative body, and the delegates did not feel themselves bound to
 pass resolutions which might possibly be considered as campaign
 (60)
 documents.

The problems before the conference were outlined with
 great clearness and impartiality by Professor W. Jenks of Cornell
 University. He reduced all the questions before the assembly to
 a few leading ones..

I. "Is it true that industrial conditions and monop-
 lies have abolished competition? Managers of the most important
 industrial combinations assert that they have much competition.

Some maintain that combinations do not abolish competition, but simply raise it to a higher plane. So long as there is no monopoly there is at least potential competition. How can an establishment which sells only a high percentage, say 75 or 90 per cent of the total products, secure the monopolistic gains?

2. "Are not the combinations of capital and the combinations of labor based on the same principle, namely, the natural right of men to unite their efforts in order to obtain a legitimate end by lawful means? If the answer be affirmative, than a law to restrain one class of organization should be held to restrain the other class.

3. "Is it true, as lately asserted, that "the Mother of all trusts is the custom's tariff law? Many industries, however, in which great combinations exist, have no protection of their products by tariff. Besides, managers of combinations which have been formed in protected industries assent that it has been the fierceness of home competition that has driven them into combination, and that, if the tariff has been in any sense the cause of the competition, it has been such only by developing the home industry to such an extent that fierce competition was unavoidable."

"Other combinations of great power have been formed in industries protected by patents. Would it be practicable for us to so amend our patent laws as to remove from them the element of monopoly while still securing to the investor, by royalty or otherwise a suitable reward for his inventive skill?"

"It has been frequently asserted that the success of many of the leading combinations of capital has been due to reduced rates granted by the railroads; but to what extent and to whom do railroads grant discrimination rates? And what further remedies can be found for such discrimination beyond that which now exists under the Interstate Commerce law? Here evident difficulties confront the student of interstate legislation. First, it would be unjust to prevent the railroads from discriminating between short hauls and long hauls, because short hauls often require the same expense on the part of the carrier as long ones, and hence, the companies seem justified in charging relatively more for short hauls than for long ones. Second, one of the chief items of expense in railroad transportation is the handling of freight; hence, other things being equal, it is fair to charge relatively more for freight that requires several handlings than for freight that remains in the same cars from the place of shipment to the terminus where it is delivered. Thirdly, when large amounts of freight are shipped at the same time, economies are made which would become impossible if the same weight or volume were divided into several lots and handed over to the company at different times; thus, the price of transportation cannot be the same.

"Therefore, if an equitable law should be framed to enforce perfect equality among the patrons of the road, it must amount to this: that the same price must be charged to all for equal distances under precisely the same economic conditions.

4. "Managers of great capitalistic organizations usually assert that they have been driven to combine through the fierceness of competition; that capital is really on the defensive, that it is only through the power that comes through a large aggregation of capital that a fair profit is possible and that we are able to meet foreign competition in foreign trade. How far are these assertions true?"

5. "Over capitalization."

Most of the new combinations have issued large amounts of stock, common and preferred, as well as of bonds. How much of this capital is represented in plant at a fair valuation? How much is 'water'? Should a fair valuation be based on the cost of the plant or on its earning capacity? Are the interests of the stockholders and the interest of the consumers the same under present industrial conditions?

6. "The sixth question refers to the effects of combination on prices and wages. Does combination eliminate middlemen, and if it does, is there any sufficient compensation for their losses? Will it be possible in a comparatively short time for the persons who are thus ruined, as well as for the laborers driven out of employment by the combination, to secure employment elsewhere through the added demand that may come merely from the saving of cost and of labor?"

7. "If the state needs to interfere in this modern industrial movement, what form of legislation is the wisest? Should it be destructive, and attempt to prevent combination, or should it be regulative, permitting combinations freely, but attempting to

control them so that evils to the public may be avoided? How far will legislation prove effective either to regulate or destroy? How far must such legislation be national; how far must it be left to the several states?"

The professor concludes as follows: "There are other problems suggested by the industrial combination. I have mentioned the most important ones to which my attention has been called. It is hoped that wise and conservative, though bold, action may in no long time solve some of them".

It would be impossible to examine in detail the answers which other speakers gave to the problems proposed by the Cornell Professor. Therefore, the attempt will be made to give briefly the principal arguments advanced either for or against the trust, in order to show in a general way the trend of thought.

"But what is a trust? Let us not be terrified by the mere word 'Trust' or by the assertions that it is an 'Octophs,' 'a hydra-headed monster'. Such are the terribly and incomprehensible noises of which Mr. Bourke Cochran complained in his final remarks." Some say that trusts have long ceased to exist, others that trusts are more grasping than ever. "If the monster has survived the Anti-trust laws, let us stare it boldly in the face". In one recent work we find the following definition: "Trusts, are combinations by which the property of several companies, individual manufacturers or retail dealers is deeded to one or several trustees who need not be the owners of any part of the property thus entrusted to them. The members of the association received

in exchange stock certificates which warrant to them a pro rata share in profits of the combination."

Thus described the monster was not so terrifying, but had a questionable shape. "The legal owner of the property is different from the real owner; he can increase or diminish the production at will, open and close stores just as suits the interest of the corporation, get rid of competitors by underselling them, for local losses are to him of little consequences. These extensive powers lead to abuses and monopolies in restraint of trade." (63) It was also objected that partnership and other combinations of capital may lead to similar abuses of corporate wealth. The word monopoly must also be defined. As defined by the economist, it is use of capital or of privilege by which competitors are driven from the field, and by which the person or persons who hold monopolistic powers are able to drive all other competitors from the field and remain practically the only manufacturer or merchant. Throughout the conference, it appeared that the words "trusts," "monopoly", "combinations" were used loosely and in order to avoid equivocations the above definitions are attached.

Hence, when the speaker seemed to condemn all possible trusts we will assume that they wished to denounce the possible or real abuses of the power which is conferred by the condensation of capital; and when others complain of the breaches of the valid contract, or of the undue exactions of some of the societies of the working men, we take it that they do not mean to object to labor organizations but to possible abuses of the corporate energy of combined labor.

What seems to be wanted is not destruction but regulation, and regulation which must be carried on at the least expense of individual freedom compatible with social order.

With previous explanation it will be possible to examine some arguments in favor of the trust, which use large amounts of capital, and some of the accusations which were used against them urged by those who feared abuses. (64)

In the Conference one of the ablest defenders of the trust was Professor George Gunton, President of the Gunton Institute, New York. His arguments were in part as follows: (65)

"The trust question is only a ~~new~~ phase of an old problem, the problem of free industrial enterprise.... Every improvement since Wyatt's Spinning frame and Hargrave's Spinning Jenney has had to fight its way against popular prejudices of the time. The hand-loom weavers marched throughout England and broke the power looms."

After drawing attention to the similarity of the arguments employed by those who, in the past, objected to the introduction of new and improved machinery, and of the objections urged now against trusts by those who would suppress all combinations of capital, Professor Gunton regrets that the agitation should have assumed a political form. "Men of National reputation are asking the people to reverse the policy of industrial freedom and return to the doctrine of arbitrary paternalism; specifically, to suppress large corporations. Are the American people ready for such a step?

There is only one point of view from which this subject can be considered properly- the interest of the public." The public here means the citizens taken distributively; while the people would mean the same citizens in their corporate capacity. The Professor expresses in the most felicitous manner the nature and genesis of a trust. To do justice to the theme of Professor Gunton, it will be necessary to include the following quotations:

"It must be remembered, first of all, that the trust be it good or bad is only an experiment in industrial organization, which the progress of the last fifty years has evolved. Under the primitive hand-labor method, the competing unit was the individual. With the development of the factory, the individual was superseded by the partnership, and later partnerships were superseded by the corporation.

"Now, the trust was one of the experiments in the evolution of the group units. Numerous forms of organization and association were tried but these were uneconomic and failed. The trusts proved to be bona fide producers.

"The difference between the trusts and the ordinary corporations was not economic, but legal. The trusts are a formal merging of a number of corporations or firms under one management. There has been few bona fide trusts. They have been disbanded and converted into simple corporations.

"In reality, then, what we have are simply corporations. The whole question is, what is the influence of large corporations upon public welfare?"

Professor Gunton proves conclusively that our industrial expansion has kept pace with the development of corporate production. He takes his data and figures from the senate report on wholesale prices and wages. He does not hesitate to hold up as examples of corporate success the companies that have been most abused by anti-trust speakers, like the Carnegie Iron and Steel Company, the American Sugar Refinery Company and the Standard Oil Company. He speaks as follows:

"That company furnishes an unlimited cash market for every barrel of petroleum that it produces in this country. Moreover, it gives employment to 35000 American laborers, pays \$100,000 a day in wages and exports, in competition with Russia, into Europe and Asia nearly 1,000,000,000 gallons of oil a year, bringing about \$60,000,000 in gold into the country. Here is an industry, all told, which furnishes employment directly or indirectly to about 45,000 American laborers, paying about \$125,000 a day in wages, bringing a balance of \$60,000,000 of gold a year into the country, all of which would be lost to the country but for the economic energy and superiority of the Standard Oil Company".

(66)

Professor Kinley of the University of Illinois, presented a report in which is produced another class of economic facts carefully gathered by the Civic Federation of Chicago, which throws a different light upon the evolution of combined capital. The most important part of the report is given in full:

Questions were sent to wholesale dealers, commercial travelers, railroads, combinations, labor organizations, contractors, economists, financiers, public men, etc.

"According to these replies the following articles cannot be bought outside the trust: Anthracite coal, bagging, grass, glucose, kerosene, liquors, raisins, roofing, ammunition, stoves, sardines, starch, snuff, solder, scythe snaths, tins plate, tinware tobacco, white lead, lumber, wooden wares and yeast cakes.

"In answer to the question what effect combinations have on the distribution, one hundred and ten say it is injurious because it decreases their business and profits and tends to eliminate them and forty-nine wholesale dealers think they have been benefited by the formation of combinations.

"In answer to the question what effect combinations have on the consumer, one hundred and fifty think consumers are injured while only twenty-four think they are benefited and forty-one think there is no difference.

"The items of information about prices aggregate five hundred and six. Four hundred and fifty two were to the effect that prices rose after combinations were made; twenty-four that they fell; fifteen that there was no change, and fifteen that they were fluctuating; two hundred and ten did not specifically assign a cause; one hundred and eighty nine assign trusts as the cause of the change, and forty assign other causes, usually increased demand, rise of raw materials, or the tariff."

These facts lead us to believe that trusts, after all, are not quiet as innocent and harmless as their defenders represent them.

As equally edifying as this information is the history of the tinplate industry as traced by Mr. Byron W. Holt. The fact is that man is materially ambitious and greedy, and that when he has the power of fleecing his fellow men, he often yields to the temptation, and if law does not interfere, he succeeds in accomplishing his purpose.

Besides the economist's information, valuable material may be had by appealing to the orators. The conference possessed among its members a large number of very fine speakers; but the interest centered on two men, Hon. William Bourke Cochrane and Colonel William Jennings Bryan. Abstract from the eloquence give some information.
(67)

In the conference, both orators evinced extra-ordinary powers; both could by turn descend to homely illustrations and rise to the highest flights of oratory. But where did they agree or disagree? What remedies were proposed by either of them?
(68)

Both agreed on some points. Both agreed that combinations of capital could be highly useful, but could also do much harm but while the New York orator held that the trouble was merely accidental, and due only to mismanagement, Colonel Bryan asserted that the evils were the natural outgrowth of large accumulations of

capital, whenever such accumulations were not sufficiently controlled by law.

Both admitted that publicity was indispensable to prevent such abuses; but while Mr. Cochran thought that publicity was sufficient without the addition of troublesome legal enactments, Mr. Bryan thought that the law was necessary to keep within the bounds of justice the power of the trusts. As has been seen, he advocated that the combined force of the national and state law must be invoked.

In order to show the necessity of resorting to great power to withstand corporate strength he drew a parallel between God-made man, i. e., the individual, and the man-made man, or the corporation. (1) "The former is weak and nearly on par with his fellowmen, the latter is a giant which can grow in strength and wealth beyond calculation. (2) When God made man, he placed a limit to his existence, so that, if he were a bad man, he could do no harm long; but when we made our man-made man, we raised the limit of his age. (3) When God made man, he breathed into him a soul, and warned him that in the next world he would be held accountable for his deeds done in the flesh; but when we made our man-made man, we did not give him a soul and if he can avoid punishment in this world he need not worry about the hereafter."

Both admit that privileges granted by the Government for special rates or rebates granted to some individuals or corporations, place other shippers at a disadvantage, and violate

justice; but Mr. Cochran treats it as a hypothetical case, which rests on often repeated assertions, which the orator is unwilling to accept. Mr. Bryan accepts them as facts.

Over capitalization seems unimportant to Mr. Cochran as long as the accounts are open to every stockholder. Mr. Bryan objects to it even when publicity is granted, on the ground that the evident result is to make the public pay for water.

Both agree in condemning swindle and monopoly. Both desire to encourage competition. To the objection that corporations crush it, Mr. Cochran replies that the corporation itself is the result of competition.

The remedies suggested by the two antagonists were: Mr. Bryan suggested a license plan as has been previously explained, while Mr. Cochran suggested publicity for corporate prohibition under penalty for special favors, right of action against any corporation whose services are suspended, except that an absolute defense proved that it was at all times ready to discuss with its employess questions at issue between them. (69)

The contributions made by the representatives of the farmer and laboring classes are significant in interpreting the predominate thought of the conference. Excerpts from some of these speeches will be included: Mr. Gompers, President of the American Federation of Labor, spoke on the control of trusts. He said in part: (70)

"Organized labor looks with apprehension at the many panceas and remedies offered by theorists to curb the growth and development or destroy the combination of industry. We have seen those who know little of State craft and less of economics urge the adoption of laws to regulate interstate commerce, and laws to prevent combinations and trusts, and we have also seen that these measures when enacted, have been the very instruments employed to deprive labor of the benefits of organized effort while at the same time they have simply proved incentives to more subtly and surely to lubricate the wheel of capital's combinations.

"For our part, we are convinced that the state is not capable of preventing legitimate development or natural concentration of industry. All the propositions to do so which have come under our observations would, beyond doubt, react with greater force and injury upon the working people than upon the trust.

"We demand the evils to be controlled by the federal government, and encourage the federation of labor."

(70)

Mr. Aron Jones, Grand Master National Grange Patrons of Husbandry, gave the opinion of the organization of federal and state regulation of trusts. In brief, he said:

"The first step to be taken in remedial legislation is to pass a well considered anti-trust law by the congress of the United States clearly defining what practices on the part of any corporation would be against public policy, and cripple or injure individual enterprise, thrift, and the acquirement and use of the property of any citizen of the republic, and to supplement this law

by equally well-considered anti-trust laws by each of the state legislatures to reach and apply to such phase of the matter as could not be reached by the act of congress....These laws provide for government and state inspection of their business, of their books, agreements, receipts and expenditures; in short, a full and complete knowledge of the affairs of the corporation.

"If corporations are conducting legitimate business, no injury will be done them by inspection."

John M. Stall, Secretary of Farmers National Congress

(71) he says:

"The trust is a logical phenomenon in industrial development. Being such, it may be destroyed in form, but not in essence. It will doubtless be modified, in time superseded, and certainly while it exists it may and ought to be directed, controlled, and made an instrument, not for private gain alone, but for the public good. We have the machine. It is not for us to smash but to discover how best to use it.

"If the trust does not work good, it is not the fault of the thing per se ; that whichever increases the productivity of human labor gives men more to enjoy and more time for recreation." If it has wrought more harm than good, that is not the fault of the trust which can exist without being a monopoly, but because it has been mis-used.

"While the principle was early established that the government had the right to take cognizance of the instruments of

industry, increased experience and wisdom showed that efforts should be to direct rather than to suppress, and probably it has no more perfect flower than the law that grew out of the "Grange cases", which demonstrated that the strongest corporations are the servants of the state and subject to its control. The same application must be made to the trust.

"Certainly, we should lose no time in taking control of the trusts, which up to this time, have been the curse to the American People. It is imperative that this regulation come through the arm of the law."

The above excerpts seem to indicate the recognition of the inevitability of the trust. The early opposition to the trust both as a business organization and as a monopoly came chiefly from the laboring and agriculturist classes. Their particular viewpoint, as expressed in the Conference, is significant from two standpoints: (1) It indicated that these classes had come to realize the trust as permanent, and that it must be controlled rather than annihilated as previously advocated, or

(2) That they had been confused on terms in the beginning as trusts and monopolies.

It is safe to conclude, however, that in 1899, these opposition groups were opposing the abuses rather than big business organizations per se.

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Dr. E. Benjamin Andrews, formerly of Brown University, himself a distinguished political economist, sums up the significance

of the Conference as follows:

"The fact of this conference, its personnel, its views and its results are all worthy of notice. The very fact of so large and so representative a gathering to discuss a social question is the sign of the time. It means that the public is in earnest thought about the trust problem. Perhaps there was no need of this proof; perhaps all were aware of the fact before; yet, no one who attended a session of the conference and saw its comprehensive character or felt the spirit of its deli^{ib}beration, could help being impressed with the special and emphatic kind of evidence that the trust question is now most deeply engaging the public mind. The fact of the Conference means, further, that people are no longer depending alone on legislative discussion, political platforms or news papers to make opinion touching questions of high moment. They prefer to convene and confer in an independent way, each speaker responsible to himself alone and at liberty to pour out his last and best ideas. This conference forms precedents for future free-lance conventions on many other subjects.

"As to the views of the Conference, those if any, in which all the delegates agreed are certainly very few and small. Perhaps all would have joined in certain generalities, as----

(1) "That the vast amassing of capital and industry under central control characteristic of our time, form an interesting phenomenon, richly deserving study.

(2) "That they are a possible menace to our economic, social and political welfare, and ought to be investigated on that account.

(3) "That they are stirring the public mind, at any rate, and will be dealt with, and would better be dealt with outside politics."

"Upon specific tenets about trusts, however, the conference presented the wildest variety of opinions. Among those who had reflected upon the subject, one could trace more or less roughly the crystallization of the following creeds:

(1) "The trusts are a natural evolution of the economic forces now in play, and will therefore, be found to be, not only permanent in spite of attack, but good and beneficial as well, whatever to the contrary may seem to be the case. This was in essence Mr. Gunton's plea.

(2) "That trusts are mainly the product of vicious legislation giving special privileges to powerful corporation; and are not the product of economic law; and can be and ought to be put down by the law. This idea lay at the base of Mr. Bryan's address. Byron Holt elaborated the thought as it relates to protective tariffs and free trade.

(3) "The view of most of the political economists in the conference--who, it may be said contributed the bulk of the seasoned thinking--was that trusts are mainly the result of economic evolution, so that all talk of suppressing them is

futile; that they may become very deleterious notwithstanding this; raising the effective cost of goods to the consumer; erecting and intensifying class distinction; retarding industrial invention and vitiating political life; and that therefore, they must be carefully watched and studied to see what regulation of them is necessary, and then checked and snubbed by legislation to keep them the servants of the people and not let them become their oppressor. Mr. Bryan's best not related to this point. Having contrasted the God-made man with the man-made man, he demanded that the law which created the latter, retain control and that the man-made man must be admonished every day of his life. "Remember now thy creator in the days of thy youth".

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Honorable William Wirt Howe, of New Orleans who presided over the Chicago Conference, made a brief but very compact statement as to the admission and concessions made by the conference which form a bases for some conclusion. They are as follows:

(1) "Combinations and conspiracies in the form of trusts or otherwise in restraint of trade or manufacture, which by the concensus of judicial opinion are unlawful; should be declared so by the legislation with suitable sanction and, if possible, by a statute uniform in all jurisdictions; and such a statute should be thoroughly enforced.

(2) "That the organization of trading and industrial corporations, whether under general or special laws, be permitted

only under a system of careful governmental control, also uniform if possible in all jurisdictions.

(3) "The objects of the corporations should be confined within limits definite and certain. The issue of stocks and bonds should be guarded with great strictness. If mortgage bonds seem to be required, they should be allowed only for a moderate fraction of the true cash value of the property that secures them. The issue of stocks should be allowed only either for the money or for the property actually received by the company and dollar for dollar, so that there can be no 'watering' of stocks.

(4) "And finally, there should be a thorough system of reports and governmental inspection, especially as to the issue of stocks and bonds. The fact must be recognized that trading and industrial combinations are needed to organize the activities of our country and that they are not to be destroyed, but controlled as we control steam and electricity, which are also dangerous if not carefully managed, but of wonderful usefulness if rightly harnessed to the car of progress."

To summarize: The Chicago Trust Conference is significant from three standpoints:

(1) The conference contributed enlightenment on both sides of the subject in the brief, terse analysis of the problem as presented by Mr. Jeremiah Jenks, Professor Gunton, Mr. J.B. Clark, Mr. McKinley, etc., who for the most part gave new matter rarely uttered save to a university audience.

(2) A close analysis of the speeches of the former opposing groups indicate that the trusts are accepted more or less as inevitable in the industrial process. There is no consensus of opinion as to methods of handling the problem; however, destruction is no longer advocated as a practical plan, but rather some form of governmental regulation.

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