

The Economic Club of New York

First Dinner of the Season 1912-1913
6th Year

The Regulation of Competition Versus
The Regulation of Monopoly

Friday Evening, November 1, 1912

Table of Contents

First Speaker

Mr. Louis Dembitz Brandeis Attorney from Boston	5
--	---

Second Speaker

Dr. Charles R. Van Hise Chairman of New York Board of Arbitration President of University of Wisconsin	6
--	---

Third Speaker

Dr. Talcott Williams Dean of the School of Journalism at Columbia University Former Editor of the Philadelphia Press	23
--	----

Introduction

James Speyer, Chairman

Ladies and Gentlemen: Before we begin the regular business of the evening, I want to ask you all to pause to perform a solemn duty. I know you will all agree with what I am going to say. Mr. Sherman, the Vice President of the United States, has suddenly been taken away. The news of his death has come to us as a great shock, but his physician and intimate friends have known for months the state of his health, and he himself knew that he was not a well man. Nevertheless, when his party asked him to have his name put on the presidential ticket with Mr. Taft, he ignored all personal consideration, and he stated to his friends that if Mr. Taft and his party wanted him, he would have his name go on. This, ladies and gentlemen, was characteristic of the man. He was lowly; he did his duty as he saw it; he was a faithful servant of the American people. Ladies and gentlemen, out of respect to the late Vice President of the United States, I ask you all to rise in your seats.

(The audience rose)

(Further remarks by the Chairman)

Members of the Economic Club: Those of you that know me do not expect me to talk about a difficult subject which very much abler speakers are going to discuss tonight; but I feel I must thank my fellow members for having elected me for their president this year. I assure you that I appreciate the honor very much indeed, and I am going to try and follow my genial predecessor,

Mr. Milburn, as well as I can. (Applause) I want to say that in order to secure my nomination and election as president, I have had to make no pledges, promises, of any kind, as to the office which it is my privilege as president to fill; therefore, as will be seen from your menu card, I have not changed a single member of the existing committees. Those gentlemen have done their share of the work, and, especially, Mr. Ely has done more than his share of the work. (Applause) We are all indebted to them and particularly to him.

I want to say, however, that the Executive Committee feels that this year some changes should be made, whether I am president or not, so that other members of the Club may have a chance to take a more active part in the direction of the affairs of the Club. As you know, our Club is now in its 6th year, and has been extremely successful. The limit of membership, 1200, has been reached, and there is a waiting list. Ours was the second club. The first one started in Boston, and there are now about 14 of such organizations all over the country, but ours is the biggest and the most important one.

I want to say very low-toned to you that we have a surplus, but I don't want to say how much it is, (Laughter) for fear that one or all political parties may want a campaign contribution.

(Laughter) Our constitution says that the object of the Club shall be to aid in the creation and expression of enlightened public opinion on the important economic and social questions of the day. And this constitution is also our platform, which is more than any of the political parties can say at the present time. (Laughter)

Your Committee on Meetings will continue to select interesting subjects of national importance for discussion, so that our Club will continue to lead, rather than follow, other similar organization. Suggestions and advice from members are not only welcomed, but desired by your committee. To receive proper attention they should be addressed in writing to the secretary of the Club. You will, as heretofore hear both--or I suppose I better say all three sides of the question, with that love of fair play which is so characteristic of the American people.

One of the most difficult problems your “committee on seating,” which is Mr. Ely, has to face is this, --how to give the entire membership front seats at all the meetings of the Club. This problem, Mr. Ely tells me, is further complicated by the fact that there appears to be an alarming increase in deafness among our members. (Laughter) There are a great many who wish special consideration in being seated in front, on account of defective hearing. (Laughter) this affliction seems to be steadily on the increase, whilst we can’t find any larger hall, or make the front row any longer.

But seriously, gentlemen, the secretary wishes me to state that he is trying his very best to give each member in turn a seat in the front, or in the center part of the room. He hopes that with this systematic and fair arrangement, everyone will be satisfied in turn.

I would like to say one word about the length of our meetings. We realize that it is difficult for a speaker, interested in his subject, to keep within his allotted time. On the other hand, the presiding officer dislikes exceedingly to interrupt. Nevertheless, I wish to give fair warning now to the distinguished gentlemen present tonight, and to all future speakers, that I shall hold them strictly to their time limit. We will arrange our dinners and meetings so that the Club may adjourn not later than 11 o'clock, and that program will be carried out. I want to say to the ladies in the gallery, who show such a keen interest in the regulation of competition, --or is it the regulation of monopoly?--if the wives of any of the Club members are present, I wish to say to each of them that if her husband comes home very much after 11 o'clock on the nights of the Club meetings, don't you believe him if he says he was kept here. (Laughter)

Now, ladies and gentlemen, this is our 21st dinner, and this large and very representative gathering of over 900, on a rainy day, and a few days before election, to hear the serious subject which is to be seriously discussed tonight, is certainly in itself an encouraging and very characteristic sign of our epoch. It proves that the leasing and busy men of New York are not too busy to give time and thought, after their day's work is done, to their duties as citizens. We here in New York realize just as much as Americans in the past, the importance of forming our own individual opinions in regard to these economic questions, which are of such vital importance to the welfare of the whole nation.

I am fortunate in being allowed to introduce as the first speaker tonight one of the leading lawyers of Boston, who has given the subject which we are to discuss a great deal of thought. Mr. Brandeis has been called “The People’s Advocate,” because on many occasions he has stood as a legal champion of what seemed to him the people’s cause in some of the most conspicuous litigations involving public questions. I am told that Mr. Brandeis and Governor Wilson think alike in many ways on the trust question. Mr. Brandeis was one of the first to call attention to more scientific business management, and I am sure he will be himself scientific, as well as efficient, in presenting his views. Mr. Brandeis. (Applause)

First Speaker

Louis Dembitz Brandeis

Attorney from Boston

NOTE: SPEECH NOT IN TRANSCRIPT

MR. SPEYER: Ladies and Gentlemen: After listening to the very interesting address of Dr. Brandeis from Boston, it seems hard to recall the time when we here in New York, and in the east generally, looked upon suggestions as to legislation that came to us from the west with astonishment and distrust. But happily this has changed during recent years. We here realize now that people out there are facing the same problems that are before us, and perhaps they realized them before us and are trying to solve them honestly, and perhaps with a little more courage than

we have shown in the east. We understand now that the men out west, that proposed these new measures, are just as patriotic and good Americans as we are here. No state has been more active and aggressive,--or shall I say progressive?--in attacking these new problems than has been the great state of Wisconsin, and in the front rank of these states and of these fighters have been men connected with the university of Wisconsin. They have furnished correct information, given important advice, drafted new laws on many subjects, under the leadership of their President, Dr. Van Hise. His recent book "Concentration and Control," has won immediate recognition, and the views therein expressed have been incorporated in the Progressive Platform. We are glad that Dr. Van Hise, who not only writes books, but also takes an active part in the solution of practical problems, is spending some time in New York as chairman of the Boards of Arbitration to adjust the wages of Railway engineers; and we are particularly glad that Dr. Van Hise is with us this evening. (Applause)

Second Speaker

Charles R. Van Hise

Chairman of New York Board of Arbitration

President of University of Wisconsin

Ladies and Gentlemen: It is with great pleasure that I can say that with very much which Mr. Brandeis has said, I am in full accord. Indeed, with his fundamental proposition which he has presented to you, that there should not be monopoly in this country, I coincide fully. The

question before us, as here presented is, one of regulation of competition versus regulation of monopoly. So far as I know, Mr. Brandeis was the one who first phrased this idea. It was indeed a stroke of genius, in that it struck popular fancy, was accepted as an alternative, and if accepted on the only alternative before us, the people naturally turn to regulated competition. However, I wish to assert at the outset that there is no such alternative before us at the present time. There are many other solutions of this question than regulated competition or regulated monopoly, and the scientific mind demands not simply that two of the various possible solutions be considered, but that all possible solutions be considered, and the best one among them selected. (Applause)

In all of the discussion that has been presented this evening, magnitude and monopoly have been treated as synonymous terms. They are not synonymous terms. Monopoly has a well-defined meaning in law, as we know, and it is that meaning which should be assigned to this term in the discussion before an economic club. Magnitude there may be, and great magnitude, and there may not of necessity be monopoly. It has been assumed in the discussion which has been presented this evening, or tacitly, that all of the great concentrations of industry which have magnitude are monopolies. That is a thing to be proved, with regard to any one of them of which it is asserted. It is not to be assumed. If we can assume that all of the great concentrations of industry are monopolies, then there is a contradiction between the cases, -- the points,--which have been presented to you. It has been admitted, it has been agreed, that concentration up to a certain point is necessary in order to give efficiency. It would not be held by anyone, I imagine, that we should return to the old situation of 50 or 60 years ago, in which industry was financially

subdivided, in which there were not a large number of organizations of large size, but many minor organizations scattered all over the country. Do you expect--do any of you expect--we shall ever turn from the great flour mill to the crossroads grist mill? It is impossible. Therefore, there is some degree of concentration which is allowable. The question is what degree of concentration is allowable, is permissible, is advantageous, not only for the industry, but for the people at large. Hence it does not meet the question to assume that all of the concentrations of industry are monopoly. If we can make that basal assumption and put that as the foundation stone of our argument, it is easy to prove our case.

Monopoly has never been recognized in this country by common law, or by statute law; it never has been recognized in England by common law or by statute law. Combination and cooperation have been recognized by both. The distinction is fundamental, and nobody understands it better than Mr. Brandeis the lawyer.

In the middle ages there were very stringent laws against combinations and contracts in restraint of trade in England, both statute law and common law. But Parliament 50 or 60 years ago wiped out those statutes against all sorts of combinations and contracts, provided they were not monopoly contrary to public policy, or immoral, and, of course, immoral refers to those practices which have been mentioned as just that by Mr. Brandeis, and to which we shall all agree.

Also, in this country, statute law was very strict against combinations and contracts in restraint of trade, and laws were passed in various states along the same lines as statute laws. But in this country also there was a revision of the law, both statute and common, until cooperation was permitted, cooperation in many lines, cooperation in regulating territory, cooperation in limiting output, cooperation even to the extent of prices; provided always that as a result of that cooperation the market was not controlled; that the contracts were not immoral; that they were not general; that they were not contrary to public policy.

That is the evolution through which law went in this country and in England, and then there came the Sherman Act of 1890, and immediately the wheels were turned back to the laws of the middle ages, and all contracts and combinations in restraint of trade, even if limited in extent, confined in time, were prohibited, and the necessity of legislation which followed as a result of that led to similar statutes being passed in more than 30 states. What were the results of these statutes? When they were originally passed there were two sections of the Sherman Act, one of which prohibited monopoly, and the other of which prohibited contracts and combinations in restraint of trade. When the question came up to the Supreme Court, it was for the first time ascertained that those two sections were to be read together. Why were they read together? Well, of course, I don't know; but the reasonable conclusion is that the investigation of the Supreme Court led them to the conclusion that this section, taken by itself, which everybody up to that time supposed should be taken by itself, prohibiting all contracts and combinations in restraint of trade, would create an impossible situation, and therefore they coupled the two

sections together and put in the law the word “reasonable,” and so started the 2nd cycle of evolution of the common law. (Applause) One cycle of evolution in regard to that matter had been sufficient in all of the countries; had been sufficient in Germany, had been sufficient in England; and we in America are the only modern, civilized nation which must go through this development. Therefore I say there is but one intermediate ground,--freedom of combination, prohibition of monopoly, permission to cooperate, and regulation of cooperation. (Applause) No such alternative confronts us as is proposed in that question. If you can assume that as the basis for your argument, the conclusion is easy. We must not have monopoly, and therefore we are driven to the other conclusion.

Now, we are confronted with a situation. These laws are upon the statute books. We have gone through these stages of development, and now it is proposed as sufficient solution to revise “reasonable” so that it shall mean prohibition of all contracts and combinations in restraint of trade, and so succeed in getting statute law back to where Mr. Sherman and his people thought they had gotten it 30 years ago.

This solution of our situation makes me think of the case of Harold Beaugardin, a philosopher, who lived up on Hudson Bay. Harold has one trap set in the same place for 20 years and has not yet caught a fox in it. He will not consider changing its location, as it is a good place, he reasons, and ought to catch a fox. (Laughter) It preys on his mind if he doesn't visit and trim this fox trap

regularly, and he has been known to get up and go out in the night to it when he was especially negligent.

Notwithstanding that the trap of the Sherman Act has never caught a fox for 20 years, and only smells in one or two places of a tail or leg, (Laughter) it is proposed to strengthen its “wings” and sharpen its “fangs,” with the expectation that it will be a solution of this great, fundamental problem which confronts us. (Applause)

In this case, of this Sherman Act, it has also been assumed that the only violators of it are the great combinations. This is the fundamental question which is very well in all discussions of this question. The Steel Trust, the Tobacco Trust, and a few others have been mentioned. But this principle of cooperation goes from the great industrial center, like that of New York, to the country crossroads. Does it make any difference here in New York whether you buy anthracite of one company or another? It doesn't make any difference in the country crossroads either. The price is just the same. His ice is just the same also, and it is true of any standard article. In short, this principle of cooperation has extended from the great industries to the great dealers, to the country crossroads, and they are cooperating in exactly the same way, and the principle is the same, and he one is violating the law just as much as the other is. (Applause) I am willing to stand for enforcement of the law when the law is enforced equally for all; but when somebody is picked out because he is in the front seat, or because it is popular to attack him and then to allow 99, or 999 to escape, I say that is a profoundly immoral situation. (Applause) and that is exactly

the situation in this country, and we all know it. The politician who will say “Break up these trusts, destroy them,” will say in the very same breath, “We must have cooperation among the farmers.” (Laughter)

Why, gentlemen, the cranberry growers of Cape Cod and New Jersey, and Wisconsin, sell 85% of their products through an agency down here in Wall Street. Have we heard of the Attorney-General prosecuting these farmers? (Laughter) There would be a great and shrillish cry if that were done, and there would be many lacking votes when it came to election.

We have here not a special situation which concerns a few men, but a general, irresistible impulse. It is all very well to say, “Has the time come when one, or two or three great, rich men shall stand up and defy the court?” but Edmund Burke said more than a century ago, “I know no way of drawing an indictment against a nation.” And that is the situation which we have in this matter. There is just as much of a copper-riveted combination between the three icemen in the country crossroads as there is in steel, and any solution, if it is a just solution, must be applied to steel, tobacco, and the icemen in the country crossroads alike. Just as certainly as the great combinations are violating the Sherman Act, as I have no doubt they are, so are all of those small aggregations of wealth in this state violating these 30 state statutes.

This is the problem that we have before us. Mr. Wickersham says that if we can only break up these combinations; if we can only divide them up into 6, 8 or 10 units, they will compete; this

tendency to competition is such an irresistible one that you can't stand in its way. But I tell you, gentlemen, the tendency for cooperation in this 20th Century is so much stronger than the tendency for competition, that you will never restore it. You will never restore it in the old sense. There will be competition between different classes of goods; there will be competition between the mail order house and the crossroads and the town; there will be competition in various ways, and I upon my part am just as anxious as can be, as Mr. Brandeis, to have regulation of competition just as much as possible; but as matter of fact, competition has broken down hopelessly in this country to adequately control prices, to adequately control politics, and we all know it. Why, gentlemen, it is no longer the theory of competition that it will control and regulate prices, but that it will regulate quality; that it will give us better quality and will give us better prices. That is a beautiful theory, just like Heaven. (Laughter) but it has never happened in this world, and will never happen. We have recognized it in regard to quality, absolutely recognized it by the establishment of the pure food laws. Why should we have pure food laws if competition will give us quality? We found that competition will not give us quality, and we found that we could not afford to allow fraudulent articles to be sold. There was a remedy in the courts. If I am sold a thing as pure strained honey, that has been wholly innocent of having any relations whatever with a bee, (Laughter) I have a remedy in law; I have been fraudulently dealt with. Why don't I take my case in court? Why, you know why you don't take your case in court. The lie is so small that it is impossible for the individual to get the remedy, and the result has been that, recognizing that competition was wholly inadequate in this regard, we passed laws and created an administrative commission upon whom we imposed the duty of protecting the public;

and when we imposed that duty upon the administrative commission, and confessed that competition would not regulate quality, then we succeeded in getting pure food, or a reasonable proportion of pure food, at least, (Laughter) and never until then.

Precisely the same thing would be true of clothing. We sell shoddy as linen now. Why? Because it is unlawful, fraud, unlawful, and I can get redress in court under the theory of the law; but of course I never do. But if we had an administrative commission whose duty it was not only to examine food, but to examine clothes, and we had their agents going out all through the states, shoddy would not be sold as linen very long because the penalty would be too great.

Now, why is it that competition has broken down? It has broken down because of the simply enormous advantages which come with cooperation. One of these has been mentioned,--the economic advantages of magnitude. Now, in this regard there is no difference between Mr. Brandeis and myself as to a certain magnitude. The question is how much. He will assert that a great many of these organizations have exceeded the magnitude which gives economic efficiency. I can assert upon the other side that very few of them have gone beyond the point which will give economic efficiency. Neither one of us can prove our case. We haven't the facts in the matter. (Laughter and Applause) The Commissioner of Corporations has investigated just one case of this kind. I have looked through all of the books, and I had experts, etc. look over all the literature of all languages, to find if there were investigations with regard to industries which did give us facts upon which to make a judgment regarding efficiency and magnitude, and the

only investigation which I have been able to find in literature was that of Herbert Knox Smith in regard to the steel industry. Now one investigation has been made, and Mr. Smith reached the conclusion that the large concentrations in the manufacture of steel are very much more efficient than the small ones, and he gives the quantity, or amount,--how much per ton. The 5 great combinations,--United States Steel, Cambria, Pennsylvania, Jones-Laughlin,--the other one doesn't occur to me, but it doesn't make any difference, five of them, as being the five which are efficient, buy from \$2.50 a ton to \$5.50 a ton for the smaller organizations. In this particular case it has been proved that a \$100,000,000 combination is economically more efficient than a \$10,000,000 combination. It has not been proved that a \$1,000 combination has been more efficient than a \$100,000,000 combination, because that investigation has not been made, and we do not know. Mr. Brandeis may assert that the United States Steel Corporation is not more efficient than its four steel competitors, and I may assert the contrary, and we are exactly where we were before, because we don't know the facts, and we shall not know the facts until the same scientific investigation has been made in regard to this matter that has been made in the other case. This is a question for scientific investigation, and our Bureau of Corporations should make an investigation, not only of this matter, but of all those of industry, so that we may have a scientific foundation upon which to decide how far we shall permit magnitude to go.

I shall just turn aside for one moment to call attention to the second question. It was argued, for instance, argued in this matter, that the lack of efficiency of these corporations was due to the failure of the railroads in this country as compared with Europe. Now, it is a fact that there is no

other country in the world in which the weight of the traffic, the weight of the train, the weight of the engine, in freight service, are equal to those in this country. Neither the speed equal in any country in the world, for freight, as it is on our fast freight trains, and we all know that the striking force of the blow goes up as the square of the speed, and our railroads put on the rails of this country a strain far beyond that which is required in any foreign country. Not only so, but these very rails which are so excellent, manufactured in Germany and England, are produced by a trust, in the sense in which the term has been used here tonight. The German Cartel has been in control of a greater percentage of the product than the United States Steel Corporation. However, it is true that in the German Cartel there has been greater economy in the individual plant, and it is a federation rather than a consolidation. The same thing would have been true in this country had it not been for the Sherman Act. Men who built up a business dislike to surrender it to someone else,--its control and influence were being built up in this country in the same way that they were in England and Germany, on the principle of cooperation under the common law, and then the law came in and the trust was declared to be unlawful, and they drove these people to the combination, to the general holding corporation, and from the holding corporation to a complete consolidation, ever getting out from the last decision of the court, because of this irresistible tendency for cooperation. Germany and England, in my opinion, are vastly more fortunate than we are in this respect, in that permitting cooperation, in that promoting reasonable cooperation, they have allowed these firms to cooperate without driving them to this more complete consolidation, and therefore surrendering their autonomy; and they have therefore surrendered their autonomy to a less extent that we have.

Now, I should be very glad to go over other various points which have led to this cooperation. I have not time to do so. I shall merely mention one of them, and this will be the waste of competition in the case of some of our natural resources. You all have studied these questions; you know many of the wastes of competition, but here is one waste which is sometime neglected. Under present conditions we have 5,000 operators who, from the mines in the bituminous coal industry, can extract perhaps 200,000,000 tons per annum of coal, more than the present market demands. In consequence of that, these men competing and to a certain extent unable to cooperate,--because, while I say that, while there is no general enforcement of the law, I am perfectly willing to admit that here and there where the fangs of the Attorney General have struck there has been a restraining influence,--these men, not being permitted to cooperate, are obliged to compete with their neighbors, and the result has been a most wasteful mining. There is the most wasteful mining of coal in this country than there is in any civilized nation. It is appalling, the amount of this coal that we leave underground, under our methods of exploitation by which we put the material on the market--bituminous coal--at current rate. If these 5,000 operators were allowed to say, "We will divide the market, you will produce in your section of the country 10% and we will produce 15% and the other 20%," then it would be possible to reduce these frightful wastes which will be a most disastrous factor in the industry of this nation a few centuries hence. It seems to me that we in these matters should not simply consider our own generation, but there rests upon us the obligation to consider future generations.

We are now, under the frightful wastes of the competitive system,--we are skimming the cream of the natural resources of a virgin country, and we have done it with a recklessness never before equaled. It is going on continuously.

Now, this is not the only factor involved in this, but it is one of the formidable factors,--this lack of cooperation in getting proper, efficient mining of coal, use of our forests, and our other natural resources.

But I must proceed at once to the constructive side of the question, in the few minutes that remain. My proposal, then, gentlemen, is neither regulated competition, nor regulated monopoly, but prohibition of monopoly, permission--keeping freedom of competition open, and promotion of cooperation.

Now, it has been proposed that when we divide up these industries, we will divide them up in such a way that not one of them shall have more than 50%. That is Mr. Bryan's method. The Stanley bill says 30%; that is understood to be Mr. Brandeis' suggestion; at least, it agrees with one statement that he has made in another place.

Now, it makes no difference, gentlemen, whether you break these combinations up so that there are 10 with 20% or 20 with 5% or the other with 50, the other 30 and the other 20%. The demonstration of that is the fact that I have already cited, that thousands of farmers cooperate

perfectly, just as perfectly in marketing their products as do the 5 members of the great steel combination, just as perfectly; indeed, it is a little more copper-riveted trust, in a certain way; and they have not only marketed this 85% but if any one of these men sells except through the selling agency, he is obliged to sell at the same price, and if he does not sell at the same price, sells a dollar or so lower, he has to pay the difference in the treasury.

Now, this is the situation, the same thing, we have in cotton, the same thing in lumber. Why, these legislators, some of them whose brains are not very great, after they saw that these trust bills they were framing were going to hit the farmer, as in Texas, and certain other states, two or three of them,--Arizona, South Dakota, and Illinois,--they put in exceptions for the farmers.

(Laughter)

Well, now, the United States Supreme Court, of course, immediately declared, so far as the cases have gone before them,--have declared these features unconstitutional as being special legislation.

If we have, however, concentration sufficient to give efficiency, cooperation sufficient to produce reasonable conditions, and keep freedom of competition open, and prohibit monopoly, we must in some way regulate these men who cooperate, just exactly as we have regulated the railroads. In the case of the railroads, has there been any proposal to prosecute them for violations of the Sherman Act? And yet, every one of us here knows they are just as flagrant

violators of the Sherman Act as any other corporation in the United States. Are the railroad rates the same? Are the passenger rates between New York and Chicago? Can you do better by going over the Pennsylvania, or over the New York Central, or over any road? The price is just the same, providing the speed is the same, and the service the same. How does it happen that they got together? Just by Providence, I suppose,--just by a Providential act that these rates were the same upon all the roads, at the same conditions, all over the country. (Laughter) Why is it, however, that nobody proposes to indict the railroads in this matter? Simply for the reason that the rates which they can charge are controlled by a commission, and the public is protected, and nobody has any longer any wish, or any honor, in making them any further trouble in that matter. That is the whole matter. Simply that they are just as much amenable to attack under the Sherman Act as any other combination in the United States, but the sense of justice (Laughter) is such that we will not, when they have reasonable rates, and are competing and giving us reasonable service, even if the law is on the statute book and is this sort of hallowed thing that you have described,--our sense of justice is such that we will not attack them in the courts. Will the Attorney General of the United States or the Attorney General of the State, or of any state, attack the railroads for violating these anti-trust acts when the public is properly protected? I have not heard the proposal made anywhere. There has been nothing said of the proposal.

However, there is a wrong condition when we have on the statute books a law of a kind that we have to wink one eye when we consider a great group of industries of the country, and we ought to remedy these laws, so that these gentlemen would not be in this position, this unfortunate

position, of being technically violators of statute which it is not advantageous from the public point of view to enforce. (Applause)

Now, I cannot go into the constructive side. To do so would take more than my allotted time. But the substance of my proposition is that there be an interstate trade commission and state trade commissions, which shall have substantially the same powers to regulate cooperation in industry, that the Interstate Commerce Commission and the state commerce commissions have in regard to the public utilities. (Applause) It seems to me that these state commerce commissions and Interstate Commerce Commission, and these administrative bodies with regard to pure food laws, where competition has failed to regulate quality and has failed to regulate price, point the way for the next constructive step in the development of our laws. I suppose it would perhaps be chimerical, with the present opinion of the public, to propose to repeal the Sherman Act. We can even allow the Sherman Act to remain as it is, and by amendments to it in this constructive line, meet the situation. The Sherman Act can be left to apply, as it has been applied by the Supreme Court, to control of the market and to monopoly, because when you come to put in that word “unreasonable,” you simply go back to the common law. Unreasonable restraint of trade is monopolistic restraint of trade, and we shall say that while monopoly is prohibited, reasonable cooperation, if under the watchful eye of an administrative commission which will protect the public, may continue to cooperate.

Now, I cannot give you all of the powers which those commissions should have. My idea would be that those commissions should have broad, simple rules of law, which shall be formulated into definite working machinery by the commissions. For instance, Mr. Brandeis and I would both agree that unfair practices should be prohibited, and by unfair practices we mean what was meant by immoral practices in the common law. We also would agree in various other particulars, but the main, vital point about the law is this,--that when I am sold shoddy instead of woolen, the same principle applies with regard to industries. I am not obliged to bring the case myself through the machinery of the courts, but I have an administrative commission to which I can make complaint, and it will become the duty of the administrative commission, representing the public, and me as a part of the public, to secure redress. This is one of the great advantages which have been gained by the Interstate Commerce Commission.

My time has expired. I thank you, gentlemen. (Applause)

MR. SPEYER: Gentlemen, I see in this room three of my friends who are in charge of the important railroads,--Mr. Rea of the Pennsylvania, Mr. Willard, President of the B. & O., and Mr. Frank Trumbull. I know each of them would be glad of an opportunity to explain why they do not want to be classed with the Steel Trust tonight, but I can't give them any time, especially for this reason, that after the next speaker has finished, Mr. Brandeis has asked for another 5 minutes. (Applause) So has Dr. Van Hise. I suppose that Dr. Talcott Williams will take his five minutes extra, too.

The next speaker is one who is not on a visit to New York, but who has come here to live. I think this is his first appearance before such a large and distinguished audience. Dr. Talcott Williams is now the Director of the new School of Journalism at Columbia University, and comes to us from the City of Brotherly Love. I hope that together with other things, he will be able to teach the rising generation of journalists a fair amount of brotherly love, an article which has been so conspicuously absent in the present campaign. There are few men in the United States who are so well qualified, and have such a thorough knowledge to speak on almost any subject, as has Dr. Williams, and on whatever subject he speaks, he speaks as an expert. The Republican Party is indeed fortunate in having such a staunch supporter as Dr. Williams. (Applause)

Third Speaker

Dr. Talcott Williams

Dean of the School of Journalism at Columbia University

Formerly Editor of the Philadelphia Press

Mr. President, Ladies and Gentlemen: I accept less for myself than for the School of which I have the honor to be the head, what has already been said. I have not felt that as representing that school I should take a polemic share in any political contest. But I am glad of what has been said, because, while I speak in no sense,--in no sense,--from a political or polemic standpoint, in what I say this evening, I express what I believe to be the settled policy of the great party, one of

whose candidates has suddenly been removed, whose memory you have for an instant honored, and whose going reminds us all that the glories of our blood and state are shadows, and not substantial things. And tonight, tonight, with this lost flesh in our minds, with the August spectacle of this great nation drawing near to the valley of decision next Tuesday, we have met to consider the one issue which beyond any other is to decide by its solution whether trade,--free trade for every man,--shall continue to be the code of American life, or whether instead it is to be so constituted that the privilege of capital shall replace here, and play the part which has been played in other lands by the privilege of birth. (Applause) On the open surface of things we are all agreed in our answer; but this question of questions which confronts us is whether, in the solution we give, we succeed in keeping trade open for the individual man, or instead make the path easy for organization and combination.

Now, in our discussion this evening, I do not understand that we seek to get back to a desire for competition; neither do I understand that on the other side we propose to close the doors. But the decision on this point,-the decision on this point rests, let me remind you, on an authority which has been scarcely mentioned this evening, and that is the American people. (Applause)

It will not be by capital; it will not be by labor,-organized labor; it will not be by the organized farmer, but by the American people as a whole, that this decision will be made, and the American people has never believed in monopoly. Alone, alone of all the nations of the earth, it refused to give any branch of its government a monopoly of sovereignty, and divided it. It gave

its government coordinate powers, and refused to give any man, or any office, supreme power. It cries with the prophet, “Woe to the man who has field to field, and runs house to house, that he may sit alone in the midst of the earth.” The American people has never been willing that any man, though he were Washington or Jackson, or Grant, should sit alone in the midst of the earth, and when history has completed its record, it may not end with those three names! (Applause)

Now, I have been asked by each of the speakers in a sense as to what was meant which we wanted to restrain, and especially by the distinguished speaker, public man and university president alike, honored in both positions by holding them. I will tell you what the American people propose to restrain.

The tobacco Trust was in the habit of finding a tobacco shop on an eligible corner, of either buying the lease of the man who owned that house, that shop, and turning the man out, or, if the man owned his own shop and supposed in the shop or trade that he has as settled and solid a property as could exist, of buying the opposite corner and putting in some man there who undersold, under the orders of the trust, and in time ruined the man who had his store. Now, I do not care whether every step in that act is the product of the abolition of the common law; I do not care whether every step was legal. Acts like that are wrong and they are going to stop, and they must stop. (Applause) the American people has determined that they shall stop, and in order to stop them the Sherman Act was enacted. (Applause)

Now, I think that before an audience like this, the Sherman Act, as your applause has proved, is unpopular. But I know also as a journalist what the opinion of the American people is. They may be wrong or they may be right, but they have their opinion, and, what is more important for the present discussion, they have the power to enforce it. (Laughter)

In 1908 an attempt was made to amend the Sherman Act. It was made under a measure which was first drawn by the National Civic Federation. It went to Washington, and it had some changes in the office of the Commissioner of Corporations, and at last it reached Congress, giving a wide power to the President of the United States, at his own will, at his own will, through the Bureau of Corporations, to decide what could be done and what could not be done; and in addition, it proposed precisely what we have been told could not be done,--it proposed to exempt organized labor and the organized farmer, and there came instantly such a rain of protests from all over the United States, that that measure, excellent as it was in some of its parts as originally drawn,--every measure since this has shown the effects of the measure drawn by the Conference on Trusts of the National Civil Federation in the fall of 1907,--but the instant that measure reached Congress a million and a half small shop keepers and manufacturers over the country, and the other millions who depend upon a free market for their products and for their labor, so besieged their representatives with protests that the measure never even left committee, and never reached a vote; and never since that time has it been possible even to bring to a vote, in either house of Congress, a definite proposal to amend the Sherman Act. It is un-amended, and I believe that today in the present temper of the American people, it is un-amendable.

Now, the only thing which remained to be done under those conditions was to enforce the act, and it has been enforced. I wholly deny that the decisions in the Tobacco Trust and the Standard Oil Trust read the word “reasonable” in the old sense of the common law into that act. Instead, instead, and when all the decisions are handed down, and the different phases of the view of the minority came to be collated together, I do not think that any man felt that the word “reasonable” in its old technical, common law sense, had been read in that act. What was said, instead, was that any corporation or any combination which went to work and did things which impaired the potentiality of competition, the potential power of competition, could be dissolved and any steps taken to destroy it, and that any step in that direction was to be considered,--and the court through that whole decision from beginning to end carefully avoided the use of the word “reasonable,” because it had been defined by countless decisions,--was to be considered in the light of reason, a very different thing in common law from “reasonable,” than what has been defined.

Now, when the power of the central government was fully established, and when history comes to write the record of the last three years and looks upon the services of a man whose good has been evilly spoken of, it will be recorded that the work of enforcing the Sherman law, which was first defined by Judge Taft in the Eddystone cases, was carried to its full extent by President Taft; and today we know that there is no limit to the power which the central government can exert in preventing such practices as I have just described. (Applause)

Now, the next step,--I am immensely obliged to you, gentlemen, for this applause, but time is precious on this occasion. Now, the next step was as to regulation. What do you propose to regulate? Do you propose to regulate the evils of monopoly, or do you propose to regulate monopoly out of existence? That is the great issue, and the parting of the ways. Do you propose on one hand to accept monopoly in any one of the forms, in the extreme form, in which it is advocated by one of the three parties before the country, in the form in which it is urged by the President of the University of Wisconsin, in all the various forms which permit a great combination to exert despotic powers, or do you propose instead to end monopoly? And on that great issue in the next decade this country will divide. I have no question as to the result. The American people have never believed in regulating evils. They believe in removing the cause of the evils. They found a trust composed of North American Indians possessing the land of this country. (Laughter) They might have regulated the evils of Indian occupation, (Laughter) but they didn't. They removed the Indian. (Laughter) They found themselves facing a trust in taxation at Westminster Hall, in Parliament, and they were begged by our English friends to regulate that evil, but to permit the monopoly. They concluded they would remove the monopoly. (Laughter) They faced for nearly half a century one promise after another to remove the evils of slavery, and they decided instead to remove slavery itself. And they will in this matter decide to remove and prevent monopoly. They will not be satisfied with any half-way regulation which seeks to make monopoly at all presentable, or to remove simply the evils of its association.

Now, in the solution of this great question, as in every other great question in American history, you will find that one guiding principle carries a great nation of English speaking people from decade to decade, from generation to generation, from century to century, perpetually passing on from power to power, from justice to justice, from freedom to more freedom, in the light and the path of the common law. What was the contest against slavery but the application of the broad principles of the common law that all men are equal in their rights? What is the principle by which we have dealt with the railroads but the application to a great railroad system of decisions which under Henry and under Edward dealt with the common carrier when he was a man that owned a mule, or a ferryman charging farthing for ferrying a man across some narrow river? These great principles have solved the railroad question, and what we need in this great matter, as we face great combinations with the power to do evil,--and the American people are firmly resolved to trust in nothing but the law, and to give no man discretion, or to put confidence in any man's ability if he has the authority to do evil and there is no legal way to stop him. There are various suggestions made. President Wilson wants to indict directors,--indict directors. Directors have been indicted. Is there any lawyer here who as the slightest doubt if you begin the business of indicting directors, but that some way will be discovered by which somebody else than the director is responsible for a particular breach of law? (Laughter) President Roosevelt,-- Colonel Roosevelt as President Roosevelt, -- tried his best to get the amendment which he is now urging on the American people to the Sherman Act, and as President, at the zenith of his power, having settled a great war, having put himself in a position which has been held by no other American, was wholly unable to secure legislation along the lines which he is urging.

Now, some 20 years ago, in the Eddystone case,--in the Eddystone Pipe case,--President Taft, then judge, laid down the broad principle that whenever you manipulate prices, either by raising the price because you have monopoly, or by depressing prices because you propose to end a competitor, you were violating the Sherman Act, violating the Sherman Act, and an indictment would lie, and the corporation could be broken up and individuals could be convicted.

Now, after eddying to and fro for 20 years, after having moved as far as the cable length would allow in the direction of accepting interpretation of the word “reasonable,” after moving in the other direction, the Supreme Court of the United States has at least established the doctrine that you have a right to step into the business of any corporation and require of it a complete publicity, and that you have also a right to take each of its acts and ask of them, “Was this act intended in order to impair competition?” and if it was it is a crime. Now, that broad principle established, principally, let me remind you, through the litigation of the present administration,-- upon that principle it is possible to impose any act.

Now, we are asked to have a commission. I believe in such a commission. I have shared more than once in aiding others, more learned in the law than myself, speaking, truly, as a journalist familiar with the eddies and currents of public opinion, in drafting measures which proposed industrial commissions. But the great need, the great need, is not an industrial commission. The great need is a principle under which the commission will act, so broad, so long-tried, so well

understood, that it can be applied alike to the larger corporation and the smallest trader; for the American people in its majesty has never feared anything, however great it was, if it was subject to the law; and it never proposes to have anything, great or small, which is not subject to the law of the people. (Applause)

Now, the law of the common carrier, which has grown in the common law of the English-speaking folk for four centuries, establishes the broad principle on which this, on which this problem can be solved. For what is it, what is it, which has enabled trusts and combinations to work the injustice of which I have spoken? In the first place, in the first place, under contracts which were honestly made,--we constantly forget that,--which were honestly made by railroads, advised by their legal advisers that they had the right to make them, one trust and another was given special privilege in the carriage of its freight, and that along was sufficient to thwart competition. That has disappeared; that has disappeared with the Interstate Commerce Commission, after 20 years of agitation, ending with the act of 1910, the first act which really gave efficiency to the will of the people, the act passed two years ago. But it also remains true that while there is power to go through the accounts of a railroad, there is not the drastic power to go through the accounts of a combination, which would enable one to know whether, in any possible way, there have been expenditures, rebates, or the various juggling by which special rates are secured, and it is for that reason and for others that publicity is required.

In addition to rebates, what is the next great factor by which a trust gets its power? By underselling in one quarter and destroying competition there; by underselling then in another quarter and destroying competition there and gradually having a market out of which competition has been weeded by the hand of violence and the violation of law. Apply the law of the common carrier. What is the law of the common carrier? Let me remind you that it has been applied not only to the common carrier. There is the hotel keeper, who has a public duty to discharge. The common law has insisted in a true democracy that all should be treated alike. Require of every trust that it shall always sell everywhere at the price at which it sells anywhere; that it cannot reduce in one place without being reduced in all; that if it sells goods at a higher price in one place than in another, every man who has bought at that higher price shall have a right to action to recover, as he can in the common law,--in the common law,--the difference between what he paid and what other men paid, and you have instantly struck from the hands of power the sword of injustice, and you have brought equality into trade. (Applause)

What is the next principle of the common carrier? Not only that you cannot reduce for one, but that there must be equality in the rate at which the service is charged; that you cannot charge an unreasonable price. Now, does any man who knows the iron trade, imagine for an instant that taking the price of steel billets as they generally range, that you could make a fair argument before any jury of 12 men, that it was fair to charge \$20.00 a ton for steel rails? If there is, he is either unacquainted with the process of manufacture in which he is interested, or his mind has as many convolutions as a seashell. (Laughter) Throughout the whole range of organized industry

today there are established, definite cost marks. It is possible to say with certainty and accuracy what it ought to cost at any given month to spin, for instance, cotton prints 64x64. Those are things understood of the trade. They form a suitable basis of fact on which the three principles of the common carrier could be applied, not to fix prices, not to decide what one man shall charge, or another man; not to bring that desert of unity in which competition ceases; but to prevent the unreasonable,--the unreasonable exaction by any one great manufacturer.

Now, if the principles, which are simple and direct, be applied; if no combination has any rights different from those which the smaller shopkeeper has; if every combination finds itself facing financial suits if it endeavors to reduce in one quarter in order to destroy competition; if it is to sell at an even price to all; if its prices are subject, not to a commission which fixes prices,--that is a bone-yard into which the world has wandered from the edict of Diocletian, and which has always failed,--but to give such publicity as will make it impossible to charge a price which gives an undue profit, you will have brought about a condition in which the trade is laid open to competition. And competition exists constantly, as Mr. Brandeis, who preceded me,--and I somewhat regret his going to succeed me, (Laughter)--as Mr. Brandeis has luminously shown, there is scarcely a single trust which is able to hold together the trade with which it starts. It may be organized with 90 or 95 % of a give industry, but as years pass, the rains of competition beat upon it, and the winds of competition blow upon it, and it gradually dwindles, as the Sugar Trust, which began with 90 or 95% and has today not over 50 or 55% of the sugar trade in the United States. Now that is the history of all trusts. Deprive the trusts of the illegal power, illegal under

the common law, illegal under the Sherman Act now capable of being expressed; deprive them of that power and competition can be trusted to do the rest.

Now I wholly deny, I wholly deny that this movement in favor of competition and against monopoly is represented by men who use dynamite at Lost Angeles or men who march in Lawrence with a banner saying “Without God or Country.” I wholly deny that these represent the American people. They represent an insignificant share of those who are in the rear rank of the procession and are unwilling to accept the conditions of American life, which is that thrift and industry shall be the keys by which the door of opportunity is opened. (Applause) Our position has been made because we believed that the way to advance industry was not to reduce hours, but to increase efficiency; that it was better to stimulate men to seek the maximum wage than to teach them to fall supinely on the support of a minimum wage. (Applause)

We go to the polls 17,000,000 strong next Tuesday, and the voters there--8,000,000 of them-- will represent families who own the houses in which they live. We believe that it is better than a system of state pensions to make it possible for few voters to live in their houses, than to tax and re-tax, in order that late in life some largess may be given to a man. (Applause) We believe that it is more desirable to permeate thrift than to permeate strikes. We believe it is more desirable to make property and keep competition open, than to see any combination of organized capital on the one side, and those who co what has been suggested this evening,--and I believe it must have been an inadvertence upon the part of a gifted advocate,--those who are said to represent the

unrest of the American people. The American people--Gentlemen, you have seen, you have seen caricatures, the "common people," with goggles and slender-waisted, with eyes like a rabbit and courage like a hair. Do you suppose that that insignificant little figure represents the common people of America? Do you suppose the man in these goggles stood in the battle line at Lexington and ended despotism for all time? Do you suppose men with goggles like those lay, with equal honor to both sides of the question, on both sides of the stone wall at Gettysburg? Do you suppose it is 17,000,000 thin-waisted voters with goggles, and scared, who are going to the polls on next Tuesday? The American people marches with its embattled might. It has righted every wrong it has known, and it will right every other wrong as far as it knows it. And the solution I am proposing, of applying the right and the law of the principle of the common carriers to great industries, moves directly in the line of the march of the English-speaking folk. It brings the tortuous acts under the dominion of law; it insists upon a democratic equality for all; it refuses to allow any privilege, any opportunity, which is denied to any capital, however small. And let me remind you that that principle will over lie deeper not only in the hearts of the American people, but in their actions. We look mystic as we sometimes see this procession of trust walking back and forth, this little army of 400 men which Mr. Untermeyer has marshaled with the expectation it would scare the American people into thinking they had several million. Why, the American people have seen lots of things like that in their day, and have seen them disappear, and remained in their quiescent might, guiding their destiny as they chose.

What is needed is courage; courage to accept the law of the past; courage to accept a democratic equality; courage to enforce the law which is the will of the people, as the Sherman Act is, in the same broad principle without changing it; to impose, as I have said, that law and the principle of the common carrier upon those great combinations. And it will be done. It will be done; and what will come if that policy is carried out is that you will see great combinations moving, doing their work, extending their trade, and around them a perpetual and pitiless competition.

Competition is just as good for the big corporation, the big organization, as for the little one, and in the end they will make more money and do better work under it than they could under any other way. Justice, justice is good for all, and liberty and opportunity are best for all, and no principle, now law, no policy, which endeavors by mere punitive acts, by mere indictment, to carry out the policy of a great people, will ever succeed. No policy which places power in the hands of a president to decide for himself what are or are not good trusts will ever succeed. Why, it is conceivable, gentlemen, under strong conditions, that if a president had that power, he might possible take the biggest trust in the country and add to its powers, and its control of the ore supply of the United States! (Applause)

Neither is it possible by any network of law, such as has been devised by Senator Lafollette, a man for whom I have profound respect, for his sincerity and for his conviction, for everything about him, (except that I once heard him speak for an hour and 45 minutes.) (Laughter) That law endeavors to decide what fraction of a trade a particular trust may have. It makes no difference

how large or how small a fraction it is, that fraction will grow steadily smaller if you open the door to opportunity--to competition. Whatever statutes are made which seek to apply some cunningly-devised invention, they are certainly sure to be fruitful if based upon this great principle of the common law on which our Constitution is founded, by which the fathers lived, which the sons believe in, and which the American people are certain to require, to enact, and to enforce. (Applause)