THE STATE AND MONOPOLY

A kecent Russian writer has said: "It is recognized as the highest principle of economic science by the newest school in the West of Europe, that the government is under obligation to take upon itself the management of economic relations in the country, and especially to care for the interests of the lowest and least secure classes of the population. In this respect our government stands in a far more satisfactory position than the Western European governments. The civil authority amongst us has, from of old, taken the most active part in the regulation of the economic relations of the people, while, in the West, such intervention of the government in the economic life of the people constitutes one of the pious hopes of the newest school of economists, the ***Katheder-socialisten*** . ' '

I do not see how the claim here put forward on behalf of Russia can be successfully resisted. If Western Europe and the United States are really to adopt the plan of regulating interests by the management of public functionaries, then they must be prepared to admit that the traditions of civil liberty, and the principles of jurisprudence, which have guided Western civilization for a thousand years, are all at fault, and that Russia has all the time been on the right track. We must come to regard the ***tcliinovnik,*** or functionary, not as a bugaboo of Russian novels, but as the true agent of civilization. The more objectively and inductively we are disposed to study social questions, the more zealously we should apply ourselves to the study of the Russian model.

No one has ever succeeded in formulating a precept for distinguishing and defining the field of action of the state, when approaching it from the negative side. It appears to be impossible to formulate such a precept, for the cases must be decided as they arise. It is altogether a matter of expediency. As such it may be subject to general maxims, whose application to particular cases must be controlled by good sense and sound judgment. The statesman must be a man of sagacity, cultivated judgment, practical experience, broad observation, and acute perception in regard to the relation of means to ends; he cannot fill his position by doing nothing.

But if it is difficult to define the function of the state from the negative side, and to say that the state should do only this or that, what shall be said of the attempt to define it positively? If we seek to give a charter to the state, that it *may* interfere, and to found interference on "principles" of morality and expediency, we find ourselves floundering in puerilities and pedantic generalizations. Such generalizations have been put forth, and the complacency with which they are propounded, in connection with their obvious ineptitude, is among the prominent features of work in social science at the present time. It has, for instance, been said that the natural monopolies constitute a definition of the field of legitimate control by the state, and it has been repeated so often, in one form or another, that it has become a sort of current dogma, as if a solution had been found which is at least good as far as it goes. The test of any such dogma is to see whether it contains all the necessary inclusions and exclusions so as properly to mark off the ground which it pretends to define.

Life insurance is not a natural monopoly, but I suppose that no one would deny that life insurance, on

grounds of expediency, offers one of the most reasonable and proper occasions for state regulation of a sound kind. As a matter of fact, state regulation of life insurance has been outrageously abused, showing how difficult it is to execute regulation wisely and righteously even where its legitimacy may be defended. But the grounds of state regulation in the expediency of the case still remain. Life insurance is a mystery to all except those who make a study of it; one party to the contract acts ignorantly and in the dark; the equities which arise from the relation of insurer and insured are subtle and complicated, and so the insured cannot, for various and obvious reasons, defend his interests. If then the state adopts general regulations for the conduct of that business, which are germane to the nature of the business, and which will prevent the insurer from perpetrating a swindle and give confidence to the insured, we have a case where the grounds for state interference to prescribe methods and fix responsibility, are as strong as in any case which can be mentioned. It is not, however, a case of monopoly, so that the dogma of interference with natural monopolies fails to include one of the widest, most important, and least questioned of the interferences now practised by civilized states.

In preceding pages I have defined and discussed representative cases over the whole field of natural monopoly; and among the other cases it was shown that literary productions, whether books or periodicals, are cases of natural monopoly. If the state is to regulate natural monopolies, the moral grounds, and the grounds of expediency, for regulating literary productions, are stronger than those for regulating any other monopoly. The moral grounds for a censorship of the press are far stronger than the similar grounds for regulating trusts, adulter-

ation of groceries, factory ventilation, child labor, and so on, because the moral corruption of bad literature is far more destructive to social interests than the other bad things against which the other regulations guard. There is no case in which the advocates of non-interference rely so entirely on "general" principles, dogmatic abstractions, and *a 'priori* assumptions as when they argue in favor of freedom of the press on a general faith that, on the whole, less harm comes from liberty than from restraint. The argument for a commission to regulate "interstate" literature is a thousandfold stronger than the argument for a commission to regulate interstate commerce or telegraphs. On the Russian plan, therefore, a censorship of the press is included.

The argument for a regulation of the natural monopoly enjoyed by newspapers would be stronger still. The need for informing the people about public affairs, and informing them correctly, is most important "in order to maintain our republican institutions," an argument which is put forward as conclusive and final in innumerable other cases. A proposition might also be formulated, on behalf of which a great deal could be said, to the following effect: the state ought to see to it that every social institution which possesses power should be loaded with a corresponding responsibility. If such a rule were adopted, it would at once apply to the newspaper press, for since we have established freedom of the press, the newspapers have become a gigantic power which is capable of perpetrating, and constantly does perpetrate, wrongs against both public and private rights for which there is no remedy. Here again, therefore, we should find moral grounds for state regulation of the press.

Still again: I have spoken so far only of regulation of literature in the interests of public morality and polit-

ical instruction; but, if there are grounds for regulating the prices of railroad transportation, then there are certainly reasons for regulating the prices of books and newspapers. If the fact that a railroad is paying 10 per cent dividends is a reason why its rates should be reduced, why is not the fact that a newspaper is paying ten per cent dividends a reason why its price should be reduced? If all the trusts are to be crushed, why not begin with the Associated Press? If it is a reason to legislate on the price of a patented article that the patentee has made a fortune, why not fix the price of James's or Howell's novels? or, stronger still, of the "Franklin Arithmetic " and "Appleton's Encyclopaedia " ? In fact, if the argumentation on these matters which fills current literature had any sense in it, we might go on and make a serious argument, of a similar kind, to show how and why the writers of "good" books should be forced to charge enormous prices.

Now, so far as I know, nobody has dared to propose a censorship of literature, or a limitation on the freedom of the press, or state regulation of literature in general, although it is plain that such regulation would be the most obvious case for state interference on the broadest ethical grounds. The dogma that the state should interfere to regulate natural monopolies here fails because it includes too much; therefore it fails, both by inclusion and exclusion, to define the limits of state interference according to the most received ethical principles, and according to the historical practise of civilized states. It remains only a specimen of the fatuity with which current social discussion is afflicted.

When a man is ailing, the first thing which occurs to himself and his friends is that he shall "take something"; from a scientific point of view, however, the worst conse-

quence of "taking something" is that all the symptoms presented by the case, from that time on, will be the confused product of the disease and the remedy, and it will be impossible to tell which symptoms belong to which cause. Therefore all chance of a clear and careful diagnosis will be lost.

The analogy from individual disease to social disease is one of the safest that can be drawn, nevertheless I use it here only to set in more familiar light the proposition which stands on its own foundation of fact, that legislation for the purpose of attempting a remedy for assumed social disease is affected by this radical vice, *viz.*: it (the legislation) enters into the subsequent phenomena and renders extremely difficult, if not impossible, all efforts to make a correct diagnosis of the case, to tell certainly whether there is any disease or not — if any, what its character; and finally, what would be its appropriate remedy.

The most glaring case of this vicious legislation in all history is undoubtedly the English legislation about Ireland since 1880. The legislation has so entered into the case that now no data can be obtained for a reasonable study of it, in its original or independent reality, or for a judgment of the effects of the legislation by itself considered.

In our own country, the most remarkable piece of paternal legislation that has ever been passed is the Interstate Commerce Law. The political economy of railroads is as yet but very imperfectly understood. Railroads constitute a natural monopoly; such being the case, it follows that no legislation will ever make them cease to be monopolies. This observation, on its face a truism, is, like most truisms, just the thing which is oftenest forgotten, or whose significance is least frequently

apprehended. The monopoly undergoes modifications as the railroad network is extended and made more complete, running in all directions and affording all possible combinations. The monopoly comes in again, however, at later stages, in new forms, because the fundamental and irremovable grounds for it lie in the natural facts of the case.

Whether, then, we take an old country with a dense population and immense accumulations of capital, like England, or a new country, with a sparse population and an immense extent of territory, like the United States; it is not strange that this monopoly, going through the wide and rapid development which railroads have undergone during the last fifty years, should have presented economic problems which we have not yet been able to solve. It has been as much as we could do to note and keep up with the phenomena, as they have presented themselves; and when we have attempted an analysis, it has proved worthless as soon as it was made, on account of the constantly changing phases of the case. Neither is it subject for wonder that the problems presented should have differed somewhat in two countries so differently situated as England and the United States. There is every reasonable ground to believe that the differences of condition will call for differences of railroad policy. In any case, it seems to be the plain dictate of right reason, that we should not hastily interfere with the development of such a gigantic interest, under the annoyance of some temporary phase of the problem; but should get a firm grasp of the facts before attempting anything of the kind.

This we have not done, and it is certain from so much experience of the Act as we have yet had, that it was not based on any clear analysis or correct solution of the

problem. However, when such an act is passed, the effort of all concerned is to conform to it if they can; and here commences the evil effect I have described. In so far as they conform to it, the phenomena which subsequently present themselves are mixed products of the economy of railroading and of the law. Not only this, but the law also has its imposing effect upon the imagination of all concerned with the matter, and it affects all the assumptions with which they come to the study of it. This is a very common experience. After a law has been in existence for ten or twenty years, and a generation has grown up which can hardly remember anything else, it is almost impossible for them to understand what it would be to be without it. The worst ills from which civilized nations suffer to-day come from just that kind of law, unwisely adopted in the first place, but now regarded as a "bulwark of society." The Interstate Commerce Law is on the way to become just such another.

Every such law when first passed goes through a sort of honeymoon. The eyes of the whole country are upon the Executive when he makes the first appointments on the commission. The test comes when it has become an old story; when public attention has been drawn away to something else; when politics and patronage get control of this matter as of all the rest. A commission for the administration of executive business, like the Civil Service Commission, is a very different thing from a committee endowed with discretion to pass upon the interests of free and equal citizens, not being itself either executive, legislative, or judicial. Such a body will inevitably become the engine of either one interest or another against the rest, or sink into nonentity. Such a commission lacks all the guarantees of

justice and of correct civil action which we have established around our legislative, judicial, and executive institutions. Those guarantees, however, are not arbitrary; they are not playthings; they are institutions wrought out by centuries of experience to meet necessities which lie in the nature of men and in the relations of human society. There is no other view of the railroad problem which is more tenable than this: that the evils which have been experienced have come from a gradual breaking down by statute of the common-law obligations of common carriers, from which has resulted a removal of responsibility from the railroads at the same time that they were developing enormous power. The solution would then have lain in a just definition of the responsibility by law, acting under the normal and well-established institutions of our civil life.

An act of paternalism like this could not long remain without offshoots. This is the most definite result of the Interstate Commerce Act which has yet appeared, and if the actual legislation along the same lines has not as yet been great, nevertheless every one who watches legislation is well aware of the latest tendency in this direction, and ample experience warns us what to expect. No act of legislation of this kind stands by itself; its inevitable tendency to encourage similar projects must be taken into account as a part of it. Plans for "interstate" telegraph, sleeping-cars, etc., are already proposed, and a bill is before Congress for an "interstate" minimum rate of wages. Thus do the friends of a false movement unwittingly do us the favor to burlesque it.

As experience of the Act goes on, the inconsistency of its parts becomes more and more evident. The prohibition of pooling, the long and short haul clause, and the assumed distinction between local and through traffic

are inconsistent and, in part, false to the facts. The point, however, which I wish to emphasize for my present purpose is that this piece of legislation was produced by a legislative compromise of opposing " views," no view being based on anything better than popular clamor, hasty prejudice, and political ambition. Neither can any legislation of a similar kind on a cognate subject ever be produced except in the same way and affected with the same vice. In strictly political matters that fact does no great harm; but in industrial matters it is fraught with mischief.

The Interstate Commerce Act is still under trial; it is too soon to make up its record and pass judgment on its history. I have used it here only as a concrete illustration, the latest and most important of the attempts to regulate by law and administrative machinery a case of natural monopoly — perhaps the most difficult one which the experience of mankind has yet met. I have not been in a position to examine and judge of the allegations made by railroad men, especially in the Northwest, about the mischievous effects of the law; the law undoubtedly forms a convenient scapegoat on which to charge the consequences of all errors and faults. That is another evil of the law. It has seemed to me, however, that the law was rapidly working out to a dilemma like this: if the Act is interpreted as the public expect, it will do great harm to the railroad business; if the stress is laid on the saving clause about substantially equal conditions, the Act will be reduced to a dead letter.

I must reserve for another essay the connection of laws about monopoly with the coming conflict between democracy and plutocracy, which is really the most important aspect of such laws.