Struggles for Justice

Social Responsibility and the Liberal State

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Progressive Statecraft

AFTER YEARS of social ferment it seemed to Walter Lippmann, perhaps the most discerning social critic of the day, that American civilization was coming apart at the seams: "the sanctity of property, the patriarchal family, hereditary caste, the dogma of sin, obedience to authority,—the rock of ages, in brief, has been blasted for us."[1] Lippmann's catalogue of disintegration was a clear sign that on the eve of the First World War American culture was breaking free from nineteenth-century orthodoxies. Newspapers rang with popular clamor about predatory practices by the "money trust," landlord abuses in tenement slums, and the cruelties of child labor. Mass meetings convened to hear sexual radicals foretell the dawn of erotic delight and social radicals extol collective ownership of wealth. City streets were exotic, open-air bazaars of Russian Orthodox peasants, Jewish pushcart operators, and Italian anarcho-syndicalists, whose raw energy was celebrated by the new breed of urban realist painters. Arts and letters were a veritable kaleidoscope of bright new ideas and sentiments from the poets of the Chicago Renaissance, the irreverent cartoonists of *The Masses*, and avant-garde artists saluting the iconoclasm of the Cubists. Against the prevailing chaos of "drift," Lippmann urged what a growing chorus of contemporaries demanded, a commanding strategy of "mastery."

No longer could Yankee Protestant elites be complacent about their place atop the social hierarchy. The unwanted children of nineteenth-century American society were in revolt against the parent, and their revolt called into question the existing relation between state and society. From 1912 through 1916 the key battles were fought out around the trust, industrial democracy, and social justice, all of which were forced upon an otherwise unwilling national leadership by popular movements originating in the working and middle classes. In response, elites developed two new strategies with a view toward reconstructing the liberal state under the conditions of twentieth-century life. One was managerial liberalism, in which corporations were seen as the cornerstone of public affairs in everything from social welfare to foreign policy. The other was progressive liberalism, in which the state would regulate private interests in the public interest. As the pace of politics quickened in the years before U.S. entrance into the First World War, progressive statecraft gained ascendancy with the presidency of Woodrow Wilson.

Wilson and the Trust Question

The trust question dominated Wilson's first two years as President. The rise of the giant corporation threw a huge monkey wrench into the inherited governing system. Corporations as big as United States Steel did not play by the same competitive rules as small proprietary firms. They did not link up with family ownership and inheritance in the same way as individual entrepreneurs. They did not hire or supervise their thousands of employees in the same way as the on-site boss in his own shop. Yet they continued to be governed by the same legal rules that applied to the competitive marketplace. This underlying contradiction between the actual relations of production and the ideological-legal form of property came to the surface in political battles around the trust in which nearly every economic group had a stake. Wall Street wanted a private central bank; shippers wanted lower freight rates; farmers wanted cheaper credit; small manufacturers wanted competitive advantages; technocrats wanted efficiency; and workers wanted greater leverage. Out of this tangle of competing interests, a daunting possibility arose: what would happen if all those who had been gored by the plutocratic ox made common cause? The pursuit of social justice had already brought workers and middle-class elements together; could the same groups draw upon the legacy of the Knights of Labor and the Populists to forge a new antimonopoly alliance against the trusts?

The term *trust* was a holdover from nineteenth-century populism, and it came freighted with faintly evil connotations. It was easier to define the enemy in rhetoric than in fact. Contemporaries applied the term to everything from monopolies such as the American Telephone

and Telegraph Corporation to oligopolies such as the handful of giant meatpackers and, for that matter, to just about any other big business. Though imprecise, it reflected the need for some generic term to cover the emergence of large-scale enterprise whose characteristic industrial structure was neither monopoly nor competition, but something in between named oligopoly. The rise of industrial goliaths such as U.S. Steel, Armour, and the American Tobacco Company was the result of convergence of changes at several levels, including the emergence of mass-production techniques and mass consumption, along with the legal prohibition on cartels embodied in the Sherman Act.

In terms of the mode of production, the key was vertical integration, that is, the linkage of mass production with mass distribution. Integration was both a matter of new technologies, such as the integrated steel mill, which turned iron ore into steel girders, and business reorganization, in which a single firm took control of purchasing, production, and marketing. Coordinating these complex operations called forth an elaborate internal managerial apparatus in each of the giant firms. Where once separate firms had bought and sold, now functional divisions, each under its own vice-president, coordinated purchasing, production, and marketing. In short, the corporation turned the competitive markets of the proprietary era into their opposite, managed markets.[2]

Mass production and distribution would not have been possible without changes in social reproduction. To move beyond the pioneering stage of illustrious inventors such as Thomas Edison toward the systematic exploitation of scientific discoveries, it was necessary, particularly for new electrical and chemical industries, to have at their disposal an expanding corps of engineers and scientists coming from the Massachusetts Institute of Technology and other polytechnic training grounds. By the same token, to manage markets properly required a corps of college-educated planners whose decisions were recorded and communicated by legions of high-school-trained office clerks, the same feminized work force that also made mass distribution possible through their low-paid work as telephone operators and sales clerks. Mass education inculcated the skills and work habits that prepared the rising generation for the discipline and tedium of the office routine. Absent these changes in the reproduction of daily life, the evolution of twentieth-century society with the giant corporation at the hub simply could not have gone forward.[3]

Presiding over these wide-ranging developments, investment bankers and big stockholders were converting proprietary ownership into corporate ownership. The advantages of limited liability quickly proved themselves in manufacturing, where 87 percent of wage earners toiled for a corporate employer by 1919. Although most of the several million employers in the United States were small, a large share of corporate property was being concentrated in a few hands. By 1914 a mere 2.2 percent of all establishments produced more than $1 million worth of goods, but these same firms employed 35 percent of all wage earners in manufacturing, and the proportion rose to more than half after the First World War. No nineteenth-century coal baron or railroad tycoon could match the $1 billion capitalization of U.S. Steel, and soon other manufacturing combines, investment banks, and insurance companies surpassed railroads as the largest concentrations of wealth. An increasing share of this wealth was owned by corporations that purchased shares of other corporations, whether as holding companies, investment trusts, or simple owners. Individual ownership of public stock issues was also highly concentrated; although data are astonishingly sparse, there is no mistaking the uneven distribution. One investigation disclosed that the richest 1 percent of individuals in 1929 held 65.6 percent of corporate stock and 82 percent of corporate bonds. All in all, proprietary forms of ownership were turning into corporate portfolios.[4]

Such were the agglomerations of wealth that came under attack for being "trusts." Seen as standing conspiracies against the public interest, the trusts gained notoriety in the great merger wave of 1898–1904, when hundreds of horizontal competitors were consolidated into a relative handful of large corporations a few of which controlled over 70 percent of their markets (Du Pont, International Harvester) and others over 40 percent (U.S. Steel, American Smelting and Refining, National Biscuit).[5] Maverick economist Thorstein Veblen contended that these mergers were a parasitic incubus on the underlying productive system, and in *Theory of Business Enterprise* (1904) he pressed the case for a conflict between the technical efficiency of the modern machine process and the "pecuniary motivation" of property owners. Damning the corporate investor with faint praise, he wrote, "the captain of industry works against, as well as for, a new and more efficient organization."[6] In a more popular vein, Upton Sinclair indicted the Beef Trust for its careless disregard of public health and brutal exploitation of immigrant workers in *The Jungle* (1906). In defending supposedly "soulless corporations" against "demagogues" and socialists, John Moody ironically

gave ammunition to the critics in *The Truth about the Trusts* (1904), which depicted a steep pyramid of wealth topped by two rival groups of finance capitalists around the Rockefeller and Morgan interests. The Wall Street Panic of 1907 only confirmed public anxiety about the machinations of high finance.[7]

In this highly charged atmosphere, government efforts to resolve the contradiction between the corporation and the legal tradition of antimonopoly only succeeded in further politicizing the issue. President Roosevelt won a reputation as a "trustbuster" largely on the strength of a single successful prosecution under the Sherman Anti-Trust Act of the Northern Securities railroad empire. His successor, President Taft, initiated more prosecutions but left the deciding influence in the hands of the Supreme Court. For its part, the Court tried to take the trust issue out of politics in announcing the "rule of reason" doctrine in 1911, under which only "unreasonable" combinations in restraint of trade would run afoul of the law.[8] Although the Court actually struck a blow against monopoly by breaking up Standard Oil and the American Tobacco Company, the result tended to promote not free competition but oligopoly. In political terms, the "rule of reason" had the opposite effect of the one intended, by inflaming public opinion against the Court. At a much lower temperature, its impact can be compared to the Dred Scott decision of 1857, when the Supreme Court had attempted to put the slavery issue above partisan politics but only wound up inflaming the kind of passions that led to the Civil War.

By the election of 1912, antitrust feeling was running high. Eugene Debs resolved to bring the system of property ownership into line with already socialized production through nationalization of big capital, while "Bull Moose" Progressives talked about thoroughgoing government regulation under their New Nationalism. Woodrow Wilson, for his part, solemnly announced with Delphic ambiguity, "I am for big business and I am against the trusts." To the consternation of conservatives, the atmosphere was reminiscent of the great battles of the Gilded Age over money inflation and the protective tariff. There was no guarantee that a Congress susceptible to democratic enthusiasms would not do something drastic such as taking public control of the banking system or putting teeth into the Sherman Act. The trust question, broadly defined, was the most pressing business faced by the incoming Wilson administration, and it was clear that a solution would require statecraft of the highest order.[9]

There is enough conflicting evidence about the president to suggest that upon coming to office he simply did not know what he was doing, or at least he did not know exactly how to proceed. He fully accepted the rise of big business as "normal and inevitable" and in common with progressive opinion believed that some middle way in the law would have to be found between extreme individualism and public ownership. Yet he had also accepted Louis Brandeis' prescriptions for restoring competition and had campaigned as a Victorian liberal devoted to free trade and what he called "the men who are on the make rather than the men who are already made."[10] Such rhetoric placated the Bryan wing of the Democratic party and other legatees of the nineteenth-century antimonopoly agitation, who were also gratified by Wilson's first major action as president in support of the Underwood Tariff, which reduced import duties from 40 percent to around 25 percent.[11]

Having shown his gentlemanly independence from the bribery and intrigue of high-tariff lobbies, Wilson next tackled the thorny problem of currency and banking. The popular clamor for "people's money" had revived after lying dormant since Bryan's defeat in 1896. Agrarians of the Southwest and militant midwestern followers of Robert La Follette, plus the handful of surviving inflationists who had once wept with Bryan to see mankind crucified upon a "cross of gold" all demanded public currency and public control over private bankers. Even Teddy Roosevelt had been heard to denounce "the malefactors of great wealth." The revival of the antimonopoly hatred for the "money power" received a big boost in 1912 from the Pujo Committee, named after a Louisiana congressman, whose investigations of the "money trust" were condensed by Louis Brandeis into a muckraking classic, *Other People's Money* (1914). These attacks indicted finance capitalists for a vast conspiracy of interlocking directorates and behind-the-scenes banker control of industry.[12]

Money trust or not, Wall Streeters sought to insulate themselves against just this sort of "agrarianism," not to mention socialism. They came forward with the Aldrich Plan under what amounted to a revival of the old Bank of the United States, which they also hoped would prevent a recurrence of the Panic of 1907. That was too much centralized banking for Carter Glass, a Virginia senator who was thoroughly conservative on every point except his antipathy to New York banks. Although Glass was the principal author of the administration's bill, Brandeis contributed the key progressive innovations—government currency and a Federal Reserve Board to oversee private banks. In its

final form, the bill contained only weak antimonopoly provisions, which enabled a large body of big bankers to support it in the expectation that real power would lie not in the Federal Reserve Board but in the officers of the member banks themselves.[13]

What emerged as the Federal Reserve System in 1913 was an exquisite political compromise that satisfied advocates of both centralized and decentralized banking, as well as supporters of private and public control. It created a dozen federal reserve banks with New York as the first among equals; banks could issue Federal Reserve notes in small denominations backed by the U.S. Treasury; the system was overseen by a federal bank board appointed by the president but presumably drawn from the leading men of the banking community. It also created the statutory basis for U.S. branch banking overseas. In all it was a remarkable balancing act that expanded the federal government's regulatory role without resorting to statist control and built on decentralized, federal structures congenial to small property while recognizing the primacy of New York banks and their leadership in foreign investment.[14] It edged away from the "drift" of laissez faire while lodging "mastery" not in a public bureaucracy but in a regulatory-corporate complex that left the main decisions in private hands. As a consequence, currency and banking disappeared as major issues until the Great Depression.

With respect to giant industrial combines, progressive statecraft followed the same lines of finely balanced compromise. The most drastic proposals came from latter-day populists, Bryan Democrats, and southwestern agrarians who wanted nothing less than destruction of oligopoly itself in the name of free enterprise. To that end they called for strict government regulation of the stock exchange, abolition of the "rule of reason," and outright prohibition on corporate interlocks of the sort uncovered by the Pujo investigation. By comparison, the socialist prescription for public ownership of concentrated capital, though a radical transformation in property relations, would have resulted in less disruption in the actual day-to-day processes of production and distribution. Keeping both of these drastic remedies at bay became the first aim of progressive policy. Taft's preferred method had been to refer the trust question to the courts, the branch of government most shielded from popular influence. In Roosevelt's case, the preference was for hands-on administrative regulation through a commission that would police the activities of big business, a position that accorded well with the tripartite, protocorporatist proposals of the National Civic Federation. Wilson, on the other hand, was more elusive. As a professor of government at Princeton, Wilson had accepted the big corporation as a legitimate fact of life, but as a presidential candidate he had talked like a latter-day Jeffersonian about a New Freedom in support of small property and against monopoly control.[15]

In the event, progressive statecraft was based not on campaign rhetoric or presidential whim but on the balance of political forces. It was clear that the socialist proposal for government ownership fell beyond the pale of liberal ideology and that the agrarian proposal for dissolution of the trusts was also unacceptable. Both were ruled out when Wilson reassured businessmen at the start of the 1914 legislative session that "the antagonism between business and government is over."[16] At the same time, the government could not simply continue drifting on a laissez-faire course, because doing so had only raised the popular temperature to a fever level. In the end, the administration and Congress charted a course between radical change and the status quo. They established the Federal Trade Commission (FTC), which was empowered to set rules for fair competition, issue cease-and-desist orders against infractions, and collect information on trade conditions.

This compromise was enough to placate both the New Nationalists, who welcomed clarification of the rules of oligopolistic competition, and New Freedomites, who hoped that small competitors would be protected against monopoly pricing. Even Taft conservatives were mollified by having FTC decisions made subject to judicial review in courts that were well beyond the reach of the people's elected tribunes. To guide judicial decisions, the Clayton Act defined "unfair" competition in terms of price discrimination, tying contracts, and some kinds of interlocking directorships and stockholding. When all was said and done, business leaders were in agreement with Wilson that antagonism between business and government was over. The U.S. Chamber of Commerce spoke for most in supporting the new arrangements for what it called industrial "self-regulation," a necessary euphemism cloaking the reality of expanded government regulation. A Missouri senator was closer to the mark in saying that the Clayton Act started out as "a raging lion with a mouth full of teeth. It has degenerated to a tabby cat with soft gums, a plaintive mew, and an anemic appearance."[17]

Wage earners had an immense stake in the trust question. Their abil-

ity to organize for self-protection was deeply affected by the way property relations were being redefined to keep up with the rise of the corporation. President Cleveland's use of the Sherman Act against the American Railway Union in the 1894 railroad strike was the opening gun of the era of the injunction, which lasted until the Norris-Laguardia Act of 1932. Although courts had long since stopped holding unions and strikes to be illegal per se, the broader forms of worker solidarity ran afoul of antitrust law, including the industrywide strike (*In re Debs*, 1895), the consumer boycott in support of a strike (*Loewe v. Lawlor*, 1908), and publication of a list of "foul" employers (*Bucks Stove*, 1911). In fact, most of the early prosecutions of "illegal combinations in restraint of trade" went against unions, no matter how much the American Federation of Labor invoked the free speech protections of the Bill of Rights.[18]

With the National Association of Manufacturers crowing over this string of courtroom victories, the AFL set out to break the potent alliance between business and the judiciary. AFL strategy was geared to the system of constitutional checks and balances and was aimed at electing "friends of labor" to Congress and the White House. Gompers supported Wilson in 1912 and used every ounce of his rather puny congressional muscle to win exemption for unions under the Clayton Act. For all his pains, the only outcomes were a pious reiteration of common legal doctrine that unions were not illegal and an eloquent but empty proclamation that "human labor is not a commodity." Grasping for any straw of legitimacy, Gompers nonetheless embraced the new law as "labor's Magna Carta." He lived to eat those words. In the ensuing fifteen years, the courts handed down more antiunion injunctions than in the twenty-four years before Clayton. Although open-shop industry enjoyed steady injunctive relief from trade unionism, it was not until the Great Depression that the balance was partially redressed and unions got some relief.[19]

In purely political terms, the progressive answer to the trust question was a masterful compromise. It gave just enough to Bryan Democrats and "friends of labor" for them to stand with conservative Democrats, Taft Republicans, and Bull Moosers behind the new regulations on banking and corporate practices. It harmonized the three branches of government insofar as Congress gave a statutory basis to the executive's Federal Trade Commission and Federal Reserve Board, while providing for judicial review of FTC decisions. It tended toward cen-