

President Sends a Message to Congress

Suggests a New Employers' Liability Law, Regulations of Injunctions, of Interstate Commerce, and Other Things.

WASHINGTON, Jan. 31.—President Roosevelt transmitted a special message to congress today. The most important parts of this document are published below:

To the Senate and House of Representatives:

The recent decision of the Supreme Court in regard to the employers' liability act, the experience of the Interstate Commerce Commission and of the Department of Justice in enforcing the interstate commerce and anti-trust laws, and the gravely significant attitude toward the law and its administration recently adopted by certain heads of great corporations, render it desirable that there should be additional legislation as regards certain of the relations between labor and capital, and between the great corporations and the public.

The supreme court has decided the employers' liability law to be unconstitutional because its terms apply to employees engaged wholly in interstate commerce as well as to employees engaged in interstate commerce. By a substantial majority the court holds that the Congress has the power to deal with the question in so far as interstate commerce is concerned.

As regard to employers' liability law, I advocate its immediate re-enactment, limiting its scope so that it shall apply only to the class of cases as to which the Court says it can constitutionally apply, but strengthening its provisions within this scope. Interstate employment being thus covered by an adequate national law, the field of intrastate employment will be left to the action of the several States. With this clear definition of responsibility the States will undoubtedly give to the performance of their duty within their field the consideration the importance of the subject demands.

I also very urgently advise that a comprehensive act be passed providing for compensation by the Government to all employees injured in the Government service. Under the present law an injured workman in the employment of the Government has no remedy, and the entire burden of the accident falls on the helpless man, his wife, and his young children. This is an outrage. It is a matter of humiliation to the Nation that there should not be on our statute books provision to meet and partially to atone for cruel misfortune when it comes upon a man through no fault of his own while faithfully serving the public. In no other prominent industrial country in the world could such gross injustice occur; for almost all civilized nations have enacted legislation embodying the complete recognition of the principle which places the entire trade risk for industrial accidents (excluding, of course, accidents due to willful misconduct by the employee) on the industry as represented by the employer, which in this case is the Government. In all these countries the principle applies to the Government just as much as to the private employer. Under no circumstances should the injured employee or his surviving dependents be required to bring suit against the Government, nor should there be the requirement that in order to insure recovery negligence in some form on the part of the government should be shown. Our proposition is not to confer a right of action upon the Government employee, but to secure him suitable provision against injuries received in the course of his employment. The burden of the trade risk should be placed upon the Government. Exactly as the workman is entitled to his wages, so he should be entitled to indemnity for the injuries sustained in the natural course of his labor. The rates of compensation and the regulations for its payment should be specified in the law, and the machinery for determining the amount to be paid should in each case be provided in such manner that the employee is properly represented without expense to him. In other words, the compensation should be paid automatically, while the application of the law in the first instance should be vested in the Department of Commerce and Labor. The law should apply to all laborers, mechanics, and other civilian employees of the Government of the United States, including those in the service of the Panama Canal Commission and of the insular governments.

The same broad principle which should apply to the Government should ultimately be made applicable to all private employers.

Where the nation has the power it should enact laws to this effect. Where the States alone have the power they should enact the laws. It is to be observed that an employers' liability law does not really mean mulcting employers in damages. It merely throws upon the employer the burden of accident insurance against injuries which are sure to occur. It requires him either to bear or to distribute through insurance the loss which can be borne when distributed, which, if undistributed, bears with frightful hardship upon the unfortunate victim of accident. In theory, if wages were always freely and fairly adjusted, they

would always include an allowance as against the risk of injury. Just as certainly as the rate of interest for money includes an allowance for insurance against the risk of loss. In theory, if employees were all experienced business men, they would employ that part of their wages which is received because of the risk of injury to secure accident insurance. But as a matter of fact, it is not practical to expect that this will be done by the great body of employees. An employers' liability law makes it certain that it will be done, in effect, by the employer, and it will ultimately impose no real additional burden upon him.

There is a special bill I call your attention to. Secretary Taft has urgently recommended the immediate passage of a law providing for compensation to employees of the Government injured in the work of the Isthmian Canal, and that \$100,000 be appropriated for this purpose each year. I earnestly hope this will be done; and that a special bill be passed covering the case of Yardmaster Banton, who was injured nearly two years ago while doing his duty. He is now helpless to support his wife and his three little boys.

I again call your attention to the need of some action in connection with the abuse of injunctions in labor cases. As regards the rights and wrongs of labor and capital, from blackmailing to boycotting, the whole subject is covered in admirable fashion by the report of the Anthracite Coal Strike Commission, which report should serve as a chart for the guidance of both legislative and executive officers. As regards injunctions, I can do little but repeat what I have said in my last message to the Congress. Even though it were possible, I should consider it most unwise to abolish the use of the process of injunction. It is necessary in order that the courts may maintain their own dignity and in order that they may in effective manner check disorder and violence. The judge who uses it cautiously and conservatively, but who, when the need arises, uses it fearlessly, confers the greatest service upon our people, and his preeminent usefulness as a public servant should be heartily recognized. But there is no question in my mind that it has sometimes been used heedlessly and unjustly, and that some of the injunctions issued inflict grave and occasionally irreparable wrong upon those enjoined.

It is all wrong to use the injunction to prevent the entirely proper and legitimate actions of labor organizations in their struggle for industrial betterment, or under the guise of protecting property rights unwarrantably to invade the fundamental rights of the individual. It is futile to concede, as we all do, the right and the necessity of organized effort on the part of wage-earners and yet by injunctive process to forbid peaceable action to accomplish the lawful objects for which they are organized and upon which their success depends. The fact that the punishment for the violation of an injunction must, to make the order effective, necessarily be summary and without the intervention of a jury makes its issuance in doubtful cases a dangerous practice, and in itself furnishes a reason why the process should be surrounded with safeguards to protect individuals against being enjoined from exercising their proper rights. Reasonable notice should be given the adverse party.

This matter is daily becoming of graver importance and I can not too urgently recommend that the Congress give careful consideration to the subject. If some way of remedying these abuses is not found the feeling of indignation against them among large numbers of our citizens will tend to grow so extreme as to produce a revolt against the whole use of the process of injunction. The ultra-conservatives who object to cutting out the abuses will do well to remember that if the popular feeling does become strong many of those upon whom they rely to defend them will be the first to turn against them. Men of property cannot afford to trust to anything save the spirit of justice and fair play; for those very public men who, while it is to their interest, defend all the abuses committed by capital and pose as the champions of conservatism, will, the moment they think their interest changes take the lead in just such a matter as this and pander to what they esteem popular feeling by endeavoring, for instance, effectively to destroy the power of the courts in matters of injunctions; and will even seek to render nugatory the power to punish for contempt, upon which power the very existence of the orderly administration of justice depends.

Not only should there be action on certain laws effecting wage-earners; there should also be such action on laws better to secure control over the great business concerns engaged in interstate commerce, and especially over the great common carriers. The Interstate Commerce Commission should be empowered to pass upon any rate or practice on its own initiative. Moreover, it should be provided that whenever the Commission has reason to believe that a proposed advance in a rate ought not to be made without investigation, it should have authority to issue an order prohibiting the advance pending examination by the Commission.

I would not be misunderstood as expressing an opinion that any or even a majority of these advances are improper. Many of the rates in this country have been abnormally low. The operating expenses of our railroads, notably the wages paid railroad employees, have greatly increased. These and any other causes may in any given case justify an advance in rates, and if so the advance should be permitted and approved. But there may be, and doubtless are, cases where this is not true; and our laws should be so framed that the Government, as the representative of the whole people, can protect the individual against unlawful exaction for the use of these public highways. The Interstate Commerce Commission should be provided with the means to make a physical valuation of any road as to which it deems this valuation necessary. In some form the Federal Government should exercise supervision over the financial operations of our interstate railroads. In no other way can justice be done between the private owners of those properties and the public which pay their charges. When once an inflated capitalization has gone upon the market and has become fixed in value, its existence must be recognized. As a practical matter it is then often absolutely necessary to take account of the thousands of innocent stockholders who have purchased their stock in good faith. The usual result of such inflation is therefore to impose upon the public an unnecessary but everlasting tax, while the innocent purchasers of the stock are also harmed and only a few speculators are benefited. Such wrongs when once accomplished can be without difficulty undone; but they can be prevented with safety and with justice. When combinations of interstate railroads must obtain Government sanction; when it is no longer possible for interstate railroads to issue stock or bonds, save in the manner approved by the Federal Government; when that Government makes sure that the proceeds of every stock and bond issue go into the improvement of the property and not the enrichment of some individual or syndicate; when, whenever it becomes material for guidance in the regulative action of the Government, the physical value of one of these properties is determined and made known—there will be eliminated from railroad securities that element of uncertainty which leads to their speculative quality and which has contributed much to the financial stress of the recent past.

I think that the Federal Government must also assume a certain measure of control over the physical operation of railroads in the handling of interstate traffic. The Commission now has the authority to establish through rates and joint rates. In order to make this provision effective and in order to promote in times of necessity the proper movement in traffic, I think it must also have authority to determine the conditions upon which cars shall be interchanged between different interstate railroads. It is also probable that the commission shall have authority, in particular instances, to determine the schedule upon which perishable commodities shall be moved.

In this connection I desire to repeat my recommendation that railroads be permitted to form traffic associations for the purpose of conferring about and agreeing upon rates, regulations, and practices affecting interstate business in which the members of the association are mutually interested. This does not mean that they should be given the right to pool their earnings or their traffic. The law requires that rates shall be adjusted as to not discriminate between individuals, localities, or different species of traffic. Ordinarily, rates by all competing lines must be same. As applied to practical conditions, the railway operations of this country can not be conducted according to law without what is equivalent to conference and agreement. The articles under which such associations operate shall be approved by the Commission; all their operations should be open to public inspection; and the rates, regulations, and practices upon which they agree should be subject to disapproval by the Commission.

I urge this last provision with the same earnestness that I do the others. This country provides its railway facilities by private capital. These facilities will not be adequate unless the capital employed is assured of just treatment and an adequate return. In fixing the charges of our railroads, I believe that, considering the interests of the public alone, it is better to allow too liberal rather than too scanty earnings, for, otherwise, there is grave danger that our railway development may not keep pace with the demand for transportation. But the fundamental idea that these railways are public highways must be recognized, and they must be open to the whole public upon equal terms and upon reasonable terms.

In reference to the Sherman anti-trust law, I repeat recommendations made in my message at the opening of the present Congress, as well as in my message to the previous Congress. The attempt in this law to provide in sweeping terms against all combinations of whatever character, if technically in restraint of trade as such restraint has been defined by the courts, must necessarily be either futile or mischievous, and sometimes both. The present law makes some

combinations illegal, although they may be useful to the country. On the other hand, as to some huge combinations which are both noxious and illegal, even if the action undertaken against them under the law by the government is successful, the result may be to work but a minimum benefit to the public. Even though the combination be broken up and a small measure of reform thereby produced, the real good aimed at cannot be obtained, for such real good can come only by a thorough and continuing supervision over the acts of the combination in all its parts, so as to prevent stock watering, improper forms of competition, and, in short, wrongdoing generally. The law should be strengthened in that particular portion of the Sherman act which prohibits all combinations of the character above described, whether they be reasonable or unreasonable; but this should be done only as part of a general scheme to provide for this effective and thoroughgoing supervision by the national government of all the operations of the big interstate business concerns. Judge Hough, of New York, in his recent decision in the Harriman case, states that the congress possesses the power to limit the interstate operations of corporations not complying with federal safeguards against the recurrence of obnoxious practices, and to license those which afford the public adequate security against methods calculated to diminish solvency, and therefore efficiency and economy in interstate transportation. The judge adds that in these matters "the power of congress is ample, though as yet not fruitful in results." It is very earnestly to be desired that either along the lines the judge indicates, or in some other way equally efficacious, the congress may exercise the power which he holds it possesses.

Superficially it may seem that the laws, the passage of which I herein again advocate—for I have repeatedly advocated them before—are not connected. But in reality they are connected. Each and every one of these laws, if enacted, would represent part of the campaign against privilege, part of the campaign to make the class of great property holders realize that property has its duties no less than its rights. When the courts guarantee to the employer, as they should, the rights of the employer, and to property the rights of property, they should no less emphatically make it evident that they will exact from property and from the employer the duties which should necessarily accompany these rights; and hitherto our laws have failed in precisely this point of enforcing the performance of duty by the man of property toward the man who works for him, by the man of great wealth, especially if he uses that wealth in corporate form, toward the investor, the wage-worker, and the general public. The permanent failure of the man of property to fulfill his obligations would ultimately assure the wresting from him of the privilege which he is entitled to enjoy only if he recognizes the obligations accompanying them. Those who assume or share the responsibility for this failure are rendering but a poor service to the cause which they believe they champion.

I do not know whether it is possible, but if possible, it is certainly desirable, that in connection with measures to restrain stock watering and over-capitalization there should be measures taken to prevent at least the grosser forms of gambling in securities and commodities, such as making large sales of what men do not possess and "cornering" the market. Legitimate purchase of commodities and of stocks and securities for investment have no connection whatever with purchases of stocks or other securities or commodities on a margin for speculative gambling purposes. There is no moral difference between should study both the successes and the failures of foreign legislators who, notably in Germany, have worked along this line, so as not to do anything harmful. Moreover, there is a special difficulty in dealing with this matter by the federal government in a federal republic like ours. But if it is possible to devise a way to deal with it the effort should be made, even if only in a cautious and tentative way. It would seem that the federal government could at least act for forbidding the use of the mails, telegraph and telephone wires for mere gambling in stocks and futures, just as it does in lottery transactions.

Under no circumstances would we countenance attacks upon law-abiding property, or do ought but condemn those who hold up rich men as being evil men because of their riches. On the contrary, our whole effort is to insist upon conduct, and neither wealth nor property nor any other class distinction, as being the proper standard by which to judge the actions of men. For the honest man of great wealth we have a hearty regard, just as we have a hearty regard for the honest politician and honest newspaper. But part of the movement to uphold honesty must be a movement to frown on dishonesty. We attack only the corrupt men of wealth, who find in the purchased politician the most efficient instrument of corruption and in the purchased newspaper the most efficient defender of corruption. Our main quarrel is not with these agents and representatives of the interests. They derive their chief power from the great sinister offenders who stand behind them. They are but puppets who move as the strings are pulled. It is not the puppets, but the strong cunning men and the mighty forces working for evil behind and through the puppets, with whom we have to deal. We seek to control law-defying wealth; in the first place to prevent its doing dire evil to the

republic, and in the next place to avoid the vindictive and dreadful radicalism which, if left uncontrolled, it is certain in the end to arouse. Sweeping attacks upon all property, upon all men of means, without regard to whether they do well or ill, would sound the death-knell of the republic; and such attacks become inevitable if decent citizens permit those rich men whose lives are corrupt and evil to dominate in swollen pride, unchecked and unhindered, ever the destinies of this country. We act in no vindictive spirit, and we are no respecters of persons. If a labor union does wrong we oppose it as firmly as we oppose a corporation which does wrong; and we stand equally stoutly for the rights of the man of wealth and for the rights of the wageworker. We seek to stop wrongdoing, and we desire to punish the wrongdoers only so far as if necessary to achieve this end. * * *

The books and pamphlets, the controlled newspapers, the speeches by public or private men to which I refer, are usually and especially in the interest of the Standard Oil trust and of certain notorious railroad combinations, but they also defend other individuals and corporations of great wealth that have been guilty of wrongdoing. It is only rarely that the men responsible for the wrong-doing themselves speak or write. Normally they hire others to do their bidding, or find others who will do it without hire. From the railroad rate law to the pure food law, every measure for honesty in business that has been passed during the last six years has been opposed by these men on its passage and in its administration with every resource that bitter and unscrupulous craft could suggest and the command of almost unlimited money secure. But for the last year the attack has been made with most bitterness upon the actual administration of the law, especially through the department of justice, but also through the Interstate Commerce Commission and the bureau of corporations. The extraordinary violence of the assaults upon our policy contained in these speeches, editorials, articles, advertisements, and pamphlets, and the enormous sums of money spent in these various ways, give a fairly accurate measure of the anger and terror which our public actions have caused the corrupt men of vast wealth to feel in the very marrow of their being. The attack is sometimes made openly against us for enforcing the law, and sometimes with a certain cunning, for not trying to enforce it in some other way than that which experience shows to be practical. One of the favorite methods of the latter class of assailant is to attack the administration for not procuring the imprisonment instead of the fine of offenders under these anti-trust laws. "The man making this assault is usually either a prominent lawyer or an editor who takes his policy from the financiers and his arguments from their attorneys. * * *

Much is said, in these attacks upon the policy of the present administration, about the rights of "innocent stockholders." That stockholder is not innocent who voluntarily purchases stock in a corporation whose methods and management he knows to be corrupt; and stockholders are gambling at cards or in lotteries or on the race track and gambling in the stock market. One method is just as pernicious to the body politic as the other in kind, and in degree the evil worked is far greater. But it is a far more difficult subject with which to deal. The great bulk of business transacted on the exchanges is not only legitimate, but is necessary to the working of our modern industrial system, and extreme care would have to be taken not to interfere with this business in doing away with the "bucket shop" type of operation. We bound to try to secure honest management, or else are estopped from complaining about the proceedings of the government funds necessary in order to compel the corporation to obey the law. There has been in the past grave wrong done innocent stockholders by overcapitalization, stock watering, stock-jobbing, stock-manipulation. This we have sought to prevent, first, by exposing the thing done and punishing the offender when any existing law had been violated; second, by recommending the passage of laws which would make unlawful similar practices for the future. The public men, lawyers, and editors who loudly proclaim their sympathy for the "innocent stockholders" when a great law-defying corporation is punished, are the first to protest with frantic vehemence against all efforts by law to put a stop to the practices which are the real and ultimate sources of the damage alike to the stockholders and the public. The apologists of successful dishonesty always declaim against any effort to punish or prevent it, on the ground that any such effort will "unsettle business." It is they who by their acts have unsettled business; and the very men raising this cry spend hundreds of thousands of dollars in securing, by speech, editorial, book, or pamphlet, the defense by misstatements of what they have done; and yet when public servants correct their misstatements by telling the truth they declaim against them for breaking silence, lest "values be depreciated." They have hurt honest business men, honest working men, honest farmers; and now they clamor against the truth being told. * * *

The "business" which is hurt by the movement for honesty is the kind of business which, in the long run, it pays the country to have run. It is the kind of business which has tended to make the very name "high finance" a term of scandal to which all honest American men of business should join in putting an end. The special pleaders of business dishonesty, in denouncing the present administration

for enforcing the law against and corrupt corporations who defied the law, also denounce endeavoring to secure really labor legislation, such as a law making employers responsible to their employees; and fit that the apologists of wealth should oppose every effort to relieve weak and helpless people from crushing misfortune brought them by injury in the business which they gain a bare livelihood. The burden should be distributed hypocritical baseness to "a girl who works in a factory" and "dangerous machinery is used to tract to expose herself to death and limb. She has no other recourse but to suffer want or else to expose herself to such dangers, and loses a hand or is otherwise maimed or disfigured for life, it is wrong that the whole burden of risk necessarily incidental to the business should be placed with the weight upon her weak shoulders all who profit by her work except her. This is what opponents of employers' liability law and of it is consistent that they usually also advocate immunity for those most dangerous members of the criminal class—the criminals of wealth.

The laws must in the future be administered as they are now administered, so that the department of justice may continue to be, now is, in very fact the department of justice, where so far as our permits justice is meted out to even hand to great and small, poor, weak and strong. There should be no delay in mentioning the laws now on the books by the enactment of legislation as outlined in the present message to the congress on its passage. Under the existing laws much has been actually accomplished during the past six years, and been shown by actual experience they can be enforced against the wealthiest corporation and the most powerful manager or operator of that corporation, as rigidly and fearlessly as against the humblest offender. Above all, have been enforced against the wrongdoers and agents of wrongdoers who have for so many gone scot-free and flouted the law with impunity, against great law corporations of immense wealth, which, until within the last half years, have treated themselves as having expected others to treat them being beyond and above all law check from law.

It is especially necessary to the government full power to deal with the great corporations engaged in interstate commerce, and above all with the great interstate corporations. Our people should clearly recognize that while there are difficulties in any course of conduct to be followed in dealing with these great corporations, these difficulties must be met and one of three courses followed.

The first course is to abandon effort to oversee and control the corporations in the interest of the public and to permit a return to utter lack of control which would obtain if they were left to the law. I do not for one moment believe that our people would tolerate this position. The extraordinary growth of modern industrialism has rendered common law, which grew up in a time when the individual was the rule, and was adapted to deal with the conditions. These new conditions make it necessary to shackle the individual as in the past we have shackled the vast individual and corporations, the vast combinations of capital, which have marked the development of our industrial system, and new conditions, and necessitate change from the old attitude of state and the nation toward the regulating the acquisition and unimpeded business use of property, order both that property may be adequately protected, and that the same time those who hold it may be prevented from wrongdoing.

The second and third courses are to have the regulation undertaken by the nation or by the states, in any event both the national government and the several state governments must do each its part, each can do a certain amount that the other cannot do, while the only satisfactory results must be obtained by the representatives of the nation and state governments working together within their respective spheres. But in my judgment thoroughgoing and satisfactory control can in the end only be obtained by the action of the national government, for almost all the corporations of enormous wealth—that is, the corporations which it is especially unable to control—are engaged in interstate commerce, and derive their power and their importance not only from that portion of their business which is intrastate, but from the interstate business. It is not easy always to decide just where the line of demarcation between the two kinds of business falls. This line must ultimately be drawn by the federal courts. The effort to secure adequate control of the great corporations by action has been wise and effective, much of it has been neither; for the effort is made to accomplish the action of the state what can be accomplished by the action of the nation, the result can only be a postponement, and in the end the law probably be declared unconstitutional. So likewise in the national arena, who believe in the measures advocated are hampered and aided by the extremists who advocate action so violent that it would be useless or else would cause more mischief than it would remedy.