

Why American Business Is Constantly Pounded

James A. Emery, Counsel for Council of Industrial Defense, Discusses Influences at Work in Congress and State Legislatures

THERE never was a time when it has been so easy to excite popular feeling against business; there never was a time when so many organized influences have been working to substitute laws of equalization for equal laws, to turn our States into social laboratories conducting experiments at the expense of the well-to-do and successful."

That is the present situation as summed up in a paragraph by James A. Emery, general counsel for the National Council of Industrial Defense. Mr. Emery's headquarters are at Washington, and it is his chief duty to watch industrial legislation introduced there. He also makes many trips in the same service to the various State capitals. He comes in close touch with the big business interests of the entire country. He is spoken of as "an unusual compound of expert in law and in business." There is, perhaps, no one in the country who has a better knowledge of the drift of industrial legislation, both national and State, and of its effect upon business.

I asked Mr. Emery for his diagnosis; I asked him why antagonism to business so constantly appears in our present-day legislation.

"The basic factors," he said, "are undoubtedly envy, discontent and suspicion. The extraordinary industrial growth of our nation since the civil war, the opening of new territory, the development of resources, the rapid increase in population—all these things have resulted in the creation of many big and sudden fortunes. Big and sudden fortunes not only inspire emulation, but also envy; they not only excite ambition, but also discontent. The wages of the average manual toiler, however high, are very naturally compared by him with the enormous rewards that go to the man who possesses and exercises those invisible qualities that contribute so greatly to the material development of our nation, but the nature and exercise of which are not so clear to the mass. And it is but natural for the manual toiler—which is the lot of the great body of our people—to feel, especially under the continuous flood of delusive doctrine poured into his ear, that somehow or other in the division of the products of industry he has become the victim.

"The extraordinary growth of our financial and industrial operations has been accompanied by an increasing complexity of process that has made it more and more difficult for the smaller, the rural, communities of the West and South to understand and appreciate the nature and operation of American business. The rise of great cities, with their extraordinary evidences of success and wealth, has created a feeling of jealousy among the more primitive communities and the suspicion that the great industrial centres are growing at the expense of the country.

"The shrewd self-seeker, who has perceived this condition and played upon it, has made matters worse. Unfortunately, the field has been left almost entirely to the demagogue; the business man too frequently has failed to play his part in making clear to his uninformed fellow-countrymen that the men employing the intricate methods of modern business are just as honest, and that their mode of doing business is just as clear and just as true, as those simpler and more familiar means of carrying on the nation's work that were used when the nation itself was a much simpler structure than it has become today.

"We need, and need as never before, systematic effort to create better understanding between industry and agriculture, the factory and the farm, city and country, so that each may realize that there is no antagonism, but only a community of interest not only in the preservation of a prosperity which each shares, but in the perpetuation of those sound principles of government economics without which none can succeed.

"At the present time there is a com-

plete circle of evil influences at work. There are envy, discontent and suspicion among a large part of our people; there are demagogues who are fanning these passions; politicians who are injecting them into our laws; and, to complete the circle, the business men, disgusted and exasperated with popular suspicion, unjust accusation and unfair legislation, have made the mistake of withdrawing from, instead of enlarging their contact with, the public and public affairs. Thus

in every kind of profitable production and distribution.

"When our Constitution was adopted in 1789 there were less than thirty corporations for profit in the colonies. Last year the Commissioner of Internal Revenue received returns from 300,000 corporations with a capital of over \$64,000,000,000, with a bonded indebtedness of over \$37,000,000,000, and a net annual income of something like \$4,500,000,000. All the great and necessary service of trans-

average carrier, the merchant and the manufacturer have come to the belief that those in control of the instrumentalities of government have been more interested in chastening than in assisting business.

"This condition, it seems to me, has been intensified—in no small degree by an increasingly prevalent and widely agitated belief in the statute as a social panacea. Every party, and indeed every community, has received the advice of popular political practitioners who sell from popular platforms every kind of social, economic and industrial nostrum for the ills that affect the body politic. Many have earned a handsome income by the extensive advertisement of their patent medicines; and others—thank God!—have lived to receive a swift discharge from an agonized but recovered patient. Statutes have been and still are being offered to communities and industries like pills to a patient, and by no means in small doses.

"Few people, I think, have any realization of the volume of American legislation. Professor Dicey, the great British student of parliamentary activity, has said that Congress and our States annually enact more legislation than is proposed by the combined Parliaments of Great Britain, Germany, Italy, France, and Austria, representing more than two and a half times our national population.

"In the last session but one preceding the outbreak of the present war, the British Parliament received 547 legislative proposals and enacted 239. The Sixty-third Congress considered 30,053 bills and joint resolutions and enacted 700. Between 1909 and 1916, our State and national assemblies enacted 78,748 new statutes. Forty-three Legislatures in session in 1914-15 exceeded the record of any preceding year by passing 16,222 bills, 1,066 of which were vetoed, 15,055 of which became statutes to be printed for the enlightenment of lawyer and layman upon some 43,500 pages. During the last seven years the people of the United States have received an average of 12,000 new statutes per annum, the fruit of probably not less than three-quarters of a million legislative proposals, dealing in no small part with production, distribution, finance, in every circumstance of conduct, supervision, employment and organization.

"To this body of ever-expanding regulation must be added an almost incalculable supplement of municipal regulations, assuming in the larger industrial communities exceptional proportions and critical significance. Nor is this restless tendency toward new law confined merely to regulatory proposals. With increasing frequency constitutional amendments are being proposed in Congress and the State Legislatures. The last and present Congress have received over 100 such suggestions, some of which would transform the very nature of our Government.

"Legislation naturally tends to express the dominant social and political forces in operation. This is clearly perceptible in the briefest analysis of the forces now in control of the legislative movements of Congress. The non-industrial States possess and exercise through their Representatives in the Chairmanship of the most important committees of either house the greatest influence in the shaping of law. 'I know not,' said Woodrow Wilson, in his work on 'Congressional Government,' 'how better to describe our form of government in a single phrase than by calling it a Government by the standing committees of Congress.' This is especially true in the lower house, for committees hold powers of life or death over nascent legislation. They live at first hand with the principles and facts at issue. They mold the measures which are ultimately approved, and, if caucus action is required, they are the most powerful factors in shaping its course. They present the measures which they report under rules limiting debate, and forbidding or limiting amendment; tak-



have they suffered not only from the malformation of public opinion prejudicial to their interests, but also from the manufacture of bad laws regulating the operation of their business, because they have not supplied the raw material of information out of which sound legislation might be manufactured.

"Nothing can illustrate more clearly the characteristic operation of these local and peculiar prejudices than the use that has been made of, and the attitude of mind that has been created toward, the term 'corporation.' A mere legal description, it has become upon the lips of some an epithet, and upon those of others an accusation and an indictment that often without a hearing amounts to a conviction of business wrong.

"The people do not realize the function of the corporation and the service which it performs in every department of American life; that it is as essential to the maintenance and development of American business in every form as the capital without which it could not operate or the customers without whom it could not be supported. The corporation in itself is simply a useful tool for assembling and directing in efficient form the combination of capital and labor to work the resources of civilization for private profit and social benefit. It is the one instrumentality through which many strangers in every part of a wide world can successfully and efficiently co-operate with other strangers, with a limited responsibility, and engage

portation by land and water, wholesale and retail merchandising, lumbering, mining, smelting and banking are generally operated in corporate form. Twenty-five per cent. of our manufacturing establishments, producing four-fifths of all our commodities, employing three-fourths of our wage-earners, and adding 77 per cent. of the values produced by manufacture, are corporations.

"I think it would be a conservative estimate to say that one out of every twenty families is an owner of and an investor in the stocks or bonds of some corporation. An investigation made in January of this year secured returns from 288 typical railroad and larger industrial corporations, owned by 1,461,427 stockholders whose average shareholdings were ninety shares, as compared with 157 shares ten years ago.

"Every possessor of a policy of insurance, every bank depositor, every stockholder and home owner, every participant in the philanthropies that minister to sickness and misfortune in the State and nation is directly interested in the maintenance of fair conditions for corporate life and operation; for whatever he has, be it little or great, is tied up in that endless chain of stabilizing influences that keep straight the flow of profitable investment and make sure the enlargement of productive industry.

"No intelligent man doubts that in a society like ours, in which rapid change is taking place, new legislation is a constant necessity; but I think the average business man, the representative of the

ing charge of them, supported by committee associates on the floor, they possess the largest amount of information, control the time and the speakers, and thus guide the measure through the House.

"Can it not be asserted as axiomatic that successful legislation requires the fullest understanding of the subject to be regulated? Will it therefore not be impracticable and unworkable in exact ordinances with inexperience, the unfitness, the lack of knowledge that the law-maker brings to his task?"

"I assert as a legislative fact that the representation in the last Congress and in the present, most influential in shaping the policies under which present-day industrial America must live, and move, and have its being, is nonindustrial in its environment and in its inexperience and sometimes anti-industrial in its political attachment.

"This is an industrial nation. Industry has been the chief source of its material growth. Its development and attendant trade, with the accompanying educational advancement and financial standing, have made us one of the first business nations of the world.

"In 1820 10 per cent. of our population was engaged in industry; 83 per cent. in agriculture. Since that time the number of those engaged in agriculture has increased 600 per cent.; in manufacture 3,100 per cent. In 1915 the gross production of our farms was valued at more than ten billion dollars; of our factories at some twenty-four billion,

four billion more than the value of the combined production of manufactured commodities by Great Britain and Germany.

"The Sixty-third Congress enacted a series of anti-trust acts regulating not only the operation and relationship of industrial combinations to each other, but the conduct of their employes during industrial disputes, undertaking to limit the judicial protection for life and property under such circumstances. That legislation was inspired, shaped and pressed by the Representatives of nonindustrial constituencies with the least understanding and experience with and stake in the critical problem at issue. The Sixty-third Congress was composed of 435 members, the majority party possessing 290. Of these 165 were from Northern and Western States in which the urban or industrial population outnumbered the rural about eleven million. One hundred and twenty-five were from Southern States, with an industrial and urban population of approximately six million, and a rural and nonindustrial population of substantially twenty-three million. One hundred and sixty-five would seem to be a majority over 125, and you would therefore say that in the dominant party the industrial States were more than amply represented in control. But it must be remembered that important legislation is not made on the floor of either house, but in the great committees. Of the 125 members from the nonindustrial States thirty-four were Chairmen of the most important of the fifty-

eight committees of the House, excepting only Appropriations, Mines, and Pensions. That situation is substantially true in the present Congress.

"In the Senate, in the last Congress, as in the present, the same nonindustrial States possessed the Chairmanship of the Committees on Appropriations, Banking and Currency, Claims, Commerce, Conservation of Natural Resources, Education and Labor, Finance, (which handles the tariff question,) Immigration, Judiciary, National Banks, Naval Affairs, Patents, Post Offices, Public Buildings and Grounds, Public Health and Quarantine, and Rules.

"In the Sixty-third Congress the tremendously important Federal Trade Commission act was in charge of a Senator who represented a State which contains less than one-tenth of 1 per cent. of the wage-earners of the United States, and contributes less than 1 per cent. of our industrial production.

"The twelve leading industrial States of the Union—California, Indiana, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New York, New Jersey, Ohio, Pennsylvania, and Wisconsin—neither contributed to the membership of the subcommittee of the House which first formulated the trust legislation, nor, with a single exception, were those States represented in the majority of the conference committees of the House or the Senate which practically remade the Trade Commission and Clayton acts. Yet those twelve States hold a dominant interest in American industry. Their

production is the largest factor in American wealth, the largest maker of employment for American labor. They possess three-fifths of our voters, 50 per cent. of our population, 50 per cent. of our farm values, five-sixths of our wage-earners, produce three-fourths of our manufactured products, and in 1915 contributed to the support of our Government approximately \$305,500,000 of the \$415,500,000 of internal revenue tax; \$35,000,000 of the \$41,000,000 personal income tax; they are the home of 102,000 business corporations of the 174,000 with taxable incomes; and they hold in their banks \$4,000,000,000 of the \$5,000,000,000 odd of the saving deposits of the country.

"These States, politically inconsequent in originating and molding the rule of business life under which they must operate, possess 230 of the 435 Representatives. They hold the vast industrial wealth-making majority, yet they are politically a minority in actual legislative influence.

"The severest restrictive regulation of industry and commerce was formulated by a majority representation and influence, which, however able, well intentioned and sincere, were qualified by neither experience, environment, or knowledge to fix the rule for the development of industrial life. On the contrary, by the inevitable law of human nature, they have written into that statute a native prejudice against large things because of their size, against industrial things because of their nature, against corporate things because of their name."