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THE EVOLUTION OF FEDERAL REGULATION OF INTERSTATE COMMERCE THROUGH THE ENACTMENT OF THE INTERSTATE COMMERCE ACT OF 1887

THESIS FOR THE DEGREE OF M. A.

Hanley W. Albig

1932

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Submitted in partial fulfillment of the requirements for the degree of Master of Arts in the Graduate School of Michigan State College of Agriculture and Applied Science.

Approved for the Department of History and Political Science:

E. B. Lyon

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-OUTLINE-

I. Introduction

A. Development of the transportation system.

1. Resume of the period 1829-1860.

2. Rapid development after 1860.

a. The Granger lines.

b. The transcontinental roads.

B. Chaotic conditions and early abuses.

C. State departure from the laissez faire policy

D. The Granger Movement and the railroads.

E. The Granger laws.

1. Illinois railroad legislation, 1869-1871.

2. Minnesota railroad legislation, 1871-1875.

3. Iowa and Wisconsin railroad legislation, 1874-1875.

F. The Granger Decisions.

1. Munn vs. Illinois.

2. Chicago, Burlington and Quincy Railway Co. vs Iowa.

3. Peik vs. Chicago and Northwestern Railway Company.

II. Failure of State legislation to solve the problem.

A. Conditions under State regulation.

B. Difficulties of effective State regulation.

C. Necessity for National regulation.

III. The power of Congress to regulate interstate commerce.

A. Senate committee investigations.

B. Propositions established.

IV. Available precedents as a basis for regulation.

A. The experience of the Granger States.

B. English railway legislation.

V. The agitation for National regulation.

A. The early attempts to regulate.

1. Report of the House Committee of Ways and Canals, June 1868.

a. The reasons for the report.

b. The nature of the report.

2. Congressional action prior to 1874.

a. Drafts of the bills and resolutions introduced.

b. The Act of 1873- Regulation of live stock transportation.

3. The McCrary Bill, January 27, 1874.

a. The reasons for its introduction.

b. The main provisions of the bill.

c. The opposition to the bill in Congress.

d. Its passage by the House, March 26, 1874.

e. The action of the Senate.

4. The Windom Report, April 24, 1874.

a. The reasons for the report.

b. The composition of the committee.

c. The nature of the report.

d. The reception and effect of the report.

5. The Reagan Bill of 1878.

a. The reasons for its introduction.

b. The main provisions of the bill.

c. The opposition to the bill in Congress.

d. Its passage by the House.

6 . The Reagan Bill of 1880.

7 . The Reagan Bill of 1885.

a. The main provisions of the bill.

b. The House debate on the bill.

c. Its passage by the House.

d. The action of the Senate.

8 . The Cullom or Senate Bill.

a. The main provisions of the bill.

b. Its passage by the Senate as a substitute for the House or Reagan Bill.

c. The deadlock in Congress.

9 . The Cullom Senate Committee.

a. The reasons for the investigation.

b. The composition of the committee.

c. Their method of investigation.

d. The Committee's report, January 18, 1886.

I. Public opinion on the question.

VI. Important United States Supreme Court decisions.

A. The decisions leading up to the Wabash decision, 1876-1886.

B. The Wabash, St. Louis and Pacific Railway Co. vs. Illinois.

C. The significance of the decision.

VII. The Interstate Commerce Act of 1887.

A. Evolution in Congress.

1. The activities of the Senate.

a. The Senate Bill 1532 reported from the committee.

b. Its passage by the Senate.

2. The activities of the House.

a. Its reception of the Senate Bill 1532.

b. Its passage of the Reagan Bill as a substitute.

3. A comparison of the two Bills.

4. The Senate disagrees to the substitute.

5. A Committee of Conference is appointed.

6. The Conference report is submitted.

a. The debate on the report.

b. The acceptance of the report.

(1) By the Senate.

(2) By the House.

B. Characterization of the Bill's progress through Congress.

1. A partisan or an economic measure?

2. The support of the Measure in Congress.

3. The opposition to the measure in Congress.

C. The attitude of the public.

D. The provisions of the Act.

VIII. Conclusion.

A. The culmination of the agitation for Federal regulation.

B. The effects of the Interstate Commerce Act.

1. On the railroads.

2. On the public.

C. The significance of the Act.

1. The beginning of National regulation.

2. The passing of the *laissez faire* policy.

I

The desire to afford the principal cities of the Atlantic Seaboard with adequate transportation facilities for reaching the expanding markets of the Mississippi Valley led to the construction of the Baltimore and Ohio Railroad, the first railroad of any considerable length designed for the purpose of passenger and freight traffic. Actual construction began in 1828, and, although not the first railroad in the United States, it is generally associated with the beginning of the American Railroad System.[1]

Other lines were started at once and the mileage increased from 380 miles in 1833 to 30,626 miles in 1860. Construction during this period was mostly local in character, especially in the east and south. Late in the period there was a tendency to consolidate and the principal lines developed were the Baltimore and Ohio, the New York Central, the Erie, and the Pennsylvania.[2] Extensive preparations were made during the latter part of this period to extend the lines west of the Mississippi River. The Gulf of Mexico was also connected with the Ohio and Upper Mississippi Valleys.[3]

In 1869 the total mileage had increased to 43,510 miles. Between 1860-1869 consolidation formed the leading feature of railway construction. During this period the gigantic Granger systems radiating from Chicago in northern, northwestern, southwestern, and southern directions were developed. These lines were the Illinois Central; Chicago and

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1. Stuart Daggett, "Principles of Inland Transportation" pp. 56-57.
2. Ibid., pp. 58-62. Cf. J.L.Ringwalt, "Development of Transportation Systems in the United States" (Detailed statistics and history of each line.)
3. Ringwalt, op. cit., p. 141.

North Western; Chicago, Burlington, and Quincy; the Chicago, Rock Island, and Pacific; and the Chicago and Alton. By 1880 the total mileage in the United States was 84,965 and this had increased to 149,102 miles in 1887.[4] By this time the first transcontinental lines had been constructed- the Union Pacific and Central Pacific met in 1869; the Northern Pacific, 1883; and the Atchinson, Topeka, and Santa Fe, 1884. The Great Northern had also been extended to the Pacific and the Southern Pacific had opened up a line east to New Orleans.[5]

After the Civil War expansion had been too rapid, and overbuilding of railroads had resulted. The system of governmental land grants had substituted an artifical stimulus for the economic incentive of railroad earnings. Investment of capital was in advance of the economic need or of the possibility of earning adequate returns. Business morality itself was low, and chaotic conditions and abuses were likely to result. The unused capacity of the overbuilt railroads was responsible for intolerable practices. Ruinous competition resulted from the attempt to obtain the small amount of traffic that developed and to divert it from rival roads. "It was easier to steal existing traffic than to create new business".[6] The cornerstone of the economic philosophy of the times was competition, and the policy of <u>laissez faire</u> prevailed; little was done to correct abuses either by legislation or public regulation.[7]

Discrimination and extortionate charges constituted the chief grounds of complaint against the transportation system. The principle

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4. Ibid., pp. 174-189, 196, 197.

5. R. E. Riegel, "Story of the Western Railroads" Ch.18.

6. E. L. Bogart, "An Economic History of the United States" p.643.

7. Ibid.

causes were: (1) Stock watering. (2) Capitalization of surplus earnings.[8] (3) The introduction of intermediate agencies, such as car companies, fast freight lines, etc. (4) "Construction Rings". (5) Unfair adjustments of through and local rates, and unjust discriminations against certain localities, whereby one community was compelled to pay unreasonable charges in order that another more favored might pay less than the services were worth. (6) General extravagance and corruption in railroad management whereby favorites were enriched and the public impoverished. (7) Combination and consolidation of railway companies, by which free competition was destroyed, and the producing and commercial interests of the country handed over to the control of monopolies, which were thereby enabled to force upon the public the exorbitant rates rendered necessary by such a system. (8) The system of operating fast and slow trains on the same road whereby the cost of freight movement was believed to be largely increased.[9] Antagonism was also aroused by the uncompromising attitude assumed by the railroad authorities who shielded themselves behind the Dartmouth College decision,[10] and asserted their private character so far as the management of their business was concerned. They denied the right of the public, the States, or the nation to regulate or interfere with their

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8. The net profits over and above the amount paid on interest and dividends were supposed to be expended in permanent improvements and charged to capital account, for which additional stock was issued, and increased charges rendered necessary to meet the increased dividends required. It was insisted that this was a double form of taxation, first, in the exorbitant charges from which such surplus profits were derived; and second, in the conversion of such surplus into capital stock, thereby compelling the business of the country to pay increased charges on all future transactions.

9. Senate Report No.307, 43 Cong. 1 Sess., pp 71-79.

10. 4 Wheaton, 518. Cf. R. F. Cushman, "Leading Constitutional Decisions" pp. 68-79.

operations in any way. It was claimed that the convenience of customers was disregarded and that travelers and shippers were subjected to all sorts of discourtesies and even injuries. Any attempt to secure justice was apt to result in persecution by the powerful corporations. "Absentee ownership" was blamed for many of the abuses, and the free pass system was criticized because of the influence which the railroad corporations exercized over legislators and public officials.[11]

The Industrial Revolution had been followed by a period of industrial development free from any interference on the part of government. The economic doctrine of laissez faire reigned supreme. The evils of unrestrained competition and laissez faire to a certain extent brought their own curb. Following the Civil War the public reacted against the illegal methods so commonly used, and cut-throat competition was so disastrous that some way out was necessary.[12] The outbreak against laissez faire was caused by the farmers' grievances against the railroads and other representatives of capital, the general public distrust of consolidation of industry and capital, and by the ideas of State socialism brought to this country by the increasing number of European immigrants.[13] The attempt to subject the railway corporations to the control of the States found vent in the Granger Movement. The results of this movement marked the abandonment of the laissez faire theory that natural laws alone were sufficient to insure the management of the railroads in the interest of the people. It was the beginning of a definite attempt to solve the railway problem by restrictive State legislation.[14]

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11. S. J. Buck, "The Granger Movement" pp. 12, 13.
12. H. W. Faulkner, "American Economic History" pp. 515, 516.
13. Ibid., p. 652.
14. Buck, op. cit., p. 123.

Between 1869-1875 the Grangers waged a fierce attack on the railroads. The movement was significant in that it enabled the farm voter to formulate and give expression to his views in respect to transportation just when they were more than unusually pronounced.[15] The Western farmers largely attributed their failure to market their crops at a profit to the exorbitant railroad rates and to the high cost of handling commodities by the middleman who stood between the producer and consumer.[16] They directed their political influence primarily toward securing State legislation regulating railroad corporations either by securing office themselves or through their representatives.[17]

Illinois, Minnesota, Iowa, and Wisconsin were primarily affected by the Granger legislative experiments. The first act was passed in Illinois in 1869 limiting the roads in general terms to "just, reasonable, and uniform rates". An amendment to the Illinois State Constitution in 1870 declared railroads to be public highways, forbade stock-watering and consolidation of competing lines, required railroads to make annual reports to a State officer, and directed the legislature to pass laws to correct abuses and to prevent unjust discrimination and extortion by railroad carriers in the State. In fulfillment of this, laws of 1871 provided for maximum fares and freight rates, regulation of warehouses and the transportation of grain, establishment of a board of railway and warehouse commissioners, and the enactment of a general railway incorporation act. An Illinois act of 1873 forbade unjust discrimination and unreasonable rates. Substantial penalties for extortion or for making any unjust discrimination as to passenger or freight rates were provided. The

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15. Daggett, op. cit., p. 472.

16. Buck, op. cit., p. 9.

17. Ibid., pp. 102, 103.

Railroad and Warehouse Commissioners were directed to make a schedule of reasonable maximum rates and fares for the transportation of passengers and freight cars upon each railroad within the State.

In 1871 Minnesota passed an act setting up freight and passenger schedules, declaring railroads to be public highways and forbidding discrimination. The same year the office of railroad commissioner was created, with power to investigate and make reports. In 1874 both the act creating a railroad commissioner and the maximum fare legislation were repealed. Instead a law establishing a railroad commission of three members to be appointed by the governor was enacted. These commissioners were directed to draw up a schedule of maximum rates for each railroad in the State. This statute was repealed in 1875 and a single commissioner with power to inquire and report was substituted. The schedule of maximum rates referred to in the previous law was done away with, but unreasonable and discriminatory charges were still prohibited. Similar acts were passed by Iowa and Wisconsin, and between 1870 and 1886 restrictive railway legislation was passed by several other States.[18]

As a whole the Granger legislation sought (1) to establish schedules of maximum rates by direct legislation; (2) to establish a commission with authority to draw up schedules of maximum rates; (3) to establish maximum rates, whether fixed by the legislature or by a commission, as *prima facie* evidence of reasonableness before the courts; (4) to attempt to prevent discrimination between places by *pro rata* or "short haul" clauses; (5) to attempt to preserve competition by forbidding consolidation of parallel lines; (6) to prohibit granting of free passes to public officials.[19]

These laws immediately met opposition on the part of the companies

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18. Daggett, op. cit., pp. 473-477. Cf. Buck, op. cit., Ch. 4,5. Also F.N.Thorpe, "American Charters, Constitutions, and Organic Laws, 1492-1908".
19. Buck, op. cit., p 205.

and were fought in the courts. There were two angles of attack, first, that the exclusive power to regulate interstate commerce rested with Congress, and that, since the bulk of the commerce was interstate, the federal government should legislate if it was necessary; second, it was maintained that the effort to regulate rates was contrary to the Fourteenth Amendment.[20]

The so-called Granger cases were the first to bring before the Supreme Court the question of the right of a State to regulate interstate commerce. In the October Term, 1876, the Supreme Court handed down together several decisions of which the most important were: Munn vs. Illinois; Chicago, Burlington and Quincy Railway Company vs. Iowa; and Peik vs. Chicago and Northwestern Railway Company.[21]

The leading case on the constitutionality of the Granger laws was that of Munn. vs. Illinois. The Court stated and elaborated upon the principle that there were certain businesses "affected with a public interest" which the public had a right to control. "When one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control." In the succeeding cases these principles were applied explicitly to the cases

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20. Faulkner, op. cit., p. 463.
21. Buck, op. cit., p. 206. Cf. 94 U.S., 113 et seq.

of carriers by rail.[22]

Taking the decisions of the Granger cases as a whole the following propositions were established:

"(1) A State may, under the police power, regulate, to the extent of fixing maximum charges, any business which is public in its nature or which has been 'clothed with a public interest'.

"(2) The warehouse business (in Chicago) and the business of operating a railroad are sufficiently of a public nature to be subject to such regulation by the State.

"(3) At least until Congress acts in the premises, a State may regulate interstate commerce so far as its citizens are affected.

"(4) Although a railroad charter is a contract, it does not interfere with the right of a State to regulate charges unless it contains a direct stipulation to that effect, and the charters are subject to the reservations contained in the general laws under which they are obtained or in the State constitution.

"(5) The courts are not competent to review the question of the reasonableness of charges fixed by the legislature, or in other words the power of the State to regulate rates is subject to no restraint by the courts."[23]

Thus at the end of 1876 there was a respectable body of State legislation attempting to regulate the railroad companies, and the constitutionality of this legislation was upheld by the Supreme Court at

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22. Daggett, op. cit., p. 479. Cf. 94 U.S., 113.
23. Buck, op. cit., pp. 211, 212.

the time. It was the Granger legislation of the 'seventies that eventually led to the Interstate Commerce Act of 1887.

II

Failure of State Legislation

The system of State legislation failed to solve the problem of railroad regulation. The Granger laws had been in effect only a short time when it became evident that it was a National and not a State problem.[24] In order to effectively regulate the railroads of the United States it would be necessary to include the official supervision of every step taken, from the granting of the charter and selection of a route on through all the financial operations incidental to the organization of a company and the construction of the line, and of the policy pursued by the management after the road began to operate. The division of power between the State and Federal government made it impossible to secure a uniform system of regulation. Under State regulation there was no assurance of concert of action among the States, or of any degree of uniformity in the legislation enacted.[25] Any serious attempt on the part of several States to enforce such legislation would naturally lead to great confusion.[26] Under the rule of the Granger decisions it had appeared possible for the State governments to cover completely between them the field of both intrastate and interstate railroad transportation.[27] However, the courts were from time to time pointing out the impracticability of allowing each State to impose such restrictions as it pleased upon the commerce passing into, through, or beyond its borders and were tending to confine the State's jurisdiction to that commerce originating and termi-

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24. Buck, op. cit., p. 214.
25. Senate Report No.46, 49 Cong. 1 Sess., vol. 2 p.44
26. Buck, op. cit., p. 214.
27. Daggett, op. cit., p. 484.

nating within its own borders- that which was strictly domestic. The States were thus hampered by their inability to apply their regulations directly to interstate commerce, which comprised the greater portion of the business carried on by the railroads within their borders. A great opportunity was thus presented for the evasion of the State's authority. There is little wonder that the various State regulations did not accomplish what was expected of them.[28]

National regulation was necessary to remedy those evils which were beyond the jurisdiction of the States and, until Congress acted, were not subject to any governmental control in the interest of the public. Even control of the State's own domestic commerce was frequently rendered inoperative by reason of its intermingling with interstate commerce and thus escaping regulation. National regulation was also needed to supplement, to give direction to, and to render State supervision effective. It was the only method that could secure that uniformity of regulation and operation which the transportation system required for its efficient development.[29]

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28. Senate Report No. 46, 49 Cong. 1 Sess., vol. 2 p. 45.
29. Ibid., pp. 178, 179.

III

Power of Congress to Regulate Interstate Commerce

In investigating the constitutionality of the power of Congress to regulate interstate commerce the Senate Committee on Transportation Routes to the Seaboard inquired into the nature, extent, and application of the powers actually delegated. In the course of their proof they cited Supreme Court decisions to maintain the following propositions: (1) The powers of Congress are derived directly from the people of the several States, and not from the States themselves. (2) Prior to the adoption of the Constitution, the powers now possessed by the national government constituted a part of the supreme sovereignty which resided in the people of the several States. The sovereignty of the people of the States over commerce was absolute. (3) The Constitution transferred whatever elements and attributes of sovereignty which appertained to these powers when they existed in the people of the several States to the national government with the powers themselves. These powers now exist in Congress as fully and completely as they formerly did in the people of the States, subject only to the express limitations of the Constitution itself. (4) ". . . The grant of powers to Congress is an investment of power, for the general advantage, in the hands of agents selected for that purpose, and hence they are not to be construed strictly, and against the grantee, but according to the natural and obvious meaning of the language of the Constitution, taken in connection with the purposes for which they were conferred". (5) ". . . Every important word in the clauses which confer the 'power to regulate commerce among the several states', and to 'make all laws which shall be necessary

and proper for carrying it into execution', has received judicial construction by the Supreme Court of the United States, and that under such construction the power of Congress to regulate interstate transportation by railroads, and to aid and facilitate commerce, is clearly established". (6) In the exercise of its delegated powers, Congress was authorized to employ such means as were appropriate and plainly adapted to their execution, and was not confined to means which were indispensably necessary. The Courts would not inquire into the degree of necessity of any particular measure adopted. (7) In the selection of means by which interstate commerce shall be regulated, Congress might prescribe the rules by which the instruments, vehicles, and agents engaged in transporting commodities from one State into or through another should be governed, whether such transportation was by land or by water, by railroads or in steamboats.[30]

From the decisions of the United States Supreme Court the Cullom Senate Committee (1886) settled three questions which figured prominently in the discussion of Congress' power to regulate railroads engaged in interstate commerce. What constitutes commerce as the word is used in the Constitution? What is interstate commerce? What is meant by regulation? They established the following propositions:

(1) "Commerce, in the meaning of the Constitution, includes the transportation of persons and property from place to place by railroad."

(2) "Commerce among the States includes the transportation of persons and property from a place in one State to a place in another State. Interstate commerce is all commerce that concerns more States than one, and embraces all transportation which begins in one State and ends in or passes through another State." (3) The power to regulate such commerce

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30. Senate Report No.307, 43 Cong. 1 Sess., p. 80.

is vested exclusively in Congress without any limitation as to the measures to be employed in its discretion for the public welfare.[31]

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31. Senate Report No.46, 49 Cong. 1 Sess., p. 39. (See Senate Report No. 307, 43 Cong. 1 Sess., pp. 86-109; Senate Report No.46, 49 Cong. 1 Sess., pp. 28-40 for Supreme Court citations on these points.)

IV

Available Precedents

When Congress seriously set about the task of framing an act to regulate interstate commerce there were several available precedents which could be followed. The experience of the Granger States has already been discussed. Many other States had also passed laws in imitation of the Granger laws. The type of Railroad Commission set up in Massachusetts by the Statute of 1869 received much praise and was duplicated in some other eastern States. This type of commission was known as a weak or advisory commission when contrasted with those having mandatory powers over railroad rates as in Wisconsin and Illinois.[32]

A more important fund of experience lay in the English situation where conditions paralleled quite closely those in America. The United States was slow in departing from a policy of *laissez faire* to a policy of government control by both State and National governments, due to several reasons. (1) The *laissez faire* doctrine had been accepted as final in the years immediately following the Civil War, and the first section of the Fourteenth Amendment[33] put a fitting capstone upon this theory. "Although this had supposedly been incorporated in the Constitution to protect the negro, the increasing pressure of corporations upon the Courts eventually led to an interpretation which went far to restrain the interference of the State legislatures in the operation of business."

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32. Daggett, op. cit., pp. 486, 487.
33. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(2) It was considered bad economics to regulate private capital both by the capitalist and the average citizen. (3) The pioneer individualism of the frontier demanded complete freedom of action. Laissez faire and competition, therefore, were the order of the day.[34] In England on the other hand the British Parliament early began to take an active interest in the evolution of the railway and its many problems. In 1836 the question of government control appeared in a series of resolutions, introduced into the House of Commons by James Morrison, which proposed a bill for railway charter revisions or withdrawals within a stated period. The bill was withdrawn, however, because of the sharp opposition in the House. In 1838 a railway bill was passed by Parliament for the conveyance of mail and the measure thus gave the government some power of regulation. In 1840 a committee was appointed to consider the entire question of legislative policy and out of this background emerged several railway acts. These were instrumental in initiating a policy of governmental regulation of the British Railway System. Thus early in the period of railway building England committed itself in viewing railways as public untilities demanding governmental supervision in the interest of the public.[35]

Acts passed in 1840, 1845, and 1863 secured standardization of charter provisions by providing model clauses to be incorporated in future Acts of Parliament. Among other things they required that railway and canal tolls and charges should not exceed certain stated maxima, and that they should be exacted equally from all persons. In 1854 the Clauses Consolidation Acts were supplemented by the Railway and Canal Traffic Act

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34. Faulkner, op. cit., p. 515.
35. J. H. Clapham, "An Economic History of Modern Britain- The Railway Age, 1820-1850" pp. 381-424.

which prohibited extortion and discrimination in general terms, and required railways and canals to afford reasonable transportation facilities. The Interstate Commerce Act of 1887 as eventually enacted in the United States was of the same type although more elaborate.[36] In 1873 a Railway and Canal Commission was provided to hear complaints and to determine controversies arising under the earlier law.[37]

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36. Daggett, op. cit., p. 565.
37. Ibid., p. 488.

V

Agitation for National Control

As already mentioned the Granger agitation for government control of railroads had not been under way very long before it had become evident that the problem was national in its scope, and that even the most drastic State legislation could not remove the evils complained of. It was natural then that agitation for federal regulation to supplement the Granger laws of the Western States should begin in Congress.[38]

The regulation of railroad rates by national authority was first seriously considered in the second session of the Fortieth Congress (1867-1868).[39] On January 7, 1868, the Senate Committee on Commerce was instructed by resolution "to inquire into and report upon the expediency, by bill or otherwise, of regulating the various railroads in the United States that extend into, or have connections with, other railroads in two or more States, and particularly uniform and just rates of fare for passengers and freights by classes, and maximum rates by classes as far as practicable, and a general maximum for all freights not particularly provided for."[40] This committee failed to report.[41] At the same session the House Committee on Judiciary was instructed to inquire into and report to the House whether in their opinion Congress had the power under the Constitution to regulate rates on railroads engaged in interstate commerce.[42] The Committee on Roads and Canals was likewise instructed "to inquire whether Congress has the power under the Constitution

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38. Buck, op. cit., p. 214.
39. Ibid., p. 215.
40. Senate Journal, 40 Cong. 2 Sess., p. 75. Cf. Cong.Globe, p. 343.
41. Buck op. cit., p. 215.
42. House Journal, 40 Cong. 2 Sess., p. 456. Cf. Cong.Globe, p. 1632.

to provide by law for the regulation and control of railroads, especially those extending through several states, so as to secure: 1. The safety of passengers. 2. Uniform and equitable rates of fare. 2. Uniform and equitable charges for freight or transporation of property. 4. Proper connection with each other as to transportation of passengers and freight; and if in the opinion of the committee, Congress possessed such power, then to report a bill which will secure the foregoing objects.[43]

On June 9, 1868, the House Committee on Roads and Canals submitted its report; the first ever submitted to Congress on the subject of railroad regulation.[44] The committee itself was not able to agree entirely and the minority also submitted a report, which was signed by Kerr (Indiana) and Barnum (Connecticut). The majority report submitted by Mr. Cook (Illinois), declared that Congress had the power to regulate interstate commerce on the railroads and that such regulation was expedient. The minority report took issue with the majority on both points claiming that such a measure could not be constitutionally enacted by Congress, and ought not to be entertained, and that, if the power existed, its exercise would be inexpedient. The committee felt that they did not have the necessary technical information to draw up a bill and therefore they failed to report such a measure. They proposed that a commission be appointed to collect this information, but no action was taken.[45]

Both Houses of the Forty-first Congressadopted resolutions instructing committees to investigate the subject, and during the second session of the Forty-second Congress the first bills advocating national regulation of railroad rates were introduced into the House of Representatives.[46]

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43. Ibid., p. 640. Cf. Cong. Globe, p. 273.
44. Buck, op. cit., p. 215.
45 Committee Report No.57, 40 Cong. 2 Sess.
46. Buck, op. cit., p. 215. Cf. House Journal, 41 Cong. 3 Sess., p.84; Senate Journal, 41 Cong. 3 Sess., pp. 568, 1943; House Journal, 42 Cong. 1 Sess., pp. 197, 561, 654; House Journal, 42 Cong. 2 Sess., Index.

The resolution introduced by Mr. Williams (Indiana), December 20, 1869, is full of sectionalism and throws light on the reasons for the Granger activity concerning railroads in Congress. "Whereas it is the duty of the Congress of the United States to afford protection to all the industrial, manufacturing, and mechanical interests of the country equally, and whereas by the construction and consolidation of extensive lines of railways extending from the seaboard to the agricultural States of the West, and extending through two or more States; and whereas such railway companies by their consolidation have become such giant monopolies as to control the entire lines of transportation from the producing States of the West to the Eastern markets; and whereas by the regulation of freight traffics on their lines of railways they have adopted such exorbitant, oppressive and unequal rates for the transportation of the agricultural and other productions of the West as to consume in charges for the transit more than one-third of the entire value, while the manufacturing interests of the East are protected by a tariff . . . thereby discriminating against the agricultural and other productions of the West, compelled to seek a market at the seaboard; and whereas by the eighth section of the Constitution of the United States it is provided . . . that Congress shall have the power to regulate commerce with foreign nations and among the several States; and whereas doubts may exist whether under the Constitution Congress has the power to regulate and limit the rates of freight on lines of railways passing and extending through two or more States; Therefore, Resolved, That the Judiciary Committee be instructed to inquire into the constitutional power of Congress to legislate, or to enact such laws as shall protect the great agricultural and other producing interests of the West, by limiting the rates of tariff

on such productions from the West to the seaboard. . .[47]

During the third session of the Forty-second Congress an attempt was made in the House to authorize the appointment by the president of a commission of three members to collect information concerning interstate railroads. This commission was to investigate the earnings, expenditures, rates of charge, and operations of railroads and to report to the president its findings, including statements of what rates ought to be charged, whether they should be uniform per mile or not, and what legislation might be necessary on the subject; but the House failed to pass the measure.[48] However, the Senate adopted a resolution for the appointment of a select committee of seven on Transportation Routes to the Seaboard.[49] Resolutions were also adopted by the Senate which instructed its committees on Judiciary and on commerce to inquire into and report by bills or otherwise upon the constitutionality and expediency of legislation to regulate rates on interstate commerce, and the right of Congress to construct and operate or authorize the construction of interstate railroads.[50] The Committee on Judiciary did not report; but the Committee on Commerce reported February 20, 1873, that they did not deem it necessary at that time to thoroughly consider the constitutional question involved, but that they had confined their deliberations more to the subject of the expediency of reporting a bill regulating freights on continuous lines through two or more States; and that the committee did not have the necessary information to enable them to report a bill if they had deemed it proper to do so; and that they were

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47. Cong. Globe, 41 Cong. 2 Sess., p. 239, 868. Resolution quoted in L.H. Haney, "A Congressional History of Railways in the United States, 1850- 1887" pp. 242-243.
48. Buck, Op. cit., p. 218. Cf. House Journal, 42 Cong. 3 Sess., pp.263, 266, 275, 302; Cong. Globe, 843, 1057.
49. Buck, op. cit., p. 217.
50. Ibid., p. 217. Cf. Senate Journal, 42 Cong. 3 Sess., pp.29,35,72,73.

not prepared to report favorably. A minority report from the Chairman of the Committee, Mr. Vickers (Maryland), reported at length against the constitutionality and expediency of federal regulation.[51] There was no further attempt made to take action at this session. Before adjournment, however, the Senate Committee on Transportation Routes to the Seaboard was increased to nine members and instructed to report at the next session of Congress.[52]

That the early period of agitation for federal regulation was a period of doubt and inquiry concerning the power of Congress to regulate railway rates was shown by the character of the resolutions adopted. The object of rate regulation was cheap transportation, and many of the bills introduced during this period were characterized by this feature. Several bills providing for a railway commission were introduced. These showed clearly the influence of English legislation. The early period likewise saw the introduction of some bills against discrimination although the emphasis in general was placed on securing lower rates.[53]

An important step was taken before the climax of the early movement came in the passage by the House of the McCrary Bill in 1874. The livestock traffic of the railways had become very important, while the conditions were bad. An act was passed which received President Grant's signature on March 3, 1873, regulating such traffic in so far as it was interstate. The act was far from perfect and was violated on a large scale, but its importance in opening the field of national regulation is noteworthy. Mr. Eldridge called it a peculiar bill and deemed the power it would confer on Congress extraordinary; and Mr. Casserly said, "This bill is a new departure in the policy of this government. It is the first time Congress has undertaken to deal with that mighty

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51. Senate Report No. 462. 42 Cong. 3 Sess.
52. Buck, op. cit., p. 217.
53. L.H.Haney, "A Congressional History of Railways, 1850-1887" pp. 283, 285. 286.

problem whether the transportation of property upon railroads forming links in communication between State and State is commerce within the meaning of the Constitution in the first place, and whether in the next place, it is politic for Congress to assume the exercise of that power. It is one of the greatest questions which has ever arisen in this body. I have heard senators, and leading senators here, who did not doubt the congressional power, declare . . . that they shrank from the consequences of exercising it.'" The act was immediately made an argument for further regulation.[54]

The Granger Movement was then at its height and during the first sessions of the Forty-third Congress (1873-74) some nine different bills and one joint resolution embodying various propositions for the regulation of railroads were introduced into the House.[55] Great interest on the subject was felt throughout the country. Chambers of Commerce, from Saint Paul to the Gulf of Mexico, were constantly passing resolutions asking that the country might have more adequate facilities for transportation, and that they might have <u>cheaper</u> transportation. Scarcely a Legislature went through its sessions without pleading that Congress should do something to relieve the people. Agriculturalists throughout the land pleaded for more and cheaper facilities for transportation, speeches were made, and conventions organized showing that the people were in earnest.[56]

The matter finally came before the House on January 20, 1874 in the form of a bill, which Mr. McCrary introduced by unanimous consent from the Committee on Railways and Canals, to regulate commerce by railroad

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54. Ibid., pp. 267, 268.
55. Buck, op. cit., p. 225. Cf. Cong. Record, 43 Cong. 1 Sess., p. 783; House Journal, index 1543.
56. Cong. Record, 43 Cong. 1 Sess., p. 2146.

among the several States. Before the bill came up for consideration a resolution was adopted by a vote of 178;64 that in the judgment of the House, it was within the constitutional power of Congress by law so to regulate commerce among the States so as to protect that portion of the internal commerce which was among the several States from all unjust or oppressive tolls, taxation, obstructions, or other burdens, whether imposed by railroad companies or by combinations thereof, or by other common carriers, when engaged as the instruments of such portion of the commerce of the people; and that the present condition and magnitude of the commerce among the States was such as to demand the prompt exercise of the power and duty declared in the resolution.[57]

The McCrary Bill asserted the right and duty of Congress to regulate interstate commerce carried on by means of railroads. It provided two things in the nature of regulations; that persons engaged in interstate commerce should be prohibited from making unreasonable or extortionate charges, and that they should be prohibited from unjust discrimination in the matter of charges. The bill according to Mr. McCrary was simply declaratory of the common law itself.[58] Leading features of the bill were that it provided that there should be a board of nine commissioners, consisting of one from each judicial circuit of the United States; that the board should institute a thorough investigation into the rates of toll and compensation charged for transportation of freights, passengers, and cars over each railroad line, and into the reasonableness thereof, and should as soon as practicable after such investigation, prepare for the owners and operators of each line a separate schedule of reasonable maximum rates of charges, the schedule to be duly authorized by the board of commissioners, printed, and posted in each of the offices and depots of the railroad company. A copy was

57. House Journal, 47 Cong. 1 Sess., p. 408.
58. Cong.Record, 43 Cong. 1 Sess., p. 1941.

to be filed in the office of the clerk of the circuit court of the circuit in which any part of the railroad affected might be, and a copy of the schedule, certified by the clerk of the court, was to be admissible in evidence in any trial under this law. Where the commissioners found the rates of a company already reasonable, they could dispense with fixing a tariff of charges for that company. Any corporation operating a line through two or more States, which should be guilty of extortion, by charging or receiving more than a reasonable rate of toll or compensation for the transportation of freight, passengers, or cars over such line, should pay a certain penalty. It was made the duty of the United States attorneys to prosecute all such offenses. Upon any trial for violation of the law the schedule was to be regarded as <u>prima facie</u> evidence that the charges therein fixed were reasonable, but the companies were permitted to prove, if they could do so, the reasonableness of their charges.[59] The last section prohibited unjust discrimination but no method was provided for <u>prima facie</u> evidence in this particular.[60]

The House debate on the bill was very extensive and it involved principally the questions of contitutionality, state rights, and expediency. In addition there were objections to the principle of the bill. It was argued by some that the McCrary Bill sought the remedy in the wrong way and that the way to solve the problem was by improving the existing water routes and by opening up new ones in different parts of the country. Another group claimed that the building of a government line of railroad was necessary. Some who conceded the power of Congress to regulate railroad rates claimed that no commission, however learned and able, could make a schedule of reasonable rates, and therefore, that the bill was impossible.[61]

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59. Ibid., p. 2424. Bill printed in full pp. 1946-1947.
60. Buck, op. cit., p. 225. Cf. Cong. Record. 43 Cong. 1 Sess., p.1946.
61. Cong.Record, 43 Cong. 1 Sess., pp. 1941-1947.

The bill was said to create a board which was a loose and imperfect organization, which was not a department nor a bureau, that it would sometimes be in session and sometimes not, and that it had no definite duties beyond those generally stated in the bill- to institute an investigation into rates charged by railroad companies and to fix schedules.[62]

However, all amendments were shut off by the previous question,[63] and on March 26, 1874 the House passed the McCrary Bill by a vote of 121:116 with 53 not voting.[64] The Alignment of the East against the West is shown in the vote by sections as follows:[65]

	Yeas	Nays
New England States	7	13
Middle Atlantic States	17	35
North Central States	64	26
South Atlantic States	12	17
South Central States	17	23
Far Western States	4	2
Totals	121	116

The bill was then sent to the Senate where it was referred to the Windom Committee on Transportation Routes to the Seaboard.[66] Late in the session this committee reported the bill back with an amendment but no further action was taken.[67]

On December 16, 1872 the Senate of the United States had adopted the following preamble and resolution.

"Whereas the productions of our country have increased much more rapidly than the means of transportation, and the growth of population and products will in the near future demand additional facilities, and cheaper ones, to reach tide-water; and

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62. Ibid., p. 2247.
63. Buck. op. cit., p. 226.
64. Cong. Record, 43 Cong. 1 Sess., p. 2493.
65. L. M. Hacker and B.B.Kendrick, "The United States Since 1865" p. 272.
66. Senate Journal, 43 Cong. 1 Sess., p. 383.
67. Ibid., p. 661.

Whereas in his recent message the President of the United States invites the attention of Congress to the fact that 'it will be called upon at its present session to consider various enterprises for the more certain and cheaper transportation of the constantly increasing Western and Southern products to the Atlantic Seaboard,' and further says 'the subject is one that will force itself upon the legislative branch of the Government sooner or later, and I suggest, therefore, that immediate steps be taken to gain all available information to insure equitable and just legislation; . . . I would therefore suggest either a committee or a commission to be authorized to consider this whole question, and to report to Congress at some future date for its better guidance in legislating on this important subject'; therefore

Resolved, That a committee of seven be appointed, to whom shall be referred that part of the President's message relating to transportation routes to the seaboard."[68]

Thus the famous select committee on Transportation Routes to the Seaboard with Senator Windom of Minnesota as its chairman came into existence. Later in the session (March 26, 1872) the committee was authorized to sit at such places as they might designate during the recess, to employ a clerk and a stenographer, and to send for persons and papers; and to investigate and report to the Senate on the subject of transportation between the interior and the seaboard. At the same time two members were aided to the committee.[69] The Committee reported April 24, 1874.

The inquiries of the committee in regard to railroads concerned especially the following subjects: "Combinations between different lines; the consolidation and amalgamation of lines; fast-freight lines; the

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68. Senate Report No. 307, 43 Cong. 1 Sess., p. 7.
69. Ibid.

issuing of stock not representing money paid in for construction, a device commonly known as 'stock-watering' or capitalization of surplus earnings; competition between railroads and water-lines; the relative cost of the various methods of transportation; the regulation or control of existing railroads by States and by the National Government, involving the questions as to the limitation of the powers of Congress under the commercial clause of the Constitution; the construction of one or more double-track freight railroads by the Government, to be operated by it or leased to parties who shall operate such road or roads subject to government control; and the chartering of freight-railroads to be constructed and managed by private corporations, such roads to receive aid from the Government and to submit to governmental regulation with regard to their rates of freight and the facilities which they shall afford." The Committee did not pretend to have exhausted the subject, but they expressed the hope that the facts submitted would stimulate further inquiry and enable Congress to inaugurate measures which would be productive of great benefits to the country.[70] The primary object of the committee as it lay in the minds of the President and the Senate was rather the question of cheaper transportation than other abuses which had been revealed in the management of the railways. The Windom Report contained for the first time a comprehensive plan of federal regulation of the whole subject of interstate commerce.[71]

The general summary of the conclusions and recommendations of the Committee presented in concise form the results of their work. They asserted the importance of the problem of cheap and ample facilities for the interchange of commodities between all parts of the country; they claimed for Congress ample power under the Constitution to regulate

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70. Ibid., pp. 10, 11.
71. E. J. James, "The Railway Question" p. 35. Cf. Buck, op. cit., p.221.

interstate commerce in every respect whether by land or by water; they allowed that a remedy for some of the existing defects and abuses might be provided by direct congressional regulation but they rejected this plan as being doubtful of securing facilities, sufficiently cheap and ample to meet the just and reasonable requirements of commerce. The Committee felt the need of more definite and detailed information, and therefore, confined themselves solely to those recommendations which could be enacted with safety to secure the desired object- cheap transportation. They recommended for action the following:

1. Publicity of all rates, and prohibition of any increase of such rates without reasonable notice to the public.

2. Prohibition of the combination and consolidation of parallel or competing lines.

3. That all railway companies transporting grain from one State to another should be required to receipt for quantity and to deliver the same at its destination.

4. That all railway companies and freight organizations, receiving freights in one State to be delivered in another, and whose lines touch at any river or lake port, should be prohibited from charging more to or from such port than for any distance on the same line.

5. Prohibition of stock-watering. The remedy for this evil was said to fall within the province of the States which created the corporations, and prompt state action was recommended.

6. Passage of state laws prohibiting officers of railway companies from owning or holding any interest, directly or indirectly, in any non-cooperative freight line operated upon their railroad.

7. That a Bureau of Commerce, in one of the Executive Departments of the Government, should be charged with the duty of collecting and reporting to Congress information on the whole subject of internal trade

and commerce so as to enable Congress to legislate intelligently upon the subject. The Bureau should be clothed with the power to require of each company engaged in interstate transportation to make full reports as to: (1) The rates and fares for passengers and freights, with all drawbacks, deductions, and discriminations, (2) receipts and expenditures, including compensation paid to officers, agents, and employees, (3) the amount of stock and bonds issued, the price at which they were sold, and the disposition made of the proceeds, (4) the amount and value of commodities transported during the year.

The Committee however were unanimously of the opinion that the problem of cheap transportation was to be solved through competition and not by direct congressional regulation of existing lines. Railway competition when regulated by its own laws would not effect the object, and the only means of securing and maintaining reliable and effective competition between railways was through national or state ownership or control of one or more lines, which being unable to enter into combinations, would serve as regulators of other lines. They then advocated the construction of one or more double-track freight railways to be owned or controlled by the Government and the construction and improvement of adequate waterways as the best solution of the problem of cheap transportation.[72]

Before the Windom Committee reported, a resolution was introduced and discussed in the Senate instructing them to report a bill creating a commission to investigate and report as to what legislation was constitutional, necessary, and practicable for the regulation of interstate commerce. No action was taken, however. Shortly after the committee reported, several bills providing for regulation of interstate commerce in various ways were introduced but the Senate took no further action.[73]

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72. Senate Report No.307, 43 Cong. 1 Sess., pp. 240-243. Cf. James, op. cit., pp. 35-37.
73. Buck, op. cit., p. 232.

The recommendations of the committee, however, did serve to direct public attention still more powerfully to the importance of the question and the necessity for some federal measures in relation to the problem.[74]

A lull in the agitation for federal control of railroads, both inside and outside of Congress, followed the failure of Congress to enact the McCrary Bill into law. Attention seemed to be directed toward the efforts of the States to enforce their laws, but the failure or repeal of the greater part of these State measures naturally discouraged the advocates of restrictive legislation.[75] Railroad conditions changed greatly after 1873. Transportation rates fell rapidly over large portions of the railroad systems, and the numerous extension of the lines during this period brought the benefits arising from competition more and more to the important shipping centers. This tended to turn the attention of the public away from the cheapness of transportation to the problem of discrimination between sections, cities, and individuals which the new conditions helped to increase.[76]

Therefore, by 1878, when Congress again turned its attention to the railway problem, the emphasis was placed on the elimination of unjust discrimination and not on cheap transportation as in the previous period. Agitation during the interval had never completely died down, but the bills and resolutions introduced had received little if any attention.[77] In the second session of the Forty-fifth Congress (1877-1878) Mr. Reagan of Texas, as chairman of the Committee on Commerce, reported to the House a bill to regulate interstate commerce and to prohibit unjust discrimination. This was a substitute for earlier bills, one introduced by Mr. Reagan and another by Mr. Watson (Pennsylvania) both of which bore the same

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74. James, op. cit., p. 37..
75. Buck, op. cit., p. 226.
76. James, op. cit., p. 38.
77. Buck, p. cit., p. 227.

title.[78] The object of the Reagan Bill of 1878 was to prevent unjust discrimination by transportation companies; i. e., that no higher rates should be charged to one shipper than to another, and that no advantage should be given to one shipper over another. One of the chief criticisms of this bill was its verbosity and difficulty of interpretation. In brief it embodied the following provisions: (1) Freight rates and facilities should be made equal to all shippers. (2) Rebates and drawbacks should be prohibited. (3) The gross amount of charges should not be greater for a shorter than for a longer distance on the same line of transportation. (4) Combinations by individuals or corporations to defeat the objects of the bill were prohibited. (5) All schedules of rates of freight and charges must be posted so that all shippers might know the rates they were required to pay. (6) When the rates were fixed for local commerce within a State, the State rates were required to be posted, and the transportation companies were forbidden to charge more for interstate freights than for State freights. (7) Provision was made for the efficient enforcement of the bill in the courts. (8) Penalties for violation were provided.[79] The bill did not attempt to provide what charges should be made, but only that they should be equal to all shippers and not greater for shorter distance than for long.[80]

A comparison of this bill with the McCrary Bill of 1874 indicates clearly the change that had taken place in the transportation problem. The emphasis was now unquestionably upon unjust discrimination.[81]

The bill met considerable opposition in the House. As already mentioned its verbosity was criticized severely. Some members considered it a measure in the interests of the corporations, and claimed that the

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78. Cong. Record, 45 Cong. 2 Sess., p. 3096.
79. Ibid., p. 3275. Bill printed in full p. 3096.
80. Ibid., p. 3097.
81 Buck, op. cit., p. 227.

purpose accomplished was directly opposite from that intended.[82] That the effect of the bill, whatever the object might be, was to aid and foster monopoly.[83] Others urged that the bill would defeat competition. There was also the fear that the bill might be so construed as to interfere with commerce wholly within a State.[84] And it was claimed that the long and short haul clause would have the same effect as a pro rata regulation of rates and charges.[85] Much of the debate centered on this feature.

The House repeatedly refused to proceed with the discussion of the bill, and toward the end of the session Mr. Reagan introduced a substitute[86] which went over to the next Session of Congress. The substitute bill was promptly brought before the House in December. It was less verbose and less technical, and it embodied a few changes. The section which was objected to because it required that the State schedules of freight should be posted up as a means of comparison only, in order to prevent charging greater rates of freight for interstate than for State commerce was changed to a simple prohibition of a greater compensation for a shorter than for a longer haul. The bill as originally reported contained no provision against the pooling of freights by roads running to and from the same terminal points. In the substitute a section was added prohibiting pooling.[87]

Mr. Reagan's substitute measure was accepted by the House after a brief debate.[88] The vote stood: yeas 135, nays 104, with 48 not voting. The South and the West were now combined against the East.

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82. Ibid., p. 228.
83. Cong. Record, 45 Cong. 3 Sess., p. 95.
84. Buck, op. cit., p. 228.
85. Cong. Record, 45 Cong. 2 Sess., p. 3097.
86. Bill printed in full Cong.Record, 45 Cong. 3 Sess., p. 93.
87. Ibid., pp. 94-95.
88. Ibid., pp. 93-103.

The sectional vote[89] on the bill was:

	Yeas.	Nays.
New England States	2	21
Middle Atlantic States	23	27
North Central States	54	31
South Atlantic States	18	12
South Central States	32	10
Far Western States	4	3
	133	104

The bill was then sent to the Senate where it was referred to the Committee on Commerce.[90] It was ordered printed for the use of the Senate, and a resolution was submitted to consider the bill at the earliest possible moment. Later a joint resolution to provide for a commission to consider and report what legislation was needed for the better regulation of commerce among the States was submitted and referred to the Committee on Commerce. No action resulted on either the bill or the resolution.[91]

The Forty-sixth Congress was again flooded with petitions, memorials, and resolutions from citizens, Granges, State legislatures, and boards of trade for the passage of the Reagan Bill or some other measure for the regulation of interstate commerce. Mr. Reagan introduced his bill, but it along with several others was never reported from the Committee.[92] More bills and resolutions were reported at the next session, and finally toward the close of the session, the House Committee on Commerce reported three bills. One prepared by Mr. Reagan was similar to his previous bill. When they came up for consideration, the subject was dropped after a brief debate.[93]

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89. Hacker and Kendrick, op. cit., p. 273.
90. Cong.Record, 45 Cong. 3 Sess., p. 117.
91. Ibid., pp. 531, 1045, 1182.
92. House Journal, 46 Cong. 1,2,3, Sess., index. Senate Journal, 1,2,3, Sess., index. Cf. Buck, op. cit., p. 229.
93. Buck, op. cit., p. 229. Cf. Cong.Record, 46 Cong. 2 Sess., pp.1154, 1362, 1864, 2506-2510. Also Cong.Record, 46 Cong. 3 Sess., pp. 17, 48, 362-366.

Every session of Congress was confronted with numerous bills to regulate interstate commerce, but it was not until 1884-1885 that definite action was again taken. During this time the final stage in the evolution of the Interstate Commerce Act of 1887 was begun.[94] December 2, 1884 Mr. Reagan brought before the House a bill (H. R. 5461) to establish a board of commissioners of interstate commerce and to regulate such commerce. This committee bill was not satisfactory to Mr. Reagan, and he immediately proposed a substitute.[95] After a long debate the House accepted the Reagan substitute.[96]

The Reagan bill provided that rates must be reasonable; it prohibited discrimination and forbade rebates, drawbacks or any other advantages; there was to be no cutting of rates; it prohibited pooling or combination agreements; it prohibited a greater charge for a shorter than for a longer haul; provided that schedules should be posted; violators were liable to three times the damages actually sustained to be recovered by the person or persons who sustained the damage by suit in any State or United States Court of competent jurisdiction; and penalties for violation of the act were also provided.[97]

During the debate on the bill the provisions of the Committee's bill and Mr. Reagan's bill were closely compared and discussed. The differences in the two bills bring out the views held in Congress at the time. The Committee's bill provided only for legal remedies, while the Reagan bill provided for both legal and equitable remedies; the Committee's bill did not make unjust charges an offense, while the Reagan bill made all violations of its provisions penal; the Committee's bill provided for common law damages, while the Regean bill provided for damages equal to

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94. Haney, op. cit., p. 290.
95. Cong. Record, 48 Cong. 2 Sess., pp. 25,26. Both bills are printed in full pp. 26-28.
96. Ibid ., p. 295.
97. Ibid., pp. 27, 28.

three times the amount actually sustained; the Committee's bill did not prohibit the railroad companies from charging more for a shorter haul than for a longer haul, while the Reagan bill did; the Committee's bill only prohibited the allowance of rebates or drawbacks and other discriminations to any one person which were not allowed to any other person, while the Regean bill prohibited the allowance of rebates, drawbacks, or advantages of any kind in all cases; the Committee's bill required no posting of schedules of its rates of charges, while the Reagan bill did; the Committee's bill provided for the appointment of a railroad commission, while the substitute did not since Mr. Reagan preferred to include legislation for adequate legal and equitable remedy which enabled the citizen to go directly to an honest court and an honest jury rather than to run the risk of dealing with a dishonest commission.[98]

In the course of the debate on the two bills, Mr. Reagan showed that the provisions of his bill were not novel and untried by legislation, but that they were in full accord with the provisions of the most recently formed State Constitutions.[99] However, the Reagan bill was denounced as being a cast-iron measure, a harsh measure, imposing injurious restrictions on trade, and as calculated to injure the best interests of the country.[100]

On January 8, 1885 the vote was taken on the measure and the bill after a few minor amendments had been added, was passed by the House. The vote, 161:75 with 87 not voting, shows the sectional alignment of the country as follows:[101]

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98. Ibid., pp. 25-32.
99. Ibid., p. 288.
100. Ibid., pp. 293, 294.
101. Ibid., p. 555.

	Yeas.	Nays.
New England States	3	13
Middle Atlantic States	30	27
North Central States	84	17
South Atlantic States	19	14
South Central States	38	4
Far Western States	7	0
Totals	181	75

Paralleling the action on the Reagan bill in the House the Senate had been considering the Cullom bill (S. 2112) to establish a commission to regulate interstate commerce. This bill had been postponed in the previous session and it now came up for consideration early in the second session of the Forty-eighth Congress.[102] The Cullom bill provided for a railroad commission of nine members, it required transportation companies to charge reasonable rates and declared unreasonable rates to be extortion and misdemeanor. It made greater charges against one shipper than another, under substantially similar circumstances and conditions, unjust discrimination and a misdemeanor. In case of complaint against any railroad company it provided that the commission should conduct an investigation and report its findings to the railroad company. If reparations were demanded and not made and the evil not discontinued, then the commission should require the district attorney to sue the railroad company. The other provisions of the bill related to acquiring information and reports by the commissioners.[103]

During the debate on the measure the Reagan Bill was brought from the House and the Senate proceeded to consider it. A comparison of the two bills showed that they both affirmed the same evils and declared the power of Congress to control and regulate the subject. The methods, however, differed. The Reagan Bill proposed to prohibit and punish those

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102. Ibid., p. 51.
103. Ibid., p. 1686. Bill printed in full p. 854.

evils, not only by opening the Federal Courts of the United States to the aggrieved person, but also by making them a penal offense. It required the United States District Attorney to prosecute the same. It brought, therefore, the whole power of the national government to sustain the individual in his suit against the railroad in obtaining a redress of any grievance committed in violation of the law. The Cullom Bill, on the other hand, required a quasi-judicial suit before the commission and an opportunity for the railroad company to abide by it. If the company followed their recommendations then it was relieved of any further liability.[104]

After a long debate in which the provisions of each bill were compared, the Senate substituted the Cullom bill for the Reagan or House bill. The vote in the Senate on February 4, 1885 was 43 yeas and 12 nays with 21 not voting.[105] The House refused to consider the measure when the bill was returned to it, and thus a deadlock resulted.[106] But the flood of petitions for regulation continued to pour in from citizens and boards of trade throughout the nation.[107]

It was at this point that Senator Cullom (Illinois) submitted a resolution on March 13, 1885, for the appointment of a select committee to investigate and report upon the subject of regulation of interstate commerce. The resolution was adopted the following day after being amended so as to include the subject of the regulation of transportation by railroads and water routes in combination or in competition with freight and passenger lines engaged in interstate commerce. The report of the Committee was to be made to the Senate at the beginning of the next session of Congress in December 1885.

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104. Ibid., p. 1246.
105. Ibid., p. 1274.
106. Ibid., pp. 1362, 2047.
107. Haney, op. cit., p. 280. Cf. House Journal, 48 Cong. 2 Sess., index.

The Committee as appointed by the President of the Senate consisted of the following Senators: Chairman, Mr. Cullom (Illinois), Mr. Platt (Connecticut), Mr. Miller (New York), Mr. Gorman (Maryland), and Mr. Harris (Tennessee).[108]

The purpose of the investigation was to ascertain what sort of legislation for the regulation of interstate commerce would be for the best interests of the country.[109] The Committee devoted itself largely to the question of whether any legislation was advisable and, if so, what the scope and character of that legislation should be.[110] In order to ascertain what causes of complaint existed against the railroads and to determine the opinion of the public as to what remedies should be applied by Congress, arrangements were made for the committee to visit the leading commercial centers of the United States and take testimony. Public notice was given of these hearings, and efforts were made to secure the attendance of those most competent to speak as the representatives of every interest and of every shade of opinion. The Committee issued a circular containing a series of questions which called attention to those problems that had been most prominently discussed in connection with legislative control.[111] Written statements were solicited from localities in all sections of the country which the Committee was unable to visit. Any organization or person who was known to have given special attention to the question in any phase whatever was included in this correspondence.[112]

The Committee submitted their report to the Senate on January 18, 1886. The report first emphasized the importance of the topic investi-

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108. Senate Journal, 48 Cong. 2 Sess., pp. 515, 520. 521,524.
109. Senate Report No. 46, 49 Cong. 1 Sess., vol. 2 p. 1.
110. Ibid., vol. 1 p. 1.
111. Ibid., Appendix, pp. 1, 2.
112. Ibid., p. 2.

gated and of the United States Railroad System in commercial transactions. Next they took up the power of Congress to regulate interstate commerce. An examination of the economic and social functions of the railroads was then followed by a review of the various methods of railway legislation as adopted in different countries. A summary of the provisions of the State statutes and the work of the State commissioners was then given. This was followed by a discussion of the competition between waterways and the railways. The Committee next emphasized the necessity for national regulation of interstate commerce, and then a summary of the complaints against the railroad system was presented together with the recommendations of the Committee. A bill was submitted with the report which embodied their plan for regulation.[113]

The Cullom Committee agreed with the Windom Committee on transportation routes to the Seaboard (1872-1874) in regard to the influence of water routes on railroad charges. Their conclusion was to the effect that water routes, when properly located and maintained, afford the cheapest method of transportation and that they in turn were the most effective regulators of railroad charges.[114]

The indictment of the railroad companies was especially severe. It showed clearly the basis for the agitation for federal regulation which was coming from all parts of the country.[115]

The Committee concluded that publicity, both as to the charges made and as to the manner in which the business was conducted, was the best remedy for unjust discrimination. They recommended the posting of rates under the direction of a commission, and they favored the establishment of a national commission with adequate powers to enforce whatever regula-

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113. Ibid., passim.
114. Ibid., pp. 167-174.
115. See Appendix.

tion might be enacted for the regulation of interstate commerce. Any proceedings arising under the law should be within the jurisdiction of the United States Courts.[116]

The Congressional efforts to secure the passage of an interstate commerce act were the result of the popular agitation for such a measure taking place throughout the country. This movement was carried on through all the known organs for expressing public opinion. The press played an important part and was continually filled with discussions of railroad abuses. The popular movement was especially active during the 'seventies when the Granger state legislation was being tried and found unsatisfactory. The Granger movement early turned to Congress for national aid, and in addition several movements of a more national scope were under way. The most important was the National Cheap Transportation Association organized in New York City in 1873.[117] State organizations of a similar nature were organized, and numerous conventions were held from time to time which devoted themselves to the transportation problem.[118] Every session of Congress was flooded with petitions to regulate interstate commerce from citizens, Boards of Trade, State legislatures, Chambers of Commerce, merchants and manufacturers' associations, commercial exchanges, Granges, and farmers' associations everywhere.[119] Some organizations undertook to inaugurate general campaigns of petitions to Congress.[120]

After 1880 the demand ceased to quite an extent due to a remarkable change that occurred in the attitude and direction of public sentiment toward the railways. The benefits of competition had proved the only real law that had remained in force since the hasty state leg-

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116. Senate Report No.46, 49 Cong. 1 Sess., p. 182ff.
117. Buck, op. cit., p. 218.
118. Ibid., pp. 219, 220.
119. See House Journal , Index.
120. Buck, op. cit., p. 228.

islation demanded by public impatience had failed. Competition had done the very things the Granger laws attempted and could not accomplish.[121]

"The Nation" expressed its view on the Reagan Bill of 1885 which was then pending in Congress as follows: "The Interstate Commerce bill now engaging the attention of Congress, is occupying time which might more profitably be spent upon something else. Mr. Reagan's measure had its beginning at a time when the railroad problem was a very different thing from what it is now. Complaints of excessive charges and unjust discrimination were then frequent and, perhaps, well founded. They were dealt with in an imperfect way by the States, and the resulting crop of Granger legislation was not satisfying. . . . Meanwhile competition has accomplished most of the ends which Grangerism aimed to secure. It has reduced the rates of transportation for persons and property far below the dreams of the Grangers themselves. . . So far as the Reagan Bill has this end in view, it will be as superfluous as an attempt to supplement the ocean tides with a squirt gun . . ."[122]

The findings of the Cullom Committee also brought out the fact that the strength of the opposition to railroads had modified considerably. Public sentiment was directed more towards local discriminations and abuses; the people wanted reasonable rates and no discrimination. They were willing that the railroad should have a reasonable profit because they realized more and more their dependence upon the railroad systems. Their chief complaint was against the injustice arising from the practice of charging more for a shorter than for a longer haul.[123] Although the demand for regulation had largely changed from general opposition to local dissatisfaction the report of the Cullom Committee

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121. Nation, vol. 40 p. 437 (May 28, 1885).
122. Nation, vol. 39, p. 539 (Dec. 25, 1884).
123. Senate Report No. 46, 49 Cong. 1 Sess., vol. 2 pp. 616,617,785,686 703,754,886,887,952,976,1002,1051,1070,1102,1131,1391.

showed that all classes- merchants, manufacturers, farmers- were insistent upon the national regulation of railroads.[124]

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124. Buck, op. cit., p. 230.

VI

United States Supreme Court Decisions

Contrary to the usual opinion, the force of the State Granger laws was gradually broken down by a series of court decisions which culminated in the Wabash, St. Louis, and Pacific Railway Co. vs Illinois decision in 1886. Only one year after the Granger decisions the issue was again met in the case of Hall vs. De Cuir (95 U.S., 485), which involved an act of the State of Louisana prohibiting discrimination by common carriers of passengers between persons of different race or color. The terms of the act applied to carriers engaged in transporting passengers from State to State. The court declared the act void as an interference with interstate commerce, even if construed to be limited to that part of the carriage within the State. The court said:

"While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the State, or taken up to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. . . . It was to meet just such a case that the commercial clause in the Constitution was adopted."

In the case of Kaeiser vs. Illinois Central Railway Company, Judge McCrary of the United States Circuit Court in the suit brought under the Iowa statute to recover damages for overcharges upon freight shipped from points in Iowa to points in Illinois and Wisconsin, said:

"It seems very obvious that the regulation of the transportation of

merchandise over a line extending, it may be, from the Atlantic to the Pacific Ocean, is a subject which is in its nature national. It is so because it necessarily concerns the people of the whole country and is beyond the legislative power of any State. . . .And since no State law can have any extra territorial force, is it not clear that the attempt to enforce the statutes of each of the several States, in so far as the carriage within such State is concerned, would lead to conflicts and disputes which no State authority would be competent to adjust and determine? These considerations, I think, lead inevitably to the conclusion, not only that such commerce is the subject only of national control and regulation, but that any attempt to devolve upon a single State the power to regulate it in part would necessarily give to such State the right to discriminate against other States of the Union."

The same attitude was taken by a Unites States circuit court of Tennessee in the Louisville and Nashville Railroad Company vs., the Railroad Commission of Tennessee[125] case to test the validity of the statute enacted in that State for the regulation of railroads. Certain provisions of the act were held to be an attempt to regulate interstate commerce.

In Moran vs. New Orleans (112 U.S., 69) a municipal ordinance of the city of New Orleans, which directed a tax to be collected from persons running tow-boats to and from the Gulf of Mexico and New Orleans, was held to be a regulation of interstate commerce and therefore unconstitutional.

Further evidence is found in the case of the Gloucester Ferry Company vs. Pennsylvania (114 U.S., 196) decided April 14, 1885. The case arose from an attempt of the State to collect taxes upon the capital stock of the company, which operated a ferry across the Delaware River between

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125. 12 Federal, 679.

Gloucester in New Jersey and Philidelphia. Mr. Justice Field delivered the opinion and said that the subjects of regulation upon which the power of Congress might be exerted were of infinite variety. While with reference to some of them, which were local and limited in their nature or sphere of operation, the States might prescribe regulations until Congress intervened and assumed control of them, yet, "when they are national in their character and require uniformity of regulation affecting alike all the States, the power of Congress is exclusive. Necessarily that power alone can prescribe regulations which are to govern the whole country. And it needs no argument to show that the commerce with foreign nations and between the States, which consists in the transportation of persons and property between them, is a subject of national character and requires uniformity of regulation. Congress alone, therefore, can deal with such transportation; its non-action is a declaration that it shall remain free from burdens imposed by State legislation."

The declaration of the court was even more explicit in the case of Brown vs. Houston (114 U.S., 622) decided May 4, 1885. Speaking for a unanimous bench, Mr. Justice Bradley said:

"The power to regulate commerce among the several states is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations. If not in all respects an exclusive power, if, in the absence of Congressional action, the States may continue to regulate matters of local interest only incidentally affecting foreign and interstate commerce, such as pilots, wharves, harbors, roads, bridges, tolls, freights, etc., still, according to the rule laid down in Cooley vs. Board of Wardens of Philadelphia (12 Howard, 299), the power of Congress is exclusive whenever the matter is national in its character or admits of one uniform system or plan of regulation; and is certainly so far exclusive that no State has power to make any law or regulation which will affect the free

and unrestrained intercourse and trade between the States, as Congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of other States coming or brought within its jurisdiction. . . . So long as Congress does not pass any law to regulate commerce among the several States it thereby indicates its will that that commerce shall be free and untrammeled, and any regulation of the subject by the States is repugnant to such freedom. This has frequently been laid down as law in the judgments of this court. . . . In short, it may be laid down as the settled doctrine of this court at this day that a State can no more regulate or impede commerce among the several States than it can regulate or impede commerce with foreign nations."[126]

The decision rendered in the Wabash, St.Louis, and Pacific Railway Company vs. Illinois case, decided October 25, 1886, was not, therefore, a sudden reversal of policy but one gradually built up during the interval between 1876 and 1886. It appears that it never was the deliberate opinion of the court that a statute of a State which attempted to regulate the fares and charges of railroad companies within its borders, for a transportation which constituted a part of interstate commerce, was a valid law.[127] The decisions of the Granger cases were definitely reversed and the attempts of the State governments to regulate interstate commerce were at an end.

An Illinois Statute said that if any railroad company should within the State, charge or receive for transporting passengers or freight of the same class, the same or a greater sum for any distance than it did for a longer distance, it should be liable to a penalty for unjust discrimination. The Wabash, St. Louis, and Pacific Railway Company made

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126. Senate Report No.46, 49 Cong. 1 Sess., pp. 34-38. Cf. 118 U.S., 557. See also Telegraph Company vs. Texas, 105 U.S., 460; Mobile vs Kimball, 102 U.S., 691; Pickard vs. Pullman Southern Car Company, 117 U.S., 34.
127. 118 U. S., 557.

such a discrimination in regard to goods transported over the same line from Peoria and from Gilman, both in Illinois, to New York. More was charged for the same class of goods carried from Gilman than from Peoria which is 86 miles farther from New York than the former. The difference was in the length of the line within the State of Illinois.[128]

The Supreme Court of Illinois rendered its decision on the ground that the transportation and charges were exclusively State commerce, but they conceded that it might be a case of interstate commerce which Congress would have had the right to regulate if it had attempted to do so. They argued that this statute belonged to that class of commercial regulations which might be established by state law until Congress should legislate on the subject. The Illinois court insisted that it was not regulating commerce within the meaning of the Constitution of the United States. To support their conclusion they cited the cases of Munn vs. Illinois; Chicago, Burlington, and Quincy Railway Company vs. Iowa; and Peik vs. Chicago and Northwestern Railway Company.

In presenting its decision the court said: "Of the justice or propriety of the principle which lies at the foundation of the Illinois statute it is not the province of this court to speak. As restricted to a transportation which begins and ends within the limits of the State it may be very just and equitable, and it certainly is the province of State legislation to determine that question. But when it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States cannot be over estimated. That this species of regulation is

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128. Ibid.

one which must be, if established at all, of a general and national character, and cannot be safely and wisely permitted to local rules and local regulations, we think is clear . . . The regulation can only appropriately exist by general rules and principles, which demand that it should be done by the Congress of the United States under the commerce clause of the Constitution."

The court definitely reversed its previous decision and held that notwithstanding what was said in the Granger cases, a statute of a State, intended to regulate, or to tax, or to impose any other restriction upon the transmission of persons or property or telegraphic messages from one State to another, was not within that class of legislation which the States might enact in the absence of congressional legislation. Such statutes were void even as to that part of the transmission which lay within the State.[129]

The significance of the case lies in the fact that it culminated the series of court decisions which were setting aside the individual State regulations of interstate commerce and put a definite end to the State attempts to regulate such commerce. Nine tenths of all the existing railway rate laws were swept away.[130] The case came just at a time when the agitation for regulation both within and outside of Congress was especially strong, and the decision served to focus attention more than ever on the problem. Since the State attempts to regulate interstate commerce were unconstitutional, federal regulation became more imperative than ever, and the decision threw the duty of regulating interstate commerce unquestionably upon Congress.

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129. Ibid.
130. Nation, vol. 43, p. 516. (Dec. 23, 1886).

VII

Interstate Commerce Act of 1887

The Senate bill to regulate commerce which accompanied the Cullom Committee Report was recommitted, and on February 16, 1886, Mr. Cullom reported a substitute bill (S. 1532) from the committee.[131] The purpose of the bill was to stamp out unjust discrimination. It applied to both freight and passenger service by railways, and water-ways when used in connection with a railway for continuous shipment. The various forms of discrimination between persons, commodities, kinds of traffic, and between places were specifically prohibited and declared unlawful. There was a limited long and short haul clause. Publication of rates was required and it was declared unlawful to charge more or less than the public rates. Shipments were to be considered continuous from the place of shipment to the place of destination. Any combinations to evade the provisions of the act by breaking of bulk, carriage in different cars, trans-shipment, or other devices were prohibited. Any violation of the provisions of the act was to be considered a misdemeanor and penalties were provided. The remainder of the bill was devoted to the organization of a commission of five members and to the details of its operation as a means of securing the enforcement of the act. Two courses were open to the aggrieved shipper, the regular recourse to the common law or arbitration of the controversy by the commission. The latter method, in the event of a favorable finding by the commission, would free the shipper from any expense of investigation and enable him, if necessary, to go into court with a prima facie case already established.[132]

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131. Cong. Record, 49 Cong. 1 sess., p. 1464.
132. Ibid., p. 3471.

The provisions of the bill followed closely the recommendations and findings of the Cullom Interstate Commerce Committee.

The chief criticism of the bill was based on the week long and short clause. It was claimed that it did not go far enough to provide against the evils of discrimination complained of by shippers all over the country. The limitations and provisions were said to destroy its force and value.[133] After a long debate the Senate passed the measure by a vote of 47;4 and it was sent to the House.[134]

When the bill reached the House it was referred to the Committee on Commerce which reported it back with an amendment in the nature of a substitute.[135] The substitute was the House or Reagan bill which was then passed in place of the Senate bill by a vote of 192;41, with 8[illegible] not voting.[136] A comparison of the two bills showed that they differed in scope in that the House bill did not apply to passenger traffic, nor did it cover traffic by water. The chief points of difference were; (1) The House bill definitely prohibited pooling, while the Senate bill proposed inquiry by tthe commission. (2) The House bill was plain and specific in its long and short haul clause; the Senate provision was weak and might be set asiie. (3) The House bill required that all rates should be posted; the Senate bill only those which the Commission deemed practicable. (4) The House bill did not provide for a commission but left the enforcement of the act to the courts; the Senate bill provided for a commission.

The theory of the two bills was also different. The Senate bill was based on the theory of securing a detailed regulation of freight and passenger rates though it neither fixed any rate nor authorized the com-

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133. Ibid., p. 3553.
134. Ibid., p. 4423.
135. Ibid., p. 4809.
136. Ibid., p. 7753.

mission to do so. It proposed to enforce the provisions by bureau orders and the proceedings of courts combined. The House bill proceeded on the theory of abridging the monopoly powers of the railroad companies, and of prohibiting the greater and more manifest violations of right by them, without attempting a detailed regulation of freight rates. It provided for the enforcement of its provisions through ordinary courts, which were within the convenient reach of the people.[137]

On the motion of Mr. Reagan the House requested a conference with the Senate upon the amendment to the bill.[138] When the measure reached the Senate, on the motion of Mr. Cullom, it disagreed to the substitute and agreed to the conference asked by the House.[139] The Conference Committee was then appointed and consisted of the following House managers: Mr. Reagan, Mr. Crisp, and Mr. Weaver (Nebraska).[140] The Senate appointed Mr. Cullom, Mr. Oliver H. Platt, and Mr. Harris.[141]

The compromise involved four main issues: (1) a commission, (2) an anti-rebate provision, (3) an anti-pooling provision, and (4) a long and short haul clause. In the debate on the interstate commerce bills the Senate had favored a federal commission and the permission of railway pooling. They tolerated a weak long and short haul clause and an anti-rebate provision. The House majority on the other hand were opposed to a commission, pooling, and rebating. They favored a rigid long and short haul clause.[142]

The conference report was made at thebeginning of the second session of the 49th Congress, and the passage of the amended bill was recommended to both Houses. The amendment differed little from the Senate bill;

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137. Ibid., pp. 7276-7280.
138. House Journal, 48 Cong. 1 Sess., pp. 2483, 2484.
139. Cong. Record, 48 Cong. 1 Sess., p. 7818.
140. Ibid., p. 7882.
141. House Journal, 48 Cong. 1 Sess., p. 2470.
142. Haney, op. cit., p. 289.

the chief change lay in the addition of the provision prohibiting pooling. Other changes in the Senate bill were that "the District of Columbia was included in its scope, and the term railway was defined to include all the roads in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease (S. 1). Provisions concerning damages were taken out and combined in a new section with an additional provision allowing a reasonable counsel's or attorney's fee in case of recovery (Ss. 2, 3, 4). The section requiring carriers to furnish reasonable and proper facilities was amended to require proper and equal facilities (S. 3). A change in the long-and-short-haul clause was considered to be of some importance. The words of the Senate bill, 'from the same original point of arrival' were stricken out and the formula, 'the shorter being included within the longer distance,' was inserted. The provision authorizing the commission to make exceptions to the clause was also slightly modified with the idea of greater rigility. Section five of the Senate bill was replaced by Section six of the conference bill which was a combination of the House and Senate provisions concerning publicity of rates. The new section not only directed the commissioners to secure publicity of rates over each railway and connecting lines, but also required each railway to publish rates between all points on its line.[143]

The House conference, on the other hand, listed a greater number of concessions. The House bill had applied only to freight; the bill as amended embraced passenger service as well. The House bill limited itself to railroad transportation; the other included transportation partly by water when both were used under a common control, management, or arrangement for a continuous interstate carriage. A proviso was added to the House long and short haul clause to the effect that upon application to

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143. Ibid., pp. 299-300. Cf. Cong.Record, 49 Cong. 2 Sess., pp. 171-173.

the commission it might in special cases make concessions. The House bill had required rates to be posted up; while the Conference bill required common carriers to keep printed schedules for public inspection. A new section was added which provided that persons claiming damages might proceed for recovery either in the United States Courts or before the Commission, but not before both. The House bill had not provided for a commission, while the conference bill contained the Senate provisions in this respect. It will be seen that the House provisions in regard to discrimination by special rates, rebates, draw-backs, and other devices were retained as well as those requiring equal facilities and advantages for all shippers without exception. The House provision prohibiting pooling was incorporated into the Conference bill.[144]

It appears on the whole that the Reagan bill was the more radically amended, but the Cullom bill had already received previous modification in the direction of the House bill.[145]

The composite nature of the bill had resulted in a measure that no one really wanted,[146] yet when the vote was taken both Houses accepted it. The Senate vote was 43;15, with 17 not voting; and the House vote 219;41 with 53 not voting.[147] The sectional character of the House vote, although not as pronounced as previous votes on the question, is shown as follows:

	Yeas.	Nays
New England States	11	10
Middle Atlantic States	40	10
North Central States	90	10
South Atlantic States	30	2
South Central States	43	5
Far Western States	5	4
	219	41

The progress of the Reagan-Cullom Interstate Commerce Bill through

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144. Cong. Record, 49 Cong. 2 Sess., p. 779.
145. Haney, op. cit., p. 301.
146. Cong.Record, 49 Cong. 2 Sess., p. 844.
147. Ibid., pp. 666,881.

Congress was practically free from partisanship. The issue was purely economic and both parties joined in securing the passage of an interstate commerce act. On the other hand this was not true of some of the other attempts to secure regulation. For example the McCrary Bill of 1874 was resisted by the Democrats on the old State Rights' doctrine,[148] and an analysis of the vote on the Reagan Bill of 1885 shows that most of the Republicans with the exception of the Western members, voted against the measure while the Democrats supported it.[149]

Senator Cullom was the chief advocate for the bill's passage in the Senate while Senator Platt led the opposition. The discussion was narrowed to two major issues, the long and short haul clause and the prohibition of pooling. Senator Platt was opposed to both provisions as found in the Conference report, and as a member of the Conference Committee he had refused to sign the report. He attacked the modification of the long and short haul clause but he opposed in particular the absolute prohibition of pooling. He refused to surrender the provision of the Senate Bill directing the commission to make an immediate investigation of pooling and to report their recommendations to Congress. He feared that the absolute prohibition of pooling would break up at once every arrangement by which the interstate commerce of the country was conducted, and result in an immediate rate war by all the railroads of the United States which would be more injurious to the business of the country than any which might exist under pooling contracts. On the other points of the bill he agreed.[150] Senator Platt based his arguments on the testimony taken by the Interstate Commerce Committee. It was his con-

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148. Ibid., p. 654.
149. Detroit Free Press, Jan. 9, 1885.
150. Cong. Record, 49 Cong. 2 Sess., p. 171

clusion that a vast majority of those who really understood the railroad problem desired legalized pooling. He maintained that before Congress should prohibit the method by which the railroad companies had resorted to prevent unjust discrimination, it should be shown that the practice was inherently wrong.[151]

Mr. Cullom interpreted the bill differently. He said, "One of the purposes of the bill itself by requiring publicity of rates and preventing change of rates to a higher schedule, except on ten days' notice, is to bring about that stability of rates which the railroad companies themselves are appealing to us to have brought about, because under the system of pooling they have not been able to bring it about . . . . Every one knows that the railroad companies themselves have finally become reconciled to some national legislation, because they have not been able to protect themselves one from another, and I think that the provisions of this bill in relation to publicity, and the other provisions to guard against various wrong-doing on their part, will have very great force and effect in bringing about that sort of stability which it has been the ostensible purpose, at least, of pooling to secure."[152]

Senator Hoar (Massachusetts) said that there were four great objects which the bill accomplished; First, it extended the common law to interstate commerce and it established the great principle of reasonableness to be enforced by law; Secondly, it established a commission- a constant supervisory National authority; Thirdly, it required publicity and this let in "the daylight on every transaction between the carrier and the customer;" Fourthly, it prohibited unjust discrimination. These provisions he was in favor of but he objected to the long and short haul clause and the prohibition of pooling. He regarded them as an attempt to strike

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151. Ibid., p. 773.
152. Ibid., p. 171.

down healthy competition. He asserted that the United States had the best, cheapest, and most convenient railroad service on the face of the globe, and claimed that the cheapness of this transportation would be destroyed. He declared that the prohibition of pooling would destroy the steadiness of business by putting it out of the power of the railroads to prevent railroad wars and that constant fluctuation was the destruction of all trade. He therefore favored recommital of the bill.[153]

Mr. Sherman (Ohio) feared that the long and short haul clause would destroy the export trade of the country by diverting the sea-trade, which found its course from Asia to Europe by the trans-continental roads, to other routes such as the Suez Canal, Cape Horn, Panama, or Canada. "So great was the competition for that trade that it could be diverted by even a pebble, much more by such a great restriction as the bill proposed?" He suggested a discrimination in favor of the foreign trade. This was the only reason he would vote to recommit the bill.[154]

Mr. Edmunds (Vermont) argued in favor of the Conference Committee Report. He claimed that, as to the long and short haul clause, the committee had merely changed the phraseology of the bill as passed by the Senate without changing the meaning. He defended the prohibition of pooling which he claimed was just another phase of the combination of corporate monopolies. Mr. Ingalls (Kansas) said the bill was to regulate commerce, not to wreck, ruin, and destroy it. He regarded the purpose of the bill as beneficent and in the interests of the producers of the country. The effort to recommit the bill failed.[155]

In the House the debate likewise centered on the prohibition of pooling and the long and short haul clause. The position of the majority of the House on these two provisions had already been shown by its action

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153. Ibid., pp. 634-636.
154. Ibid.
155. Ibid.

on the Reagan Bills to regulate interstate commerce. In addition the provisions creating a commission were criticised. It was claimed that a political board would be created and that the railroads would be thrown into politics. The majority, however, supported the bill. Mr. Burrows (Michigan) concluding a speech in favor of the measure, said; "The chief merit of this bill after all . . . is to my mind its moderation. It is not a rash measure; it is not an extreme measure; and it is fortunate that this is so. It is well in taking possession of this new field of National company that we move with extreme caution. We are on the border of an unexplored territory and every step is fraught with momentous consequences. Vast interests are involved. In redressing wrongs we must invade no right, but advance with such prudence and consideration that in the end our national domination over this great question will be a national blessing."[155]

The Interstate Commerce Act was the result of a popular movement which had been in progress nearly twenty years, yet all sections were not satisfied. The objections according to Senator Hoar did not come from the railroad men, who wanted to put up rates, but from the customer who wanted to put them down and who could not get along unless they were kept down. The United Transportation Committee representing the various business associations of the city of Boston claimed the bill would seriously affect the business interests of Boston. The Chamber of Commerce feared the destruction of the city's foreign shipping business. The Peoria Board of Trade while approving most of the provisions protested against the long and short haul clause. They believed it would unsettle all business interests throughout the West, depreciate the value of all farming lands west of the Middle States, and work directly in the interest of the lake

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155. Ibid., pp. 806-808, 839-869.

ports, lake transportation lines, Canadian lines, and the Eastern farmer. The Minneapolis Board of Trade while approving the general principle of the bill protested against the long and short haul clause and the prohibition of pooling. Speaking for the producers and shippers of the Northwest they feared that these provisions would be destructive to the interests of the distinctively agricultural sections of the country.[157]

The comment of some of the leading newspapers of the time on the bill is particularly significant.[158] The Washington Critic (Ind.) while the conference report was still before Congress said, "Whoever does not help to bring it up every day, whoever helps to push it aside after an hour's perfunctory oratory, whoever fails to be its urgent, constant and importunate friend, must look hereafter to the railway corporations for his support, and expect to be opposed by the people."

The comment of the St. Louis Republican (Dem.) was ". . . the chief consideration in its favor is that it is the beginning of a national railroad policy which has already been too long delayed. The trouble has been permitted to harass us too long. It ought to have been settled ten years ago. It increases every day."

The New York Tribune (Rep.) was not so favorable to the bill. It said, "Why should members of Congress vote for a bill to abolish competition among railroads? The more the Interstate Commerce bill is examined, the more this is found to be its character. It is far from the purpose of those members who have most zealously favored the bill to suppress that competition which has so greatly reduced rates for transportation within the past twenty years. . . and those companies which would have the least chance to prosper in an era of competition for the favor of the public are beginning to hope that the bill may pass. . . Is it desirable to stop the competition which has wrought these marvelous changes? It has

157. Ibid., pp. 636-638.
158. Public Opinion, vol. 2 pp. 240-251.

been possible for roads to transport at such low rates and live, only because they had been able to reduce rates less between non-competing points, and by competition to wrest a great part of the through traffic from the Canadian roads and the water routes."

The Cincinnati Commercial Gazette (Rep.) was especially bitter. "The tendency of cheap long hauls is to bring into play the resources of the whole country- to abolish provincialism- to put aside the pride of presumptuous ignorance in insignificant localities. We do not contend that there are not popular wrongs connected with the railroad business, but we feel free to assume,at least, that the railroad men act upon business principles that are the outgrowth of enlightened selfishness. Congress, with its horizontal and arbitrary methods and its clumsy hold upon the details of large transactions, has been feeling for some time that it has a call to meddle, and it therefore muddles. The purpose is to cater to the prejudices that are held to be popular against railroads. The result will be, if the bill becomes a law and it is seriously enforced, to vastly diminish the internal commerce of the country. It will drive trains from our transcontinental roads, as ships have been driven from the seas. It will discriminate in favor of the roads of Canada . . . It would stop the passage of freight between Asia and Europe across the American Continent."

The Portland Oregonian's (Ind.) comments were: "Of the necessity of a federal law to supplement the efforts of State legislation there is increasing evidence every year. The interest of shippers and of investors in railroads alike need protection. It is now in the power of a single company or single freight agent to precipitate a war that means the waste of millions of revenue. The difference in freight rates which one merchant or manufacturer may gain over his competitor is often enough to set-

tle the question of the success of one or the failure of the other, and such an enormous power is sure to be outrageously exercised if left without some responsible, impartial regulation which can place decent limits to its application. . . . for the protection of the public against the consequences of rate wars and interstate combinations of railroad, coal and oil monopolies there is a crying need of Federal regulation."

The Richmond State (Dem.) supported the measure. "The need of the hour is such legislation as will not permit railroad companies, on the one hand, to ignore their duties as common carriers and will tend to prevent much of their unjust discrimination; but will not cater, on the other hand, to that short-sighted demagogry which, in attempting to answer popular clamor, would do serious injury to the railroads by trying absolutely to control their business, and which would only serve to provoke at last such a reaction among a disgusted people as would defer indefinitely the settlement of our present difficulties, and leave wholly unchecked the encroachments of powerful corporations for many years to come. Let us, then, avoid too little legislation as well as too much legislation, finding just relief in the interstate commerce bill now before Congress. That measure is for the interest of the people of Virginia. . ."

The Philadelphia Record (Dem.) ". . . While Congress delays and the lobby intrigues, the necessity for the passage of this measure becomes more and more apparent in the continued extortion and favoritism of the railroad companies, and in the incapacity of the States to deal with questions of interstate traffic."

The New York Sun (Dem.) expressed the view of Wall Street. "On the whole, Wall Street seems to have sized this bill up pretty accurately in concluding that it will not reduce railroad receipts nor injure railroad securities. Our advice to everybody is to accept the law in

good faith, if it becomes a law, and adjust freight and passenger tariffs at once, as nearly in accordance with its provisions as possible. A good deal of rascality will disappear with secret rates and rate cutting; much money which now goes to pool commissioners and clerks will be saved: the public will be more fairly served, and the stockholders will get much more regular, if not larger dividends. Let the bill pass.'"

The Chicago Journal (Rep.): "It is certain that an interstate commerce law is required by the country. It is a matter of pressing importance, and its enactment, too long delayed already, should not be postponed to another session of Congress. Such legislation will hardly be perfect at first. It is necessary to make a beginning, to lay a foundation. The Cullom-Reagan bill is perhaps as fair a measure as could be framed for a beginning in this kind of legislation. If it shall become a law and go into operation its merits and its defects will soon become apparent, and the latter can be corrected by proper amendments."

The Cincinnati Times-Star (Ind.) expressed itself as follows: Mr. Reagan would sacrifice the commercial interests of the entire West in order that Galveston might roll in high clover. He is a patriot, perhaps, but his patriotic zeal flows in a narrow channel. If he has been misjudged in this business, it is no better for his reputation. Assuming that Mr. Reagan looks only to the general welfare, it seems anything but creditable to him that after so long an experience in the field of practical statesmanship he is still a piddler." And, again, "It is not too much to hope that the business sense of a majority of Congressmen will detect and reject the fatal fallacy of the long and short haul idea embodied in the Reagan-Cullom bill."

The Nashville Union (Dem.) also opposed the bill's passage, We can not believe after studying this bill, "with a view of giving it a

fair and correct interpretation, and especially with the view of seeing what effect it is to have on our own section of the country, that any member of Congress from Tennessee, Alabama, or Georgia, familiar with its provisions will vote for it to become a law. Whenever he does he signs the death warrant of his section of the country."

The Detroit Tribune (Rep.): "Since the original Cullom bill could not be agreed upon, it appears to be clearly the duty of the Congress to pass the bill now before it. The people want only what is fair as between themselves and the railways, but they do want that much, and it is high time that Congress devised some means to that end."

The Boston Transcript (Ind.): "Such a bill looks like an attempt on the part of Western and Southern Congressmen to appease their constituents by a show of legislation that in reality will accomplish nothing definite."

The New York Graphic's (Dem.) brief but sharp criticism was: "The passage of the bill would be a public calamity instead of a benefit."

The attitude of one of the leading railroad men- James J. Hill- toward the act was particularly significant. He felt that it would ruin the country, although the railroads might survive. He predicted that Congress would be called into a special session to repeal the act.[159]

The Interstate Commerce Act of 1887 was not applicable to traffic wholly within one State. It defined the term "railroad" to include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease. The term "transportation" as used in the act was to include all instrumentalities of shipment and carriage. The provisions of the act were as follows:

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159. E. F. Humphrey, "An Economic History of the United States" p. 358.

(1) Charges must be reasonable. (2) Special rates, rebates, etc. were prohibited. (3) Undue preference to persons, localities, and traffic was denied. (4) The charges for a shorter distance were not to be more than for a longer with the proviso that the commission might authorize exceptions. (5) Pooling of freights and earnings was prohibited. (6) Common carriers must print and post schedules and advances were not to be made until after ten days notice. Reductions however, could be made without notice. A copy of the schedule rates was to be filed with the Commission, and any deviation from the schedule rates was illegal. (7) Combinations to prevent a continuous carriage of freight to its destination were prohibited. (8) Liability arising from violations of the act was to be the full amount of damages sustained plus a fee for counsel or attorney as set by the court. (9) Persons damaged might make complaint to the Commission or sue personally. (10) Violation of the act was a misdemeanor and the maximum fine was set at $5,000. (11) An Interstate Commerce Commission, consisting of five members, was to be appointed by the President with the advice and consent of the Senate. Not more than three members could belong to the same political party. Their term of office was to be six years with the exception that the first commissioners were to be chosen for two, three, four, five, and six years respectively. The Commission had the authority to inquire into the management of the business of all common carriers subject to the act, and it was to keep itself informed as to the manner and method in which they were conducted. It had the right to obtain from the carriers full and complete information necessary to enable it to perform the duties and carry out the objects for which the Commission was created. Petitions as to the violations of the law were to be made to the Commission which would then forward the charges to the carrier. In case the complaint was not

satisfied within the time specified an investigation was to be made. Records were to be kept of all complaints, settlements, and investigations. It was the duty of the Commission to file a petition for proceeding in the circuit courts for violations of the act or refusal to obey the order of the Commission. The United States District Attorney was to prosecute the case. The written reports of the Commission were admitted as prima facie evidence in all judicial proceedings. Every vote and act of the Commission must be recorded and its proceedings made public upon the request of either party interested. The salary of the Commissioners was to be $7,000 per year and any expenses they might incur during the conduct of their business were to be paid. The principal office was to be in the City of Washington but they could hold sessions anywhere in the United States when necessary. The annual reports to the Commission from the common carriers were to include the amount of capital stock issued; the amounts paid therefor, and the manner of payment; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of their property, franchises, and equipment; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of the improvements; the earnings and receipts for each branch of business and from all sources; the operating and other expenses; the balance of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. In addition the reports should contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements or contracts with other common carriers as the Commission might require. The Commission was to submit an annual report to the Secretary of the Interior. The act was to take effect in sixty days and

the commission was to be appointed and organized at once.[160]

On March 22, 1887 President Cleveland appointed the following Interstate Commerce Commissioners: Thomas M. Cooley, of Michigan, for six years; William B. Morrison, of Illinois, for five years; Augustus Schoonmaker, of New York, for four years; Aldace F. Walker, of Vermont, for three years; and Walter L. Bragg, of Alabama, for two years. Public reaction to the appointments on the whole was very favorable although there was considerable regret in the West that there was no member from west of the Mississippi River.[161]

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160. United States Statutes at Large, 49 Cong. 2 Sess., vol. 49 Chap.104.
161. Public Opinion, vol. 2 p. 537. "The Interstate Commerce Commissioners."

VIII

Conclusion

At the time when Congress passed the Interstate Commerce Act there probably had never been in the history of the government a bill under discussion which inevitably affected, either directly or remotely, such great financial and industrial interests. The effect of the provisions of the act reached every industry, every hamlet, and every laboring man in the United States.[162] In fact the operation of the law was even more than interstate; it was international. It directly affected the transcontinental Oriental trade and forced the issue whether certain commodities on the other side of the globe would go to market west by way of San Francisco, or east by way of the Suez Canal.[163]

The Inter-state Commerce Act was the response of Congress to the needs of the time. The economic causes which had given rise to the public demand for national regulation had resulted in a steadily increasing pressure upon Congress. During the period that the problem was before Congress the popular demand had changed from general opposition to the railroads and the desire for cheap transportation to resentment against unjust discrimination. The main purpose of the Interstate Commerce Act, therefore, was to do away with such specific abuses..

The House had been quick to respond to the popular request for regulation while the Senate did not show much interest in the early efforts of the House to secure regulation. It was more deliberative and business-like in its methods. The investigations it conducted which resulted in

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162.Cong. Record, 49 Cong. 1 Sess., p. 393
163.St.Louis Republican quoted in Public Opinion vol.3 p. 14.

the Windom and Cullom reports were of inestimable value to the ultimate success of the act as finally evolved. The findings of the Cullom Interstate Commerce Committee in particular furnished the basis for the Cullom Interstate Commerce Act.

The impetus to the necessity for regulation furnished by the Wabash, St. Louis and Pacific Railroad Company vs. Illinois decision served to unite the opposing forces in the House and Senate and a compromise measure was accepted by both groups. Although the act as passed was not exactly satisfactory to anyone, it was a beginning. The foundation had been laid for future legislation. The provisions of the Act showed that neither the radical nor the most conservative element had triumphed, but that a moderate course had been taken. The Interstate Commerce Act showed the influence of the Granger State legislation, the previous bills introduced into Congress, and the English legislation. In fact its provisions were not new but had already been tried in many States. The act climaxed the whole movement for federal regulation of interstate commerce and it represented the honest effort of Congress to deal fairly with the problem.

On the whole the Act was quite favorably received. A typical opinion was expressed by the Detroit Free Press in an editorial on January 22, 1887. ". . . The bill which has . . . been passed is not wholly satisfactory to the members who have labored most assiduously in its behalf and who have given much time and thought to the very complicated questions involved. That there is need of Federal legislation on the subject admits of no doubt. The constant complaints of unjust railroad discrimination and the inability of individual States to afford a remedy show this. Whether the measure, which now lacks only the approval of the President to become the law of the land, will be effective or will accom-

plish any good can only be learned by experience. It is necessarily experimental, but it will furnish a basis for future legislation. . . Experience will no doubt show that there are many defects in the law; for a perfect measure, without previous legislation as a guide is an impossibility. The effort on the part of Congress to frame a law that will be a public benefit was an honest and an earnest one, and it is to be hoped that the law will prove substantially successful."

The first annual report of the Interstate Commerce Commission confirmed the impression of the public that the operation of the act on the whole had been beneficial.[164] It had cured a good many more evils than it had created. The long and short haul clause from which so much harm was expected did not yield the bad results that had been predicted. The rule had been generally established that a higher charge should not be made for a shorter than for a longer distance when the shorter was included in the longer, and it was complied with almost without exception throughout large sections of the country. Other important effects noticed were that through rates were lower; that rates were more just and proportional than formerly; that special rates, secret rates, or rebates were no longer given to favored individuals; and that the pooling of freights and railroad earnings had come to an end when the act took effect. Complaints of unjust discrimination and the giving of undue and unreasonable preference by the open rates were still frequent, but even so the good effects of the law were manifest. Formerly the carriers made discriminations at pleasure, while those now complained of were such as the carriers understood that they might have to defend. Carriers complied quite well with the provisions for filing and publishing schedules. There was, however, no general uniformity, either in form or general method of preparation. The public thus was confused by the different methods of giving information.

164. Nation, vol.45, p. 454. (Dec.8, 1887.

and in some cases misled. The lack of uniformity in freight classification gave rise to a demand for federal regulation of freight classification since the charges were not the same in all sections of the country. The tendency of rates was downward, and no destructive rate wars occurred as was feared. The stability of rates reacted toward general stability in business. Since most lines attempted to comply with the law there was much greater uniformity than existed before the act was passed.[165]

The Commission adopted the wise policy of gradual reform rather than hasty changes which might prove disastrous. Upon this point they said:

"The act to regulate commerce was not passed to injure any interests, but to conserve and protect. It had for its object to regulate a vast business according to the requirements of justice. Its intervention was supposed to be called for by the existence of numerous evils, and the commission was created to aid in bringing about great and salutary measures of improvement. The business is one that concerns the citizen intimately in all the relations of life, and sudden changes in it, though in the direction of improvement, might in their immediate consequences be more harmful than beneficial. It was much more important to move safely and steadily in the direction of reform than to move hastily, regardless of consequences, and perhaps be compelled to retrace important steps after great and possibly irremediable mischief had been done. The act was not passed for a day or a year; it had permanent benefits in view, and to accomplish these with the least possible disturbance to the immense interests involved seemed an obvious dictate of duty."[166]

The act operated directly to increase railroad earnings, especially those on interstate passenger traffic through the abolition of the free

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165. Report of the Interstate Commerce Commission, 1887. Senate Executive Document No.48, 50 Cong. 1 Sess., vol.1, ad passim.
166. New York Post. Quoted in Public Opinion vol.4, p. 206.

pass system, and on the freight business by putting an end to rebates, drawbacks, and special rates. The public began to develop confidence in the railroads and this resulted in turn in an increased amount of freight traffic. The public seemed to feel that the days of rebates and special rates were ended and that open rates on an equal basis were offered to all shippers. The amount of railroad construction showed a decline but this was regarded as only a temporary condition.[167]

Credit for the beneficient results must in no small way go to the work of the Interstate Commerce Commission. The chairman, Judge Cooley, of Ann Arbor, Michigan, was an able jurist and one that was trusted by all parties concerned.[168] The decisions of the Commission formed an important body of new law that was generally obeyed. A. T.Hadley writing in January, 1888, said, "Thus far the career of the Commission has been a brilliant success. Instead of nullifying the law, they have made it enforceable. They have given it a construction and an application which really mean something."[169]

As time went on, however, the deficiencies of the law became more apparent and the practical results achieved were a disappointment. The old evils reappeared and the railroad companies seemed to vie with each other in evading the provisions of the law. Nevertheless, the Act paved the way for future regulation and led to a better understanding of the transportation problem.

The significance of the law itself had an important bearing on the future policy of the National government. It marked the beginning of the policy of National regulation; and, as the Granger laws had marked the passing of the <u>laissez faire</u> doctrine in the States, the Interstate Com-

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167. Senate Executive Document No.43. 50 Cong. 1 Sess., al passim.
168. W. Z. Ripley, "Railroad Rates and Regulations" p. 456.
169. Quarterly Journal of Economics, vol. 2, p.162. "The Workings of the Interstate Commerce Law" A. T. Hadley.

merce Act of 1887 marked the passing of that theory as a policy of the National government. We might designate the Cullom Interstate Commerce Act as the Magna Carta of the reform of unchecked individualism and laissez faire in the conduct of big business. When the country became more accustomed to governmental interference in questions of a social and economic nature, additions were made to the original act which tended to extend and strengthen its scope. The Interstate Commerce Act marked the beginning of the career of the United States government in social legislation which ultimately led it into every field of private endeavor. The movement toward social control may be said to have begun with the passage of the Interstate Commerce Act in 1887.

APPENDIX

The causes of complaint against the railroad system of the United States as expressed to the Cullom Senate Committee were summarized as follows:

"(1) That local rates are unreasonably high, compared with through rates.

(2) That both local and through rates are unreasonably high at non-competing points, either from absence of competition or in consequence of pooling agreements that restrict its operation.

(3) That rates are established without apparent regard to the actual cost of the service performed, and are based on "what traffic will bear."

(4) That unjustifiable discriminations are constantly made between individuals in the rates charged for like services under similar circumstances.

(5) That improper discriminations are made between articles of freight and branches of the business of a like character, and between different quantities of the same class of freight.

(6) That unreasonable discriminations are made between localities similarly situated.

(7) That the effect of prevailing policy of railroad management is, by an elaborate system of secret special rates, rebates, drawbacks and concessions, to foster monopoly, to enrich favored shippers, and to prevent free competition in many lines of trade in which the item of transportation is an important factor.

(8) That such favoritism and secrecy introduce an element of uncertainty into legitimate business that greatly retards the development of our industries and commerce.

(9) That the secret cutting of rates and the sudden fluctuations that constantly take place are demoralizing to all business except that of a purely speculative character, and frequently occasion great injustice and heavy losses.

(10) That, in the absence of national and uniform legislation, the railroads are able by various devices to avoid their responsibility as carriers, especially on shipments over more than one road, or from one state to another, and that shippers find great difficulty in recovering damages for the loss of property or for injury thereto.

(11) That railroads refuse to be bound by their own contracts, and arbitrarily collect large sums in the shape of overcharges in addition to the rates agreed upon at the time of shipment.

(12) That railroads often refuse to recognize or to be responsible for the acts of dishonest agents acting under their authority.

(13) That the common law fails to afford a remedy for such grievance, and that in cases of dispute the shipper is compelled to submit to the decision of the railroad manager or pool commissioner, or run the risk of incurring further losses by greater discriminations.

(14) That the differences in the classifications in use in various parts of the country, and sometimes for shipments over the same roads in different directions, are a fruitful source of misunderstandings, and are often made a means of extortion.

(15) That a privileged class is created by the granting of passes, and that the cost of the passenger service is largely increased by the extent of this abuse.

(16) That the capitalization and bonded indebtedness of the roads largely exceed the actual cost of their construction or their present value, and that unreasonable rates are charged in the effort to pay dividends on watered stock and interest on bonds improperly issued.

(17) That railroad corporations have improperly engaged in lines of business entirely distinct from that of transportation, and that undue advantages have been afforded to business enterprises in which railroad officials were interested.

(18) That the management of the railroad business is extravagant and wasteful, and that a needless tax is imposed upon the shipping and traveling public by the unnecessary expenditure of large sums in the maintenance of a costly force of agents engaged in a reckless strife for the competitive business." (1)

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(1) Senate Report No. 46, 49th Cong. 1 Sess., pp. 180-182.

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