AMERICAN RAILROAD LEGISLATION.

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AS late as 1850 the Erie Canal furnished the only means of cheap transportation between the West and the seaboard. There was through communication by rail on the line of the New York Central; but it was under the management of so many different companies, and its traffic was subjected to such burdensome taxes, that through freight could not be handled with economy. The other trunk lines were as yet incomplete. The Pennsylvania system of public works was useful in its way, but was too complicated to furnish a cheap or satisfactory means of freight transportation.

The Erie Railroad was completed in 1851. In the same year the State of New York ceased to tax the freight traffic of the New York Central. The development of trunk-line freight business dates from this point. Once begun, it grew with surprising rapidity. In 1852 the Central and Erie together carried less than 80,000 tons of freight; in 1854, 600,000 tons. The canal receipts were affected by the change. A reduction was made in tolls, but railroad traffic continued to grow in spite of it.

The Governor in his message for 1855 spoke of the injury to the State due to the attempt of the railroads to handle freight. In the reports of the State authorities for subsequent years stress was laid on the fact that the freight traffic belonged to the canal by natural right—that the railroads were lessening the revenues of New York State for the benefit of the residents of the West. Bitter complaints were heard on all sides. The "Clinton League" was organized to protect the canals. It was proposed to reimpose a tax upon railroads which should prevent them from attempting to carry freight. The New York newspapers insisted that the railroad managers did not know their own business; that it could not possibly pay to carry freight at three cents a ton a mile; that the property of stockholders was being thrown away by the directors in an insane effort to crush the canals.

This agitation continued till 1861, when public attention was diverted from it by the war; and in the next four years railroad freight traffic became so firmly established that the attempt to stop it could never be repeated. Each year was showing the ability of the railroads to carry freight at lower rates than those which the New York agitators had pronounced to be ruinous; each year made it clearer that the development of the West could not be stopped in order that the Erie Canal might make money. The efforts of the Clinton League to give the Erie Canal a monopoly of the through traffic had become a thing of the past; and to-day few persons remember this attempt at railroad control, and none are found to defend it.

And yet in one sense it had its justification. The authorities felt that a new power had arisen. For the first time the transportation system between the Lakes and New York city was passing out of the control of the State. The attempt to stop the railroads from carrying freight was crude and illegal; to have retained control in that way would have been worse than to lose control altogether. No subsequent attempt at legislation has involved quite so bad a mistake. But the difference has been in degree rather than in kind. People have tried legislative restriction because they were frightened at the growth of railroad power; they have not stopped to see the difficulties of the subject. "If thy right hand offend thee, cut it off," has been the rule, and the public has suffered from the consequences. But each mistake has taught us something, and each new legislative experiment is less reckless than its predecessor. The Grangers were not so radical as the Clinton League; the extremists of to-day are less radical than the Grangers. We are gradually finding out what we can do, and thus narrowing down our efforts to the point where they will become really effective.

The attitude of our public authorities toward the railroads has been very much like that of an injudicious parent toward a wayward child—alternately giving him liberty which he was certain to abuse, and making rules which were so strict that they could not be permanently enforced. During the early years of railroad development no favor was too great to be granted. The United States welcomed railroads more warmly than any other nation. They came at a time when they met a national

want. As our population was moved across the Alleghanies, some such communication was needed to bind the parts together, or they would have fallen asunder by their own weight. Our public men were ready to see this. The Baltimore and Ohio Railroad was planned for a national highway before steam communication had been really proved practicable. Many of the States gave active encouragement by exemption from taxation, or even by direct subsidies. Pennsylvania, South Carolina, and Georgia at first built and operated no inconsiderable part of their lines. The crisis of 1837 did not put a stop to railroad development. The failure of canal schemes made the necessity of railroads all the more obvious. Many of the States devoted to the aid of railroads a large part of their share of the surplus revenue which was distributed in 1837. When this was exhausted, grants of public land were proposed, and after some opposition finally carried out on a large scale.

The first railroad land grants were those of the Illinois Central and Mobile and Ohio, in 1850. The system developed rapidly. Each State was anxious to secure its share of the benefit. The sectional interests of North and South were balanced against one another. Eight million acres of public land were given away under Fillmore, nineteen million under Pierce. The crisis of 1857 disclosed the true character of many of these enterprises. But the check to the practice was only temporary; in the time of the war it was renewed on a larger scale than ever. The Union Pacific Railway was felt to be a matter of vital necessity to the nation, in order to bind the different parts together. Credit and land alike were freely offered for its assistance. The Northern Pacific road a year or two later was less successful in engaging the credit of the government in its behalf, but in return it received a double allowance of land. These vast grants, aggregating nearly 80,000,000 acres, paved the way for a number of others. The war had opened men's eyes to the possibilities of national development. For the first time the East was beginning to appreciate the West, and to put ample faith in its resources. From 1866 to 1872 Wall Street and Congress vied with one another in encouraging the speculative fever. The lapsed grants in the Southern States were renewed, new ones were freely bestowed in the West and Northwest, until finally the amount of public domain given away included, at least nominally, an area as large as the whole of the thirteen original States of the Union.

Nor were the States and municipalities idle. They had no land to give away, but they could borrow money and devote it to railroad construction. They did not attempt to run the roads themselves: the early experiments in that direction had not proved very successful. But they did what was in some respects much worse: they subscribed to the stock or to the bonds of new railroads, and often were almost the only *bona fide* subscribers. They thus placed their money in the control of a board of directors who had only a speculative interest in the business, and who were much more solicitous to make money out of fraudulent contracts or speculation in the securities than to build or run the road properly. The result of the policy was disastrous. In so conservative a State as Massachusetts only a small part of the municipal subscriptions were rewarded with any interest; a much larger number assisted in building roads from which they never received any profit; while a larger number still were devoted to the construction of roads which remained unbuilt for many years, and some of which are never likely to be built at all.

This state of things lasted till 1870. During most of this period there was no systematic effort at railroad control; the few attempts, like the one in New York, already alluded to, were so ill-judged as to defeat their own ends. People relied on competition to regulate railroad charges. To secure this they were ready to grant all sorts of facilities. At first any man who wished to build a railroad had to secure a special charter. This requirement was gradually done away with in different States by the enactment of "general railroad laws,"* under which any company complying with certain conditions was empowered to construct a railroad without special legislation in its behalf. The efforts to enforce liability of railroad managers were few and far between. Railroad tax laws were even more chaotic than other tax laws. There was an occasional provision limiting dividends which corporations could pay, and still more rarely some sort of effort to fix max-

* First adopted in New York and Illinois in the years 1848–1850.

imum rates, but nothing which touched the great evils and abuses of railroad management as they had developed in actual practice.

The central evil, greater than all others put together, was the inequality of railroad charges. The general scale of rates was low—lower than they had been by any other means of transportation, and on the whole lower than they were anywhere else in the world. But this did not make the differences in charge any less severely felt. It was a great deal better for A to pay a dollar, and at the same time be sure that his competitors B and C were paying the same price for the same service, than for A to pay only ninety cents, while his rivals were charged but eighty cents. Business could adjust itself to almost any schedule of rates; but where one person was favored at the expense of another, no such adjustment was possible. Now the railroads had it in their power to grant such favors, and they abused the power unmercifully. The system of freight rates was so far secret that it was impossible for any man to tell what terms his rival was getting. The charges were not merely unequal, but uncertain; the management often arbitrary, and almost always irresponsible.

Competition furnished no remedy. The great majority of places could have but one railroad; they must ship by that railroad or none at all, whether they liked its rates or not. Towns which had bonded themselves heavily in order to secure the building of a railroad through their limits were compelled not merely to pay taxes on their bonded indebtedness, but to pay much higher rates than the terminal points which had benefit of competition. The railroad seemed to have no sympathy with local interests. It was largely owned by capitalists in other States or other countries. The managers acknowledged no responsibility to their patrons; they seemed to be working in behalf of a foreign interest, whose object it was to drain the shippers as dry as possible. Too often the manner in which the complaints of local shippers were treated was more offensive than the grievances themselves.

A reaction was inevitable. The local shippers could not control the railroad managers directly; but they could control the State Legislatures, and make laws which the railroads must obey. A movement in this direction began about 1870, making itself first felt in Ohio. But it was not until 1872 that its true strength was revealed. As long as business was expanding, and almost everybody seemed to be growing rich, great inequalities were borne without complaint. But when the reaction set in—when the demand for American wheat, artificially stimulated by the European wars of 1870, gradually began to fall off, and the margin of profit for the farmers of the upper Mississippi Valley was rapidly converted into a loss—it was inevitable that they should try to shift the burden upon the railroads.

This was the origin of what is popularly called the Granger legislation. In one sense the term is not strictly correct. The Grangers, as an organization, were not responsible for its existence; it began before the granges had anything to do with the matter. Many of their leaders deprecated the attempt to drag the organization into politics. But it was to a large extent a farmers' movement; and the Grange, as a farmers' organization, furnished a rallying-point for the agitation, and seemed to the outside public the moving force in the whole matter.

It was on Illinois that the attention most strongly centred, and the Illinois legislation was typical of the whole movement. The Constitutional Convention of 1870 made certain provisions for State control of rates, which led to the passage of a law in 1871 directly fixing the rates which railroads should be permitted to charge. This law was pronounced unconstitutional by the State courts; but the term of office of the judge who had given the opinion soon expired, and he was defeated in his attempt to secure re-election. It is not clear that the Patrons of Husbandry, as such, worked against him, but there seems to be no question that many of the local organizations were made to subserve the purposes of politicians who thought that they saw in them a new means of obtaining offices and securing political power. The same influences controlled the election of candidates for the Legislature of 1873; and in that year a law was passed providing for a commission with power to fix rates. The statute was so framed as not to come into direct conflict with the previous decision of the courts; but it was at the same time made pretty clearly evident that no legal obstacles would be allowed to stand in the way of its enforcement, if the people of Illinois could help it.

Other States of the upper Mississippi Valley followed the example of Ohio and Illinois, and made their regulations even more stringent. The policy of the railroads in some of these cases was almost suicidal. Had they been willing to unite their influence with that of the more moderate of the leaders of the Grangers, the worst evils might have been prevented. Instead of this they allowed the measures to take an extreme shape, thinking that if the statute were made thoroughly bad, they could perhaps defeat it in the Legislature, and certainly resist its enforcement in the courts. In both these respects they were disappointed. The moderate members of the Legislature preferred a bad measure to no measure at all. The courts, after some delay, pronounced such measures constitutional. In the Granger cases, decided in 1877, the Supreme Court of the United States declared unequivocally the right of the State Legislatures to regulate charges on railroads and other industries involving a virtual monopoly. The decisions were all the more significant because there can be little doubt that the majority of the Court regarded the laws as practically unwise, and admitted their constitutionality in spite of it.

It had not been at first expected that the Supreme Court would uphold this legislation. Had the decision come two years earlier, it is hard to say what would have been its consequences in frightening railroad investors. But the worst dangers were over before the decision came. The very men who had passed the obnoxious laws were now quite ready to let them remain unenforced. In some cases they actually repealed them. They had learned by experience that the farmers themselves were the worst sufferers from destructive railroad legislation. It was in Wisconsin that the matter was clearest. The law of that State had taken the lowest rates charged by any railroad as an indication of the price at which that railroad could afford to do its work, and had established schedules of mileage rates on that general basis. It went into effect in 1874. What was the result? Two years later the Governor's message called attention to the fact that railroad enterprise in Wisconsin was practically destroyed; no railroad was paying dividends; only four were paying interest; the capital necessary for the development of the country was seeking investment in other States; the railroads were afraid to do what was absolutely indispensable for the growth of the State, and could not be compelled to do it as long as the law deprived them of all their profits and threatened to throw them into bankruptcy. The very men who passed the law in 1874 repealed it in 1876. They lost far more than they gained by it.

Let us stop to consider for a moment why the system of equal mileage rates proved so disastrous in its consequences.

When railroads were first built it was commonly supposed that their charges would be graded on this principle. The tolls for turnpikes and canals, or the carriers' charges for wagons, have been generally graded in this way, and it was assumed that railroads would naturally do the same thing. But it soon became evident that a railroad did not need to charge twice as much for hauling goods one hundred miles as for hauling them fifty miles. The mere matter of train service was only a small item in the expense. The cost of loading and unloading remained the same whether the distance travelled were great or small. If the cost of loading and unloading the consignment of freight was a dollar, and the cost of hauling it was half a cent a mile, the expense of carrying it fifty miles would be $1 25; the expense of carrying it one hundred miles only $1 50. To insist that the charge for the latter service should be double the former would be obviously unfair to somebody. If the schedule were right for the short-distance shipper, the long-distance shipper would be robbed for the benefit of the railroad. If, on the other hand, it were made right for the long distance, the short-distance shipment would not pay expenses, and the railroad would lose money on its local traffic.

This was obvious enough when it was brought to the test of practice. But there was another point of the same kind less obvious, and even more important. If a railroad was already carrying a certain amount of traffic, it could handle additional traffic at very much lower rates. If it can double its volume of business, only a small part of its expenses are doubled. Interest charges remain practically the same. Administrative expenses increase but slightly. In the great majority of instances the same thing is true of expenditures for maintenance. The ordinary repairs of a railroad are not due

so much to wear as to weather. Track watchmen must be kept busy, and bridges inspected, whether the volume of traffic be great or small. In order that the railroad may be profitable, some traffic must pay for all these things. But when they are once paid for, additional business can be profitably handled at very much lower rates.

It was thus for the interest of the railroads to reduce their charges wherever large additional traffic could be developed. It was this which led them to give low rates for necessaries of life, like coal or wheat, which would furnish a large business at low rates, but little or none at higher rates. Thus far it was an unmixed public benefit. Had the railroads been obliged to make the same charges for coal as for higher-priced goods, it would practically have stopped the coal traffic of the country, without benefiting any one. This is perhaps the main reason why a return to the old system of tolls is impracticable. If the railroad company charged tolls for the use of the road-bed, by which each car-load had to pay its share of the fixed charges, it would simply stop the movement of a great many of the necessaries of life, which to-day are charged perhaps half a cent a ton a mile—little more than the expense of loading and hauling, and by no means enough to cover anything like a fair toll for the use of the track. If everything were levelled down to this basis, the company could make no money; if everything were levelled up, the company would lose much of its business, and no one be the gainer.

But there were many other ways in which railroads were tempted to extend their traffic, which were not always for the public interest. The long-distance business offered a field which could be almost indefinitely developed by lower rates. The railroads did not see that by so doing they sometimes killed off their short-distance business by putting it at a relative disadvantage. A lower rate on wheat from Chicago might seriously interfere with the development of farming at intermediate points. But the loss of local business was indirect and often unseen, the gain of Chicago business direct and obvious. Under the stress of competition, the railroads often looked at the latter to the exclusion of the former. In so doing they were led into many devices which were not merely questionable, but absolutely bad. To secure business which they could not otherwise obtain they gave special rates to favored shippers. These favors were often quite unreasonable in amount. They were commonly kept secret. The machinery was such that they were given in a thoroughly irresponsible fashion. They were largely under the control of local freight agents, and often quite removed from the knowledge or influence of really responsible officers of the roads most interested. As a result they were apt to be given to the men who least needed and least deserved it, and culminated in abuses like the special contracts of the Standard Oil Company, which was granted a decisive advantage over its competitors under all conceivable circumstances.

This explanation of railroad practice shows some of the difficulties under which legislators worked. To return to the system of tolls or of equal mileage rates was as much out of the question as it would have been to prohibit the railroads from carrying freight altogether, after the fashion of the Clinton League. On the other hand, to allow the existing system to go on, with all its abuses, was to put every independent trader at the mercy of the railroads. The fault was not in the underlying principle of railroad management, but in its application. The system of making rates to develop business, or, in other words, of charging what the traffic will bear, if properly applied, was good for the public as well as for the railroads. But the trouble was that its application was in the hands of the railroad managers—oftentimes in the hands of their more irresponsible agents; that if they acted wrongly, whether through mistake or through corruption, the individual shipper had no remedy. The railroad agents were the sole judges of the application of the principle, and were often under a positive temptation to apply it in the most short-sighted fashion. The system of secret rates and personal discriminations had sometimes made such misapplication the rule rather than the exception.

The first important step toward a solution of this difficulty was taken in Massachusetts. While the Northwestern States were endeavoring to establish a system of regulation too strict to be maintained, Massachusetts had appointed a commission with powers apparently too slight to be of any use. It is not likely that the

men who provided for the appointment of the commission expected that anything would come of it. Fortunately, however, it had something better than legislative powers: it had a man of exceptional ability at its head, in the person of Charles Francis Adams, Jun. His ideas were not always practicable, but among his many qualifications for the office not the least important was a readiness to acknowledge when he was wrong. The result was that he pursued those lines of policy which were practicable, and abandoned those which were not. One fundamental idea ran through all the work of the Massachusetts commission: it was seen that the real interests of the railroads in the long-run nearly coincided with those of the public; that the more serious abuses harmed both parties; and that by bringing matters squarely before the public the legitimate interests of all concerned were generally arrayed on the same side. The moral influence of the Massachusetts commission reports was overwhelming; no railroad manager dared to set himself directly in opposition to them. In less than ten years it had secured a great deal of publicity of railroad accounts, and had greatly lessened the abuses with regard to railroad rates.

The success of the Massachusetts system was so marked that it soon found imitators. The other New England States already had so-called railroad commissions, some of them dating back to the very infancy of the railroad; but their powers and their influence had been merely nominal. On the other hand, the Granger States in several instances had commissions charged with the execution of the laws regulating railroad rates, and their powers were too great rather than too small. The results in Massachusetts caused the powers of the Eastern commissions to be increased, and those of the Western commissions to be diminished, generally with good effects. Nowhere were these effects more striking than in Iowa. After the failure of the granger law in that State, a commission was formed on the Massachusetts plan pure and simple; and no commission in the United States has done better work than that of Iowa. The same general plan has been followed in New York within more recent years, and the results have furnished a strong justification for it.

Within the past eight years there has been an effort at stricter railroad control in some parts of the South: South Carolina, Georgia, Kentucky, Alabama, Tennessee, and Mississippi have successively passed railroad laws of a severe character. Yet in all these States, with but one exception, the influence of the Massachusetts system has made itself felt. The execution of the laws has been left largely in the hands of commissions with large discretionary powers; and these commissions have relied for their support, not merely on the pains and penalties of the law, but on the influence of public opinion. The most extreme among them have proceeded with more caution, and therefore with more chance of enduring success, than the legislators of the Northwest in 1874.

By the year 1880 it had become a well-established principle that it was impracticable to fix rates directly by law; that the important thing was to secure publicity and equality, and above all to have the means of holding the railroads responsible for what they did. On the other hand, the railroads had come to recognize what ten years before they would have denied, that their business was not a purely private one; that they had public rights and responsibilities, and could not claim immunity from legislative control.

But though the State authority and the railroads were in less direct conflict than before, the most difficult questions yet remained unsettled. The wiser legislators were ready to allow railroads great freedom of action; but where should that freedom stop? The wiser railroad managers welcomed legal provisions for the enforcement of equality and responsibility; but how far should this equality or this responsibility be carried? These questions were still unsolved, nor was it in the power of the individual States to solve them.

The through business of the railroads had come to be of co-ordinate importance with their local business. Half the shipments of the companies, roughly speaking, are not confined by State limits, and this half includes nearly all the strictly competitive business, where the worst abuses prevail. The investigation of the Hepburn committee in New York in 1879 made a series of revelations with regard to the handling of inter-State traffic, which showed the community for the first time to what extent the discretion of the rail-

road managers had been abused. Of what use was enforced equality within the State if all sorts of discrimination could be practised in favor of those shippers who lay beyond its limits?

The railroad managers themselves had not been insensible to these evils. They had taken measures to avoid the recurrence of a state of things like that in 1873, when cattle were carried from Chicago to New York at a dollar a car-load, or in 1875, when the "Eveners" and the Standard Oil Company obtained their greatest advantages. The system of railroad pools was intended to prevent precisely these abuses. As long as one point had the benefit of competition while another had not, the competition point would get lower rates, and individual shippers at that point would obtain secret rebates which would give them an advantage over their competitors. These abuses and inequalities were always worst in a time of active railroad war. The local shipper was often at the worst disadvantage when his absolute rates were lowest. Pools were devised as a means of preventing this. By dividing the traffic at competing points they put a stop to this system of secret underbidding. A mere agreement to maintain rates did little good, because it was so easily violated as to cause a suspicion of bad faith when there was no real ground for it. A division of traffic, or pool, was so much easier to watch that each party could rely on its being strictly obeyed by the others as long as they pretended to obey it at all.

It is impossible to trace the origin of the practice of pooling. It began in Europe earlier than in America, and has been more consistently carried out there. Important American pools were formed as early as 1870, but the first large and successful system was established in the South in 1873 or 1874. Since that time the practice has spread all over the country, though nowhere with the same completeness of organization as in the South. There can be no question that pools have lessened the inequalities of rates; but their workings have not been altogether satisfactory. There is a strong temptation for a pool to level up instead of levelling down, and to prevent the rapid reduction in rates and increase in economy of management which take place under the stress of active competition. Moreover, they are looked upon with a jealous eye, because they increase the railroad power, even when they distinctly lessen the abuses of that power. There is no room for doubt that they have done good; but they do not by any means furnish a satisfactory solution of the problem, or lessen the demand for a national system of regulation.

When the framers of the Constitution gave Congress the right to regulate commerce between the States, they builded better than they knew. They thought only of the possibility of legislative restrictions by the States themselves; but they actually provided a constitutional means for dealing with the railroad question in its larger aspects.

The right has been unquestioned, but until the present year little use has been made of it in connection with railroads. The exceptions are too trifling to note in detail. A serious proposal to make it the basis for effective legislation was first made in 1873, under the influence of the Granger agitation. Since then the matter has been quite constantly under discussion. The Reagan bill was first introduced into Congress in 1878. As first presented it was an exceedingly crude measure, taking no account of the intricacy of railroad business, and the necessity that national regulation should be elastic in order to be really effective. Year after year it was urged upon the attention of Congress, and with almost every session slight changes were made in the plan of the bill to render it more practical. The different characteristics of east-bound and west-bound freight were recognized; the clauses with regard to the relative rates for different distances were made less stringent.

As long as the bill was in its crudest shape, conservative influences were strong enough to defeat it; if not in the House, at any rate in the Senate. But as time went on it became evident that some measure of national control was bound to pass. The growth of business and the decisions of the courts were showing more and more clearly the limitation of power of the individual States. It became clear that the Reagan bill could be prevented from becoming a law only by the passage of a more moderate bill with the same general objects in view. Such a bill was introduced in the House in the session of 1884–5, and was preferred by the committee to the Reagan bill. But

the House itself reversed this action, and insisted on passing the more radical measure.

When the matter came before the Senate they did not concur in the action of the House, but substituted a more conservative bill, introduced by Senator Cullom. The House was unwilling to agree to this, and the two bills were so radically different in character that any compromise was impossible. For the time being all legislation was defeated by this disagreement.

This discussion had one important practical result. A special committee of the United States Senate was appointed, with Mr. Cullom as chairman, to investigate and report upon the subject of the regulation of inter-State commerce. The committee worked industriously all through the summer, and at the close of the year 1885 presented a remarkably able report, accompanied by a mass of important testimony. For the first time we have before us a basis for intelligent discussion of the whole subject. They also reported a bill strictly prohibiting all purely personal discriminations and all secret rebates or drawbacks; attempting to regulate local discriminations, but not in a very rigid way; providing for a commission to secure the enforcement of the law, and at the same time to make those exceptions which should be found necessary in its practical operation. Toward pools the attitude of the bill was neutral; it neither prohibited them nor legalized them. It directed that the commission should report what action was needed on the subject.

The bill passed the Senate in the spring of 1886, but it became evident that it was too moderate to suit the temper of the House. The chief points of difference were three in number. In the first place, the House desired a strict prohibition of local discriminations instead of an elastic one; in the second place, they were unwilling to trust the execution of the law to the discretionary powers of a commission; in the third place, they demanded that pools should be directly prohibited.

There seemed to be great danger that this difference of opinion would defeat all action in 1887, as it had in 1885. The political leaders felt that such a result must not be allowed. The country was loudly demanding some action. A great many men had reached the position where they thought that almost any legislation was better than none at all. Senator Cullom himself was so far affected by this feeling that he was willing to make great sacrifices rather than to see all action defeated. A conference committee of the two Houses was appointed, which finally succeeded in agreeing upon a compromise measure. The Senate was to yield its point with regard to pools, the House its objections to the establishment of a commission with discretionary powers. The difference with regard to local discrimination was settled by the adoption of a compromise clause so vague that each man was able to interpret it to suit himself. The conference report was signed by all the conferrees, except Senator Platt, who made a vigorous fight against the prohibition of pools. But his efforts were unavailing; the demand for legislation of some sort was too strong to be resisted, and the measure, as reported from the committee, passed both the Senate and the House, and finally received the signature of the President.

Such, in brief, was the history of the Inter-State Commerce Law. Let us now examine its provisions, and their probable working.

It provides, in the first place, that it shall be unlawful for any common carrier to charge one person less than it charges another for the same service under similar circumstances; nor shall it in any other respect give undue preference to one person over another in the same circumstances. And in subsequent sections of the act it provides for a system of publicity of rates, and prohibits such secret rebates, drawbacks, or agreements as might defeat this object. All this part of the measure is thoroughly good. The object has been recognized as a desirable one, not merely by the public authorities, but by the better class of railroad men. Such publicity and equality of treatment would sweep away the worst abuses connected with our railroad system; and though the prohibition of special contracts will undoubtedly work great hardship in some instances, there is no question that the good to be obtained far outweighs the evil.

The provisions with regard to local discrimination are more doubtful; it is hard to say exactly what they mean, or how far they are wise. The section bearing on this point reads as follows:

"SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however*, That, upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than the shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act."

This does not mean that the Boston and Albany shall charge no higher rate per mile from Chatham to Boston than is charged for shipments over its line from Chicago to Boston. This interpretation, which would be ruinous to all concerned, is shut out by the words "in the aggregate." But there is a real uncertainty whether the law limits the amount which the Boston and Albany may charge from Chatham to Boston by the whole Chicago-Boston rate, or by the Boston and Albany's *share* of that through rate. For instance, supposing that a shipment is made at forty-five cents, and the Boston and Albany receives fifteen cents. Is the permissible charge from Chatham to Boston limited by the forty-five-cent rate or by the fifteen-cent fraction of it? The former interpretation would involve comparatively little change in the railroad tariffs of the country; the latter would upset them completely. There can be little practical doubt that the courts will adopt the milder interpretation; but as long as any uncertainty exists it may affect trade very seriously, because the railroads will not feel free to do a great many things which may subsequently be pronounced lawful by the courts.

There is another way in which this provision may make trouble. The Canadian roads are, of course, practically exempt from its operations. If the Grand Trunk desires to make special rates for wheat, it can do so. If the American roads attempt to follow its example, they are, in the first place, hampered by the necessity of a notice which must be given before changing their rates; and in the second place they must lower all their intermediate rates to correspond. Now the through traffic in wheat from Chicago to Liverpool is a large and easily handled line of business; but it is subject to severe competition, and in this competition the Grand Trunk Railroad will be given a great advantage, which will inure to the benefit of its English stockholders. Unquestionably the commission will provide for such cases. Perhaps the courts may decide that the export traffic is not under similar conditions with the domestic, and therefore exempt from the operations of the act. But in any event there will be much delay and uncertainty before these matters can be adjusted.

The difficulty of carrying the act into effect is greatly increased by the prohibition of pools. Unsatisfactory as pools have been in some respects, they have this great advantage, that they take away much of the inducement to secret rebates and discriminations. They prevent responsible roads from being placed at the mercy of their more reckless and irresponsible competitors. When pools are prohibited, if one company makes special contracts in violation of the provisions of the act, the other companies are almost forced to it in self-defence—and there are means of doing it which are exceedingly hard to detect. So serious has been this difficulty that other countries have recognized the impossibility of stopping pooling and discrimination at the same time. Believing that discrimination is the greater evil, they direct their efforts against this; as a means of stopping discrimination, they legalize pools. That is the only way in which the states of central Europe have been able to enforce the short-haul clause on their own lines. When there was anything like active competition, the government could not make its law binding on its own agents. If private companies were violating the short-haul law in Belgium or Prussia, the government roads had to do the same thing in sheer self-defence, or else see their lines losing money while their competitors were making money—a thing which the tax-payers would not stand. Thus it is that in Belgium, in Germany, and in Austria the state railroads enter into contracts for division of traffic with rival lines, and even with competing water routes.

And it is here that the evils of discrimination have been, on the whole, most effectively met. In other parts of continental Europe, where pools are not so strong, discrimination is more prevalent. In England, where they are barely tolerated, there is still more discrimination; in America, where we have tried to prohibit them altogether, discrimination is at its worst. And in America itself we find that the abuses of the system of special rates have been most severe at those times and those places where railroad wars have caused pooling agreements to be thrown to the winds.

The prohibition of pools is to be regretted, because it will make it more difficult to enforce the other sections of the law. If the means provided are strong enough to enforce it without the aid of pools, it will do no special harm to see them abolished. But there is reason to fear that we shall have a hard task in so doing. Both the commission and the United States Circuit courts are likely to be crowded with business, at least during the first year or two of the operation of the act.

Not that the railroads are likely to try active measures of resistance. The most they will do is to interpret its more doubtful portions in their own favor, and it is by no means certain that they will undertake to do that. Some of the ablest railroad men say, with much justice, that even the appearance of resisting the enforcement of the act would cause them to incur much odium; that it is better in the long-run for them to interpret it according to its obvious meaning. Such a course would often hurt the railroads, but it would generally hurt the shippers a great deal more. The result would be that the blame would be cast, not upon the railroads, but upon the act itself; and its obnoxious provisions would be modified much more speedily than could otherwise be the case. In other words, the experience of Wisconsin in 1875 would be repeated in a milder form, but on a larger scale, and it would be seen that anything which really harmed the railroads harmed the public a great deal more.

Such a course will probably be the wisest in the end, but it will involve great hardship for the time being. We see its results already. The business of the country has developed under a system of special rates for different localities. All this is to be suddenly changed; just how great the change will be, no one knows. The names of the men on the railroad commission, and particularly that of Judge Cooley, its chairman, are a guarantee that the discretion of this commission will be wisely used. But the commission cannot provide at once for every case which shall arise. We have passed a law without knowing exactly what it is going to do, and the country is bound to suffer the consequences of its recklessness. Although the law is so framed that we may expect good to come of it in the long-run, it will be impossible to avoid great hardship in adjusting ourselves to it.

It is not likely that the adjustment will be a final one. The Inter-State Commerce Law is not in any sense a solution of the railroad problem: it is simply one of a series of experiments which narrow down the range of possible action. If honestly enforced, its successes and its failures will help to teach us what we can and what we cannot do, and another ten years will see us prepared to avoid some of our mistakes of judgment to-day. That an ideally perfect law will ever be obtained is not likely. A political problem cannot be solved like a mathematical one. The advocates of free competition and the advocates of State railroad ownership each have a solution to offer; but neither of these solutions does as well in practice as in theory. Free railroad competition turns out not to be free. State railroad ownership too often means not the ownership of the State as a whole, but of a small body of men who happen to hold political power at the time; it is neither more nor less than the substitution of a ring of political managers for a ring of railroad managers. Its practical success varies according to the condition of the civil service. But the government is, as a rule, less responsible than a private corporation, instead of more so. If there is any lesson which is clearly taught by the history of railroad management from the beginning until now, it is that publicity and responsibility are more important than any set of laws or regulations. It was because competition failed to secure such responsibility that we have ceased to rely upon it. It is because the Inter-State Commerce Law furnishes a new means of enforcing such responsibility that it marks a decided advance in American railroad legislation.