THESIS

"A CRITICAL ANALYSIS OF THE RECENT INTERSTATE COMMERCE ACT"

by

Clarence G. Nevins

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When in 1787 the drafters of the Constitution for the original thirteen states inserted a provision declaring that all interstate commerce should be under the control of the federal government, they little dreamed of the immense significance that was attached to these few words. At that time there was little commerce carried on between the different states and, as for the condition today there is no necessity of taking the time to expound to the American public, the vital connection that our Interstate Commerce has with our existence as one of the great nations.

The first law passed under this provision of the constitution was not until 1887, and it was on that related to interstate railroads only. This act had some rules and principles for the controlling of interstate railroads and provided for the establishment of a commission of five members who were to be appointed by the President. It was to become the duty of this commission to apply and enforce the law. Each commissioner was to hold office for six years and was to draw a salary of $7,500 per annum. One of the most renowned constitutional scholars in the whole country, Hon. Thomas M. Cooley, was the first president of the commission. They were to hold sessions all over the United States as the

occasion required, but the larger number of its sessions were to be held in Washington, D. C. The commission was not a branch of the judicial department, but of the legislative, yet its powers were chiefly judicial in character.

In order to give a complete analysis and criticism of the recent law passed in 1905, it must be necessary to give some of the more important features of the law as passed in 1887. This act declares that all railroad rates must be reasonable. Every railroad doing business was to adopt a classification of freight and a schedule of rates for each class, the copies of the classifications and schedules to be filed with the Commerce Commission. Rebates were strictly forbidden and the law contained a provision which forbade a railroad to charge more for a short than for a long haul. Such is a brief summary of the law passed in 1887.

It was undoubtedly a big advancement toward the bringing of the big public service corporations under the direct control of the general government. Had its provisions been carried out in as good faith as the law was passed, there would not have been as much secret rebating as has been brought to light in the last few years.

In 1898 an act was passed which made the chairman of the Interstate Commerce Commission and the Commissioners of Labor, a board for the arbitration of railway labor disputes. If the employers and employees wish to take advant-

age of this act, each chooses an arbiter and these two select a third. The three then work together and examine the merits of the case, and render a decision, which can be enforced by the courts.

In 1903 Congress passed the Elkins act, which was in reality an amendment of the law. The reports of the Interstate Commerce Commission have, from the beginning, contained urgent recommendations for amendment and changes in the original law, but until the Elkins Act, nothing whatever had been done to relieve the situation.

In 1904 President Roosevelt in his annual message to Congress recommended legislation that would give the commission more power. He urged that the commission be given the right to prescribe rates upon complaint and such rates to be effective unless reversed by a court. The House of Representatives feeling the need of such legilation at their very next session, proceeded at once to the consideration of this problem. As a result of their labors we find that on the 9th of February, 1905, the House passed the Esch-Townson Bill, by a vote of 32 to 17. The Senate, however, failed to see the necessity of such a law, but instead instructed their committee on Interstate Commerce to sit during the congressional recess for the purpose of taking testimony and consider plans for railway rateslegislation. In 1905 President Roosevelt again renewed his recommendations for legislation of this sort and the long awaited act

was passed in the session of Congress. The law as passed by the Senate after a conference report with the House on the 28th of June, 1906, and which went into effect on the 28th day of the following August, is a much more radical measure than even the President had expected to receive at the hands of Congress. There was practically no opposition in the House, but as usual in such cases a strong fight was made in the Senate. A majority of the Committee on Interstate Commerce argued to favorably report the bill, but the conservatives of the Committee succeeded, with the purpose of discrediting the bill, in having it placed in charge of Senator Tillman of South Carolina, a Democrat, and a bitter personal enemy of the President.

An extroardinary series of events which happened about this time, seemed to exert a powerful influence over members of the upper house. These events included disclosures made by the Interstate Commerce Committee in an investigation of the Pennsylvania Railroad. An anthracite coal strike, and a report by the Commission of Corporations on the transportation of petroleum. All these added to the revelation of the packing industry and insurace investigations could not heop but enforce upon the minds of some of the more delinquent statesmen, that a stringent law was needed. The original Hepburn bill after having been extensively amended, was passed in the Senate with only three dissenting votes. Senators Morgan and Pettus did not believe the law to be radical enough, while Senator Foraker opposed the whole plan of legislation under consideration, upon the assumption that

the proposition to confer upon a Commission a power which he said was limited to the legislative branch of the government, was unconstitutional.

It will not be our purpose to analyze briefly the law as this Recent Interstate Commerce Act. The new law widens materially the limits of the commissions' authority and includes several agencies of transportation which had heretofore been completely out from under their control. Among these might be mentioned the express companies, sleeping car companies and persons or corporations engaged in the transportation by pipe lines of oil or any other commodity, except water or gas. Express Companies are now compelled to publish rates, tariff statistics, and financial reports. The Standard Oil monopoly could hardly have been built up had it not been for the rebating practice and this no doubt led to the inclusion of pipe lines as common carriers. The meaning of the term "railroad" was extended so that it now includes spurs, switches, terminal facilities of every kind, freight depots, yards and ground. The meaning of"transportation"was made so as to include many instrumentalities of shipment or carriage which had not hithertobeen included under that term. A clause was added to this act which prohibitedrailroads from transporting in interstate commerce any commodity, other than timber or its manufactured products, which are produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such as may be

necessary and intended for its use as a common carrier. The purpose of this clause was to prevent railroads from being engaged in any other business than that of transportation. However, the foregoing clause was not to go into effect until May 1, 1908, and it is too early as yet to to comment either for or against the wisdom of its adoption.

One of the most striking features of the law was its reference to passes. Common carriers are forbidden to give directly or indirectly , and persons are forbidden to use interstate passes. There are two classes of exceptions made to the application of this state. The first includes railroad employees and their families, officials, attorneys, and employees of agencies associated with the railroad business. The second class comprises the poor and unfortunate classes and those engaged in charitable and religious work.

As to the first class of exceptions, we do not believe that there is any well-grounded object ot their being granted free trnasportation by the railroad companies. The only possible exception to this might be in granting passes to attorneys and newspaper men, who in reality only spend a small part of their time in the employ of the Railroad Co.

Many of the states have passed laws containing this same provision or one very similar to it. There can be no doubt but that the pass is an evil of the highest magnitude. Through its power corruption has become more common and the influence of the pass is one that cannot be ignored.

The section in the recent interstate commerce law is certainly generous enough in its list of exceptions. There is considerable doubt whether the law should, even by implication, impose upon railroads the burden of carrying unfortunate persons free. This is a duty that belongs to the state and there might be some excuse for the elimination of this article from the law. Neither is there any special reason why railroads should be compelled to grant reduced rates to ministers of charitable and religious work. This seems to be a form of discrimination which we are so careful in prohibiting railraods from practicing, when in their dealings with other corporations. If the pass clause is vigorously enforced, it will, by the help of laws passed by several states, do away with the ppass scandal in time.

The section of the law pertaing to railway rates is one that over-shadows every other clause in importance. The rate section of the amended act provided that the Commission shall have power upon complaint, whenever the rates or charges or any regulations or practices are unjust or unreasonable, to prescribe after a fair and impartial hearing, the unreasonable regulation or the maximum rate, and to make an order that the carrier shall cease from violation of the statute. The law previous to this amendment contained a provision of this sort, but in [illegible] provision the Maximum Rate Case before the courts in 1897, this had been declared unconstitutional.

Many of the ablest lawyers in the Senate argued that

such would be the case with this provision but we find that Justice McKenna, for the Supreme Court on the 20th day of May, 1907, handed down a decision which declares unequivocally the right and pwer of the Interstate Commerce Commission to set aside a rate if it considered the same to be unjust and unreasonable.

"hen the question was up for debate in Congress, the railway side contended that his function could not be delegated to any body and they positively assented that Congress had no right to give to the Commission, any such right. This decision, above quoted, not only removes the final doubt as to the right of Congress to confer the rate making power, but it opens the way for any additional legislation that may be required in order to make more effective the existing law. This is indeed a notable advance, but as yet the rate question is by no means settled. There are many discriminations that will never come to the attention of the Commission and it must not be thought for an instant that the railroads have given up the struggle. Excessive rates are being charged, towns are being discriminated against in countless instances, and unreasonable rates have been and will continue to be the subject of much bitter complaint.

As a rule a shipper is not so much interested in the rate he pays as he is in seeing to it that his competitor pays the same rate. A major portion of the shipping is done by that class of business men termed "middle" men, and it can be easily seen that it makes little difference to them

what the rate is, so long as their competitors pay the same. The men who are really affected by the rate are not able to bring their complaints before the Commission as they should be. The actual sufferer would not be reached by the middle man instead. One of the most memorable debates of the whole session of Congress arose over the question of allowing courts to give injunctions, thereby setting aside the ruling of the Commission for the time being. Senator Bailey argued the limitations of judicial authority, while Senator Spooner led those who maintained a more conservative view. The affair ended by express jurisdiction being conferred upon the Circuit Court in suits to enjoin set aside, or suspend orders of the Commission. Five days'notice was to be given before such order could be made and in this way the Commission was informed of the probable action of the Court. Under the old law the Commission had no power to compel the making of a joint rate and railroads had it in their power to refuse any such rate made. The Commission is now given greater power along this line and they have the right to establish through routes and the conditions under which they shall be operated whereven the carriers refuse or neglect to do so voluntarily. The law compels a publication of rate schedules and these are to be filed with the Commission and these schedules cannot be changed unless thirty days' notice is given.

It is noted that the law fails to give the Commission

a direct power over classification. This is a serious defect and should soon be remedied as a railroad can raise rates on a certain commodity by simply making a change in the classification. Moreover, the Commission has power upon complaint to lower a rate on one road, yet it can not prevent the order being practically revoked when a competing line makes a corresponding decrease in their rate.

The new law requires a very elaborate publicity of accounting from all roads and requires that the annual reports be made out under oath. These reports are to be filed with the Commission within a perscribed time or a forfeit is exacted. The book-keeping methods are given by the Commission and they are to have free access to these things at all times. The railroads are forbidden to keep any other accounts, records, or memoranda, than those approved by the Commission and to any violation of these provisions, a fine and imprisonment is attached. One would think, after reading the clause in the amended law that pertains to publishing of reports and accounting that certainly the measure was radical and drastic enough to suit anyone. If the Commission can not work intelligently when all this is disclosed to them, it will certainly be because they are not upheld by the courts.

A radical change in the method of procedure in enforcing the privisions of the new law was also made. Before it was easy for the Commission to make rulings but it seemed

to be decidedly impossible for the commission to bring about speedy or decisive results. Formerly pernalties for violation of an order of the Commission did not begin to run until sustained by an order of oa court. This allowed the railroad to continue its unlawful course until after the Judiciary had deliberated upon the matter. The new law makes a ruling of the commission effective within such reasonable time as the commission shall prescribe, and continues it in operation for a period not to exceed two years. The carriers have the privilege of appealing to the U. S. Circuit Court at any time and appeals from the action of this court lies directly to Supreme.Court and have priority over all except criminal cases.

The Commission is given the power to grant a rehearing at any time upon application for same and it in their judgment there has been an error in the original finding, they may reverse, change or modify the original decision.

The personell of the Commission was changed from five to seven members, only four of whom can be of the same political party. The term of office was also extended to seven years and their salry increased from $7,500 to $10,000 per year. This was a change for the better as much more dignity and influence is attached to the Commission.

All of the important changes in the Interstate Commerce law as recently amended, have now been taken up, and

it shall now be our purpose to criticize more sharply some of these changes and also point out some amendments that should be added.

In the original law of 1887 a provision was put in which made pooling of railroads prohititive. It is natural for the public to believe this was a wise insertion and it would no doubt be extremely difficult to convince the average person that such a clause is detrimental to the best interests of the travelling public. Nevertheless, it is the honest conviction of most men who have made the railway problem a special study , that this clause should be repealed. The argument in favor of such action is as follows:

More uniform and stable rates would be secured. The old saying,"Competition is the life of trade" cannot hold when applied to the railroad industry. Discriminations between different towns, so prevalent now, would be eliminated. Railroads now have secret agreements with each other and the only method of solving the railraod problem, outside of govermental ownership, is for the Commerce to know all of the agreements entered into by the railroads.

Another omission that will be felt in the enforcement of the new amendment is that clause in the old law in regard to relative charges on long and short hauls. The Supreme Count decided against this clause as being unconstitutional the way it was worded in the old law. It seems that

an amendment could have been added which would give the Commission more power along this line. It is a form of discrimination which can hardly be tolerated and the sooner it is remedied, the better it will be.

Many students of the Interstate Commerce problem have urged that question of inland tranportation by water be included under the jurisdiction of the Commission, while only a small part of our commerce is ever transported by water. Yet in some cases the rate problem would be much simplified were it not for the exemption of water transportation. Publication of water rates would materially aid the Commission in the solution of this problem.

It might not be out of place to comment on the act, as a whole, and its solution of the railroad problem. There are many public men in the United States, notable William Jennings Bryan of Nebraska, who still insist that governmental ownership of the railroads is the only real solution. "Government ownership" sentiment has undoubtedly been growing during the last few years, yet there is much debate as to whether the idea is even possible to say the least. Public opinion was largely responsible for the recent amendment, but it is not for us to say how soon the taking over the railroads by the government will be brought about by the same means. If the Commission is able to enforce to the letter this existing law and if Congress will add the needed amendments as they become necessary, we see no reason why private ownership should be longer feasible.

Another feature that has been proposed by Chairman Knapp of the Commission is the reincorporation of our railroads under an act of Congress or some plan of fereral license. This, he believes would bring state laws more into harmony with national laws, and while it would not limit the actual power of the state, yet as a practical matter it would prevent improper legislation by the state. Public resentment is so strong that most of the legislatures during the last year have passed more radical laws in dealing with the railrad question in their respective states. This, Chairman Knapp believes to be in the main, wrong, and he is in favor of national regulation through the Commission. It is exceedingly difficult to convince the average person that there is a limit to the reactionary legislation now going on. He rather is inclined to believe that the railroad interests should be shown no mercy whatever.

The law as passed in 1905 is not to be considered as a new law, but an amendment to the law of 1887. The fundamental principles of that law have not been disturbed, and the amendments have been incorporated with a view to making these standards apply more definitely and practically to the problems of railroad transportation. The present Commission is composed of able men who will do their part toward enforcing the Commerce law. The railroads as a rule, seem disposed to obey the will of Congress and to accord the Commission every facility for investigation. If this

attitude continues or not, remains to be seen, nevertheless, the recent Interstate Commerce law was a huge stride toward the solution of the railroad problem as it confronts the people of the United States today.

Clarence G. Nevins.