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THE LIFE ARTERIES OF THE REPUBLIC

Address to the Convention of Railroad Commissioners

JUSTICE WALTER CLARK

THE CLEAR RIGHT OF THE PUBLIC TO CONTROL RATES.

CRIPPLING DISCRIMINATIONS AGAINST

The South. Why Railroad Officials Have Preferred to Keep Rates High Even at a Comparative Loss. Usurpation

by the Federal Judiciary.

The following is the speech of Justice Walter Clark, of the Supreme Court, delivered by invitation before the national convention of railroad commissioners at Denver, Colorado, on Thursday last:

Gentlemen of the Convention: I appreciate the compliment of being requested to address this Eleventh Annual convention of your honorable body, composed of the inter-State Commission and the Railroad Commissioners of thirty-four States. There are few men to whom more important interests are confided than you, upon whom rest a people's hopes for the regulation of the great transportation business of this country. Upon your success in the discharge of that duty awaits the public decision whether we shall rest content with this form of regulation, or whether, slowly it may be, or suddenly it may be, but in either event reluctantly, the people shall be forced to take over the



JUSTICE WALTER CLARK.

ownership of railroads as the sole solution of one of the greatest problems which now vex the public mind.

Your conventions have, I believe, with one exception, been held in the city of Washington. Appropriate, as for many reasons that city is for your gathering and pleasant as it is for any assemblage, you are to be congratulated that for this occasion you have selected the capital of the Centennial State, the centre of the wild and breezy west. Here the air is purer. You are at a higher elevation and can take a broader and more comprehensive view of men and affairs. It would look as if you were at the very centre and hub of the universe, for as Proctor Knott said of the "zenith city of the unsalted seas," the sky fits down at the same distance all around us. At any rate you are at the centre of the great country which stretches from the Mississippi to the Pacific—a section which embraces two-thirds of this Union, though many men east of the Mississippi have never suspected it. Political parties are so little alive to it that all our Presidents save one have come from the one-third of the Union that lies east of the Mississippi, and that one lived on the very bank of the river at Baton Rouge. Two of the three great parties in 1896 combined in the nomination of a candidate from west of the great river, and the probabilities are that he will be nominated again next year.

The mountain barriers which once divided this immediate section from the Golden Slope of the Pacific are like Louis XIV said of the Pyrenees—they exist no longer—for we "Have ridden our iron stallions down to drink, Through the canyons to the waters of the West."

The steel rails of commerce have riveted State to State by bands that can never be burst asunder. Beneath the tread of the iron horse mountains have vanished and rivers ceased to exist.

A LESSON FROM ROME.

From the golden mile stone in the Roman Forum radiated those magnificent roads which to this day tell how Rome built for the ages. Along them poured the tide of the Republic's and the Empire's commerce; over them tramped her legions, and as the God Terminus successively removed further and further the limits of her domains, these magnificent viaducts carried to the remotest verges the arts, the literature, the laws, the civilization that was Roman. Indeed her roads made possible the vast extent of her dominion and bound, together for so many centuries so many countries in that Roman Peace which created and maintained the civil-

ization and the learning without which humanity would not occupy the advanced stage that it does today.

Suppose for a moment that those Roman roads, the arteries of the empire, had been owned by private companies of millionaires; that not a wheel could roll nor a man move along them, nor even the legions except on terms dictated by the corporations; would not those corporations have had the empire by the throat? Would they not have appointed consuls and pro-consuls, every Senator, every general and every judge? They would have been the government.

A greater than Rome is before you. In these United States the 190,000 miles of iron way are no less the life arteries of the Republic. Along them pours a tide of travel, of freight, of wealth far beyond what the Roman ways, even those nearest the capital, ever witnessed. Indeed, though our railway system dates back only seventy years, over any one of our many great through lines, the volume of freight and travel exceeds that of the entire world a century ago. It is needless to say that the control of this immense power must be in the government, that is in the people, for with us the government is still in theory at least, the people.

RAILROADS AND THE PUBLIC.

The Supreme court of the United States in the Granger cases (Munn vs. Illinois, 94 U. S.) has reiterated in many a case since that time out of mind the control of common carriers and their regulation as to rates and in all other matters, rested in the government. "Though in this country transportation by railroad is carried on by private corporations," said the Inter-State Commerce Commission in their last report (1899) to Congress, "it is essentially a government function. This appears from the necessary conditions of railroad construction. It is a universal maxim that private property can not be taken for private uses, but only for the public use. Yet no railroad can be built without the appropriation of private property. It equally appears from the relation of the carriers' business to the community. A merchant may sell to one customer for one price and to another customer for another price, as best serves his interest, without violating any sense of right and wrong, but it is universally felt that the rates of public transportation should be uniform to all. The railway is, from its very nature in respect to the greater part of its business, a virtual monopoly. If the business of transportation is essentially a government function, then the government must see that it is properly discharged. If it is in essence a monopoly, then it must be regulated. The two things, of necessity, go hand in hand."

THIS PUBLIC IS SOVEREIGN.

This is a very clear statement of the proposition. Railroads can only be constructed by reason of having rights of way condemned for them as a public use, and being a public use, they are necessarily subject to public regulation. Indeed, the fact that you sit here, that we have an Inter-State Commission and that thirty-four States or more have their Railroad Commissioners, is conclusive that the sovereign, of whom the Supreme Court of the Union and of every State, is merely an agency—the sovereign people—has decided once for all that these iron horses shall be bit and bridled. The sun will not, cannot, go back a single degree in the dial at Ahaz. Mr. Ingalls, President of two great systems, in his address to you last year, frankly said: "Regulation by the people has come to stay and a railroad manager who does not recognize that fact is a back number." He further said that the mass of railway managers fully recognized the permanence of public control and regulation and were earnestly seeking a solution of the difficulties attendant upon it.

No one can doubt that if all railway managers loyally accepted the yoke of the law, all questions of differences between railways and people would be fairly settled by these boards provided by the law for that purpose. It is because many managers do not accept it but resort to injunctions, often issued by their former attorneys, promoted to the bench to set aside rates, regulations and tax assessments made by your commissions that the present unsatisfactory condition of affairs exists.

OWNERSHIP VS. CONTROL. It results that the real question—and we are fact to face with it—is whether it is practicable to control these great forces, these immense aggregations of capital, by Commissions and by statutes, or shall it be necessary to take the absolute ownership of them over in the government.

In all the countries of the world save Great Britain and the United States, the answer has been that government ownership is indispensable to a safe and just control. Accordingly in almost all other countries, including even the Australian and other British colonies, the railroads, or at least the controlling lines are owned by their respective governments. In the United States and the contracted territory embraced in the British Isles, the experiment of government control, without government ownership, is on trial.

There are evils in government ownership. There are difficulties in government control, unless it has ownership. It is those difficulties which you have had to face since the creation of your respective Commissions. You know their magnitude. The history of your various bodies, and the published proceedings of your meetings in these joint sessions for ten years past, show how fully you have grasped the situation and with what ability you have discussed the problems it presents.

ASPECTS OF THE PROBLEM. There are many aspects in which the railroad problem presents itself:

- 1. The relation of common carriers to their stockholders. 2. To one another. 3. To their employees.

4. To the government.

5. Their relation to the humble individuals who are often treated as if they had no right to express their opinions on such serious and intricate matters as railroad management, yet without whom not a car wheel would roll, not a magazine would draw his salary—in short the men upon whose broad shoulders rest the entire support of this immense system—the patrons of the roads.

In looking over your proceedings last session, I see that the invitation was extended to me upon the ground that the investors, the great railroad presidents and their attorneys, the employees, the representatives of the government had been heard by you, and it was suggested that it would not be amiss if the people, "the Joneses who paid the freight," they who supported the railroads instead of being supported by them, should be heard from also, and a friend of mine proposed that I should be selected to represent this "Forgotten Man." Your convention did me the very high honor to ask me to represent him and I am before you. This forgotten man elects no president, superintendent or board of directors but he has to bear whatever burdens they see fit to place upon him. He has no voice in fixing the salaries, many of them as high as or higher than that of the President of the United States, but he pays them to the last cent. He rarely rides in a palace car or upon a free pass but he pays the fare of those who do. He has no hearing as to the tax which shall be levied for the movement of himself, his produce or his purchases, but he pays it more surely than he does the taxes for the support of his city, State or Federal Government, for the Station Agent, like that other tax collector, the Custom House officer, extends no credit or delay but requires cash in hand.

OWNERSHIP NOT DESIRED.

Speaking for this client you have assigned me, I shall not say that he desires government ownership. On the contrary I think he does not—as yet. He is patient. He is conservative. He has government control, without ownership, on trial. He is watching it closely; I may even say, doubtfully, but he will give it a fair trial. If it succeeds so much the better. If it shall fail, he will be heard from further.

Let it not be thought that there are limitations upon his power, for from ocean to ocean and from earth to sky, this land and all that in it is, are his. He conquered it with his blood. He created it with his labor and has defended it with his life. As to Constitutions, he made them and he can make others when He deems that justice to himself and to those dependent upon him, shall require it. Justice has ever been the attribute of the race to which He belongs, and conservatism His companion, but He can move. He moved at Bunker Hill and an historic flag, the flag of his fathers for long centuries, disappeared from his shores forever. He moved at Philadelphia and a new form of government, alien to the traditions of the race, took its place among the nations to abide forevermore.

I shall therefore, as far as I am able, point out to you a few of the views of this client, some of the causes of complaint which he has told me he has under the present system of government control and which possibly may be remedied without calling in government ownership; and I take it this is what you wish to hear.

THE MASSES ARE JUST.

The masses of our fellow citizens are intelligent and just. They have no hostility to railroads as such, but only to their abuses. They recognize the immense value of railroads, their indispensable assistance in the development of this country. By individual, city, county, State and National subscriptions they have aided the construction of the railroad system of this country. They have seen individual stockholders "frozen out;" they have seen city, county and State holdings displaced that great manipulators may become the owners of these properties. They have seen the more than \$500,000,000 of National aid given in lands and bonds, disappear "like baseless fabric of a vision" and leave scarce a wrack behind. These things they have endured and would even forgive if the present management of these systems were fair and just.

It was a Frenchman who maliciously defined a lawyer as a "gentleman who rescues your property from the enemy and appropriates it himself." It will be small advantage to the public if the railroads develop the country merely to own their profits themselves, for the value of land depends upon the amount of profits taken out of its produce for transportation.

RAILROAD EARNINGS.

The returns to the Inter-State Commerce Commission for the year ending June 30, 1899, are not yet in but taking the returns for 30 of June, 1898, and making an allowance for increase at the same ratio which they showed over the previous year, it may be roughly estimated that there were 190,000 miles of railway in the United States on June 30, 1899, and that the railroad receipts for the year ending on that day were 1,400 millions dollars, of which 500 millions were net profit. It may also be said that two sevenths of the receipts were from passengers (of whom more than 600 millions were carried) and that the total of bonds and stocks upon which these corporations were paying or endeavoring to pay dividends and interest is (according to Poor's Manual and other good authorities) something more than double what it would cost to replace all the railroads with their equipment and property of every description. The 100 per cent, or more of bonds and stocks above actual value is due largely, but not altogether to watering, for to some extent it represents extravagance in construction and shrinkage in values. The immense volume of this business, whose receipts aggregate nearly three times, and whose net revenues about equal, the total receipts of the National

Government, shows that it must be regulated by public control in some form. It touches the public welfare at too many points to be left uncontrolled by no considerations superior to the profits of the corporations or the caprices of their managers. At the same time the immense bulk shows also the difficulty of wise or effective supervision and the incalculable harm alike to the carriers and the public if that supervision were done by unskillful or hostile hands.

MEDDLING IN POLITICS.

One of the greatest evils of the present system is the proneness of these corporations to interfere in politics. Realizing that a government by the people is kept unshaken by the power of great moneyed combinations, there is nothing which arouses public indignation more than the almost unceasing interference of these corporations in the nomination and election of legislators, congressmen, Governors and United States Senators. Their contributions to Presidential campaign funds is a National scandal. Worse than all is their influence in the appointment of the life judiciary of the Federal Government and recent evidence given before the Industrial Commission shows that they are not above tampering with the nomination and election of State judges chosen by the people.

It is not for such purposes as these that corporations are chartered. Their interference in such matters is not to advance but to thwart the public interest. Such expenditures of effort and of money are not made without expectation of most adequate returns. They are not necessarily made in behalf of either political party, for the late J. Gould cynically expressed the truth when he said "In a Democratic district he was a Democrat and in a Republican district a Republican, but in every one a railroad man." This interference in the nomination and election of public officials fatigues popular indignation even more than the lobbies maintained in Congress and State legislatures, to affect legislation and is a great lever towards forcing a demand for government ownership of railroads.

DISCRIMINATION IN RATES.

The greatest of evils attendant upon the present system, viewed from a financial standpoint, is the prevalence of excessive rates, and more difficult to repress, because secret, is discrimination in rates. By this means individuals and even cities can be destroyed and others built up by their destruction. The Standard Oil Co. which forced the railways to carry its products at 30 cents per barrel while compelling them not only to charge all others 80 cents per barrel, but even to pay the extra 50 cents paid by its rivals into the Standard Oil Treasury, is a sample of the methods of these modern highwaymen, the trusts. The Standard Oil Company is shown to have received from the railroads \$10,000,000 bonus by this means in 18 months. Other corporations have followed the same methods until small manufacturers have been crowded out and equality of opportunity, which was the boast of our institutions has become non-existent.

The crucial question for solution is whether the interference of great corporations in politics and their secret discrimination in rates, whereby trusts are created and sustained, can be suppressed without resort to government ownership. These evils must be eliminated. The hope of America lies in the very fact that our people will not submit to such abuses much longer.

How shall you suppress these discriminations? Mr. Depew recently stated that certain large establishments could ship goods from Chicago to New York at 35 cents per 100 pounds while others had to pay 75 cents—a difference of \$80 per car load, or on a shipment of ten car loads per day a discrimination of a quarter of a million dollars per year; and W. H. Vanderbilt testified before the Hepburn Commission that all large shippers got rebates if they asked for them. How can any individual or any town stand up against the destructive power of such discriminations?

Can they be stopped by voluntary agreements, however solemn between railroad managers? Hear what President Ingalls told you at your last convention. He said: "Men managing large corporations, who would trust their opponent with their pocket books with ungodly thousands in it, will hardly trust his agreement for the maintenance of tariffs while they are in the room together. Good faith seems to have departed from the railroad world so far as traffic agreements are concerned." If these managers will not trust one another how can the public be expected to have much faith in them?

CRUSHING OUT THE WEAK.

The Inter-State Commerce Commission seems to agree entirely with President Ingalls for they say in their 1899 report "The situation has become intolerable, both from the standpoint of the public and of the carriers. Tariffs are disregarded, discriminations constantly occur, the price at which transportation can be obtained is fluctuating and uncertain. Railroad managers are distrustful of each other and shippers all the while in doubt as to the rates secured by their competitors. The volume of traffic is so unusual as to frequently exceed the capacity of equipment, yet the contest for tonnage seems never relaxed. Enormous sums are spent in purchasing business and secret rates accorded far below the standard of public charges." This is unanswerable proof that those charges are too high and that the general public is victimized. The report goes on "The general public gets little benefit from these reductions, for concessions are mainly confined to the heavier shippers. All this augments the advantage of large capital and tends to the injury and often to the ruin of small dealers. These are not only matters of grave consequence to the business welfare of the country, but they concern in no less degree the higher interests of public morality." Further on the report says: "The discriminations are always in favor of the strong and against the weak." This

condition the present law is powerless to control. If it is asked why the criminal remedies are not applied the answer is they have been and without success. The business of railroad transportation is carried on to a very large extent in conceded violations of law. Men who in every other respect are reputable citizens are guilty of acts which if the statute law of the land were enforced, would subject them to fine or imprisonment.

THE REMEDY.

It would seem that the remedy is easy and simple. It is to give the Inter-State Commission power to reduce rates. When a discrimination of this kind has proven the current rate too high, it should be made the duty of the Commission to reduce the rate to the general public permanently at that figure. A ratchet and pawl arrangement of that kind can alone give the general public justice and stop discriminations.

The bulk of the receipts of railroads, five-sevenths on an average or say one thousand millions dollars in round numbers for the year ending 30 June, 1899, came from the carriage of freights. I have not the time or the knowledge to point out, if indeed any one can, as yet, the most serious defects in the freight rates. So close is the calculation on these points that it is said that 1/4 of a cent per bushel on wheat between Chicago and Liverpool, will determine its rate and we know that 1-10 of a cent per ton per mile added on freight would tax over 100 millions more annually out of the people. There should be no power to add it except by the people's consent, given through the Railroad Commissions.

UNRELIABLE RETURNS.

Our commissions have done a great work in securing improvements in the classification of freights and the publicity of rates, and towards the accuracy of returns—though the reliability of the returns made by railroads is, as yet an unknown quantity. On some systems they can not be relied upon and on others not at all. Until a uniform and reliable system of returns can be compelled, we shall be more or less groping in the dark in our search for that elusive but much desired "reasonable rate," which the law allows. When there is no suppression or intentional misstatement in the returns, there are sometimes such errors as charging the rental of leased lines to operating expenses—which is in effect making the public pay the rentals for them—and sums spent for lobbying, subsidizing newspapers and such purposes are always covered up in a lump sum, usually under the head of terminal expenses. The traveller and the shipper has to pay for debauching his own public servants.

It is true that compared with foreign countries, there has been a decided reduction in freight rates, and if there were no discriminations, we might think we had approached, in some sections of the country, a fair rate. The introduction of larger engines, labor-saving devices and other economies, however enable the railways to haul very much cheaper than formerly. By the introduction of larger engines alone, the Union Pacific Railroad saved \$1,040,000, in 1894 over the cost of doing the same volume of work in 1890.

EXORBITANT FREIGHT RATES.

That we have not yet reached a reasonable and fair freight rate is shown not only by the frequent reduction to favored parties, but by the large quantities of freight carried freightless and indeed on our Lake States, over the Canadian Pacific Railroad and thence down to California points, instead of by the natural and shorter routes through our own States. Then while freight rates in the greater part of the Northern and Western States are more reasonable than formerly, those South of the Potomac and Ohio were adjudged excessive by the Inter-State Commerce Commission in the case of the "Freight Bureau of Cincinnati vs. Cincinnati, New Orleans and Texas Railroad," 167 U. S. 479, which was begun by the Freight Bureau of Chicago and Cincinnati for the purpose of reducing rates from those two cities to eight important cities in the Southern States. No tribunal has ever reversed this finding that these rates were excessive. The United States Supreme Court merely held that the Inter-State Commerce commission had no power to reduce rates—the more is the pity—but it held that Congress could confer that power upon the commission. The statement of Mr. Campbell, general freight agent, proven recently before the Industrial Commission was to the effect that freight rates in the Southern States are exorbitant. Indeed it is a matter of common knowledge, and can be shown at any time by a comparison of freight charges on the south side of the Ohio with those on the North.

CRIPPLING THE SOUTH.

In fact the embargo laid on the development of the Southern States by the exorbitant charges for transportation is the chief factor in retarding its growth. If the members of Congress from those States would unite in support of a bill conferring upon the Inter-State Commerce Commission the right to reduce rates whenever in the opinion of that able and conservative commission rates are excessive, they would do more for the progress and prosperity of that beautiful section than can be done by any other single measure in the ordinary range of legislation. In some sections of the South, the charges are so high, especially in the trucking business, that the real owners of the soil are the London and New York bankers who own the principal railway systems of the South. Their transportation charges take all the profits, leaving the nominal owners of the soil a mere pittance. Their situation is exactly like that of the people of Ireland, a fine country which is in the same manner impoverished by the Bailiffs carrying all the profits of agriculture to be spent by non-resident landlords in London, whence it never returns. The railroad system of the South is a duplicate of that which impoverishes Ireland, there by the actual ownership of the soil, with us by the ownership of the railroad sys-

tems whose exorbitant charges (as adjudged by the Inter-State Commerce Commission) is in the practical perception of all the profits of ownership of the soil, without its inconveniences. One large railroad system in North Carolina last year paid its stockholders (by sundry devices) 156 per cent, dividends, which is over 400 per cent, on the price at which the syndicate bought out the State's stock in the road. Though they thus got back in one year's profits more than four times their investment, they obtained from a Federal judge an injunction against the Railroad Commission reducing their passenger fares to 2 1/2 cents per mile or assessing their property for taxation at one-third of the market value of their stocks and bonds.

You gentlemen can say whether there are any instances approaching this injustice or unfairness in your respective States.

While freight rates in the Northern States will compare favorably with those in other countries, in passenger rates the charges in this country are, as a rule, excessive and unjustifiable and of course doubly so in the Southern States.

HIGH PASSENGER TOLLS.

In no particular have the railroad charges been more extortionate nor more unwise than in passenger rates. Upon the liberal estimate of 125 (1-16 of a ton) as the average weight of passengers paying full fare (above 12 years of age) the average charge for passengers per mile is over 30 times, not infrequently 50 times, that charged per pound for freight, notwithstanding passengers load and unload themselves—a consideration which far more than compensate for the carriage of baggage for part of the passengers. This is peculiarly unfortunate for it not only diminishes the revenues of the roads, which could fill their cars, or carry additional cars, without an perceptible addition of expense, but it prevents that free circulation of the population which is so highly educational and which induces new enterprises whereby freight traffic is increased. Wherever reasonable passenger rates have been tried, the result has been not only accommodation to the public, but increased profits to the railways. In thinly settled Russia, as far back as 1894, passenger rates were reduced to 1/4 cent per mile for distances under 106 miles, and lower for longer distances—the fare for 100 miles being 75 cents and for two thousand miles \$6.00. This paid so well that since then a further reduction has been made which our Consular agents report profitable. In Belgium, workmen living 42 miles from their work places buy weekly tickets good to go and return six times a week for 57 cents a week, and shorter distances in proportion—a good solution of the evils of crowded tenement houses and high rents. In India the rates were 1/2 cent per mile, which proved so profitable that recently there has been a reduction to 1-3 cent per mile. In Great Britain, France, Germany and Austria, travel, equal an accommodation to our second class, averages 1/2 cent per mile.

Among many examples of what lower rates will do in this country, in one of the rate wars, passenger rates from San Francisco to Chicago were reduced from \$120 to \$15, with the result that the passenger coaches were full, carrying 60 passengers, and bringing in \$200 per car when the haul of a road of that length had been at usual rates only \$220 per car.

There are two reasons possibly why railroad managers prefer higher rates—for it can not be on account of the profit. One is they prefer a smaller volume of business at approximately the same profit—the convenience to the public being counted nil. The other is that with high rates, the free passes have a greater purchasing power in influence and in votes, and the same is true of the reduced rates they give to drummers, preachers and others who can influence public opinion, thus making the passenger business a leverage of special privileges to some and not of equal rights to all.

ADVANTAGES OF LOW RATES.

Judge Cooley, that eminent statesman and jurist, as long ago as 1892, in his address before your convention, pointed out that the railroads in most unmistakable ways, daily admitted their passenger rates to be too high. First, he said, by the large number of persons they carry free; then by the number of those they carry at reduced rates on mileage tickets, the still further reduction to ministers, and the yet further reduction on all conceivable occasions, Summer tours, college commencements, political speakings, excursions, and in the occasional rate wars. As that eminent man pointed out, it will be fairer for the public if the corporations, instead of making so many special rates, and crowding the people on excursions and other occasions, would make permanent, all the year round low rates, with exceptional rates to no one and on no occasion. A permanent rate of this kind of one cent a mile first-class, and less for second-class, would pay the roads better than the present system and would give them a popularity they do not now possess, not only by reason of the moderateness of the charge, but from the absence of that air of favor and condescension which attends the granting of lower rates for special occasions and the favoritism or worse, which marks the free pass and reduced rates given to individuals. The greater opportunity given by the reduced rates to laborers to live out of congested cities where their theatre of work lies, and to raise their families amid better surroundings would alone justify the reduction, to say nothing of the greater opportunity to seek at points where labor is needed—against which present railroad rates are a Chinese wall. Owing to our higher passenger fare, only about one-third as many people in proportion to population ride on railroads in this country as in England. I note in your proceedings that in