A PLAIN TALK ON RAILROAD LEGISLATION

The Commoner presents this week another instructive article on the railway rate question from the pen of the gentleman who in former articles, as in this, deals with the subject in a way that simplifies the question to those who may have been perplexed by the false arguments and misstatements made by the railroad lobby.

The article follows:

There may be honest differences of opinion as to the most practical way of regulating common carriers, but it is difficult if not impossible to understand how they are to be controlled and regulated without delegating the necessary power to some administrative body instead of attempting to deal with them through the courts.

It is acknowledged, even by those who oppose the policy of conferring this power upon an administrative body, that the courts can not establish rates for the future because that is purely a legislative function. In congress lies the power to control and regulate the transportation companies engaged in interstate commerce, either directly or through a board or commission created for that purpose.

The opponents of President Roosevelt's policy contend that congress can not delegate this power to an administrative body. If congress can not impose an administrative duty upon an administrative body, how could it impose an administrative duty upon a judicial body? There is one point upon which all are agreed, and that is that the courts can not, under any circumstances, determine and fix a rate for the future, for that is a legislative and not a judicial function. Were a shipper to complain of excessive or unjust charges the courts could only take cognizance of charges made for shipments that have moved. If suit is brought to compel the carrier to refund the amount over-charged, the court must necessarily determine what amount has been unlawfully collected, and in doing so must also of necessity determine the reasonable and legal rate that should have been collected in the first instance. But the court's decision has absolutely nothing to do with fixing a reasonable and just rate for future business. The only relief the courts can afford is to award judgment for overcharges made on past shipments.

The first section of the act to regulate commerce provides that "all charges * * * shall be reasonable and just. And every unjust and unreasonable charge * * * is prohibited and declared to be unlawful." If transportation charges shall be reasonable and just, and congress does not say what constitutes a just and reasonable charge, then this fact must be ascertained and the duty of determining the maximum charge must be conferred on an administrative body, because a judicial body can not determine in advance whether rates are reasonable and just. It was generally supposed at the time the interstate commerce law was passed that what is called the rate-making power had been conferred upon the commission created by the act. The carrying companies complied with the commission's orders almost without exception for several years. Then they contested one order, then another and the courts, as usual, would overrule one another and confusion reigned supreme. The carriers, emboldened by the chaos resulting from conflicting judicial interpretation, attacked what is familiarly known as the "long and short haul clause" of the law, claiming that competition between common points created the dissimilar circumstances and conditions which the law said might make an exception to the rule. The commission contended that the very evil which the law was intended to remedy was occasioned mainly by railway competition; that it is impossible to conceive of any other reason why a carrier should charge more to the nearer than the more distant point. The supreme court decided, however, that railway competition between carriers might create the necessary dissimilarity of circumstances and conditions and permit them to charge more for a shorter than for a longer haul, the shorter being included in the longer. Mr. Justice Harlan, in dissenting from this decision, said:

> Taken in connection with other decisions defining the powers of the interstate commerce commission, the present decision, it seems to me, goes far to make that commission a useless body for all practical purposes, and to defeat many of the important objects designed to be accomplished by the various enactments of congress relating to interstate commerce. The commission was established to protect the public against improper practices of transportation companies engaged in commerce among the several states. It has been left, it is true, with power to make reports and to issue protests. But it has been shorn, by judicial interpretation, of authority to do anything of an effective character.

We do not attack the soundness of the court's decision. As Mr. Bryan says, go and read the dissenting opinions if you want criticisms of the courts.

Senator Foraker, who appears to be leading the opposition in the senate against President Roosevelt's policy, has presented to the senate committee on interstate commerce a bill which represents his ideas as to what shape the proposed legislation should take. In explaining his bill he is quoted as saying:

> The results desired by the president should be accomplished; but if they can be secured without conferring the rate-making power on the interstate commerce commission, or any other governmental agency, a number of very troublesome legal questions will be avoided.

What he means is that the railroads will attack the constitutionality of the law. If the constitution as it stands forbids the regulation of common carriers the sooner we find it out the better. If congress is to hesitate about passing laws for fear the courts will declare them unconstitutional, how are we to ever get relief. Can congress ascertain what the courts will or will not do if they do not pass some laws for the courts to work on? Congress should do what it thinks is right and what the people want done, and not borrow trouble by trying to anticipate what action the courts will take. The constitution was made for the people, not the people for the constitution. It is the especial duty of the courts to decide whether the laws of congress conflict with or violate the provisions of the constitution.

Senator Foraker is further quoted as saying that "The great evil to be reached and dealt with is discrimination." We admit that discrimination of all kinds is a very great evil and should be dealt with, but we do not concede that it is the greatest present evil. Discrimination has been a much greater evil in the past than now. As pointed out by the commission, the discrimination against non-competing points in favor of the trade centers, was primarily caused by competition. Rebating and other forms of discrimination are largely attributable to the same cause. That this is true must be admitted. It is a self-evident truth. It must also be admitted that the elimination of competition will also eliminate practically all forms of discrimination. Now, if we find that competition is rapidly ceasing to be a factor in the transportation business of this country, we open up to view the real and greatest evil that should be reached and dealt with—monopoly.

Great as is the discrimination evil, we can not agree that it is the great evil. Railway combinations is the great evil. Combinations will eliminate competition, and when competition disappears the discriminations will very largely, if not completely, disappear. The most striking feature of recent years is the tendency to combine, and in no branch of industry is the advantages to be hoped for from combination more certain than in the railway business. The interstate commerce commission reports that between July 1, 1899, and November 1, 1900—less than eighteen months—there were absorbed in various ways 25,311 miles of railway. The total mileage of the United States was less than 200,000, so more than one-eighth of the entire mileage of the country was brought under the control of competing lines.

Let us look at the railroad situation as it exists today and see what the great evil is. Divide the United States into three parts, which for convenience we will call groups one, two and three. Start at Mackinaw City, Mich., and run thence down the eastern shore of Lake Michigan to the Indiana-Illinois state line; thence along this line to the Ohio river, thence down the Ohio to the Mississippi river, thence to the Gulf of Mexico. Divide that territory lying east of this line with the Ohio and Potomac rivers. That part lying north of the Ohio and Potomac rivers and east of the north and south line described we will call group one; south of the Ohio and Potomac rivers and east of the Mississippi river we will call group two, and west of this north and south line we will call group three.

In group one there are approximately 53,000 miles of railroad, and of this 37,680 miles, or over 71 per cent, are controlled by seven companies, as follows:

New York Central lines, 12,011 miles; Pennsylvania Co., 10,562 miles; Baltimore & Ohio, 4,454 miles; Great Central Route, 3,061 miles; Erie, 2,553 miles; Boston & Maine, 2,351 miles; New York, New Haven & Hartford, 2,088 miles; total, 37,680 miles.

In group two, there are approximately 35,000 miles of railway, of which 22,554 miles are controlled by five companies, as follows:

Southern Railway, 9,666 miles; Atlantic Coast Line, 4,173; Louisville & Nashville, 4,028 miles; Seaboard Air Line, 2,809 miles; Central of Georgia, 1,878 miles; total 22,554 miles.

In group three there are approximately 105,000 miles of railway, of which 88,034 miles are controlled by eleven companies, as follows:

Atchison, Topeka & Santa Fe, 9,324 miles; Burlington route, 3,549 miles; Northern Pacific, 5,304 miles; Great Northern, 6,245 miles; Chicago, Milwaukee & St. Paul, 7,054 miles; Chicago North Western, 9,074 miles; Rock Island route, 7,160 miles; Frisco system, 4,693 miles; Gould lines, 14,536 miles; Harriman lines, 13,352 miles; Missouri, Kansas & Texas, 3,043 miles; total 88,334 miles.

The Gould lines are considered one because they are under one control, although operated under a number of companies. The Harriman lines are also under a common control, although consisting of a number of separate companies.

The Illinois Central, being located in groups two and three, was not included. It will be added as a separate line. A recapitulation shows the following astounding result:

	Companies.	Miles.
Group No. 1	7	37,680
Group No. 2	5	22,554
Group No. 3	11	88,334
Illinois Central	1	4,402
	24	152,970

The total mileage in the United States is approximately 210,000 miles, of which 152,970 miles are controlled by twenty-four companies or groups of men, and the end is not yet. Senator Chauncey M. Depew ,of New York, is chairman of the board of the New York Central lines controlling over 12,000 miles of railway. Will he vote for regulation or against it? Will he vote in the interest of the people or in the interest of the railways? Is discriminations, largely caused by competition, the great evil? Or is combination, which will eliminate competition, the great evil?

It is idle to say that rates will not be advanced. Rates have been advanced already. Senator Foraker proposes to protect the people by injunctions. Ex-Secretary of the Navy Paul Morton violated the court's injunction against rebating. President Roosevelt handed him a bouquet for admitting it. The injunction plan will not suit the public.

"THE WORD OF A GENTLEMAN"

The insurance investigation now in progress in New York continues to bring out some interesting testimony. Not the least interesting development was that of November 15, when Mr. E. H. Harriman, the railway magnate gave testimony as to what his personal word is worth. James Hazen Hyde, the gentleman whose fopperies and dissipations hastened the disclosures in insurance circles, is credited with having had an ambition to be ambassador to France. This fact was brought out while Mr. Harriman was on the witness stand, and Mr. Harriman in response to a question said:

"I promised to speak to President Roosevelt about it."

"Did you ever ask the president to appoint Mr. Hyde?" asked Mr. Hughes.

"O, no, indeed!" responded Mr. Harriman.

The news dispatches say that Mr. Harriman chuckled when he made the last response as quoted above. If the chuckle meant anything at all it meant that Mr. Harriman had no intention of keeping his promise to Mr. Hyde when he made it. But doubtless Mr. Harriman was only a victim of the force of habit. He may have entered into other "gentleman's agreements" which none of the agreeing parties intended to observe, and perhaps felt that this was another off the same piece.