

a national character that it requires a single national tribunal to regulate it. An extract from a recent report of Special Master W. S. Thorington, sitting in the Central of Georgia and Western Railway of Alabama rate hearings, is in point on this separation between local and interstate business. He stated:

"The vice of such a claim consists in the assumption of the unity and inseparableness in all cases of the two classes of traffic.

"That such a separation is difficult or not possible with the exactness of mathematical certitude is very generally admitted, but it would be a startling canon of construction that a state is to be deprived of a right so vital because of difficulties in the way of its exercise when such a principle has never been applied to the individuals seeking to enforce ordinary rights in the courts."

"One sentence will contain an answer to claims of this character, that it is difficult to separate the expenses on local and through hauls:

"Even after you have removed the state lines the problem of reasonable local rates still remains.

"The longer the hauls and the higher the rates the better it is for the stockholders in railway companies. Upon the other hand, it is to the interest of the public generally to have short hauls as well as long hauls and to have rates just as low as they can reasonably be placed, providing it does not seriously interfere with the prosperity and growth of the railway business. In order to tell whether local rates are reasonable or not it will be necessary always to make some division between operating expenses, earnings, and values. This will be true whether state governments or whether the national government has jurisdiction over these local hauls. The problem of the reasonable local haul in all its complexity would still be with us even if you were able to destroy state regulation.

FREAK LEGISLATION RARE

"Occasionally one hears about various examples of freak legislation on the part of some states. These are very rare. The argument that such acts impeach the whole body of state legislation is like saying that one sinner in a church renders the whole church a failure. This argument is actually advanced from time to time; the only thing it proves is the assinine stupidity of the man who makes the argument. There have been a hundred wise and beneficial laws enacted to one that is foolish; and generally the unwise law has been quickly relegated to the realm of oblivion by the courts or by the solid good sense of public opinion causing its repeal.

"Should it ever be proven in any given case that a state has reduced its interior rates with the deliberate purpose of favoring its own industries to the injury of a neighboring state, then it will be ample time for the courts to interfere. There is not a state commissioner in America who supports such a policy. (See San Diego Land & Town Co. v. Jasper, 189 U. S., 439; Knoxville Water Co. v. Knoxville, 189 U. S. 434, 439.)

"The real issue is practical rather than theoretical in character. It is not whether we shall abolish all state regulation, but, instead, whether this or that is a proper function to be performed by the state. Whenever the act of a state legislature or commission does, in fact, conflict with the findings of the interstate commerce commission as to what is just and reasonable, and directly interferes with and places a burden upon interstate commerce, practically all of us, at least the vast majority, are ready to acknowledge that such a condition of affairs should not continue. Either the courts or some other tribunal not a party to the disagreement should have power to determine which rate is reasonable. If additional legislation be needed to clarify this situation, efforts along that line will ultimately succeed. But that does not affect to the slightest extent the other proposition—that where a given act of a state tribunal does not interfere with interstate commerce it should stand. The development of the law has been along the line of determining what does and what does not interfere with interstate commerce. This kind of legislation and judicial interpretation have been in progress for many years. But it is a wholly new and unheard-of proposition to do

away with state regulation. This is a doctrine that jeopardizes our institutions.

"In case of a discrimination between rates, that one which is unreasonable should yield. If such a conflict exists between state and interstate rates, let the supreme court determine which one is reasonable and must stand, and the other should be disapproved. The judiciary has no power to determine reasonable rates for the future, but it has exercised the power of determining the reasonableness of rates already established. Even if that were not so, it would be better to amend the constitution in that respect than to devitalize our dual system of government, by a virtual amendment in another manner.

"Chief Justice Marshall retained to the fullest extent entire appreciation of the importance of the federal judiciary and the national government, thereby securing to us and to posterity one nation instead of many; yet Chief Justice Marshall was capable also of realizing the value of the states in our scheme of government.

"In the famous case of Gibbons v. Odgen (9 Wheat., 1, 203), Marshall commenting on these powers reserved to the states, said:

"They form a portion of that immense mass of legislation which embraces everything within the territory of a state not surrendered to the general government; all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, and those which respect turnpike roads, ferries, etc., are component parts of this mass."

Mr. Justice Hughes, in the masterly opinion rendered in the Minnesota Rate case, gives recognition to the same principle. He says:

"Our system of government is a practical adjustment, by which the national authority as conferred by the constitution is maintained in its full scope without unnecessary loss of local efficiency."

"The great benefit urged on behalf of exclusive national control is uniformity. We have made a sort of modern fetish out of this slogan, 'uniformity.' Anything done in the name of uniformity we assume to be right and proper. To be sure uniformity is very greatly to be desired. We all agree on that proposition. But there is something even better and more important than uniformity—that is, wise regulation. Rates may be uniformly high or uniformly low. Rules of service may be uniformly harsh and rigid or uniformly lax and weak. Proof that they are uniform does not prove that they are just.

"Wise regulation contemplates vastly more than mere uniformity. If uniformity were the summum bonum, we should have a world government prescribing what time of the year we must plow and reap, what kind of education we shall give to our children, etc. Harvest time depends somewhat upon the particular portion of the world in which you live; education should depend somewhat upon your circumstances and probable future life.

WHAT VARIOUS GOVERNMENTS CAN DO

"There are some things which a world government could do better than national or state governments. A world government could compel peace amongst the nations; but it could not efficiently prescribe the character of the sewers to be installed by the city of Pittsburgh, Pa., or Des Moines, Iowa. There are some things a national government can do better than a state or city government. But we do not want to leave it to the national government to prescribe the character of telephone service our city shall have. I do not want to leave it to congress to determine the time I shall retire at night. There are some things which might well be left to a world government, there are others which can be cared for better by our national government, and others by the state government; and still others by the county, and city, and family. And there are a few matters that even the individual, himself, can best perform, strange as it may seem to some.

"The real problem is how to secure wise regulation. Will a strong centralized government bring the best results, or is the federal plan—joining national and state control—preferable? The issue concerns the method of government, one of the profound problems at the basis of all organized human life.

"The tremendous growth of interstate commerce seems to have raised the query amongst some of us as to whether separate state governments are longer needed. The wisdom of local self-government and the federal system of statecraft is up for consideration. The Sanborn doctrine strikes at the very vitals of our present system.

SYSTEM OF GOVERNMENT AT STAKE

"There has been a marked tendency to swing from one extreme to the other. At one time the prevailing sentiment favored independent states. It was the genius of a Marshall that created the great public sentiment, later crystallized under the leadership of Lincoln, which saved our country from being transformed into several separate nations. Today the pendulum is swinging in the other direction. We are anxiously waiting to see if there will be other champions of our federal system, our American plan of government, men who will have the far-sighted vision and the courage to save the country this time from going to the other extreme. The life of our dual system of government is again at stake. Many of us have lost sight of its value in the glamour of a new nationalism.

"Too much 'nationalism' is just as wrong as too much 'States' rights.' There is a happy medium.

"It is not this government as one nation, nor the several states, but the combination in one federal plan that has rendered such a distinct contribution to the welfare of humanity. It is this federal plan that must be most jealously guarded. A tendency one way or the other, toward centralization or toward decentralization, is dangerous.

"It must be expected that from time to time there will be strong men, men who are ambitious to leave distinguished names in history, who will champion a powerful, centralized government in the United States. There always has been, and there always will be, a dramatic attraction in the building of great empires about a central authority; the glory of power in a supreme authority interests and awes even those who are governed.

"The strength of nations does not lie in the vastness of the territory under one highly centralized and supreme authority. This truth has been centuries in the learning.

"That government which hugs closest to the sober and mature judgment of the people and keeps in touch with the demands of changing conditions is the one which best fulfills its mission, and will live the longest. The makers of government must set as their goal, not the creation of an extensive centralized machinery, but a human organism, capable of reaching out, and searching after, and meeting the demands of life."

Mr. Bryan. In this address he calls attention to the objections, which I desire to emphasize, and treats them much more elaborately than I can in what I have to say to you. All I can do is to present substantially the same thought in my own way.

When you take the railroad systems of this country, involving, as they do, I think, 160,000 miles—is it not?

Mr. Faulkner. It is over 200,000.

Mr. Esch. Two hundred and fifty thousand.

Mr. Bryan. Mr. Chairman, I will have from time to time to inquire as to the details, because I am better acquainted with the principles involved than I am with figures. When you take the railroad systems, involving the management of some 250,000 miles of railroad, and collecting earnings amounting to—

Mr. Adamson. It was almost three billion last year.

Mr. Bryan. Yes; over three billions, I think—an amount at least twice the revenues of the federal government.

Mr. Adamson. I beg your pardon, Mr. Chairman, for interrupting. The witness asked that question, it was not I.

Mr. Bryan. I hope that you will help me, because I come before you, gentlemen, without any opportunity to prepare such a statement as I would like to present, and will ask permission to make such additions and amplifications as may seem best when I have more leisure.

When you take the management of a system of railroads with this amount of mileage and collecting more than twice, as I say, the rev-