

Mr. Bryan Opposes Exclusive Federal Control of Railroads

[Following is the statement of Mr. Bryan before the Joint Subcommittee on Interstate Commerce of the United States senate, in session, Thursday, Dec. 7, 1916, Senator Francis G. Newlands, chairman, presiding; also Vice-chairman, William C. Adamson.]

Mr. Chairman and gentlemen of the committee, my reason for coming here is that the proposition which you have before you seems to me to be of so great importance, in fact, so revolutionary in character, that, as one interested in all things that affect the government and people, I feel it my duty to present very briefly what might be called the other side from the side that has been presented, as I have read it in the papers.

The first question to be decided is whether we need MORE stringent railroad regulations, and, according to the decision of that question will be the decision of the other questions involved. If we want LESS restriction I know no better plan of securing it than the transfer of all regulation to Washington. The issue, as I understand it, is whether the federal government should take exclusive control of the regulation of railroads, not only as to interstate commerce but as to intrastate commerce as well. The transfer of this power to Washington—that is, the giving of the federal government exclusive control—is, in my judgment, objectionable for several reasons, if what we desire is more stringent regulation. It seems to me inevitable that such a change would very much weaken the regulation of railroads for two reasons: In the first place, it would bring such a burden upon the people in charge of regulation at Washington that they would be overwhelmed and would find it physically impossible to go into the whole subject and understand the details. I may add that I would like to introduce and make part of my testimony, if you call it testimony, a speech made by Dr. Clifford Thorne, chairman of the state board of railroad commissioners of Iowa, and president of the National Association of Railway Commissioners. This is an extract from his address which is described as the "President's address at the twenty-seventh annual convention of the National Association of Railway Commissioners, San Francisco, October 12, 1915."

The Chairman. If you will hand the speech to the reporter it will be included in the record.

(The paper referred to is here printed in full, as follows:)

THE GREAT AMERICAN EXPERIMENT

"We are on the eve of another struggle for party supremacy. The birth and death of political parties are intensely dramatic and interesting; but, at the most, parties are only temporary things. Our form of government is of far greater consequence; it has outlived and will outlive hundreds of brilliant leaders and many great political parties. Its creation was, and its change will be, a news item of centuries.

"For several years there has been gradually developing in this country a sentiment in favor of wiping out state lines. An agitation, partly spontaneous and partly inspired by interested persons, has been carried on to support a change in the trend of our judicial decisions relative to the powers of a state to regulate business. This is reflected in speeches, magazine articles, and books.

"It is now vigorously claimed that the time has arrived for the practical abolition of all state regulation. This thought has permeated the minds of some of our ablest leaders. Such a change in the American plan of government would be of stupendous importance.

"It is probably safe to say that not since the Civil war has this question of the relative rights and functions of state and national governments commanded such widespread consideration as during the past few years.

"The issues of today again concern vast property interests. The rights of railroads, express companies, telegraph, telephone, and other public-service corporations, as well as many huge industries, the rights of shippers, producers, and

consumers, and the future policies of state and nation on many grave questions of business are vitally concerned.

"Shall we proceed as rapidly as possible to eliminate state government from our commercial life?

"Judge Sanborn, as a circuit judge, in the spring of 1911, rendered a decision enjoining the enforcement of certain orders made by the Minnesota Railroad & Warehouse commission. During the past 50 years there have been many orders of federal courts sustaining and enjoining orders made by state authorities, but none of these have commanded the nation-wide consideration following that decision.

"The decision by Judge Sanborn occasioned the railroad commissions of eight sister states, having 70 similar cases pending in the federal courts involving precisely the same issues, to file a brief with the supreme court as amici curiae, opposing the doctrine he announced. This action was later unanimously indorsed at a representative gathering of 30 state railroad commissions in their annual convention at Washington, D. C.

"After the railroad commissions had determined to file a brief and argument against the doctrine announced by Sanborn, the governors at their national convention unanimously agreed upon a similar action. Finally, the federal government, through the attorney general of the United States, filed a brief opposed to the positions taken by the governors and railroad commissions of the various states. Perhaps never before in the history of the United States has any case called forth such an array of briefs and arguments from the various departments of the state and national governments.

"The Minnesota rate case will probably take rank as one of the great legal contests of the present generation. The decision of the supreme court of the United States reversing Judge Sanborn, of the lower federal court, brought into issue the whole subject of the relative functions of the state and nation in our scheme of government as applied to the commercial affairs of the country. It focused attention for the moment on the wisdom of our American plan of dual government.

"The supreme court refused to decide the real issue that the public had under consideration at the time. The court said that the question as to whether federal regulation of commerce shall supplant state regulation is not a question for the judiciary to determine; it is legislative and not judicial in character. The contest was thereby transferred from the court room to the halls of congress. It now becomes not a question of precedence or of statute but one of expediency—of wisdom.

"Since that decision a movement has been gradually inaugurated throughout the nation looking toward the elimination of state regulation of commerce.

"Let us pause a few moments and carefully weigh the wisdom of this dual system or federal plan.

"You may start with this premise: Within the next 25 years substantially all our commercial affairs will be carried on by companies doing both state and interstate business. What is good for railroads will be good for others. Shall we abandon our state governments, so far as the regulation of business is concerned? Here is an issue which strikes at fundamentals—which has to do with the method of government.

"In striving after the new we frequently fail to realize the intrinsic value of the old. Let us consider a few of the reasons justifying this federal plan or dual form of regulation, which contemplates both a centralized governing power and state regulation.

"It is true that our constitution in many respects was a compromise, the creation of circumstances. The different colonies were loath to yield up any of their powers. Hamilton fought vigorously for a strong national government. In those days much fear prevailed that we might have too loose a central government. Statesmen of that and succeeding pe-

riods were profoundly concerned over this problem. Marshall, on the supreme bench, became the chief instrument in cementing the national character of our government.

"However, it is a gross mistake to imagine that the jealousy among the rival states was the sole cause for limiting the powers of the central government. There existed among the framers of our constitution, entirely independent of any compromise as to the rights of rival states, a deep-seated conviction that a federal government composed of several states retaining large jurisdiction was far preferable to a strong centralized government. This is evidenced by the recorded discussions of that day. Here was a question not of state rights but of expediency, of wise government. This purpose or intent in their minds was reflected in the constitution which they drafted.

"One whose writings inspired much of the thought of that time was Rousseau. His 'Contract social' became a standard textbook for the makers of the government of those days. In this work Rousseau stated:

"As nature has set limits to the stature of a properly formed man, outside which it produces only giants and dwarfs, so likewise, with regard to the best constitution of a state, there are limits to its possible extent, so that it may be neither too great to enable it to be well governed nor too small to enable it to maintain itself single handed. There is in every body politic a maximum of force which it can not exceed and which is often diminished as the state is aggrandized. The more the social bond is extended the more it is weakened, and in general a small state is proportionally stronger than a large one.

DISTANCE WEAKENS ADMINISTRATION

"A thousand reasons demonstrate the truth of this maxim. In the first place, administration becomes more difficult at great distances, as weight becomes heavier at the end of a longer lever. * * *. The same laws can not be suitable to so many different provinces, which have different customs and different climates and can not tolerate the same form of government * * *. The chiefs, overwhelmed with business, see nothing themselves; clerks rule the state. In a word, the measures that must be taken to maintain the general authority, which so many officers at a distance wish to evade or impose upon, absorb all the public attention; no regard for the welfare of the people remains, and scarcely any for their defense in time of need, and thus a body too huge for its constitution sinks and perishes, crushed by its own weight."

"There is much truth well stated in the foregoing sentences. It is quite evident, however, that Rousseau had not realized the full possibilities of the federal plan of government, as worked out in America, whereby the advantages of intelligent, efficient local home rule and the large empire, compelling respect, are combined into one whole. It is this combination, this federated co-operative plan which is the distinguishing feature of the American constitution.

"From the earliest records we learn that men have always been seeking for some form of government which would come close to the life and thought of the average man, which would keep in close touch with the progress of business and social life and at the same time be large and strong enough to keep peace at home and abroad. Powerful centralized governments or innumerable small principalities have been common. There seems to be an inevitable tendency for a government either to fall to pieces or to gravitate into a strong, centralized domineering power.

"What is the fundamental characteristic of our government which distinguishes it from all others preceding ours? It is not the republican idea of government, for the world has seen many republics. It is not the formation of a large empire, for there have been larger. It is the creation of a nation large and strong enough to assert its independence among the world powers and to compel respect from others and obedience and order at home, at the same time combined with a form of government securing real, tangible home rule to the various independent sovereignties making up that nation. The delicate balance between the central and local authorities in America was a novelty among the nations up to the end of the