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By *Whom*, all things; for *Whom*, all things.

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THE REGULATION OF RAILROADS.

IN attempting to define the limits of legislative control of railroads, whether *de jure* or *de facto*, the first requisite is to find with whom, and subject to what conditions, the ownership of them lies. Mankind in their simplicity have believed, and wrought their faith into their fixed and not easily changed modes of speech and action, that those whose funds build the roads own them. If the State builds a railroad, it owns it, as the State of New York owns the Erie Canal. If private individuals, under a charter of incorporation from the State, build a railroad or canal, paying all charges for land, construction, and equipment out of their own pockets, as they have built the New York Central alongside of the Erie Canal, they own it. But no. According to that master of bright legal paradox, Judge Black, in his recent letter, it seems that the common-sense of mankind, asserting itself in its habits of speech and action, has been all astray on this subject. He tells us, "The corporations who have got into the habit of calling themselves the *owners* of the railroads have no proprietary right, title, or claim to the roads themselves, but a mere franchise annexed to and exercisable thereon." A little farther on, he likens the proprietorship of the stockholders of a railroad to that of a collector of a port in the custom-house he occupies in the discharge of his office. That is, they are not owners at all. The \$5,000,000,000 expended by our own and foreign investors in our railroads give them no ownership whatever. They belong to the State. On whatever theory such a doctrine may be defended, those who advance it need not shrink from being called communists. If this is not communism as respects this immense mass of property, we look in vain for it. Farmers and all other property-holders may as

well understand, withal, that no private property can long survive the grasping of railways by the State. Some indeed, as Mr. Henry George in his "Progress and Poverty" (p. 364), who favor the latter, are already pressing the confiscation of land by confiscating its rents.

But it is said that the State owns these properties because a part of the land they occupy has been obtained, by the exercise of the State's power of eminent domain, from such proprietors as would otherwise refuse to part with it, if not utterly, yet at any fair rates. But this is only the power to get it by paying a fair price, judicially ascertained. To whom does it belong if not to him that pays for it, and so obtains a deed for it? Of course the State aims in granting this high power, to secure a public benefit otherwise unattainable, by enabling parties willing to incur the expense and risk, to provide means of transportation so indispensable to the people as railways. But could private capital be found to build and run them if it were understood that those who pay for them do not own them? Never. With such an understanding there would not be one mile of railway where now we have ten, and this only of the poorest kind. Besides, what are railway mortgages or debentures worth if given by those who are not owners of the property?

However the title to the railway is acquired by its proprietors, in all circumstances it is subject to State taxation unless expressly relieved by its charter, and also to what is known as the police law of the State, which applies to all property according to its kind. This is simply the means by which the body-politic protects itself from harm. It aims to enforce the principle, *sic utere tuo, ut alienum non lædas*. All laws designed to protect from injury or destruction the persons or property of those having to do with railroads, whether in moving upon or about them, such as requiring proper brakes, gates, cattle-guards, fences, switching safely, etc., fall under this head.

Railroads also fall under the provisions of the statute and common law respecting common carriers. This because they are such. And this law applies to them in a manner corresponding to their nature and peculiarities, holding them to reasonable precautions to insure safety; responsibility for losses and injuries to persons and property transported

by them arising from want of due care; also to impartiality in their dealings with, and treatment of, all parties applying for transportation by them. Further, like all other common carriers, the common law requires that they shall be "reasonable" in their charges and accommodations, all circumstances considered. All this may be assumed, for the purposes of this discussion, to be enforceable before our courts at common law, without special enactments, however these may sometimes be adopted by legislatures *ex abundanti cautela*. But it is not so much the *principles* of impartiality and reasonableness in fares and accommodations that are in debate, as the proper interpretation of and mode of applying them in relation to the peculiar and immensely complicated circumstances of railroads. The consideration of these will bring into its sweep the vexed question of discrimination in rates in all its aspects.

Reasonings based on supposed analogies between railway and other modes of transportation are very apt to mislead. English railroad legislation long proceeded on the theory that they were part of the "king's highway." It tried to fix tolls of particular articles or classes of articles, till they were found to be beyond enumeration or feasible classification, and the whole attempt, like many other forms of legislative interference, has been gradually abandoned as beyond even the "omnipotence of Parliament." With the advantage of unity of government and smallness of territory, regulation of railroads by Parliament has been getting more and more minimized, till some of the pet schemes of our own reformers have been discarded, because outgrown or proved mischievous by experience. The railway is a thing *sui generis*. It is a highway, resembling a turnpike or canal only in this respect: that it is for purposes of travel or transportation by all who desire to use it, according to the conditions peculiar to it. If built by private capital, it is privileged to obtain a fair remuneration for this, provided the public use of it is sufficient for the purpose.

The fixing of the rate of highway tolls by the charter, or by the legislature, is confined to a few simple things, for which just and plain rates can be made with comparative ease. Neither are such roads common carriers. Those who use them may become common carriers, as they may use any roadway or water-way,

natural or artificial, in conformity to its nature, for this purpose. But railroads, while possessing immense capacity for transportation, can only be used by their owners or lessees. Not only must the road-bed and track be theirs, but all the cars, engines, rolling-stock, machinery, and conveniences for transportation must be so, and worked wholly by them. Theirs alone is the power and responsibility. Otherwise these roadways could not be worked a single week without numerous collisions and wreckings. They can transport for others, but they cannot allow others to put their own cars and engines on their road at pleasure. Their charges must be for transporting persons and freight in vehicles, and by motors and employés wholly their own, or wholly subject to their control. Now this involves an enormous expense for repairs of road, track, bridges, locomotives, cars, motive power, the vast pay-roll of employés, etc., which must be reimbursed from receipts for what they transport; if possible, too, with due remuneration to the capital invested. Here is a vast complexity of expenses, also, in the kinds and amounts of the articles transported, and of the conditions and circumstances which affect the relative cost of such transportation. It is not within the capacity of any legislature, or commission thereof, to adjust a tariff with reference to each article, or classification of articles, that shall be always and everywhere reasonable. The problem is so intricate as to prevent more than an approximate adjustment of it, even after the longest experience, by railroad experts and officials themselves. It is ever growing upon them with new elements of intricacy, and tasking their ingenuity for solution. The past twenty years have shown that fluctuations in the price of labor and the purchasing power of legal-tender money, not less than other causes, render any just fixing of rates by law impossible.

Meanwhile, nothing in the premises impairs the obligation of impartiality on the part of railroads towards their patrons; that is, of affording all, equal accommodations at precisely equal rates, under precisely like circumstances. If A and B, at the same time and place, ask like rates for precisely like service, impartiality requires that they both be treated alike. That there have been some rather gross violations of this is *prima facie* established by the testimony taken before the Investigat-

ing Committee of the New York Legislature; pre-eminently in the case of the Standard Oil Company and its accessories. If the railroads made any contract, as is alleged and we have not seen disproved, with this company or its accessories which were refused to others in like circumstances, and especially a covenant to protect any of these corporations from "competition," all this is beyond their legitimate province, and contrary to public policy and morality. No denial nor adequate justification of having made considerably lower charges for grain transportation to some great houses in New York than to others has been brought to our knowledge. Probably a sufficiently keen experience of the effect of such real or apparent partiality has been had to prevent its repetition. Probably, too, without the veil of secrecy these transactions would not have occurred.

On the other hand, we see no sufficient reason for anti-discrimination statutes based on the assumption that, in order to be reasonable and impartial, rates must vary just in proportion to the amount, distance, or speed of transportation. In order to partiality, unequal favor must be shown to different persons in like circumstances. Now this does not apply where a greater proportionate charge is made for a shorter than a longer haul of the same goods, when the expense of terminal handling is the same for each. A high authority, speaking from experience, says that the terminal expenses in New York, interest of capital and all else considered, are equal to one hundred miles of haulage. Consequently the cost of freight-carriage from New York to Newark, nine miles, is more than half that to Philadelphia, ninety miles. It varies, too, with severity of grades, cost of construction, fuel, etc. Nor does a failure to vary charges as the amount carried, *ceteris paribus*, necessarily infer partiality. It is so evident that larger amounts can be carried proportionably cheaper than smaller ones, that this has generally been conceded by the most extravagant adversaries. It is perfectly evident that one thousand car-loads could be profitably taken from Chicago to New York at proportionably lower rates than twenty. Nay, more: it is demonstrable that it sometimes costs more to carry a single or few parcels, parts of car-loads, car-load, or car-loads, a shorter distance than a longer, over which trains loaded to the full capacity of the engine can be carried to

adequate terminal facilities. A full train of anthracite coal can be taken from Easton to Trenton at fifty cents per ton. To drop a single car-load of six or eight tons at a way-station on the road would, we learn, cost four dollars, besides the cost of the haul there. It can hardly be questioned that a full freight-train from Chicago to New York can take on its full maximum there at a cheaper rate per car than it can switch off and otherwise handle from one to half a dozen cars at Fonda, Deposit, Cresson, or Martinsburg.

Anti-discrimination statutes, hardening into inflexible laws, may cause more real partiality than impartiality. Mathematical ratios seem very conclusive in the abstract, until, in their concrete application, they are often antagonized by forces as inevitable as those which thwart the finest contrivance for perpetual motion. The law of impartiality is right. Any fixing of rates by law to enforce, is pretty sure to defeat it, as much so as a law that street-cars and omnibuses should charge in exact proportion to the mileage, or hotels in proportion to the stay of guests, irrespective of other considerations. What cannot be accomplished by competition, the desire of patronage, public opinion, and the like, in these respects, never can be effected by mathematical legislation. Imperfections and grievances will doubtless remain, at the best, here and everywhere. But all these things in railroads, and other matters innumerable, whether, as Lord Coke said, "affected with a public interest" or not, might be immeasurably worse. In our opinion legislative interference of the kind invoked would be sure to make them so. Such has been the effect of it in the Granger States, in Colorado, in Great Britain, where, of one kind and another, it has been annulled or minimized after experience of its unhappy effects.¹ The courts can now enforce impartiality as binding at common law on the common carrier. It is for them to determine in each concrete case brought before them, whether and how far parties differently charged or otherwise treated were in such "like circumstances" as to constitute the action complained of a breach of impartiality. But legislatures can rarely frame laws to determine this that would not encounter as many exceptions as a

¹ See "Railroads: their Origin and Progress," by C. F. Adams, Jr., pp. 80-90.

revival of the obsolete laws fixing the price of bread and meat, or a law that merchants should show impartiality by charging at the same rate for a piece, a bale, or a hundred bales of the same kinds of goods, and not higher than a certain maximum profit of ten per cent in any case. As to any secret rates, drawbacks, rebates, contracts inconsistent with this impartiality, they are not to be defended. Yet we find that Belgium, in working her own state railroads, fell into the system of "special rates."¹ Abuses of this sort have grown up which due publicity will rapidly reduce to a minimum.

But it will not do to say that a railroad may not regulate its rates to a reasonable extent for the purpose of developing business on its line, because the power is liable to abuse. All power has this liability. Denied this privilege, many of them would never be built, especially those depending on land-grants or running through new and sparsely settled countries. No doubt special rates may be made in order to plant or develop or keep alive a business that will directly or indirectly bring valuable patronage to the railroad. Still this must be subject to the law of impartiality; i.e., it must be done alike for all and each in like circumstances. "Reasonable" is the standard established by the common law in regard to all demands by and upon railroads, whether relating to the police regulations for the safety of all persons and property dependent on their care and vigilance, or to the requisites to impartiality. The courts are to ascertain and judge of this "reasonableness" in actual cases brought before them. No cast-iron statute inflexible to circumstances can do it. And this reasonableness may vary with the circumstances of different roads. It might seem a good law that no cars shall be run without Westinghouse air-brakes. How soon may a cheaper and better brake be invented? Or how many roads are unable without bankruptcy to come up to this grade of high equipment? A decision in a recent case by a Kentucky court shows how exquisitely such a tribunal may ascertain the "reasonable" in an actual case, when an unbending statute would be a signal instance of *summa lex, summa injuria*. It was a question of damages for the death of

¹ "Railroads: their Origin and Progress," p. 90.

a person caused by the wrecking of a train running into a herd of cattle on the track, where there was no negligence on the part of the employés of the road, or failure to use all available means to prevent the disaster. But it was proved that, with Westinghouse air-brakes, it might have been averted. Hence it was claimed and adjudged that the company was able to provide them, and therefore liable for lack of due care and diligence in not providing them.

We have seen how utterly inapt legislation is, which attempts to proportion charges to distance or amount of transportation in all circumstances. Moreover, the *value* of the service of the railroads at different places must or certainly ought to weigh in determining charges. The value of any service, when rendered to others for compensation, is what they can pay with advantage, and will pay, rather than not have it. Now, in the case of railway transportation, that value varies greatly for a like amount of service at different places and times. Where there is a competing water or railway communication, exactly the same service may be worth far less than where there is none, and more at some of these latter places than at others. The number of railroads is large which cannot pay expenses, unless they can charge all along the line in some proportion to the value of the service rendered. The number is much larger in which no proper remuneration of capital can be made without this liberty. They cannot fairly live without adding to the higher rates which they can command where there is no competition, the lower which is the most they can get where there is competition. Without this they may be unable to maintain the expenses of the trains that carry all they can get, but not to half their capacity, at the higher rates. If they were shut up to either class alone, or if they were obliged to carry all at the lowest rates of competitive points, they could not live, much less thrive, or get beyond that starving standard which necessitates the highest rates for the poorest service, and adds to a famishing railroad a famishing population alongside of it.

All this is conclusively demonstrated by M. de la Gournerie, Inspector-General of the French Corps of Bridges and Highways, to be true not only of railway but other modes of transportation, in an article published in the "Bulletin of the Society for the

Encouragement of National Industry in France," and republished in the Appendix to the volume of "Testimony of George R. Blanchard before the Investigating Committee of New York State." (pp. 682-3.)

This brings us to the "pooling" now so largely adopted by the railroads at their great competitive centres, especially in the interior, for carriage to the seaboard.¹ There have no doubt been just causes for grievance to shippers and merchants in the sudden fluctuations of rates of transportation from these great centres, thus adding another element to the capricious uncertainties so baneful to sound business. It was the shock of competition between these colossal carrying agents—a shock as inevitable as the collisions of trains which made such havoc with life, limb, and goods in the early days of railroads, and which, after all the securities devised to prevent them, will occasionally recur. Desperate unregulated competition tends sooner or later to the ruin of the roads and the injury of the people. Now there are only three ways of ending it: 1. Governmental prohibition, which means forbidding any railroad to carry between competitive points below a certain minimum rate. And what legislature, State or national, will undertake to forbid a railroad from carrying as cheaply as it pleases? Or 2. By the stronger crushing out the weaker, resulting in a survival of the strongest only, if not the fittest. Is this the issue coveted? Or 3. What, in slang phrase, is called "pooling," and is advocated by such competent observers and long students of the subject as C. F. Adams, Jr., under the more dignified title of the "Federation of Railroads." The essence of this is an agreement among them for each to accept as its share of the competitive business, at a moderately remunerative rate common to all, what shall be judged to be its just proportion by an umpire or board selected by them all to make the apportionment. This is vehemently attacked by some. It is said to deprive the public of the benefits of competition. It has, however, only ended an extreme competition ruinous to all parties. Mr. Simon Sterne, in his great argument before the Special Assembly Committee versus the railroads, admits that it

¹ On this subject the writer advances no opinions not to be found in his article on the "Great Railroad Strike," in the *Presbyterian Quarterly and Princeton Review*, for October, 1877.

“has brought about a change for the better from that which prevailed immediately before the pooling arrangements were made” (p. 97). He insists that it “has been discovered in this country and England that competition was not the proper regulator of railway charges” (p. 104).

The several doctrines on this subject insisted on by the assailants of the proper autonomy of railroads, would either destroy them or greatly aggravate the evils of which they complain. Suppose that, first, there could be no stop or check to the internecine competition at Chicago, St. Louis, and elsewhere, and, next, that railroads must charge the same proportionate rates from all other points as from these. If they should continue the competitive through business, and do all other business at these ruinous rates, this would soon bankrupt and wreck them. If they discontinued the through competitive business, they would be obliged to charge higher local rates from non-competitive places than ever. Or, if this were impracticable, the road would sink in its condition, equipments, capacity for speed, safety, and accommodation far below what it is when great through trains help sustain and make profitable a more perfect road, and increased accommodations in every department. All places gain on the whole, even if any lose in some particulars, from the reinforcement of local with through business. They commonly have better roads, better tracks, better trains, and more of them.

In connection with the proportioning of railroad charges to the value of their services, the question of charging for carrying articles “what they will bear” comes in. This vague and elastic phrase has figured very odiously, and played an important part in late railroad controversies. It was employed in a joint answer of the presidents of the two great New York trunk-roads to the inquiries of the legislative committee as follows:

“The managers of a railway company desire to make all the money they can for their clients, and to do this they have before them the question, What rate, within their chartered limits, will an article bear that will yield the largest profit, and at the same time stimulate its production.”

We have not struck upon the origin of a different twist of this phrase put in quotation-marks in the question of the New York Chamber of Commerce Committee, which professes to give

the true meaning of the doctrine on this subject of late sanctioned by authoritative railroad managers :

"7. Do you think it is safe to allow railroad managers to disregard the old theory upon which charges for transportation were based; namely, that they should be '*reasonable*' and based upon '*cost of service*,' and adopt the new theory which they have announced of charging '*all the traffic will bear*,' themselves being sole judges of this question?"

Yet the principle involved is so obvious that the framers of the question are constrained to admit it in the very document containing it. A page or two farther on in their Report they say :

"Of course the consideration of what the traffic will bear is one of the elements entering into the fixing of all rates for transportation, but to formally recognize the abrogation of a principle as great as competition is a step your Committee believe the American people are not ready to take."

Why, then, object to railroads considering "what the traffic will bear" in adjusting their tariff, if in the nature of things it must come in? It is impossible to exclude the value element of railroad service from the estimation of its proper price. To put it as the seventh question above quoted puts it, as if this were a new standard, excluding "reasonableness," consideration of "cost of service" and competition, is absurd. By their own showing it must be a great element in determining "reasonableness" of charges, and the necessity of it grows out of competition at least as often as anything else.

As to "abrogating competition" in transportation, it is impossible and undesirable. It needs regulation, not destruction. Like so many other things, within bounds it is an inestimable good; beyond these it becomes an agent of devastation and ruin, like an uncontrolled locomotive, or a fire let loose. Abrogate competition! As soon abrogate gravitation or the tides! There are forces that will and must prevent transportation charges from competitive points rising for any length of time above, if they cannot prevent their falling below, a reasonable standard. One is the great navigable water-courses from the interior, west, south, north, and south-west to the ocean. Another is the steady multiplication of new lines from the great interior railroad centres where agricultural products accumulate for transportation to the Atlantic and gulf ports. Now if from

great competitive points, which these new lines are constantly reaching, profits can be made at much lower rates than those now established by mutual agreement of existing lines, the new lines will immediately "cut under" them, in order to grasp a larger share of the business than they could be allowed in the pool. Here is competition. Not only so; but rates must be limited by the very nature of things unless the managers would limit and minimize their business. If their rates rise above certain limits, they raise the price of our products in foreign markets too high for export, and consequently cut off transportation for this purpose. This of such great entrepôts for distribution and transportation at home and abroad as Chicago, St. Louis, and Kansas City. But there is hardly a local town of importance on our great trunk-lines which is not pierced by competing lines, direct or indirect, to all important points, in addition to navigable waters in close proximity. Moreover, an undue tariff from any place of importance is sure sooner or later to bring competition, and to impair the business and patronage that would otherwise arise. If all these were abolished, the competition between cities would still operate. There are forces more certain and mighty than legislation that will keep alive all that is healthy in competition, especially so long as a general railroad law, now almost universally prevalent, confronts special charters and monopoly privileges.

The report from which we have just quoted proposes what is so often and loudly urged, that the people should "take every constitutional means to prohibit combinations and enforce competition;" as if the two were incompatible. We do not see how. Combinations are of two kinds; either of those which form parts of a continuous line, as the several roads between New York, Albany, and Buffalo, which were combined in one corporation, the New York Central and Hudson; or of those which go from one point to another by different routes, as the New York Central and Hudson, and the Pennsylvania, from Chicago to New York City. The former sort of consolidation it is about as easy, sensible, and advantageous to prevent, as it would be to turn the Hudson River into a series of separate levels by dam and lock for slack-water navigation. The vast gain in economy, speed, safety, profit of transportation to the railroads and the public,

from placing long stretches of railroad under one direction is too plain to be disputed. The progress of such unification can no more be arrested than the westward march of empire. Probably, however, it is the other form of "combination" that legislation is to be invoked to prevent; viz., an understanding between roads running from one competing point to another by different routes. It will take something more than legislation to prevent forwarders from the same place to the same place charging the same rates, and from having a mutual understanding what this rate shall be. Adversaries themselves being judges, this is far better for all parties than desperate and reckless competition.

But railroads are corporations, and corporations are the portents of the time, mightier than the people, and swaying an iron sceptre over them. Surely human depravity worms itself into corporations as well as elsewhere, and in all places in some proportion to the scope offered it. The question is not whether it shall, but how it shall least, infest all things human. But do those who are declaiming and raving against corporations really think themselves through to the logical outcome of such assaults? It is utterly impossible to harness the gigantic forces of nature to serve man, as steam is now made to do, without employing immense masses of capital for this purpose. Small capitalists are debarred from all possible participation in this kind of property, unless it is divided into shares capable of distribution and ownership in larger or smaller parcels, held and managed by a corporation. Otherwise these vast properties so necessary to the convenience, commerce, and productiveness of the country, must be exclusively the private property of single or few individuals. Is that the alternative so much coveted? Probably not. The outcry against corporations is an outcry not only against a few railroad magnates, but against the vast multitude of small owners, including widows and orphans and the prudent laborer whose savings are invested in them, whether they be railroads, canals, banks, mines, manufactories, steamboat companies, or whatever else. To hurl these cataclysms at corporations is but saying, either that the productive properties they hold shall be annihilated; or that they shall be owned by individuals, single or in partnership; or that they shall be owned by the State—from which latter condition we might

expect utter political demoralization and national bankruptcy. What are all the present "spoils of victory" in elections in comparison with a prize of \$5,000,000,000, now rapidly expanding to \$10,000,000,000? Where the carcass is, there are the vultures. Are not our river and harbor bills proof enough of this? And as surely as every Stony Brook or Buttermilk Falls now demands its appropriation as a condition of voting for appropriations for improving real harbors, will not every cross-road demand its railroad station as a condition of authorizing really national lines? Is it not pretty certain, too, that when other revenues for the purpose fail from exhaustion, the vacuum will be supplied by the indefinite issue of irredeemable legal-tender paper money—from all which may God deliver us! Demagogues are already proposing, as the watchword of future political campaigns, that "all privileges conferred upon corporations are rights taken from the great body of the people," and to "assail corporations and the officials who act in their interests," and "on this line to establish an aggressive campaign." Such people may light a fire. Any incendiary can do this. It does not follow that they can so easily put it out before it burns them out. Let this raid on corporations succeed in destroying them, and they may contend for other property tenures who will. They will doubtless get their labor for their pains. The great landholders will come next, and the smaller ones will quickly be drawn into their wake. Agrarianism and communism will luxuriate in the ashes of their own fires.

We may not ignore the fierce outcry against railroads as monopolies and extortioners. Judge Cooley says: "The word monopoly has an ominous sound to American ears, and whenever the appellation fairly attaches itself to anything, it is already condemned in the public mind" (PRINCETON REVIEW, March 1878, p. 257). Hence the eagerness with which the assailants of any kind of business, privilege, or property try to make it odious by hurling at it the epithets of monopoly or extortion. But in no proper sense are the railroads of the country monopolies. They are all exposed to the construction of competing lines, and it is only the fewest that have wholly escaped, and fewer still that will hereafter wholly escape competition. Most of the States allow the construction of railroads *ad libitum*, under general laws. In

others, special charters are freely granted when asked by petitioners able and willing to build roads. No vestige of railroad monopoly exists. To say that because people have only a single railroad near them, therefore this road has monopoly privileges, is like saying that cases of being near a single store, or craftsman, or hotel, turns them into monopolies.

Never was a truer sentence uttered than that of the late Dr. Chapin at some festivity in New York: "THE LOCOMOTIVE IS A GREAT DEMOCRAT." Nowhere, not even at the polls, are all more completely on a level than in the American railway-car, and that, too, in the enjoyment of advantages and comforts unknown half a century ago to the proudest monarchs, with thousands of chariots and horses at their command. But the steam-chariot cannot thus be a great democrat without being also, within due limits, a great autocrat. On his own road he must be sovereign. All else must give way and clear the track. Nothing must or can stand before him. One master-mind, too, must rule the whole road and its motors, or confusion and desolation come in place of those blessings which, rightly guided, with colossal might, he bestows on all. And yet, as with man himself, his unmatched strength is close to the greatest weakness. The endowments whereby man is a but little lower than an angel, in the very image of his God, make him capable of becoming a very worm, a brute, a fiend, "crushed before the moth." So, if the locomotive can move man and his products with a resistless energy and speed, a rotten tie, a loose spike, an unseen flaw, a mischievous boy, or senseless animal may get in its way, and, even if destroyed itself, precipitate it and its train to utter destruction.

We have uttered no uncertain sound in favor of regulated, and against reckless, competition. Not less than for other reasons we favor the "federation of railroads" in order to fix steady and fair prices for transportation, and prevent such evils, so far as they are due to this cause. Nor have we yet heard of any other mode of preventing these that would not bring in tenfold greater ones. But, as it is not possible that all evil can be utterly eliminated from competition, or anything else earthly and human, however beneficial on the whole, let us none the less do our best to minimize it. It is also worth while to remember

that fluctuation of railroad rates is, even at its worst, but one of many more formidable, yet unjustifiable, causes of such fluctuations, which are quite beyond the reach of legislation. We speak not now of those which arise from fluctuations of supply and demand, issuing from providential causes, such as the state of the crops, markets, belligerent or peaceful relations at home and abroad, but rather of what is due to the voluntary interference of mischievous human agencies. Prices of the chief articles of railroad transportation are constantly forced up and down, not only to the prodigious risk and frequent ruin of dealers in these articles, but even to the taking of the bread out of the mouths, the life-blood out of the veins, of the poor and needy, and the stinting of the comforts and necessities of life for the average laborer. What are all the variations of railroad charges in their effects on merchants, shopkeepers, and the cost of subsistence to the people, compared with the "corners" produced by the great speculators and Napoleonic gamblers in wheat, pork, cotton, coffee, and the like, who seek to control the market, and, by monopoly prices, to enrich themselves through a forced levy on every consumer in the land? To wrench these out of the people by a turn of their speculative crank is to such men as light a matter as a snap of the finger. We notice names connected with this onset upon railroads for causing fluctuations of prices, of men who have alternately grasped millions and got mired in bankruptcy by such foolhardy tossing of the dice, to gain or lose all, in trying to monopolize and force up the prices of indispensable necessities or comforts of life. What then? Can legislation stop it? It has not been yet found how, without interfering with that freedom of contract which is one of the highest prerogatives of man, to surrender which is a degradation, to possess which is to possess what is capable of immense abuses as well as noblest uses.

Men are about Wall Street not only dealing legitimately in money and securities, but wielding money by the million, and tens of millions, for the sole purpose of so raising or depressing prices as may further their speculative movements. Nothing is more common than to loan millions one day upon call to tempt smaller speculators for a rising market, and to call it in the next day, or when it suits their purpose, so as to strangle the simple-

tons they have lured into their toils. This not only makes or ruins, helps or hurts, the neophytes who are scenting the Stock Exchange for the chance of finding a bonanza in the wake of the "great operators," but it tightens money and causes injury in every department of business, and nowhere more than in produce, groceries, and dry-goods. Can any legislation be devised to stop this which will not do far more harm than good? Even in the church, tares will get mixed with the wheat, often so that they cannot be rooted out without destroying the wheat.

Much is said of railroads revolutionizing the seats of trade and of special industries. There is no doubt of it and no help for it, nor is this any just ground of complaint, unless it be caused by what, all things considered, is partiality towards particular persons and places. It has been the effect of improved methods and routes of transportation and travel in all ages and countries. The Erie Canal pushed the great sources of wheat and lumber supply to the west of where it had been. The railroads have driven them still farther and yet farther west. This is inevitable. As surely as man will seek the maximum of utilities with the minimum of effort, he will use the railroads and steamships to this end when he can. What then? Has this destroyed or impaired agriculture in the Eastern or Middle States? Never. It has changed the form of it somewhat. But statistics show a great increase in Massachusetts and New York of the number of farms, the quantity, variety, and value of their products, nay, even a considerable advance in the amount of wheat raised in the Empire State. That some thin and exhausted farms should be abandoned or pass into the hands of foreign-born laborers now become capitalists is a matter of course, railroads or no railroads. To complain, as some do, that one cannot be sure that the business-place he buys in New York now may not be less suitable and valuable five years hence, and lay it to the charge of the railroads, is puerile. It is hardly forty years since the average New York merchant felt that he had made the surest provision for his family if he left them stores in Pearl Street, then the centre of dry-goods jobbing. This has since crept up Broadway and cross-streets, till it centres around Franklin Street, while Pearl Street property is relatively second or third class. Scarcely a generation has passed since the Astor

House was the leading hotel, without a rival above City Hall Park, and considerably less than half a century since it was built. The railroads are responsible for this only as they are responsible for the growth of the metropolis.

The question of limiting the earnings or dividends of railroads has come into some prominence in connection with these discussions. This cannot be of great moment as long as the average dividends of the railroads of the country are about two, and in the most favored States ordinarily only three, per cent on their capital.¹ Of the great trunk-lines, the Erie with its enormous earnings is, and always has been, saying nothing of the future, far enough from any dividends from earnings. The Pennsylvania had to suspend them for years, and the Baltimore and Ohio at various times. Mr. Hepburn, Bank Superintendent of the State of New York, says, in his recent report, that in the State of New York, "excluding leased lines, there are only two railroads, the New York Central and Hudson, and Boston and Albany, that for five years past have paid consecutive annual dividends amounting to five per cent each."² As to the leased lines, the lessees, with a single exception, to the best of our knowledge, altho ranking as wealthy corporations, have paid no, or next to no, dividends for nearly the same period. Now as to profits, New York railroads stand high, on the average, in competition with those of the entire United States. The risks, therefore, of railroad investment are something tremendous, arising from various sources: the frequent lack of remunerative business; the liability to lose it through the construction of competing lines; the exposure to all sorts of destructive casualties from fire, flood, tempest, collisions, flaws in rolling-stock or rails; the neglect or forgetfulness of servants, in all of which the railway company, i.e. stockholders, must indemnify for losses and injuries, sometimes of prodigious magnitude, consuming profits, and even bankrupting roads. At best there is the constant exposure to new and competing roads which may render a property, before valuable, utterly or comparatively valueless. The risks are therefore immense. All losses must be

¹ See "Railroads of the U. S.," by Edward Atkinson, p. 29.

² Supplement to *Com. and Financial Chronicle*, Feb. 1881, pp. 1, 2.

borne by the stockholders first and creditors next. Must the shareholders be cut off from all chances not only of fair interest upon the capital invested, but even of generous profits in the very exceptional instances in which rare opportunities and management may honestly yield them? If so, this is unlike any business. Capital will instinctively be shy of it if it must bear the most unlimited losses, with no chance for the gains when they are handsome. In point of fact the cases are few in which railroads have averaged six per cent from the first; fewer still that have averaged eight. Most roads now solid and paying handsome dividends for years paid none. On the other hand, many roads once dividing ten per cent have come to divide nothing. As to stock dividends, in slang phrase called "stock-watering," if they represent earnings applied to the improvement of the road rather than to dividends when earned, what can be more just? If made on no such basis, they are only the company's choice as to number or form of shares.

As a general principle, we doubt the policy of restricting the earnings of railroads by legislation. We think prosperous railroads a far greater blessing to the community than bankrupt, starving, or poorly paid ones. They are more likely to keep up and advance their roads to the highest state of speed, safety, commodiousness, in order to keep and increase their business, by cheapening its cost to themselves and the public, while they increase its quantity. Thus only can they withstand competition. Thus only can come the substitution of steel for iron rails; of heavy rails for lighter ones; of heavy for slender ties; of broken stone for ground ballasting; of a double for single track; of a triple or quadruple for a double track; of stone or iron for wooden bridges; of crossings above or below other roads instead of at grade, or, where this is impracticable, the substitution for it of gates and flagmen; the increase of terminal facilities so necessary and yet so costly in our great marts of trade. A railroad is never completed, and the further it is perfected in such a way as to lessen its risks and the danger to those who use it, to cheapen and expedite its service, while this is responded to by an increase of business that warrants and takes advantage of it, the better for the public and the road.

So statistical tables show on the great-trunk lines a constant

growth of business, at constantly decreasing rates and charges, and a gradual increase of profits, until their charges have fallen a great deal below a cent a ton per mile. Yet they are able, by means of their economies and improvements, to make money now at rates that would have bankrupted them a few years ago, and would now bankrupt them upon a small business. Who believes that any such result could have been reached under any conceivable system of State management ; i.e., management at the behest of politicians dependent on universal suffrage for their places and opportunities of emolument? For, after all, it will turn out that those who control the votes which lift political parties to the ascendancy will for the most part have the places at their command. And it is one thing to regulate railroads or any other business by selecting for service persons because they can command votes, and another by selecting them on account of their pre-eminent fitness for the position they fill. Gen. J. H. Devereaux has been recently reported as saying :

“Tonnage is so heavy that the difference of the small sum of one mill per ton makes the difference of a dividend or bankruptcy. On my road it makes something like \$400,000 difference, while on the New York Central, I do not hesitate to say, I think it makes a difference of \$2,000,000.”

Think of that, and think of the legislature attempting to fix a tariff. It were better occupied splitting hairs, or seeking Captain Kidd's treasure. The fact is, had it undertaken any such function in the past, the economy of railroad transportation never would have reached this “fine point.” If the New York Legislature prohibits “discrimination” charges on the railroads no more than it does on the canals it owns, they have not much to fear in this way. It is stated that the Canal Board has abolished all tolls on west-bound traffic—but that it discriminates against all salt made out of the State ; doubtless in the interests of the farmers and butter-makers on its line and beyond, who could well afford to quadruple railroad freights if they could thus expel counterfeit butter from the market.

The railroads have received their charters from the States. They are subject to the police regulations of States ; to State taxation ; to the principles of common law applicable to them as common carriers or otherwise ; to such statute laws of States

adapted to their special peculiarities, with respect to these matters, as may be found necessary and involve no violation of their charters. But they are entitled to the unimpeded use of the privileges granted in their charters, short of manifest abuse. This cannot be interfered with without violation of that clause of the national constitution which forbids any action by State authorities impairing the obligation of contracts. And for reasons already adduced, we do not think the exercise of the State power to interfere by statute with railroad tariffs ordinarily expedient, even if its existence were unquestioned. No clear judgment in respect to this power, so far as we knew, has yet been given by the U. S. Supreme Court. That given in the granger cases related to roads in which the States reserved in the charters given the power to change them at pleasure. It has no reference to charters not thus conditioned. But the experience of the effects of this granger legislation and its like everywhere has led to its substantial abandonment, as hurting not only the railroads, but still more the people.¹

What is known as the Reagan bill in Congress reported from the same committee as the River and Harbor bill, by Mr. Reagan as chairman, would be vastly more mischievous than the granger legislation of the North-west. Several features of it are obnoxious; such as making a "car-load the unit," prohibiting pooling, enforcing the same proportional rate for one as any number of such loads, and applying criminal penalties for charging more than reasonable rates without clearly defining what is a reasonable rate. This is a very different thing from a railroad being answerable in damages for charging unreasonable rates, the

¹ "Wherever State control or ownership has been attempted, it has failed to promote cheap railway service. The history of the Tunnel and the Hartford and Erie legislation, when fully written, will be marked not only by their utter failure in securing the objects aimed at, but by corruption and fraud, by the subornation of legislators, by the prostitution of the powers entrusted to the senators and representatives for private ends, and even in the very last session by the open surrender of the interests of the State to the supposed requirements of the private clients of legislators." (Atkinson, p. 28.) See also that bright book, "Chapters in Erie," by C. F. Adams, Jr., for still more terrible legislative and judicial prostitution in lending support to plunderings of stockholders of railroads, on a scale of enormity to which civilization furnishes scarcely a parallel. Let the eight-hour laws of Congress, the New York capitol, the New York City court-house, the canal rings, the street-cleaning of the city, the pilot monopolies, convey their own lesson on the management of railroads by politicians.

courts being judges of all the circumstances in each case which make them reasonable or unreasonable. But our objection to this national interference lies deeper. The general question of trenching on the prerogatives of the States aside, we believe this whole pretension is *ultra vires*, beyond the scope of national power over interstate commerce. So far as we know, this power has never been exercised, even if it has been invoked, to determine the prices of interstate transportation. It was, we believe, never conveyed for any such purpose in our national Constitution. It has been exercised chiefly, if not wholly, to remove obstacles interposed or permitted by the States to free commercial interchange between them, or between this and foreign countries. Can the national government, under pretext of regulating interstate or foreign commerce, say what carrying vessels and steamers on the Ohio, Missouri, Mississippi, the Delaware, the Atlantic coast, across the ocean, shall charge for passengers and freight? If they can, the power is merely theoretical, which may as wisely be exercised as the power to secure the importation of wheat into the United States, if such power exists. We have a still deeper aversion to this from the practical side, for reasons so well stated in the answer of the Massachusetts Commissioners to the Chamber of Commerce committee, which our limits prevent us from quoting. It proves that all present evils connected with railroad management compare with what would grow out of congressional supervision, as ant-hills with mountains.

There is, however, one danger to our channels of interstate communication by railroad with which the power of the national government is alone adequate to cope, and which it ought effectually and promptly to prepare itself to meet. We refer to the violent stoppage of these arteries of the national life by strikes, mobs, and riots, of which the great railroad strike of 1877 gave us dire experience and ample premonition. The days and weeks in which violent men stopped the interflow of commodities between the interior and the seaboard amounted to a reign of terror, and showed us how quickly it could not only arrest foreign and domestic commerce, but precipitate a famine. We know not how soon this may occur again. The last two commercial panics (in 1857 and 1873) were precipitated by sinking immense amounts of capital in unproductive railroad-building.

This process has commenced already. Brokers are, as we now write, offering 6-per-cent gold railroad bonds at about 90. General Devereaux predicts a speedy crash. We trust it is not near. But come in due time it will and must, necessitating that lowering of wages which is sure to be resented by strikes. These might be borne if other workmen were allowed to take the strikers' places. But that is resisted by violence, else the strikers are baffled. Now here is the time and place for the national government to intervene with its fullest power; to insist that these arteries of interstate commerce shall not be cut, and to protect the liberty of all to work the railroads without molestation, by grapeshot and cannon-ball if need be. Was it not humiliating, in 1873 that this great nation was disabled by mobs and ruffians from carrying its own mails with punctuality and regularity? And are any wire-drawn theories about overriding State rights again to fetter and disable the nation from defending its own life and property in mob-beleagured States?

We will only add that laws are needed to prevent fraud on the part of projectors and managers of railroads, by which they dishonestly tempt the ignorant and unwary to sink their savings in mere speculative enterprises, or by which the stockholders in good railroads are unwittingly stripped of their property for the special behoof of the managers. Railroads ought seldom, in our judgment, to be allowed to create a bonded debt or advertise bonds for sale not backed by something like an equal amount already expended on the road, or its equivalent in lands as security. Rarely, if ever, should railroad managers be allowed to buy, lease, or otherwise get control of a connecting or parallel road with the funds or on the responsibility of the original road, without sanction of the stockholders first obtained after due notice. Many roads have been weighed down by onerous leases of this kind which have inured to the benefit of managing rings at the cost of the stock- and bond-holders. We believe that due publicity here as in regard to rates of transportation, and all the rebates and drawbacks heretofore too often kept secret, would prove the sure and adequate remedy for the evils that have furnished any serious ground of complaint.

LYMAN H. ATWATER.