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EXCLUSIVE REGULATION OF RAILROAD RATES BY THE FEDERAL GOVERNMENT

PRACTICALLY speaking, every railroad in the United States is a common carrier of foreign and interstate commerce. The exceptions are so few and unimportant that they do not affect the question to be discussed. Many of the steam railroads are adopting electricity as a motor power, but this does not affect the question. The term "railroad" is here used to designate all common carriers transporting passengers and freight, excepting "street railroads," and private lines operated by private industries in manufacturing plants. The question, which is now much debated, is whether Congress may regulate *all* rates, charges, and practices by railroads doing interstate and intrastate business, without an amendment to the federal constitution.

The constitution of the United States vests in Congress power "to regulate commerce with foreign nations, and among the several states. . . ."¹ There are a few fundamental and well settled rulings that should be stated before discussing the question presented.

A shipment from any point within the United States destined to a foreign port is foreign commerce, although the rail transportation to or from the port may be wholly within one state.² A

¹ U. S. Constitution Art. I Sec. 8 Cl. 3.

² Texas, etc., R. Co. v. Sabine Tram Co., (1913) 227 U. S. 111, 57 L. Ed. 442, 33 S. C. R. 229.

shipment from a point in one state to a point in, or over a part of the territory of, another state, is interstate commerce.³ Whether a shipment is foreign or interstate commerce is determined by its essential character and not by mere billing.⁴ Although a railroad may be wholly within a state, if it engages in any part of the movement of foreign or interstate commerce, it is subject to the act of Congress regulating commerce.⁵ There must be a continuity of movement from the point of origin to point of final destination, intended by the shipper or consignee at the time the shipment starts, and the several carriers engaged in the movement must perform the transportation under some general arrangement or practice by which the shipment is moved from the point of origin to the point of final destination without the necessary intervention of, or reshipment by, the consignor or consignee. Under the practice prevailing on all railroads at the present time, commerce is facilitated and carried on either by through billing, or the observance of the practice by each carrier, under which the shipment is delivered from one carrier to the connecting carrier without the intervention of the shipper. By this practice a shipment delivered to the initial carrier never leaves the channel of interstate commerce until it is delivered to the consignee at the point of final destination. Under many decisions by the courts this has been held to make the shipment interstate or foreign commerce without any express agreement between the carriers participating in the transportation, and subjects all the carriers participating in such carriage, and the shipment, to federal control.

"Commerce," that may be regulated by Congress under the constitution, consists of three constituent parts, namely, the *agents*, the *instrumentalities*, and the *subjects*, of commerce. The power of Congress is plenary over each one of these constituent parts that comes under its jurisdiction; thus, as we have seen, the *subject* of commerce, that is, the shipment transported, may be interstate or foreign, while some agent of commerce transporting it a part of the way may be operating wholly within a state, and this may be true of instrumentalities used—road-bed,

³ Baer Bros. v. Denver, etc., R. Co., (1914) 233 U. S. 479, 34 S. C. R. 641; United States v. Delaware, etc., R. Co. (1907) 152 Fed. 269.

⁴ Pennsylvania R. Co. v. Clark Coal Co., (1915) 238 U. S. 456, 59 L. Ed. 1406, 35 S. C. R. 896; Southern Pacific Terminal Co. v. Interstate Commerce Commission, (1911) 219 U. S. 498, 31 S. C. R. 279.

⁵ Cincinnati, etc., Ry. Co. v. Interstate Commerce Commission, (1896) 162 U. S. 184, 40 L. Ed. 935, 16 S. C. R. 700; United States v. Illinois Terminal R. Co., (1909) 168 Fed. 546.

cars, etc., but the fact that the shipment is interstate gives Congress the power over it, and by that grip it has jurisdiction over all the agents employed, and instrumentalities used, in its transportation.

If the federal government has control over an agent it may determine its liability to shippers and extend that liability so as to include acts done or omitted by connecting carriers.⁶ It may determine the liability of the carrier to its employees, and extend such liability beyond the common law rule; and a state court is required to administer the law, although the law of the state, as to liability in such a case, may be different from the federal law.⁷

The Act to Regulate Commerce, approved February 4, 1887, as amended,⁸ does not cover all the subjects which Congress has the constitutional power to regulate. Nor is any restriction in the Act, affecting its operation, to be considered as a legislative construction of the constitutional limits to which Congress may go in regulating commerce.

Coming now to the question whether Congress has power under the constitution to regulate *all* rates charged by interstate carriers, for intrastate as well as interstate carriage, we note first that the present Act expressly excludes transportation wholly within a state from its operation. The proviso in section 1 of the Act declares:

“That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state, and not shipped to or from a foreign country. . . .”

This is a restriction which Congress has placed upon its own agency. It does not determine the limit of Congressional power. In the *Minnesota Rate Cases*,⁹ the Supreme Court of the United States, speaking through Mr. Justice Hughes, said:

“The power of Congress to regulate commerce among the several states is supreme and plenary. It is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution. . . . There is no room in our scheme of government for the assertion

⁶ *Atlantic Coast Line R. Co. v. Riverside Mills*, (1911). 219 U. S. 186, 55 L. Ed. 167, 31 S. C. R. 164.

⁷ *Mondou v. New York, etc., R. Co.*, (1912) 223 U. S. 1, 56 L. Ed. 327, 32 S. C. R. 169, 38 L. R. A. (N. S.) 44.

⁸ 8 U. S. Compiled Stat. Annot. 1916 Secs. 8563-8604.

⁹ (1913) 230 U. S. 352 (398-9), 57 L. Ed. 1511, 33 S. C. R. 729, 48 L. R. A. (N. S.) 1151.

of state power in hostility to the authorized exercise of federal power. *The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations.*"¹⁰

Again, referring to the proviso in section 1 above quoted, the Court said:¹¹

"Congress did not undertake to say that the intrastate rates of interstate carriers should be reasonable or to invest its administrative agency with authority to determine their reasonableness. Neither by the original act nor by its amendment did Congress seek to establish a unified control over interstate and intrastate rates; it did not set up a standard for intrastate rates, or prescribe, or authorize the Commission to prescribe, either maximum or minimum rates for intrastate traffic. . . . The fixing of reasonable rates for intrastate transportation was left where it had been found; that is, with the States and the agencies created by the states to deal with that subject."

After reviewing the decisions recognizing the power of the states under existing law to regulate intrastate rates the opinion proceeds:¹²

"To suppose, however, from a review of these decisions, that the exercise of this acknowledged power of the state may be permitted to create an irreconcilable conflict with the authority of the Nation, or that through an equipoise of powers an effective control of interstate commerce is rendered impossible, is to overlook the dominant operation of the constitution which, creating a Nation, equipped it with an authority, supreme and plenary, to control National commerce and to prevent that control, exercised in the wisdom of Congress, from being obstructed or destroyed by any opposing action."

Referring to the interblending of operations by an interstate carrier conducting both interstate and intrastate business, the Court said:¹³

"But these considerations are for the practical judgment of Congress in determining the extent of the regulation necessary under existing conditions of transportation to conserve and promote the interests of interstate commerce. If the situation has become such, by reason of the interblending of the interstate and intrastate operations of interstate carriers, that adequate regulation of their interstate rates cannot be maintained without impos-

¹⁰ Italics are the author's. [Ed.]

¹¹ (1913) 230 U. S. 352 (420), 57 L. Ed. 1511, 33 S. C. R. 729, 48 L. R. A. (N. S.) 1151.

¹² Ibid p. 431.

¹³ Ibid p. 432-3.

ing requirements with respect to their intrastate rates which substantially affect the former, it is for Congress to determine, within the limits of its constitutional authority over interstate commerce and its instruments the measure of the regulation it should supply. It is the function of this court to interpret and apply the law already enacted, but not under the guise of construction to provide a more comprehensive scheme of regulation than Congress has decided upon. Nor, in the absence of federal action, may we deny effect to the laws of the state enacted within the field which it is entitled to occupy until its authority is limited through the exertion by Congress of its paramount constitutional power."¹⁴

The exertion of its plenary power over intrastate traffic, foreshadowed in the *Minnesota Rate Case*, has found expression in legislation, which has been sustained by the Supreme Court, controlling interstate carriers in matters affecting intrastate traffic. Prior to the passage of what is known as the Safety Appliance Act,¹⁵ the states had the same control over instrumentalities—cars and engines, etc.—used in intrastate commerce that they had and now have over rates for intrastate traffic. The states passed safety appliance laws applicable to cars and engines engaged in intrastate traffic. Congress passed a safety appliance law and restricted the operation of the Act to cars "*engaged in interstate commerce.*" This act did not cure the existing evils. The act was amended and made to apply to *all* cars and vehicles of every description "*used on a railroad engaged in interstate commerce.*" The *agents* and *the railroad* were subject to the regulating power of Congress. This act, if constitutional, took from the states all control over cars and engines used in intrastate traffic. It came before the Supreme Court in *Southern Railway v. United States*,¹⁶ and the Court, speaking through Mr. Justice Van Devanter, construed the act "*to embrace all locomotives, cars and similar vehicles used on any railroad which is a highway of interstate commerce.*" And upon the question of its constitutionality, the Court said:¹⁷

"We come, then, to the question whether these acts are within the power of Congress under the commerce clause of the constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection

¹⁴ Italics are the author's. [Ed.]

¹⁵ 8 U. S. Compiled Statutes, 1916, Secs. 8605-50.

¹⁶ (1911) 222 U. S. 20, 56 L. Ed. 72, 32 S. C. R. 2.

¹⁷ *Ibid* p. 26.

between what is required by these acts in respect of vehicles used in moving intrastate traffic, and the object which the acts obviously are designed to attain; namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way, Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate?"

Reviewing the facts showing an intermingling of cars used in interstate and intrastate traffic and the effect of differing appliances upon cars in the same train, the Court concluded:¹⁸

"These practical considerations make it plain, as we think, that the questions before stated must be answered in the affirmative."

Again the question of a uniform system of accounting for all carriers in any way subject to the Act, was before the Court. The Commission insisted that carriers subject to the act, both rail and water carriers, should report and keep the accounts of all of their receipts and expenditures, from intrastate traffic as well as from interstate traffic, and from sources of private business where the accounts were mingled, in accordance with the uniform system formulated by the Commission. The carriers insisted that neither Congress nor the Commission had authority to regulate intrastate business, and therefore could not require reports, nor prescribe the accounting to be kept of such business. The Supreme Court speaking through Mr. Justice Day said:¹⁹

"Bookkeeping, it is said, is not interstate commerce. True, it is not, but bookkeeping may and ought to show how a business which, in part, at least, is interstate commerce, is carried on, in order that the Commission, charged with the duty of making reasonable rates and prohibiting unfair and unreasonable ones, may know the nature and extent of the business of the corporation, the cost of its interstate transactions, and otherwise to inform itself so as to enable it to properly regulate the matters which are within its authority. We think the uniform system of accounting prescribed and the report called for are such as it is within the power of the Commission to require under section

¹⁸ *Ibid* p. 27.

¹⁹ *Interstate Commerce Commission v. Goodrich Transit Co.*, (1912) 224 U. S. 194 (216), 32 S. C. R. 436.

20 of the act. Nor do the requirements exceed the constitutional authority of Congress to pass such a law."

The states in the exercise of their police power may make quarantine regulations to prevent the introduction or spread of disease which affect interstate commerce, but these state regulations are subject to the paramount authority of Congress to regulate the subject matter.²⁰ The state regulation must give way whenever Congress legislates upon the subject. A state may determine the liability of a carrier for loss or damage to property within its territory; but only until such time as Congress legislates upon the subject matter.²¹

In the *Shreveport Case*,²² the state of Texas had established rates between Texas cities which were lower than the interstate rates charged to and from Shreveport, La., to the same points in Texas. The Interstate Commerce Commission found that these intrastate rates created undue preferences and were unlawful, and ordered the interstate carriers to equalize the rates for like distances upon their lines. This gave the carriers the right to lower the interstate rates, which had been found reasonable by the Commission, or to raise the intrastate rates to the level of the interstate. The carriers elected to raise the intrastate rates. As this directly affected intrastate rates made by the state it was claimed that the order was beyond the power of Congress and the Commission to make. In passing upon this question the Supreme Court, speaking through Mr. Justice Hughes, said:²³

"It is for Congress to supply the needed correction where the relation between intrastate and interstate rates presents the evil to be corrected, and this it may do completely by reason of its control over the interstate carrier, in all matters having such a close and substantial relation to interstate commerce that it is necessary or appropriate to exercise the control for the effective government of that commerce.

"It is also clear, that, in removing injurious discrimination against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter below what it may deem to be a proper standard fair to the carrier and

²⁰ *Compagnie Francaise de Navigation a Vapeur v. Louisiana State Bd. of Health*, (1902) 186 U. S. 380, 22 S. C. R. 811; *Asbell v. Kansas*, (1908) 209 U. S. 251, 52 L. Ed. 778. 28 S. C. R. 485. 14 Ann. Cas. 1101.

²¹ *Adams Express Co. v. Croninger*, (1913) 226 U. S. 491 (500), 57 L. Ed. 314, 33 S. C. R. 148, 44 L. R. A. (N. S.) 257.

²² *Houston, etc., Ry. Co. v. U. S.*, (1914) 234 U. S. 342, 58 L. Ed. 1341, 34 S. C. R. 833.

²³ *Ibid* p. 355.

to the public. Otherwise, it could prevent the injury to interstate commerce only by the sacrifice of its judgment as to interstate rates. Congress is entitled to maintain its own standard as to these rates and to forbid any discriminatory action *by interstate carriers* which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms it establishes."

Referring to the proviso in section 1 above quoted, the Court said:²⁴

"Congress thus defined the scope of its regulation and provided that it was not to extend to purely intrastate traffic. It did not undertake to authorize the Commission to prescribe intrastate rates and thus to establish a unified control by the exercise of the rate-making power over both descriptions of traffic.

"We are of the opinion that the limitation of the proviso in section one does not apply to a case of this sort. The Commission was dealing with the relation of rates injuriously affecting, through an unreasonable discrimination, traffic that was interstate. The question was thus not simply one of transportation that was 'wholly within one state.' . . . *Such a matter is one with which Congress alone is competent to deal* and, in view of the aim of the action and the comprehensive terms of the provisions against unjust discrimination, there is no ground for holding that the authority of Congress was unexercised and that the subject was thus left without governmental regulation."

Again:²⁵

"We are not unmindful of the gravity of the question that is presented when state and federal views conflict. *But it was recognized at the beginning that the Nation could not prosper if interstate and foreign trade were governed by many masters*, and, where the interests of the freedom of interstate commerce are involved, *the judgment of Congress and of the agencies it lawfully establishes must control.*"²⁶

Many instances could be given which establish the doctrine that Congress has the constitutional power to regulate the practices of every agent of interstate commerce. It may declare by what instrumentalities and by what carriers interstate commerce shall be carried.²⁷ Jurisdiction over the *subject* of commerce, or over the *agents* of commerce, or the *instrumentalities* of commerce, gives to Congress the plenary right to regulate and determine all matters affecting such agencies, instrumentalities and subjects.

²⁴ Ibid p. 357-8.

²⁵ Ibid p. 359-60.

²⁶ Italics are the author's. [Ed.]

²⁷ Pipe Line Cases, (1914) 234 U. S. 548, 34 S. C. R. 956.

These broad powers necessarily include the right to determine *all* the rates and charges which a carrier engaged in interstate commerce shall make upon its line of railroad, if a condition has arisen requiring such regulation. That is to say, paraphrasing the language of the Supreme Court, if Congress determines that the regulation of intrastate rates, charged by interstate carriers, is necessary under present conditions to conserve and promote the interests of interstate commerce, it may assume control and regulate *all* the rates charged by such carriers. The regulation of rates is not a greater, nor a different power than that exercised in determining what safety appliances shall be used upon the cars and engines used upon a railroad carrying interstate traffic. If Congress has the power to take from the states their power to regulate the instrumentalities used in intrastate transportation; if it may, by its regulation of interstate carriers, supersede the police regulations made by a state; if it may determine the relation between intrastate and interstate rates, and authorize interstate carriers to raise an intrastate rate, it requires no additional power to fix *all* the rates for *any* distance, and for all distances, that shall be charged by such a carrier. If the power granted by the constitution is adequate for the purposes above detailed it is quite sufficient to warrant Congress in fixing all rates, if conditions exist requiring such additional regulation. It only remains, therefore, to consider whether the exigencies, at the present time, call for the broader exercise of its power by Congress.

The policy of the federal government, expressed in the Act to Regulate Commerce, is very aptly stated in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*,²⁸ where the court, speaking through the Chief Justice, said:

“That the Act to Regulate Commerce was intended to afford an effective means for redressing the wrongs resulting from unjust discrimination and undue preference is undoubted. Indeed, it is not open to controversy that to provide for these subjects was among the principal purposes of the Act.”

In *New York, New Haven & Hartford Railroad Co. v. Interstate Commerce Commission*²⁹ the same justice, speaking for the Court said:

²⁸ (1907) 204 U. S. 426 (439), 51 L. Ed. 553, 27 S. C. R. 350, 9 Ann. Cas. 1075.

²⁹ (1906) 200 U. S. 361 (391), 50 L. Ed. 515, 26 S. C. R. 272.

"It cannot be challenged that the great purpose of the Act to Regulate Commerce, while seeking to prevent unjust and unreasonable rates, was to secure equality of rates as to all and to destroy favoritism."

If we go back of the Act to the commerce clause of the constitution we find the motive for introducing it very clearly stated in the opinion in the *Minnesota Rate Cases*, where Mr. Justice Hughes, speaking for the Court, said:³⁰

"The conviction of its necessity sprang from the disastrous experience under the Confederation when the states vied in discriminatory measures against each other. In order to end these evils, the grant in the constitution conferred upon Congress an authority at all times adequate to secure the freedom of interstate commercial intercourse from state control and to provide effective regulation of that intercourse as the national interest may demand."

There exists today a serious and growing conflict between federal and state authority over the fixing, and effect of state-made rates. This conflict grows out of precisely the same fundamental conditions that existed under the Confederation. It expresses itself in a different way but in spirit, and in purpose, it is the same. Some states, in order to give undue preference to their own citizens and cities, have fixed intrastate rates much lower than existing interstate rates for the same distances. By this state policy, cities within a state are protected against competition in cities over the line in another state. This was the finding, and the basis of the decision in the *Shreveport Case*.

The *Minnesota Rate Cases* furnish striking examples of the demoralization of rate structures by the action of state commissions. In that case, *Shepard v. Northern Pac. Ry. Co.*,³¹ Judge Sanborn states:

"Moorhead, Minn., Fargo and Bismarck, N. D., Billings and Butte, Mont., are so-called 'jobbing centers.' Prior to the taking effect of the order of September 6, 1906, they had always been accorded rates by the Northern Pacific Company which would allow them to compete in distribution of merchandise with their nearest neighbors and with St. Paul and Minneapolis and Duluth. The sum of car load rates from St. Paul, Minneapolis, and Duluth to these centers and the less than car load rates out from these centers to the territory geographically tributary to them, respectively, had been such as to compare favorably with rates in

³⁰ (1913) 230 U. S. 352 (398), 57 L. Ed. 1511, 33 S. C. R. 729, 48 L. R. A. (N. S.) 1151.

³¹ (1911) 184 Fed. 765 (780).

and out of their local competitors as well as with less than car load rates from St. Paul, Minneapolis, and Duluth into the territory geographically served by them, respectively. The order of September 6, 1906, as supplemented by the order of May 3, 1907, substantially reduced car load rates from Duluth, St. Paul, and Minneapolis to Moorhead. This reduction would have given Moorhead a substantial advantage in territory accessible to its jobbing industry, and not only as against Fargo unless car load rates to Fargo should have been similarly reduced, but also as against Duluth, St. Paul, and Minneapolis unless less than car load rates from these points to points geographically accessible to Moorhead, which included a considerable territory in North Dakota, should have been proportionately reduced. This reduction, unless accompanied by a corresponding reduction in car load rates to Fargo from the eastern terminals, would have served to build up Moorhead at the expense of Fargo, and therefore to discriminate unduly and unjustly against Fargo as a matter of fact, and would destroy the relation in rates which had theretofore existed between the sum of car load rates into Moorhead and less than car load distributing rates on the one hand, and less than car load distributing rates from Duluth, St. Paul, and Minneapolis to localities accessible to Moorhead on the other. If Fargo were protected as against Moorhead by a like reduction in car load rates, it would have an advantage and preference over Bismarck in territory common to them both and an advantage over the eastern terminals in territory common to Fargo and them, unless car load rates from the eastern terminals to Bismarck and less than car load rates from the eastern terminals to the territory accessible to Fargo should be correspondingly reduced; and this advantage would constitute an undue and unjust preference to Fargo as against Bismarck, which competes in certain territory with Fargo, unless rates on car load lots from the eastern terminals to Bismarck should be correspondingly reduced. And so on, from distributing point to distributing point."

Commenting upon this situation Mr. Justice Hughes speaking for the Supreme Court of the United States in the *Minnesota Rate Cases*, said:³²

"The situation is not peculiar to Minnesota. The same question has been presented by the appeals, now before the court, which involve the validity of intrastate tariffs fixed by Missouri, Arkansas, Kentucky and Oregon. Differences in particular facts appear, but they cannot be regarded as controlling. A scheme of state rates framed to avoid discrimination between localities within the state, and to provide an harmonious system for intrastate transportation throughout the state, naturally would embrace those places within the state which are on or near the state's

³² (1913) 230 U. S. 352 (394-5). 57 L. Ed. 1511, 33 S. C. R. 729, 48 L. R. A. (N.S.) 1151.

boundaries; and, when these are included in a general reduction of intrastate rates, there is, of course, a change in the relation of rates as theretofore existing to points adjacent to, but across, the state line. Kansas City, Kansas, and Kansas City, Missouri; East St. Louis, Illinois, and St. Louis, Missouri; Omaha, Nebraska, and Council Bluffs, Iowa; Cincinnati, Ohio, and Covington and Newport, Kentucky; and many other places throughout the country which might be mentioned, present substantially the same conditions as those here appearing with respect to localities on the boundaries of Minnesota. It is also a matter of common knowledge that competition takes but little account of state lines and in every part of the land competitive districts embrace points in different states."

Some states have fixed intrastate passenger rates much lower per mile than are charged interstate passengers. As a result these state-protective rates create unfair discrimination between shippers and travelers, and between contiguous cities. This has resulted in grave friction between the federal and state authorities and produced much litigation. The federal government and the Interstate Commerce Commission have been brought into many of these suits and the action of the federal power has been bitterly attacked by state officials. While the law was settled, under the present Act, in the *Shreveport Case*, the efforts to secure undue preferences by states still continue and are increasing. Shippers try to reassign their shipments at state lines to secure the lower state rates. Passengers alight from trains to get lower state fares or secure them in advance. Rate adjustments, covering large territories, are broken down by the action of a state, and a general demoralization of interstate traffic exists in many parts of the country.

The Act to Regulate Commerce expressly forbids "any undue or unreasonable preference or advantage to any particular . . . locality, or any particular description of traffic." This is the federal policy and the only policy which can result in fair treatment to all cities and shippers. Commercial competition between cities does not take account of state lines; two cities compete for trade within a state, and properly so, although a state line may run between them. Changes in modes of communication and in doing business have made the United States, industrially, one common territory. It is vastly more important to the country at large that its foreign and interstate commerce shall be maintained and advanced than that purely local intrastate commerce should be "protected," or that any state should be permitted to build up

the business of its cities to the prejudice and disadvantage of cities lying outside its borders. It is of grave importance that this conflict of laws should be terminated and that the policy of equality of treatment to all persons and localities should be universal throughout the nation. The interest of the people calls not merely for economical transportation, but for administration *without unfair discrimination or favoritism; it calls for a broad outlook and a unified national policy.* In determining whether undue preference or advantage exists upon the line of a railroad engaged in interstate commerce, state lines, as such, should receive no consideration. This is *one* Nation. Favoritism to one city, with disadvantage to another, is as injurious to the country as a whole, when such city is favored by state regulation as it is when it is preferred by a railroad company. In fact when such discrimination is caused by state regulation, it is a double evil; it creates favoritism that is contrary to the spirit and policy of the nation, and, at the same time, creates a conflict of laws and litigation that is destructive of national unity. If a city should not be unjustly preferred in rates to the disadvantage of another city, then it is equally true that a state should not be preferred to the disadvantage of other states. The law of equality and the prevention of favoritism should be uniformly applied throughout the country as a whole. It should not be left to the carriers, as it is now, to take out discrimination between interstate and intrastate traffic by raising the state-made rate to the level of the interstate rate. The federal government should exercise full and exclusive control of all rates charged by interstate carriers; the entire scope of rate-making would then be with the federal administrative commission to work out equal treatment to all in the process of regulation. The economic development of cities depends upon transportation. A comparatively small difference in a freight rate, upon a given commodity, may destroy the principal business of a city and give the business to another locality. The state cannot deal with the whole subject involved in a given case; it can only deal with the portion of the traffic within its border; the federal government alone can deal with the question as a whole. As was said by the Supreme Court, speaking through Mr. Justice McKenna, in *Interstate Commerce Commission v. Chicago, R. I. & P. R. R. Co.*:³³

³³ (1910) 218 U. S. 88, 54 L. Ed. 946, 30 S. C. R. 651.

"The outlook of the Commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interests of the whole country."

If the conditions existing under the Confederation justified the giving of exclusive jurisdiction to regulate interstate and foreign commerce to the federal government, and if the present well established policy of equality to all shippers and localities is to prevail over the entire Union, then the time has come when the regulation of *all rates* charged by interstate carriers, for any distance upon their lines, and the control of all regulations and practices, by such carriers, should be exercised exclusively by the federal government. That this can be done without any amendment to the constitution of the United States we believe is clearly established.

CHARLES WILLIS NEEDHAM.

WASHINGTON, D. C.