

business of other States. When, in 1830, steam-power began to be applied to the propulsion of vehicles upon land, the same reasons as regards control continued to prevail. The roads constructed for such vehicles were authorised by and built under the authority of the States; the corporate charters under which they were operated, and which prescribed the rights, privileges, and powers of the associated owners, were State laws; the States determined for them the measure of their taxation, and limited, if it seemed politic, their charges and their profits. The States thus touched them so nearly in all their interests and all their functions that Federal intervention seemed not only unnecessary but intrusive unless State power should be abused; and, the abuse not often appearing, intervention was scarcely thought of by any one.

For a long time, therefore, the power of the Federal Government in the regulation of commerce between the States was put forth by way of negation rather than affirmatively—that is to say, it was put forth in restraint of excessive State power when it appeared, instead of by way of affirmative national regulation. The national restraint, when there was any, was commonly effected by invoking the action of the judicial department of the Government, and by its assistance arresting such State action as appeared to constitute an unauthorised interference with inter-State traffic and intercourse. This special intervention, whether in the exercise of an original jurisdiction, as in the *Wheeling Bridge* case, reported in 13 Howard, 518, or under an appellate authority, as in *Ward versus Maryland* (12 Wallace, 418), and *Welton versus Missouri* (91 United States Reports, 275), has been important and useful in a considerable number of cases, but in the nature of things it could not accomplish the purposes of general regulation. On the other hand, the effect was to leave the corporations into whose hands the internal commerce of the country had principally fallen to make the law for themselves in many important particulars, the State power being inadequate to complete regulation, and the national power not being put forth for the purpose.

The common law still remained operative, but there were many reasons why it was inadequate for the purposes of complete regulation. One very obvious reason was that the new method of land transportation was wholly unknown to the common law, and was so different from those under which common-law rules had grown up that doubts and differences of opinion as to the extent to which those rules could be made applicable were inevitable. A highway of which the ownership is in private citizens or corporations, who permit no other vehicles but their own to run upon it, bears obviously but faint resemblance to the common highway upon which every man may walk or ride, or drive his wagon or his carriage. If we undertake to apply to the one the rules which have grown up in regulation of the others, there must necessarily be a considerable period in which the state of the law will in many important particulars be uncertain, and while that continues to be the case those who have the power to act, and who must necessarily act by rule, and according to some established system, will for all practical purposes make the law, because the rule and the system will be of their establishment.

Such, to a considerable extent, has been the fact regarding the business of transporting persons and property by rail. Those who have controlled the railroads have not only made rules for the government of their own corporate affairs, but very largely also they have determined at pleasure what should be the terms of their contract relations with others, and others have acquiesced, though oftentimes unwillingly, because they could not with confidence affirm that the law would not compel it, and a test of the question would be difficult and expensive. The carriers of the country were thus enabled to determine in great measure what rules should govern the transportation of persons and property—rules which intimately concerned the commercial, industrial, and social life of the people.

The circumstances of railroad development tended to make this indirect and abnormal law-making exceedingly unequal and oftentimes oppressive. When railroads began to be built the demand for participation in their benefits went up from every city and hamlet in the land, and the public was impatient of any obstacles to their free construction and of any doubts that might be suggested as to the substantial benefit to flow from any possible line that might be built. Under an imperative popular demand, general laws were enacted in many States which enabled projectors of roads to organize at pleasure and select their own lines; and where there were no such laws the grant of a special charter was almost a matter of course, and the securities against abuse of corporate powers were little more than nominal. For a long time the promoter of a railway was looked upon as a public benefactor, and laws were passed under which municipal bodies were allowed to give public money or loan public credit in aid of his schemes on an assumption that almost any road would prove reasonably remunerative, but that in any event the indirect advantages which the public would reap must more than compensate for the expenditures.

In time it came to be perceived that these sanguine expectations were delusive. A very large proportion of all the public money invested in railroads was wholly sunk and lost. Many roads were undertaken by parties who were without capital, and who relied upon obtaining it by a sale of bonds to a credulous public. The corporation thus without capital was bankrupt from its inception, and the corporators were very likely to be mere adventurers, who would employ their chartered powers in such manner as would most conduce to their personal ends.

It is striking proof of the recklessness of corporate management that 108 roads, representing a mileage of 11,066, are now in the hands of receivers, managing them under the direction of Courts, whose attention is thus necessarily withdrawn from the ordinary and more appropriate duties of judicial bodies. So serious has been the evil of bringing worthless schemes into existence, and making them the basis for an appropriation of public moneys or for the issue of worthless evidences of debt, that a number of the States have so amended their Constitutions as to take from the Legislature the power either to lend the credit of the State in aid of corporations proposing to construct railroads, or to authorise municipal bodies to render aid, either in money or credit. State legislation has at the same time been in the direction of making compulsory the actual payment of a *bona fide* capital before a corporation shall be at liberty to test the credulity of the public by an issue of negotiable securities.