

**STATEMENT IN REPLY TO THE
SUGGESTIONS OF THE
INTERSTATE COMMERCE
COMMISSION OF MARCH 16,
1892**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649237401

Statement in Reply to the Suggestions of the Interstate Commerce Commission of March 16, 1892 by Joseph Nimmo

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

JOSEPH NIMMO

**STATEMENT IN REPLY TO THE
SUGGESTIONS OF THE
INTERSTATE COMMERCE
COMMISSION OF
MARCH 16, 1892**

INTERSTATE
COMMERCE COMMISSION
LIBRARY.

**Mr. Nimmo's Reply to the Suggestions of the Inter-
state Commerce Commission of March 16, 1892.**

HON. S. M. CULLOM,
*Chairman of Senate Committee
on Interstate Commerce.*

DEAR SIR: I beg leave to submit to you a few thoughts suggested by reading the suggestions of the Interstate Commerce Commission of March 16, 1892.

In replying to my argument of Feb. 23, 1892, the Commission comments upon the fact that I did not "disclose just what in his (my) opinion the functions of governmental commissions in the regulation of commerce by railway should be." That is true; and I regard it as a laudible criticism, since it suggests an advancement of the argument toward its real merits. My only reason for refraining from such full disclosures of opinion was the fear of trespassing too far upon the time and attention of your Committee. Following the suggestion of the Commission, however, I will now endeavor to state to you my general views upon the subject of the regulation of the railroads as fully as may appear to be proper in this connection.

I earnestly favor the suppression of unjust discriminations, rate cuttings, and every other species of evil which tends to demoralize railroad traffic and to create disorder in the conduct of the commerce of this country. Two kinds of reform measures are, in my belief, absolutely necessary in order to accomplish that result: First, meas-

ures in the nature of self-control to be adopted by the railroad companies, and, second, clearly defined and practical provisions of law whereby the evils referred to may be suppressed in a manner conformable to justice and to the principles upon which our government is founded. That comprises my general confession of faith touching the regulation of commerce over railroads.

Just here it seems proper that I should state, with some degree of precision, what I mean by *reform measures in the nature of self-control, to be adopted by the companies*. In my argument I alluded to the fact that the American railroad system is mainly a resultant of the interaction of commercial and economic forces which overshadow the railroads. These forces are not only superior to the power which can be exercised by any railroad company, but also superior to the power which can be exercised by any combination which may be entered into among the companies. In a word, the American railroad system is not a product of railroad combination, and it cannot be controlled by railroad combination. It is the product of an evolution. Therefore, I strenuously maintain that it is incumbent upon the companies to conform to the clearly evolved organic laws of the American railroad system. This necessarily involves the preservation of the orderly conduct of the transportation interests of this country through the observance of rules and regulations in the nature of self-restraint. This is a great work, and it is progressing. It requires time for its full consummation. The splendor and the wonderful degree of efficiency to which our railroad system has attained are results of conformity to the clearly evolved organic laws of its being, and the rules and regulations in the nature of self-restraint referred to are expressions of a careful conformity to the lessons of experience. I believe this to be history and the philosophy

of history. It controls my thought upon this great question.

In order to set this matter in a clear light, I beg leave to invite your attention to some of the particular restraints to which the companies have been forced to submit themselves in the course of the evolution of the American railroad system, in consequence of the striking peculiarity of the railroad as a highway of commerce, namely, the fact that it is an avenue of commerce, the pathway of which is no wider than the wheel of the vehicle which moves upon it.

First. I would mention the requirement as to the publicity of the rates of transportation on railroads. This is a restraint upon the carrier, which was never dreamed of before the days of railroads, and which is not and never was imposed upon carriers on free highways of commerce—*i. e.*, wagon roads, canals, and natural navigable waters, where the influence of railroad transportation is not dominant. And yet everybody concedes the absolute necessity of such restraint for the purpose of securing the orderly conduct of transportation on railroads. Besides, the Interstate Commerce Act requires it.

Second. Timely notice of the raising and lowering of rates is a severe restraint upon the railroad carrier. It is not, and never was, imposed upon carriers on free highways. But experience has proved the justice and the absolute necessity for the observance of this rule in the conduct of railroad transportation, and the Interstate Commerce Act requires it.

Third. Uniform classification of freights in order to form railroad freight tariffs which may become a ready reference to freight charges would be regarded not only as an absurdity, but as an outrage upon the freedom of commerce on the ocean and on other free highways of

commerce, where the influence of railroad transportation is not dominant. But such classification is necessary in the conduct of railroad transportation, and the Interstate Commerce Commission has thrown the full force of its influence in favor of this self-imposed regulation of railroad traffic.

Fourth. The forming of connections between the tracks of different companies whereby the American railroad system sprang into existence as a great national autonomy in the work of transportation was the overshadowing cause of innumerable restraints and constraints upon individual railroad management. This I explained in my argument of Feb. 23. Connecting the tracks of the different companies has also compelled the adoption of a thousand facilities for uninterrupted freight and passenger traffic, and for mail transportation not possible on free highways of commerce. The act of June 15, 1866, involved all this, and I think no voice has ever been raised against the practical results of its operations in any part of this country.

The chief end and aim of the various self-imposed restraints and constraints upon railroad management is *the maintenance of agreements as to rates*. To this reform, inaugurated by the railroad companies under the compulsion of the logic of events, the Interstate Commerce Commission is fully committed. But it is a reform which has been only partially wrought out. Evasions and direct violations of rate agreements constitute to-day the persistent and most flagrant cause of unjust discriminations. The prevention of such discriminations is the fundamental object of the Act to Regulate Commerce. But I strenuously maintain that the suppression of unjust discriminations is primarily the duty of the companies through *agreements in the nature of self-control*, and that it is the

concurrent duty of the Government to sustain the companies in such efforts for securing the just and orderly conduct of the American railroad system. This concurrence of action in the great work of regulating railroad traffic is a thing not yet fully attained unto. I can conceive of no larger, more practical, or more beneficent work for the Interstate Commerce Commission than that of sustaining and defending such measures.

The full consideration of all the restraints and constraints and enforced facilities for transportation and travel which characterize the American railroad system and which constitute the essential law of its operations would far transcend the proper limits of this communication. Those characteristics of railroad transportation are in no sense the outcome of governmental devisement. No legislative body and no railroad commission ever conceived them or established them. The compulsion of a mighty evolution alone has forced railroad managers to submit to the obvious requirements of such restraining and constraining conditions. Any attempt to set at naught the law of railroad development enforced by these governing conditions would be as absurd as a proposition to abolish all statutory enactments and remit men to their natural rights.

And now I think I have said enough in order to indicate to you pretty clearly what I mean by *reform measures in the nature of self-control to be adopted by the companies.*

Experience has taught very much in the line of a just and proper conformity to the peculiar conditions which constitute the being and the environment of our railroad system, and yet much remains to be done in this direction in order to prevent the evils which are incident to an unbridled competition between rival lines; a strife which, if unrestrained, invariably runs to disorder, both in the conduct of transportation and of commerce. Such tendency

to disorder arises mainly from the fact that there is a constant demand for new lines and for increased railroad facilities in order to meet the rapidly developing needs of the country for transportation facilities, while at the same time there is an enormous and rapidly increasing surplus of transportation facilities at the great trade centres. It is just here, at the trade centres, and at other chief sources of traffic, where the fierce struggles for traffic arise—here is where unjust discriminations, rate-cuttings, and all sorts of abuses have their origin. From thence these evils project their disturbing influence to the extremities. The fight at the trade centres is for the largest possible share of the traffic. Control this bitter and relentless fight by measures in the nature of self-restraint, so that each line can have what may be determined by some equitable arrangement to be its proper share of the competitive traffic, and the chief cause of rate wars, unjust discriminations, and general disorder will be removed. This is a sort of restraint upon the freedom of railroad transportation which, like the various other restraints heretofore mentioned, is not only justified, but absolutely enforced by the peculiarities of the railroads as a highway of commerce. It is in vain to attempt to put a stop to the evils and mischiefs of unjust discriminations, and rate-cuttings, until their inciting cause is brought under control. When that is done governmental regulation will become practicable and easy without "treating the railroad interests as constituting in a certain sense a section by itself of the political community," or by having recourse to governmental rate-making, or to any other revolutionary proceeding.

There is another most desirable object which would be attained by a perfect system of agreements as to the division of competitive traffic, and that is the protection of the weaker lines from absorption by the stronger lines. I

know that this is a state of affairs which the managers of some of the greatest railroads in this country deprecate. They declare that they are now forced to the absorption of lines by strategic necessities and not by sound commercial or economic considerations. I mention this to you as a subject worthy of the earnest consideration of your Committee.

Just here I desire to acknowledge the fact that it was by reading the chapter of your Report on Interstate Commerce, pages 198 to 202, that I was first impressed by the force of this whole doctrine of basing a scheme of regulation upon the restraints which, in the nature of things, must be imposed upon railroad transportation in consequence of the marked peculiarities of the railroad as a highway of commerce. The chapter alluded to contains, in my opinion, the rationale of a system of just and beneficial regulation, and I believe, also, that when such a system of regulation has been inaugurated it will fully realize the conception of Mr. Chief-Justice Waite as to "extending the law to meet this new development of commercial progress."

And now I turn to the general subject of governmental control. I believe there is to-day more need of sensible and efficient means of governmental control of the abuses of which I have spoken than there was when the Act to Regulate Commerce was enacted. I am informed that in certain parts of the country rate-cutting is now rampant, and that there is danger that it may lead to a general demoralization in the freight traffic of the country. I believe you have always regarded the Act to Regulate Commerce as a tentative measure, and I know that you have carefully read the instructive lessons of experience of the last five years under the operation of that act. I profess to be as sincerely in favor of suppressing the evils above men-