

# Congressional Struggle for the First American Regulatory Agency: The Formation of the Interstate Commerce Commission as a Prelude to Modern America

(行政委員会の創設をめぐる合衆国議会の動き)

Kazuyuki Matsuo\*

SUMMARY IN JAPANESE: 19世紀末のアメリカで当時の技術の最先端をいく鉄道経営にたいする反感が強まった。それは鉄道が従来のアメリカ的文化や制度を破壊しているという認識に基づくものであったが、おもに西部地方の農民が言い出して社会運動と化した。このような動きに対応して西部の各州の政府は鉄道規制に乗り出したが、鉄道は州をまたがって運営されるため、州政府の権限や力を越えるものがあった。そのため連邦政府をうごかして鉄道規制をおこなおうという動きが活発となり、合衆国議会で論争が繰り返された。しかし企業活動は19世紀の自由放任主義のもとで拡大したから、国家による規制という考えはなかなか受け入れられることがなかった。しかし州政府や民衆の熱心な運動が功を奏して、政府による企業規制は合衆国憲法に規定のある、州と州をまたぐ商業行為に当てはまるという解釈が成立し、議会は鉄道規制に乗り出した。1897年連邦通商法および連邦州際委員会の成立である。ところがアメリカは慣習法の国であり、先例や判決が法律と同じ効力を有する。この連邦通商法を先例として、連邦政府による私企業の規制が大々的に行われるようになったのが、20世紀初頭の革新主義であり、続くニューディールであった。20世紀のアメリカの歴史を振り返るとき、巨大政府による企業規制を行なって民衆の福祉を実現しようとする流れが大きなテーマとしてある。この20世紀アメリカを規定するような流れの源流は、実は鉄道規制にその始まりがあったと言えるのである。

---

\* 松尾 弼之 Professor of American History, Sophia University, Tokyo, Japan

## I

The modern American history is full of drastic changes that would change the entire structure of society. One example of that kind of major paradigm shift was the appearance of “regulatory agencies” in America. Numerous regulatory agencies that appeared from the end of the nineteenth century on were to exercise their control over many aspects of American life in the twentieth century. The Progressive Era probably was the first period in modern American history when the government regulations were applied in large scale. The New Deal period was another era when government exercised its central power to curve the activities of private industry. And the life under “regulation” was clearly different from the life of the *laissez-faire* system of the nineteenth-century America.

This appearance of “regulations” and disappearance of free-wheeling, rugged individualism at the turn of century was observed by numerous scholars and journalists. For example, Samuel Lubell once argued as a journalist that America was steadily heading toward a Democrat’s America not a Republican America. By that he meant Americans were gradually accepting the Democratic policies of expanded social welfare, strengthened medicare, larger school subsidies, better unemployment policies, and other public services by the central government. Lubell said even the diehard Republicans had to adopt these Democratic policies because of the social demand. Another observer pointed out the emergence of the “organization man” as compared to the old fashioned individualistic man in the mid-twentieth century. Yet another watcher of the image of man in America said that there were increasing numbers of “other-directed” Americans. These new types of Americans, sociologist David Reisman stated, tended to follow social norms and rules of the society rather than their inner voices.

This large picture of changing America, more regulations by the central government and less rooms for individualistic impulses, coincides with the turn of the century. The turn of the nineteenth century. There were some insignificant federal regulations until then, but it was 1887 when the central government was engaged in full-fledged control of social/economic life in America. It was the enactment of one act—the Interstate Commerce Act of 1887 that brought in this change.

The Interstate Commerce Act was a significant act in the sense that it virtu-

ally amended the Constitution of the United States. The virtual amendment was made in the form of an “expanded interpretation” of the commerce clause of the Constitution. This clause gave the federal government power over commerce with foreign nations, Indian tribes, and among the states. The clause was inserted as a precaution should the rules and regulations of individual states fail to function. Yet it was never applied to the control of private life until then. Obviously up until 1887 there was no need to mobilize this clause.

By the end of the nineteenth century, however, the changing conditions in American society were preparing stages for this sleeping tiger. Especially, the technological development of the railroad required powerful laws to match the power of this new invention. The trains loaded with mass-produced products or raw materials would run from one state to another, thus defying the authority of any one state. At the same time, the railroad would shift products from one state to the other in large quantities, thus creating impossible economic conditions for any one state to control. The impact of the railroad was so great that farmers often blamed the railroad for the ups and downs of the market economy, which influenced the peaceful agricultural society of mid-America. Ralph Waldo Emerson, therefore, talked of the railroad as the dark “iron horse” of industrialism that threatened the peace of rural America.

It was rural America that started the struggle against this threat. The farmers in Illinois initiated the control over this violent iron horse. Yet the power of the iron horse and the forces of industrialization behind it was so strong that some unusual measures were necessary. People realized a state power was not sufficient to stand against the forces and they finally turned to the U. S. Congress for the power to tame this monster. For this to materialize, some “stretching of the commerce clause” was necessary. After prolonged debates, the enactment of the Interstate Commerce Act took place. It was the answer Congress gave to the voices from rural America. The act and its consequent creation of the Interstate Commerce Commission (I. C. C.) thus was the first general exercise of the regulatory power of Congress under the commerce clause.

This expanded interpretation of the Constitution for the sake of national control of railroads was to give precedence. It gave grounds for various federal regulations and government agencies in the twentieth century. Theodore Roosevelt’s various measures for trust-busting, the “alphabetical soup” of government agencies in the New Deal period, and various social registrations of Kennedy/Johnson era all found justification for their existence in this Act of

1887.<sup>1</sup>

This act gave the Interstate Commerce Commission the power to make regulations, to monitor compliance with the regulations, and to punish anybody who was against the Commission's regulations. In other words, this first American regulatory agency was given all of the three powers of government—legislative, administrative and judiciary powers. The power given to the Commission seemed to be the outright denial of the philosophies of the founding fathers. The government was supposed to function on the basis of checks and balances. Yet this unusual measure was considered necessary to handle the extraordinary situation—the appearance of the railroad and the industrialization. To protect the welfare of the population against the encroaching railroad, it was deemed necessary to give up the tradition of checks and balances, the sacred principles of the government.

Naturally, heated discussions took place for and against this change. The fight was especially severe in the U. S. Congress where this “amendment” was being discussed. The congressional debate that took place in the 1880s concerning this Act of 1887 was a grand fight between the keepers of the old, pre-industrial America and the advocates of a new society for the twentieth century. In this essay, I have tried to trace this congressional struggle. By doing so, I hoped to shed some light on the regulatory nature of modern American society.

## II

The establishment of the Interstate Commerce Act is widely attributed to the work of Senator Shelby Cullom of Illinois. The “Cullom Report” that he helped to formulate is believed among American historians to have been the building blocks for the act.<sup>2</sup> While this is not far from the truth, the initial impetus and sustaining forces for this congressional action did not come from Senator Cullom alone. Actually, it was John H. Reagan, a House representative from Texas, who brought up the subject and persisted in his cause for railroad regulation. Reagan devoted his entire congressional career to this cause and was the motivating force behind the enactment of the Interstate Commerce Act for railroad regulation.<sup>3</sup>

Prior to Reagan's election to Congress in 1875, however, there was already widespread agitation for railroad control. The Granger Movement probably was the foremost organization in attacking various practices of the railroads. The American farmers were not against the railroad from the beginning. This farmers' alliance, for instance, was sympathetic toward the railroad initially. Originally the railroads were accepted as a symbol of progress and prosperity because the railroads brought inexpensive and useful products from mass production facilities in industrialized cities. It was the rails that also carried their crops to faraway markets and converted them into cash.

Yet the environment that surrounded the farmers and the railroads was changing. With a depressed American economy at the end of nineteenth-century, the prices for agricultural products were also depressed. As mechanization of agriculture took place, larger amounts of crops were produced to depress the prices even further. This would impoverish the workers on the soil. There was a problem caused by rapid communications. The railroad equipped with electric signaling system along rails was quick enough to bring news of the grain market prices to the remote farmers. And the news affected the prices of the farmers' products in corners far from Chicago or London grain markets. The farmers' lives were now dependent on the manipulations of faraway capitalists. The flow of industrial products also caused worries. The products were useful but made the farmers more dependent on a cash economy. With combination of these factors brought by modernization, the farmers were gradually losing their sense of an independent, proud existence. By the 1870s, the farmers felt they were merely being driven by big city capital and the railroads. The railroads became the symbol of evil forces for the farmers.

As the anger towards the railroads grew and the anti-railroad movement spread among American farmers, it was said that hostility toward railway corporations was a necessary asset for successful political candidates in the West.<sup>4</sup> In 1875, the Senate reacted to this popular sentiment against railroads with the "Windom Report." This report, which was officially known as the Senate Report of the Select Committee on Transportation, was essentially influenced by the Granger Movement which was strongly against the railroads by then. The senators who composed this committee "studied" malpractice of the railroad companies and recommended, as a solution, more competition among railways. The report also proposed the construction of a government rail line as a "yard stick" for the competition.<sup>5</sup> The government railroad would show the model operation

for the commercial companies to follow. The Windom Report was one of the typical congressional reactions to the Granger Movement.

These moves by frustrated American farmers to influence the railroads were based mainly on local interests even though the US Congress took up the problem. What the Granger Movement wanted was to have Illinois or Wisconsin problems to be corrected. And that kind of mentality caused many conflicts of opinion among the Grangers themselves as to the method of control of the railroads. In other words, a concerted effort on a national scale was difficult to attain. With divided opinions, it was impossible to counter the forces the railroads represented. They were nationally active and were in the position to influence the national lawmakers. Thus, as the seventies drew near the end, the anti-railroad movement itself lost its steam. Yet, the hostility toward the railroads remained in the prairie area and was to supply fuel for later charges against this giant—the giant that constituted one-fifth of the accumulated capital of the country by 1885.<sup>6</sup>

While the anti-railroad activities were lacking national approach, the railroads were increasing their tendency toward a more national operation. With the opening of the western region, which was partly promoted by railroad construction, the flow of railroad cargo across state lines was increasing in volume. Manufactured products from the East were being brought to the West in exchange for grains produced in the West. The appearance of a universal coupling system to connect trains of different companies further promoted the use of through traffic across state lines. These developments often defied the state efforts to have authority over the flow of cargoes. The state-authorized and state-supervised railroads were growing out of the jurisdiction of the states due to their interstate nature of operation.<sup>7</sup> The usual application of the principles of the common law in a state to settle disputes was inadequate. As the nineteenth-century drew near the end, the necessity of some sort of national legislation was apparent to everybody.

On the industrial side, railroad managers themselves felt the need of national coordination. The railroad construction boom was collapsing by then and many railroads were being driven to bankruptcy. The resulting scramble to obtain customers for the lines was leading to various kinds of irregular practices. The secret rebate to customers was not secret anymore. The competition was so keen that even those who profited from them were forced to the conclusion that the system of fair and open rates was far preferable to the practice of secret

railroad warfare.<sup>8</sup> Against such background and not being able to control themselves, the railroads themselves were seen seeking some sort of national control. Furthermore, the railroad managers saw national control as a substitute for the anarchy of control by multiple state jurisdiction.<sup>9</sup>

The necessity for national control of rails was also raised from different corners by then. Lobbying for federal government control of railroads was conducted daily by producers, shippers, and merchants who wanted steady rates and services from railroads.<sup>10</sup> They were the ones, they said, who had to suffer the most under the volatile conditions of the railroad business. Public carriers, they argued, had a public obligation to provide regular and steady service for the general population. The complaints were also heard from the West and the South. They said the monopolistic practice and injustice imposed by railroads were hurting their lives. Specifically, they complained about irregular patterns of rates the railroads charged between places.<sup>11</sup> It was said that the railroads “have charged more for a carload from Frederick to the city of Baltimore, sixty miles, than they charged for the seven hundred miles from Chicago to Baltimore.”<sup>12</sup>

The seeming inactivity of Congress to deal with these “national” problems was causing considerable restlessness among the people who had to rely on the railroads for their lives. Especially the “unfair” rate structure for the “long and short haul” was drawing fire and the demand for action. The irregular fare pattern was considered unfair and thus un-American. As the cry for correction on national scale became louder every year, the issue was finally to enter into the political arena again in the eighties. And this time the problem was handled as a national problem from the beginning.<sup>13</sup> In other words, people and/or US Congress finally came to grips with the real nature of the problem. The new technological development called the railroad was not a regional problem, but an American problem .

### III

The year 1877 was a significant year for the Congress of the United States. This was a year when the ex-Confederate states were allowed to send their own representatives to Washington for the first time since the Civil War. Until then

the defeated south was not allowed to voice its opinions in the US Congress. In 1877, the Congress would bloom with fresh proposals and new ideas because of the many new faces with many new ideas. One of the new faces was John H. Reagan of Texas. This Texan would infuse a new life to the idea of national control of railroads in America. He brought with him an idea of strict national control of the railroads.

As Reagan assumed office in the House of Representatives, he introduced a bill titled "A Bill to Regulate Interstate Commerce and to Prohibit Unjust Discriminations by Common Carriers." In proposing this bill, he stated that "the monopolies and perpetuities are contrary to the genius of a free people, and cannot be allowed or maintained in this country."<sup>14</sup> This was the beginning of the heated congressional debates that culminated in the birth of the Interstate Commerce Act and the first regulatory agency of the United States government—the Interstate Commerce Commission (I. C. C.).

John H. Reagan was the chairman of the Texas State Democratic convention and was a leading figure in Texas politics. His influential power in his state was based on the fact that he was an important cabinet member of the Confederate government or the defeated Southern government. He was Postmaster General under President Davis of the Confederacy. His philosophy as a statesman also seemed to have come from his experiences during the Civil War. Before the war, he was a representative for the US House of Representatives but acted mainly as an agent for various interest groups in Texas. His concern was Texas, and Washington was a place to fetch something for his home state. But the war changed this selfish man.

As Confederate Postmaster, he realized in his early career that selfish thinking was not enough to cover the entire territory with an effective mail service. He found out the railroads were resisting Postmaster's requests to deliver mails for Confederate soldiers because that involved operating trains in dangerous war zones. The railroad companies had no reason to risk their men and equipment for the cause of the Confederacy. The Postmaster realized that a "national" approach was the only effective way to serve the public or satisfy the majority of people. Reagan once told President Davis that unless some system of effective railroad controls were introduced, the country let alone the mails, could not long be preserved in any degree of efficiency.<sup>15</sup>

Soon the task of attempting to discipline the railroads was given to Reagan. He called a conference of the railroad presidents only to discover that they



were not willing to cooperate at their loss. Even punitive actions by the Confederate government did not tame the railroads. On one hand, Reagan was plagued by complaints of soldiers who wanted to hear from their families but never received a letter. On the other hand, he met the refusals of the railroads to work for the "public service" by running trains in dangerous combat zones.<sup>16</sup> Through these experiences, he came to regard the railroad as a monopolistic corporation entirely devoid of reason, ready to mulct the government of huge sums without providing adequate service. When he was elected to the Forty-fourth Congress of the United States after the Civil War, he was ready to make railroad regulation his congressional career.<sup>17</sup>

His bill of 1877 in the US Congress contained prohibitions on rebates, pooling of cargoes by different railroads, and charging for greater distances than were traveled. Discriminatory practices between places and commodities were prescribed to be unlawful and railroads were required to post rate schedules publicly. The courts were to be authorized to enforce the act in response to private suits. The House was ready to accept the Reagan bill because of the public pressure for railroad regulation mentioned earlier. The bill was passed by the House with a decided majority. However, it was to be ignored by the Senate.

Undaunted by this first failure, Reagan was to propose similar bills at every occasion. The House which was controlled by Democrats usually backed the Reagan bill enthusiastically. Each time the Reagan bill was passed, it received increased majority support.<sup>18</sup> Indeed, the House was the hotbed for railroad regulation bills reflecting the American public mood at that time. During the period between 1868 to 1886, more than 150 bills and resolutions for railroad reform were introduced.<sup>19</sup> Riding on this House sentiment, Reagan, the specialist on railroad regulation, became an influential member of the House by 1886.

The Senate that had been ignoring this House move for railroad control was largely controlled by Republicans.<sup>20</sup> Constant stalemates between the two houses were common phenomena at the time. And the railroad regulation was one of the casualties of the battle. Observing this Congressional situation, a report by the State Grange of Illinois remarked:

This (Reagan) bill passed the House... but found its winding-sheet and

final resting-place in the Senate, where the railroad influence seemed to have concentrated its strength and fortified against the prayers and influence of an oppressed people.<sup>21</sup>

On this situation, Reagan could not agree more with the observations of the Illinois Grangers. He said:

It is well-known that measure has been opposed by the whole railroad power of the country. Its officers, its lobbyists have been always able to retard action on the bill....<sup>22</sup>

This might have been true but the railroads themselves were gradually changing their positions by 1885 as mentioned earlier. At least on the surface, they started to advocate national control of their business and stated that inactive government was a "despairing conclusion" for railroads.<sup>23</sup> An ex-railroad manager said that the national legislation "would prevent reckless competition between various roads and stop the craze for constructing useless lines."<sup>24</sup> *The Railway Review*, an industrial magazine, observed this change of railroad opinions in its editorial:

The leading railroad companies, which formerly opposed such an Act are now almost without an exception in its favor.<sup>25</sup>

Whatever the reason was, the railroads themselves were now pressing for the control. In response to these demands and popular agitation, the US Senate finally started to act. It took the course of proposing its own bill instead of accepting or modifying the House measure. One of the reasons for this Senatorial initiative was that the House bill with its stiff prohibition of certain railroad practices, was regarded as being too punitive to the industry. With this senatorial sentiment as a background, Senator Shelby Cullom from Illinois proposed the Senate bill for the railroad regulation. The legislation he proposed in 1885 stipulated control of the railroads by a national commission. This commission was to supervise all matters of railroad operations including extortion and un-

just discrimination. The commission he was proposing was supposed to be “softer” to the railroad industry than the U. S. court that was proposed in the Reagan bill. The court would always make indifferent decisions as to the industrial environment but the commission would be able to consider the circumstances the industry was in when it made decisions.

The Cullom bill met strong opposition in the Senate. Seeing this, Cullom’s friends advised him that he would ruin himself by advocating the proposal.<sup>26</sup> Bewildered by the strong opposition in the Senate, Cullom decided to listen to the advice of Senator William Allison of Iowa. The suggestion was to create a committee to investigate the matter and spend some time to calm down both sides—those who wanted the regulation and the ones who were against the regulation.<sup>27</sup> So he proposed to set up the Senate Select committee on Interstate Commerce to examine the railroad questions. This was adopted by the Senate. Three Republicans and two Democrats were nominated for the committee with Cullom as chairman of the committee.<sup>28</sup>

Senator Cullom’s state of Illinois was known for having the most miles of railroad track. This meant the railroad industry had the largest stake in the state of Illinois. It was also the state where Granger sentiment was particularly strong. After all, the state was a major grain production center in America. Cullom, as a successful politician, had to swim between these two different currents in his home state. When he was a governor of Illinois, he created the Railroad and Warehouse Commission to regulate railroads. His political style was close to a grass-roots approach. His oration was that of a radical Republican. Yet he was never a Granger himself. As a one time businessman, he essentially believed in the rights of property. His biographer, James Neilson, states, “It was in his attempts to rationalize the position of the agricultural West in the Republican fold that Cullom achieved most.”<sup>29</sup> It was this art of balancing the forces of opposing interests that he set out to achieve when he proposed the committee.

As he started to study about railroads as a Senator, he soon was persuaded by railroad representatives that the nature of railroad investment was drastically different from investment in other businesses. Once equipment and facilities were laid down, he was told, it was virtually impossible for railroad investors to liquidate them and move to other more prosperous businesses. He was told of the disastrous nature of competition between the railroads. Through this study, he came to the conclusion that a company was entitled to earn a just compensation for investments. In this regard, some discrimination was con-

sidered to be inevitable and legitimate.<sup>30</sup>

When his committee finally came up with the draft for the bill, Cullom paid special attention to the railroad claims and even “feared the existence of some absurdities, which the railroads could not possibly comply with.” He then met with Albert Fink and other influential railroad leaders to examine the draft “section by section, paragraph by paragraph.” He was ready to change any impractical part of the draft as a result of this meeting.<sup>31</sup> Senator Cullom, the realist, theorized that it was well to begin the regulation of interstate commerce with very conservative legislation which could not possibly harm the railroads or other business interests of the nation.<sup>32</sup>

In February 1886, Cullom introduced his bill in the Senate. This was his second trial to persuade the Senate to adopt the railroad regulations. The measure attempted to prohibit special rates, rebates, or other devices of discrimination.<sup>33</sup> The prohibition of long and short haul practice or long distance discount, despite the strong public sentiment, was made vague in the bill. Cullom defended it by saying, “every portion of this country... is alike interested in having the products of different sections of the country moved long distances at cheap rates.”<sup>34</sup> The bill also proposed to create the Interstate Commerce Commission to administer the regulations. In case some violation was found, the Commission was to “notify the carrier to desist from further violation.”<sup>35</sup> Cullom thought the Commission could act as a board of arbitration to settle differences of opinion.

Following the presentation of the Cullom bill on the Senate floor, all shades of opinion were raised and the Senate became entangled with various threads of interests. Often an entire day was spent in discussing some minor point of wording. Senator William B. Wilson of Iowa represented the sentiment of the Granger Movement. He and his followers advocated stringent railway legislation in the name of the American people. He once remarked:

It [the railroad] had assaulted all of the doctrines of our long established law relative to the duties and responsibilities of common carriers. It had asserted a masterful control of the doctrine of equal rights, and established in its stead a practice of discrimination that at least shocked the people's sense of justice and fair play.<sup>36</sup>

Supporting Wilson's view was Senator James Beck of Kentucky who said:

The bale of cotton shipped by the humblest negro, or the can of oil he had purchased to light his humble home, should be transported over the public railroad highways on precisely the same terms that Mr. Vanderbilt, Mr. Gould, or the Standard Oil Company could have it hauled for.<sup>37</sup>

On the other side, Senator Orville Platt of Connecticut represented the so-called "railroad Congressmen." They did not oppose the bill itself but defended most of the existing practices of the railroads. Platt made a typical comment which was representative of this group of senators. He said:

It [the railroad] is partly private business and partly public business. I think we should refrain as far as possible from legislating to effect purely private business in this country. But... when the railroad undertakes to discharge a public duty as well as to conduct its private business, it is eminently proper and necessary that there should be legislation... It should be the enforcement of the common law—that, and nothing more.<sup>38</sup>

Besides these statements by the advocate of two positions, what made the senatorial discussions complicated was the opinions that represented regional interests. Senators from the areas near big market places flocked together and opposed the arguments of the senators from the West. For instance, the long and short haul clause of the Cullom bill caused an intense fight. If interpreted strictly, the clause meant that the grain growers in the far west might lose their competitive edge against the "near-western" farmers over the transportation cost because they will not receive long distance discount. If the railroad charges were based on the mileage the cargo had to travel, farmers in Maryland would be able to ship their grain to New York or Baltimore far cheaper than the farmers in Minnesota. On the other hand, if the practice of charging less for long distance freight than short haul freight were allowed to exist, farmers near the consumption centers would lose their battle against volume producers of the "grain belt." Thus, the question was of vital concern to farmers. William Hepburn, senator from Iowa, said, "No other bill within my knowledge is re-

garded of more importance, at least in the section of country where I reside."<sup>39</sup>  
Senator Johnson N. Camden of West Virginia had a different opinion:

Why do the people of the extreme Western States ask to get their products to market cheaper than the people residing in the Middle States, cultivating land costing twice as much as the lands in the West; and why will the people in the East be benefited by having the States occupying an intermediate position charged twice as much for getting to market as for getting the products of the West to the Market ?<sup>40</sup>

Senators Isham Harris of Tennessee, Arthur Gorman of Maryland, Owen Conger of Michigan, and Zebulon Vance of North Carolina reflected the same sentiment in their speeches. Gorman complained that lumber could be brought from the forests of Michigan cheaper than one could move it from Wheeling to Baltimore.<sup>41</sup> Conger of Michigan, whose people had a close market of Chicago, declared:

I cannot understand, and I say the plain farmers of Michigan and the miller of Michigan cannot understand these fine-spun notions that arise in the Eastern school and that arise in the Western school. They do not know... why there should be twenty-five cents more charge on a barrel of flour when they are a hundred miles nearer to market.<sup>42</sup>

These remarks by mid-westerners were regarded by their opponents as an attempt to secure a boon for shippers and farmers of the states near big markets. They were interpreted as an effort to damage the interests of the West.<sup>43</sup> Therefore, opposite opinions were raised with equal enthusiasm. Senator John J. Ingalls of Kansas, for instance, said:

Because one man lives a thousand miles away from market and another man lives ten miles away from market, why should the remote producer be compelled to have the entire value of his production consumed in getting into market ?<sup>44</sup>

This group of senators maintained that the “seemingly distorted” method of railroad charging was necessary to annihilate distance which was forced upon men by nature.<sup>45</sup>

In spite of these differences of opinion, efforts by Cullom to make some agreeable compromise was under progress. Finally, the bill with some amendments, passed the Senate on May 12, 1886 with forty-seven yeas and four nays. No doubt many of the senators had no stomach for the bill, yet the public cry for railroad regulation was so loud that they feared to have their names recorded against it.<sup>46</sup>

#### IV

Until the Spring of 1886, the Senate had been flatly denying the House bills for railroad control. Now the story was different. The Senate was thrusting forward its own version of railroad regulation. And the House which had been told “no” for the last 150 times on the subject was not ready to admit the Senate bill. When the Cullom bill reached the House floor, the House inserted its own Reagan bill as a substitute. A deadlock between the two houses was a matter of course.<sup>47</sup> The House, as we have seen already, was not against railroad regulation per se. It was rather an eager advocate of regulation. So the House members saw a chance rather than a funeral for their bill. The passage of the Cullom bill was at least an indication of senatorial willingness to take the matter into consideration. It was an improvement over the flat denials of the past. John Reagan and his supporters started to move behind the scenes.

In July 1886, it was agreed between the two houses to set up a joint conference to discuss the problems of the two different bills. When conferees were nominated by both houses, Reagan became the head of the House delegates and Cullom for the Senate representatives. The ensuing conference, it turned out, was a difficult and turbulent one. Both sides would not yield to the other on major points. A New York paper reported on the conference scene:

There was a lively moment at the meeting of the conference committee on the interstate commerce bill today, which for a time made it look as if the struggle over the two bills under consideration would end in a high old row....<sup>48</sup>

Through the many days of conference, Reagan fought doggedly and patiently. The general belief was that Reagan would not yield. Indeed his entire political career was devoted to the passage of the bill and it would have been a defeat for him if he had to sacrifice his principles. While he was engaged in this struggle, he received an attractive offer to run for the office of Governor of Texas. He declined to accept the offer because, he said, "he had introduced a bill and was committed to pass the bill." Reagan declares in his autobiography:

I deemed it so important to the interest of the whole country that I would rather succeed in securing its[railroad regulation] passage than have any office in the gift of the people; that I did not know who would succeed me in advocating the bill; for these reasons I declined the nomination which was equal to election.<sup>49</sup>

The major points of dispute at the conference were: the creation of the commission, long and short haul provisions, and prohibition of pooling practice. Especially, the commission issue was the hardest one on which to find a compromise. The Senate bill provided for a commission to be appointed by the President. The commission was then to administer the regulations and settle disputes between various parties. Reagan pointed out that the commission could not be made to work with justice either to the railroads or the public. The "disastrous consequences of its mistakes, and the dangers and temptations incident to the position of its members" were emphasized by the Texan.<sup>50</sup> Instead, he would rather rely on the existing court system to solve any disputes. To Reagan, the courts seemed more immune to external pressures than the appointed commission.

Another point of dispute, the long and short haul provision, also seemed to reach nowhere. To Reagan the Senate version was vague enough to permit conventional railroad practices. He said, "the fourth section of the Senate bill



[that stipulates on long and short haul] ... is simply meaningless.”<sup>51</sup> On the issue of pooling, Reagan showed his tenacious character. The pooling of cargoes and revenues among railroads was widely practiced and was regarded as a vital system for the health of the railroads. The Cullom bill, understanding this business need to keep the practice, did not even mention pooling. To Reagan, the story was different. For him, pooling “in principle, has been forbidden by the common law for six hundred years and more.” To permit pooling would be “the creation of one vast and overpowering monopoly out of the many.” And such a course would “enable railroads to control the transportation and commerce of the country and soon perhaps to control the legislation of the country and become the masters of the people and their liberties.”<sup>52</sup> For Reagan this was the last provision to give up in the course of the negotiation. Thus, the joint conference reached no conclusion during the remaining period of the first session of the Forty-ninth Congress.<sup>53</sup>

While the Congress was still in recess and efforts to reach a compromise seemed to be going nowhere, the Supreme Court declared that only Congress had power to regulate interstate commerce. In October 1886, in judging the so-called “Wabash Case,” the Supreme Court held invalid the statute of the state of Illinois so far as it attempted to regulate interstate commerce. The court said such power to regulate the interstate shipment was exclusively confined to US Congress. Due to this decision, the great proportion of the rail traffic which was formerly regulated by state laws was now left without regulation.<sup>54</sup> This decision was an added incentive for the passage of federal regulations. The press, chamber of commerce, and citizens in general, loudly and insistently demanded action.

Seeing these developments, Senator Allison again advised Cullom to yield. He said to Cullom that the country demanded a bill, and he had better accept Reagan’s anti-pooling provision.<sup>55</sup> Reagan, on the other hand, was also willing to compromise. He would accept the creation of the Interstate Commerce Commission (I. C. C.) and would not oppose vague expressions on long and short haul provisions. The law, both sides came to see, would be a tentative one permitting later amendments. Finally, a compromise was reached, and the conference report in the shape of a complete bill was submitted to both houses in December 1886.<sup>56</sup> To the surprise of many people, Reagan had given up all of his plans except the anti-pooling clause. It was a basic victory for Cullom.

The bill had to go through scrutiny again by the Senate and House of repre-

sentatives. The old arguments against railroad regulation developed in the Senate.<sup>57</sup> Yet, with the persuasion of Cullom, the Senate adopted the bill on January 14, 1887 by a vote of 43 to 15. The House passed it on January 21 by a vote of 219 to 41. Senator Johnson of New York, in summing up the nature of the bill, stated: "This is a bill that practically no one wants and yet everybody will vote for. Practically no one is satisfied with it and yet they are all ready to accept it."<sup>58</sup> President Cleveland signed it into law on February 4, 1887.<sup>59</sup>

The Act broadly required that all charges must be just and reasonable (Section 1). Discrimination between persons and places was prohibited. Rebating was regarded as an indirect discrimination of rates (Section 2). To insure fair treatment, "unreasonable preference" was again prohibited (Section 3). On the matter of long and short haul, the act stipulated that it was unlawful for a common carrier to charge any greater amount "under substantially similar circumstances." A relief clause was added to permit a common carrier to apply for exemption in cases of hardship (Section 4). Reagan's plan for the prohibition of pooling was also incorporated (Section 5).<sup>60</sup> To prohibit any secret dealings, publication of rates became mandatory under this law (Section 6), and the creation of the I. C. C. was provided.

On March 22, 1887, President Cleveland nominated three Democrats and two Republicans to the Interstate Commerce Commission as commissioners. The chairman of the Commission was a conservative railroad lawyer, Thomas Cooley. To him the reform drive of railways represented a "hostility to railroad management (which) tends also, in some degree, to strengthen a troublesome, if not dangerous, feeling of antagonism to acquired wealth."<sup>61</sup> He was also a receiver of the Wabash Case of 1886. The Cleveland appointment was generally well supported on Wall Street. Albert Fink, the railroad tycoon, said, "It is a thoroughly honest board." Jay Gould, another railroad owner, was reported to have said that the Commission was admirably chosen. He was particularly pleased by the nomination of Cooley.<sup>62</sup>

On April 2, as if to prove the point of Reagan's worry, the Southern Railway and Steamship Association submitted a petition to suspend the long and short haul clause of the act. In its letter to the I. C. C., the association said that the suspension would give "instant relief to the commerce of the country" and that the Commission "would relieve itself of immediate complications." Four days later on April 6, the Commission gave its first sign of weakness. It gave orders to suspend the long and short haul clause. In the following years the Commis-

sion investigated complaints, made rulings on safety, and brought railroad practices to the public's attention. Yet the activities were marked by futility. The Supreme Court struck down almost all of its rulings as unconstitutional. In the first nine years, the orders of the Commission were held invalid in thirty-four cases with six sustained.<sup>63</sup>

John Reagan, who devoted his entire congressional career to railroad regulation, was bitterly disappointed by the outcome. His plan for strict national control of the railroads for public service was by now totally dispersed in the jumble of compromises and political calculations. The I. C. C. was bending to the pressure of business. Dismayed, this ex-Confederate cabinet member decided to return to his home territory and fulfill his old dreams on a smaller scale. He resigned his seat in the U. S. Congress in June 1891 to become chairman of the Texas Railroad Commission. In this capacity, he prescribed strict control of railroads in the State of Texas, something he had not been able to do on a national scale. Even the railroad rates were fixed in Texas. He was to remain in that position eleven and a half years until his retirement.<sup>64</sup>

Though Reagan was disillusioned by the outcome of his efforts, the Interstate Commerce Act marked a shift in railroad policy in America. Until then, the popular demand and government aim had been promotion of the railway. But in 1887, restraint of the railroad was initiated.<sup>65</sup> This change of American attitude was brought due to the social and economic changes in the late nineteenth century. The development of the West, increase in interstate commerce, rapid industrialization, the nationalizing trend in the late nineteenth century—all these forces made the conventional common law approach to railroad problems impractical. Indeed, the Act of 1887 was an answer to the new social needs by departing from the old way of interpreting the commerce clause. The Cullom committee realized this and stated in its report:

In undertaking the regulation of interstate commerce, Congress is entering upon a new and untried field....and human wisdom is incapable of accurately forecasting its effect upon the vast and varied interests to be affected....<sup>66</sup>

Indeed, human wisdom at that time was incapable of forecasting the effect of the piece of legislation that took place at the turn of the century. The change of

American attitude toward industry was to bring unimaginable changes to social and political scenes in ensuing America. Based on this Interstate Commerce Act which reflected the change of American attitude, Theodore Roosevelt stepped further into the “new and untried” field to regulate all kind of industry. Roosevelt administration was to regulate not only railroads but meat packers, insurance companies, and drug manufacturers. The trust-busting or strict regulation of industries in the name of public interest became the hallmark of the Progressive Era. Reflecting the social mood, the Hepburn Act strengthened the power of the Interstate Commerce Commission further.<sup>67</sup>

The Progressive Era was to be followed after a decade of interval by New Deal policies. The New Deal under President Franklin Roosevelt also was to incorporate strong measures to regulate industries to protect nation’s economy. Similar ideas were again to be implemented by Kennedy/Johnson administration in the 1960’. Rather than promoting industrial development, President Johnson, who was a devout New Dealer, tried to regulate industrial activities to protect the poor and the handicapped.

The Interstate Commerce Act gave precedence to all of these attempted control of industry by the U.S. government. Thus, the process of public regulation by the central government started by Collum and Reagan in the late nineteenth century expanded beyond their imagination. We can safely state that the idea of using federal government to match the powers of industry in protecting public interest became a dominant current in the twentieth-century America. Probably the word “control by the federal government” is a key expression in understanding the twentieth century. In other words, shedding the old notion of wild individualism of the nineteenth-century America, the twentieth-century America incorporated a mixture of *laissez-faire* and social control. And this process started at the other turn of the other century, as we have seen, by a handful enthusiasts and a large number of American farmers.

## NOTES

This is a revised version of the original article published in *Jochidaigaku Gaikokugogakubu Kiyo*, Vol. 14, 1980 (Tokyo, Sohia University.)

- 1 The new interpretation of the Fourteenth Amendment to include corporations as well as individuals for the protection of property rights under law was another significant interpretation of the Constitution in this period. If the Interstate Commerce Act gave extraordinary power of regulation to the government, the new

interpretation of the Fourteenth Amendment gave corporation a strong shield from that government power to regulate. Those two extraordinary interpretations were considered to be necessary to balance the countervailing interests.

- 2 Cullom himself regarded the Interstate Commerce Act as his most significant achievement in Congress. See Shelby M. Cullom, *Fifty Years of Public Service*, (Chicago, 1911) pp. 314-320
- 3 For detailed story of John H. Reagan, see "John H. Reagan's Odyssey—A Texas Congressman's Experiences through the Civil war," *Jochi Daigaku Gaikokugogakubu Ktyo* Vol. 11, 1976 (TOKYO, 1976) p. 121
- 4 Lewis H. Haney, *A Congressional History of Railroads*, Vol. II, (Madison, 1910) p.242
- 5 U. S. Senate, *Report of Select Committee on Transportation*, Senate Report No. 307, 43rd Congress, 1st sess., 1875. This report charged railroads with extravagance, stockwatering, inflation, dishonesties, and high rates.
- 6 *New York Times*, January 19, 1886, p. 3
- 7 James W. Neilson, *Shelby M. Cullom: Prairie State Republican*, (Urbana, 1962) p. 87
- 8 Clyde F. Aitchson, *The Evolution of the Interstate Commerce Act: 1887-1937*, (Washington, D. C., 1937) p. 292
- 9 U. S. Senate, *Report of the Select Committee on Interstate Commerce*, Senate Report No. 46 (The Cullom Report), 49th Congress, 1st sess., 1886, pp. 161, 162, 292
- 10 Some of the pressure groups engaged in lobbying were; Interstate Commerce Law Conventions (Shippers), National Board of Trade, National Business League, U. S. Chamber of Commerce, and Farm Commodity Organization.
- 11 J. F. Huson, *The Railways and the Republic*, (New York, 1886), p. 56 1
- 12 U. S. Senate, Remarks by Senator Arthur Gorman, April 27, 1886, *Congressional Record*, Vol. XVII, p. 3871
- 13 William S. Larrabee, *The Railroad Question*, (New York, 1893), p. 353
- 14 John H. Reagan, *Memoirs*, (New York, 1906), p. 243
- 15 In the North, the initial question of railroad control was also raised in connection to postal service. During the war, the Union side passed a law to allow the President to take over railways if necessary. But Lincoln never exercised this power.
- 16 Catherine C. William, "The Post Office Department of the Confederate States of America," (unpublished M. A. dissertation, Georgetown University, 1957), pp. 82-83, 95, 163
- 17 John Reagan, *Memoir*, p. 241
- 18 *Congressional Record*, Vol. XVII, p. 7297
- 19 The Bureau of Statistics, L. C. C. Activities; 1887-1937, (Government Printing Office, 1937), p. 29
- 20 Between 1874 to 1894, Democrats controlled the House in eight out of ten congresses. During the same period, Republicans controlled the Senate seven times.
- 21 *Report of the State Grange of Illinois*, January, 1886, cited in *Congressional Record*, Vol. XVII, p. 7298
- 22 U. S. House, Remarks by 3. Reagan, *Congressional Record*, Vol. XVII, p. 7856
- 23 Albert Fink, *Commercial and Financial Chronicle*, Vol. XLI, (July, 4, 1885), p. 7
- 24 *Chicago Tribune*, December 17, 1886, cited in *Congressional Record*, Vol. XVIII, p.309
- 25 W. P. Shinn, "Relations of Railways to the State," *The Railway Review*, (March, 1886), p. 14
- 26 *Congressional Record*, Vol. XVII, pp. 52758
- 27 Shelby Cullom, *Fifty Years*, p. 314

## Congressional Struggle for the First American Regulatory Agency

- 28 The members of the committee were; Warner Miller of New York, Orville Platt of Connecticut, Arthur Gotman of Maryland, Isham Harris of Tennessee, and Cullom. *Congressional Record*, Vol. XVII, pp. 72, 84
- 29 J. Neilson, *Cullom: Prairie State Republican*, pp. V, 37
- 30 U. S. Senate, *The Cullom Report*, pp. 43, 183, 183
- 31 S. Cullom, *Fifty Years*, p. 318
- 32 J. Neilson, *Cullom: Prairie State Republican*, p. 94
- 33 *Congressional Record*, Vol. XVII, pp. 1464, 3472
- 34 *ibid.*, p. 3867
- 35 *ibid.*, p. 3474
- 36 *Congressional Record*, Vol. XVIII, pp. 308, 309
- 37 *ibid.*, p.484
- 38 *ibid.*, p. 365
- 39 *Congressional Record*, Vol. XVII, Appendix, p. 455
- 40 *ibid.*, p. 3867
- 41 *ibid.*, p. 3871
- 42 *ibid.*, p. 3877
- 43 *New York Times*, May 13, 1886, p. 1
- 44 *Congressional Record*, Vol. XVII, p. 4227
- 45 *ibid.*, p. 3867
- 46 *New York Times*, May 6, 1886, p. 5
- 47 *Congressional Record*, Vol. XVII, p. 7753, 7756
- 48 *The New York World*, December 4, 1886 cited in *Congressional Record*, Vol. XVIII, p. 70
- 49 J. Reagan, *Memoir*, p. 246
- 50 *Congressional Record*, Vol. XVII, pp. 4309, 7283, 7298
- 51 *ibid.*, pp. 7280, 7281 Cullom bill was obscure about the originating point of the traffic flow and that made liberal interpretation of the clause possible.
- 52 *ibid.*, pp. 7281, 7298
- 53 *Congressional Record*, Vol. XVIII, p. 633
- 54 *New York Times*, October 26, 1886, p. 3
- 55 Cullom, *Fifty Years*, p. 322
- 56 *Congressional Record*, Vol. XVIII, p. 1886
- 57 *New York Times*, January 14, 1887, p.1, also Jan. 15, p. 1 and J. Hancy, *A Congressional History of Railroads*, p. 301
- 58 *Congressional Record*, Vol. XVIII, p. 881
- 59 *ibid.*, p. 844
- 60 This section was later modified by the Transportation Act of 1920 to allow voluntary pools for railroad efficiency and economy.
- 61 U. S. Senate, *The Cullom Report*, Appendix pp. 8-9
- 62 *New York Times*, March 24, 1887, p. 1
- 63 *I. O. C. General File*, #241, Section 8, National Archive Collections, Washington, D.C.

- 64 J. Reagan, *Memoir*, p. 249
- 65 Lee Benson, *Merchants, Farmers, and Railroads*, (Cambridge, 1955), pp. 204-206
- 66 U.S.Senate, *The Cullom Report*, p. 214
- 67 Samuel Hayes, *The Response to Industrialism; 1885-1914*, (Chicago, 1957), p. 145 Other amendatory acts that followed were the Mann-Elkins Act, the Transportation Act of 1920, the Emergency Railroad Transportation Act of 1933, and the Motor Carrier Act of 1935.

## SOURCES

### Government Printings

- U. S. Senate, *Report of the Select Committee on Transportation Routes to the Seaboard*, (The Windom Report), Senate Report , No. 307 (S. N. 1588 and 1589), 43rd Cong., 1st. sess. (Government Printing Office, 1875).
- U. S. Senate, *Report of the Senate Select Committee on Interstate Commerce*, Senate Report No. 46, (The Cullom Report), (S. N. 2356, 2357), 49th Cong., 1st. sess. U. S. Congress, *Congressional Records*, Vol. XVII and XVIII Jan. 1885-May 1887 (GPO 1887).
- Interstate Commerce Commission, *Annual Reports, 1887-1894*, (GPO)

### Papers and Biographies

- Cullom, Shelby M., *Fifty Years of Public Service*, (Chicago, Ill., 1911).
- Neilson, James W., *Shelby Cullom: Prairie State Republican*, (Urbana, Ill., 1962).
- Reagan, John H., *Memoirs*, with special reference to secession and the Civil War, (New York, N. Y., 1906).
- Williams, Catherine C., "The Post Office Department of The Confederate States of America," (unpublished M. A. thesis, Georgetown University, Washington, D. C. June, 1957).

### Periodicals

- New York Times*, 1885-1889.
- Commercial and Financial Chronicle*, 1885-1894.
- Railway Review*, 1886.
- Political Science Quarterly*, Sept., 1887, Vol. II, for E. R. A. Seligman, "Railway Tariffs and I. C. Law," p. 393.
- Michigan Law Journal*, V. 373?78, Dec., 1896, for George A. Katzenberger, "A Brief Outline of the Life and Works of Judge Cooley," p. 78.

### Publications

- Aitchson, Clyde B., *The Evolution of the Interstate Commerce Act: 1887-1397*, (Washington, D. C. 1937).
- Auerback, Carl A. & Nathanson Nathaniel, *The Federal Regulation of Transportation*, (New York, N.Y., 1953).
- Benson, Lec, *Merchants, Farmers, and Railroads*, (Cambridge, Mass, 1955).
- Bernhardt, Joshua, *The I. C. C.—Its History, Activities and Organization*, (Washington, D. C., 1923).
- Cochran, Thomas C., *Railroad Leaders, 1845-1890*, (Cambridge, Mass, 1953).
- Friedlander, Ann F., *The Dilemma of Freight Transport Regulation*, (Washington, D. C., 1969).
- Haney, Lewis Henry, *A Congressional History of Railways*, vol. I, II, (Madison, Wisc., 1908, 1910).
- Hudson, James F. *The Railways and the Republic*, (New York, N. Y., 1886).
- I. C. C., *Railways in the U. S. in 1902*

## Congressional Struggle for the First American Regulatory Agency

- Kirkland, Edward Chase, *Men, Cities, and Transportation: A History of New England, 1820-1900*, (Cambridge, Mass, 1948). *Industry Comes of Age: Business, Labor and Public Policy, 1860-1897*, (New York, N. Y., 1961).
- Kolko, Gabriel, *Railroads and Regulation, 1877-1916*, (Princeton, N. J., 1965).
- Miller, Clearance Altha, *The Lives of The Interstate Commerce Commissioners and The Commission's Secretaries*, (Washington, D. C. 1946).
- Mosher, William, *Public Utility Regulation*, (New York, N. Y., 1933).
- Paine, Arthur E., *The Granger Movement in Illinois*, (Urbana, Ill., 1904).
- The Bureau of Statistics, *I. C. C. Activities: 1887-1937*, (GPO, 1937).
- Rothman, David, *Politics and Power: The U. S. Senate 1869-1901*, (Cambridge, Mass, 1966).
- Sharfman, I. L., *The Interstate Commerce Commission*, 5 Vols. (New York, N.Y. 1931-1937).
- Taylor, George & Neu, Trene, *The American Railroad Network, 1861-1890*, (Cambridge, Mass., 1956).