

THE TRANS-MISSOURI CASE: DOES THE SHERMAN ACT APPLY TO THE RAILROADS?

Michael Landry
Northeastern State University

Richard D. Stone
Shippensburg University

ABSTRACT

In 1887, in answer to railroad abuses of monopoly power, Congress passed the Interstate Commerce Act, which created the Interstate Commerce Commission (ICC). In the next decade the Commission's powers were considerably diminished by a series of Supreme Court decisions in cases in which the railroads appealed ICC rulings. In only one case during this period, the *United States v. Trans-Missouri Freight Association*, did the Court uphold an ICC decision. This case was primarily about collaborative ratemaking in rate bureaus but covered several larger issues, especially the possibly conflicting jurisdictions of the Sherman Act and the Interstate Commerce Act.

Introduction

In the late 19th century American railroads revolutionized commerce by opening new markets and allowing for expanded personal mobility. Advances in the new transportation mode coincided with those in communications like the telegraph and the telephone, and with other innovations stemming from electricity. Also, there were improved methods of steel making, and applications of new business ideas revolving around mass markets. It was an era of bigness—large railroads, giant steel mills and meatpacking plants, and ruthless monopolistic predators like Standard Oil.

During that time, the federal government felt compelled to offset the growing power concentrated in these large business organizations. It did so in two pieces of legislation: the Interstate Commerce Act (ICA) of 1887 with its attendant Interstate Commerce Commission (ICC), and the Sherman Antitrust Act of 1890.

The purpose of this paper is to examine the role of one of the 1890s' critical U. S. Supreme Court cases vis-à-vis the ICC, *United States v. Trans-Missouri Freight Association*.¹ This case is important because it is part of a string of Supreme Court decisions attempting to flesh out the purpose of the ICC. In addition, *Trans-Missouri* depicts the Court wrestling in a single case with the ramifications of the two then-recent landmark pieces of legislation, the ICA and Sherman.

Early Railroad Regulation

The Interstate Commerce Act of 1887 heralded the birth of the Interstate Commerce Commission, America's first regulatory agency. A new form of American government entity, the ICC combined aspects of the legislative, executive, and judicial branches of government but not being part of any of them. Its unprecedented stature meant its early years were spent in attempts to identify and clarify its role. The arena for these efforts was the United States Supreme Court, where challenges to the Commission's authority, the understanding of its functions, and its place in government efforts to regulate expanding commercial enterprise took place through much of the 1890s. The fledgling ICC did not fare well in the Supreme Court. In fact, before reinvigoration by the first Roosevelt administration after the turn of the century, the ICC was essentially rendered a toothless tiger. It did little more than conduct investigations and collect statistics² and administer the federal Safety Appliance Act

The concept of common carriage, borrowed from the English legal system, defined the common carrier as a business operating as a regular transportation entity. Common carriage was deemed to be infected with the public interest and was, therefore, subject to special regulation.⁴ In America, state regulation of railroads dated almost to the industry's beginnings. As early as 1832, Connecticut had a state commission designed to ensure that the railroads complied with their charters. In 1844, New Hampshire established a safety inspection commission, and Rhode Island organized a commission to prevent rate and service discrimination.⁵

By the 1860s, the Midwest had strong railroad commissions backed by small town merchants who favored antimonopoly, and anti-discriminatory legislation. In the 1870s, mid-western farmers joined the merchants, seeking the benefits of cheap transportation that they claimed they were being denied. The rural and small town influences resulted in Illinois' regulation of railroad rates by 1871, which the railroads challenged in Illinois. Similar laws were challenged in Iowa, and in the federal courts.⁶ Later that decade, the United States Supreme Court said that states could regulate interstate commerce until Congress chose to do so through its exercise of the interstate commerce clause of the Constitution.^{7,8} And in the landmark *Munn v. Illinois*,⁹ the Supreme Court declared that railroads were "engaged in a public employment affecting the public interest," and could only charge "reasonable" rates.¹⁰ In lieu of state legislation, courts could determine the reasonableness of rates, and in the absence of federal law, state legislatures would determine interstate rates.¹¹

Because of that fragmented authority resulting from the Court decisions, railroad rates remained convoluted. State-decreed rates were often contradictory and railroads attempted to regain lost local revenue by charging higher rates on through freight.¹² Victory for those favoring state regulation was short-lived, as the Court reversed itself in 1886, limiting state regulation to intrastate commerce¹³ (*Wabash, St. Louis and Pacific Railway Company v. Illinois*¹⁴).

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The Interstate Commerce Act

Historians differ over the specific political influence that drove passage of the first federal law to regulate interstate business. However, it is evident that advocates of the law included agricultural, merchant, and industrial interests, and even railroads tired of cutthroat competition.¹⁵ After two years of deliberation, the U. S. House and Senate agreed on a compromise Interstate Commerce Act which was signed into law on February 4, 1887, by President Grover Cleveland.¹⁶ The primary purposes of the act were the establishment of reasonable rates and the prevention of discriminatory practices.¹⁷

Provisions of the law were as follows:

- 1) Prohibition of unreasonable charges.
- 2) Prohibition of unjust personal discriminations.
- 3) Prohibition of unreasonable discriminations between geographic locations and different types of traffic.
- 4) Prohibition of discrimination between long-haul and short-haul rates (although the ICC could suspend this provision in certain cases).
- 5) Prohibition of railroad pooling of freights or earnings.
- 6) Advance publication and filing of rates with the ICC.
- 7) Prohibition against interruption of freight shipments (to convert an interstate shipment into two or more intrastate shipments in order to circumvent the law).
- 8) Penalties for violation, including fines and/or imprisonment.
- 9) Establishment of the ICC, consisting of five Presidential appointees¹⁸

The powers which Congress granted the ICC were for the most part modeled after the state commission of Illinois, with the exception that the ICC did not possess the power to set maximum rates. Congress granted the ICC full investigatory powers, including the ability to demand that carriers produce books, papers, and testimony. In addition to being empowered to require the discontinuance of acts that were in violation of the Interstate Commerce Act, the ICC was also able to award damages to those suffering as a result of the illegal actions. ICC orders were not of themselves binding, as they required enforcement through appeal to a U. S. Circuit Court, which was to accept ICC findings of fact as *prima facie* evidence. In practice, however, courts allowed defendants to introduce new evidence not acted upon by the ICC. As a result, defendants were inclined not to fully answer charges before the commission, instead waiting until the issue was in court.¹⁹

Early Judicial Battles Involving the ICC

Within a few years, the power of both the new Interstate Commerce Commission and the state railroad commissions rapidly began to erode. In 1890, the U. S. Supreme Court declared that railroad rate setting was a judicial matter and that attempts by the

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Minnesota railroad commission to set rates was a violation of the due process clause of the Fourteenth Amendment. The inability of the ICC to enforce its rules without judicial action had led to its embarrassment in 1888 in *Kentucky and Indiana Bridge Co. v. Louisville and Nashville Railroad Co.*²⁰ In that case, the court upheld the idea that an appeal from the ICC was *de novo*, meaning new facts could be presented on appeal. Subsequently, many ICC orders were reversed in court after all facts were presented. Also, ICC fact-finding ability was limited because in the 1893 case of *Counselman v. Hitchcock* the Supreme Court ruled witnesses must have absolute, not just criminal, immunity from self-incrimination.²¹ As a result, Congress amended the Interstate Commerce Act and in 1896 the Supreme Court allowed compelled testimony in *Brown v. Walker*.^{22,23}

Also in 1896 the Supreme Court further undercut ICC authority in the "Social Circle Case"²⁴ which involved rates to Social Circle, Georgia. In the case, the Supreme Court questioned the commission's authority to set rates. As a result, railroads filed lawsuits challenging ICC rate-making power and won in the lower courts.²⁵ In the "Maximum Freight Rate" decision of 1897 (*Interstate Commerce Commission v. Cincinnati, N.O. & T.P.R. Co.*)²⁶ the Supreme Court declared that Congress had not given any rate-setting power to the ICC.²⁷ In 1897, the ICC also experienced a defeat in *Interstate Commerce Commission v. Alabama Midland Ry. Co.*²⁸ In this case, the Supreme Court essentially gutted Section Four of the Interstate Commerce Act, which prohibited long and short-haul discrimination.²⁹

There was, however, one major case that the ICC brought before the Supreme Court in which it prevailed. This was *United States v. Trans-Missouri Freight Association*, usually referred to as the Trans-Missouri Case.

The Trans-Missouri Freight Association

In an effort to reduce rate competition and to shore up prices, railroads had formed cartels known as pools. For example, in a freight pool, a particular railroad might keep half its freight revenue and divide the rest among its partners in the pool.³⁰ The Interstate Commerce Act provision outlawing pooling greatly increased competition among railroads.³¹

Barred from pooling agreements, railroads tried another tack—freight associations or traffic bureaus. In March, 1889, western railroads formed the Trans-Missouri Freight Association. It was for the purpose of fixing prices, or as subsequently described by the Supreme Court, "for the purpose of mutual protection by establishing and maintaining reasonable rates, rules, and regulations on all freight traffic, both through and local..."³² The rates, as required by the Interstate Commerce Act were approved by the ICC.³³ The association went into effect on April 1, 1889, less than a year and a half before passage of the Sherman Antitrust Act on July 2, 1890.³⁴

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United States V. Trans-Missouri Freight Association

On January 6, 1892, naming 18 railroads as defendants, the federal government filed a complaint against the Trans-Missouri Freight Association in the U. S. circuit court for the district of Kansas.³⁵ The circuit court dismissed the government's bill,³⁶ a decision upheld in October 1893, by the U. S. Circuit Court of Appeals for the Eighth Circuit.³⁷ The federal government then appealed to the U. S. Supreme Court.³⁸

On October 24, 1898,³⁹ the U. S. Supreme Court found the railroads were engaged in restraint of trade in violation of the Sherman Antitrust Act. The vote was 5-4, with those in favor including Chief Justice Melville Fuller, and Justices John Harlan, David Brewer, Henry Billings Brown, and Rufus Peckham. Dissenting were Justices Stephen Field, Horace Gray, George Shiras, Jr., and Edward White.⁴⁰ Justice Peckham wrote the majority opinion, Justice White the dissent. Writing for the majority, Justice Peckham said the crux of the case was twofold: first, does the Sherman Act cover railroads, and, second, does the railroads' agreement in the Trans-Missouri Freight Association violate that Act? In answer to these two questions, the court decided: 1) there was no contradiction between Sherman and the ICA; and 2) according to Sherman all contracts in restraint of trade are illegal.⁴¹

No Contradiction Between Sherman and ICA

The Court decided that there was no contradiction between the Interstate Commerce Act and the Sherman Act.⁴² Simply because the Interstate Commerce Act does not cover issues raised in Sherman does not mean Sherman cannot be applied to railroads. Also, wrote Justice Peckham, amending the Interstate Commerce Act to cover issues in Sherman would not be appropriate, since Sherman clearly addresses "contracts besides those relating to transportation."⁴³

Although the commerce statute may be described as a general code for the regulation and government of railroads upon the subjects treated of therein, it cannot be contended that it furnishes a complete and perfect set of rules and regulations which are to govern them in all cases, and that any subsequent act in relation to them must, when passed, in effect amend or repeal some provision of that statute. The statute does not cover all cases concerning transportation by railroad and all contracts relating thereto. It does not purport to cover such an extensive field.⁴⁴

While Congress may or may not have known of rate bureaus like Trans-Missouri at the time of its crafting of the Interstate Commerce Act, it chose not to outlaw such practices, as pointed out by Justice Peckham writing for the Court. Despite that decision, he wrote, it does not mean that the practices could not be made illegal in the subsequent Sherman Act. The railroad argument could be cut two ways: first, given government blessing of what was in effect a price-fixing rate bureau, the railroads should not be under the anti-trust provisions of the Sherman act; or, secondly – and this was the railroads' position – given the antitrust provisions of Sherman, railroads should be exempted from certain portions of the Interstate Commerce Act.⁴⁵

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The court threw out the first argument, that ICC-authorized rates automatically conveyed approval of a rate association.

...In our opinion the [Interstate] commerce act does not authorize an agreement of this nature. It may not in terms prohibit, but it is far from conferring, either directly or by implication, any authority to make it. If the agreement be legal, it does not owe its validity to any provision of the [Interstate] commerce act; and, if illegal, it is not made so by that act. ⁴⁶

The court noted that the Interstate Commerce Act outlawed pooling agreements, but did not specifically address the making of a rate and traffic agreement like that of the Trans-Missouri Freight Association. "The general nature of a contract like the one before us is not mentioned in or provided for by the [Interstate Commerce] act," wrote Justice Peckham. Rather, he noted, the Interstate Commerce Act addressed itself to issues of outlawing discrimination, long-haul-short-haul questions, continuous passage from point of origination to point of destination, and the uniformity of published rates on the part of a single carrier. "The act was not directed to the securing of uniformity of rates to be charged by competing companies, nor was there any provision therein as to maximum or minimum of rates."⁴⁷

Legislative Intent

While there was some appeal made to legislative intent to determine if Sherman was designed to apply to railroads, the Court ruled that congressional debates could not be used to infer legislative intent. Justice Peckham said that while Congress was developing the Sherman Act, the House attempted to add a provision that would make the bill apply specifically to transportation. Subsequently, the Senate added an amendment to prohibit rates "above what was just and reasonable."⁴⁸

Later haggling between conference committees resulted in removal of both the House and Senate amendments. In debates in both the House and the Senate, and in conference committees, the legislature considered differing viewpoints. Some legislators wanted language in the Sherman Act that specifically included transportation. Others thought such language was not needed, because the bill already could be interpreted as covering transportation. Still others opposed such language because they feared it would interfere with the Interstate Commerce Act and cause confusion in interpreting both the ICA and Sherman. And one senator said he assumed the Sherman Act covered transportation and that if the Senate opposed the House amendment specifically including coverage of transportation, it might be construed that the Senate did not want transportation included in Sherman. As a result, the Senate initially went along with the House amendment.⁴⁹

As a result of these disagreements, Justice Peckham, declared it to be impossible to determine legislative intent. He cited precedents indicating that:

debates in congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body...the

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result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed. Cases cited supra. If such resort be had, we are still unable to see that the railroads were not intended to be included in this [Sherman] legislation ⁵⁰

The legislation, wrote Justice Peckham, was aimed at major trusts such as “the Standard Oil Trust, the Steel Trust, the Barbed Fence Wire Trust, the Sugar Trust, the Cordage Trust, the Cotton-Seed Oil Trust, the Whisky Trust, and many others...”⁵¹ But that was not all. According to the court, “A reference to this history of the times does not, as we think, furnish us with any strong reason for believing that it was only trusts that were in the minds of the members of congress, and that railroads and their manner of doing business were wholly excluded therefrom.”⁵²

All Contracts in Restraint of Trade are Illegal

There was sharp division between the majority and dissenting members of the court over the issue of contracts in restraint of trade. The majority ruled that all such contracts are illegal; the dissenters claimed only unreasonable restraint of trade is illegal. In writing the dissenting opinion, Justice White said that it can be argued that rate agreements such as that of the Trans-Missouri Freight Association are reasonable restraints of trade and, therefore, are legal. Even with agreements like that of the Trans-Missouri Freight Association, rate wars go on anyway, Justice White wrote. Railroads, he said, without formal agreements, will eventually set rates that will be in their mutual interests (and, implied, in the public interest).⁵³ The majority doubted that railroads being able to set their own rates would be in the public interest: “To say, therefore that the [Sherman] act excludes agreements [such as the Trans-Missouri Freight Association] which are not in unreasonable restraint of trade, and which tend simply to keep up reasonable rates for transportation, is substantially to leave the question of reasonableness to the companies themselves.”⁵⁴ In other words, the majority envisioned railroad foxes guarding the public interest hen house.

The majority also said that correct interpretation of Sherman includes every contract in restraint of trade.⁵⁵ They rejected the defendant railroads’ argument that Sherman only applies in issues involving businesses involved in manufacturing or selling tangible goods “...and who by means of trusts, combinations, and conspiracies were engaged in affecting the supply or the price or the place of manufacture of such articles.”⁵⁶ According to Justice Peckham: “The terms of the [Sherman] act do not bear out such construction. Railroad companies are instruments of commerce, and their business is commerce itself.”⁵⁷

The Role of the Common Carrier

The Court defined the railroads’ argument as being one between the manufacturers of goods who theoretically can charge any price, whether reasonable or not, and the

“public character of the railroad business,” resulting in the peculiar power of control and regulation possessed by the state over railroad companies.⁵⁷ In effect, the railroads claimed they were common carriers and, as a result, should be regulated only by the Interstate Commerce Act, not the Sherman Act, which they said was designed for manufactured goods.⁵⁸ The court’s majority agreed to the common carrier argument; however, they pointed out that railroads were unique in privilege and responsibility. Railroads, wrote Justice Peckham, can take private property in condemnation proceedings, have received land grants, and have public responsibilities higher than those to their stockholders, because their business affects nearly everyone in the community. As a result, any contract restraining railroad business is prejudicial to the public interest. While Justice Peckham acknowledged the dissenters’ argument that such business is not against the public interest if 1) rates are reasonable; and 2) ruinous competition is prevented, he went on to assert that railroads were not normal businesses and the public wanted competition.⁵⁹

Appeals to Common Law and the “Spirit” of the Law

In dissent, Justice White referred to English common law, specifically *Nordenfelt v. Ammunition Co.*⁶⁰ in which the House of Lords held that contracts could only be in restraint of trade if they were unreasonable; if they were reasonable, they were not in restraint of trade. American courts, Justice White argued, had followed the lead of English courts. Giving the example of a partnership as a business practice that while restraining trade is considered reasonable, it is therefore, paradoxically, not considered to be in restraint of trade.⁶¹ The question, according to Justice White, was one of the partial restraint of trade. In effect, that is what commerce and contracts are all about.

To define then, the words “in restraint of trade” as embracing every contract which in any degree produced that effect, would be violative of reason, because it would include all those contracts which are the very essence of trade, and would be equivalent to saying that there should be no trade, and therefore nothing to restrain.⁶²

It was important, according to Justice White, to define terms, especially in legislation like Sherman, where a crime is being created. Sometimes, he said, the spirit of the law is more important than the letter and he listed cases in which literal language of statutes was ignored to bring about an interpretation that was reasonable.⁶³ Opined Justice White: “The remedy intended to be accomplished by the act of Congress was to shield against the danger of contract or combination by the few against the interest of the many, and to the detriment of freedom. The construction now given, I think, strikes down the interest of the many to the advantage and benefit of the few,”⁶⁴ and he gave the example of the Sherman Act being used against union organizing. “It is, therefore, as I see it, absolutely true to say that the construction now adopted, which works out such results not only frustrates the plain purpose intended to be accomplished by congress, but also makes the statute tend to an end never contemplated, and against the accomplishment of which its provisions were enacted.”⁶⁵

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Are the Railroads Trusts?

The Court, through Justice Peckham, recognized the existence of trusts for which the Sherman Act was designed. Those trusts “had rendered themselves offensive by the manner in which they exercised the great power that combined capital gave them.”⁶⁶ Yet, the trusts, Justice Peckham wrote, were not the only suspect concentrations of capital. The public complained of railroads, also, “...and it was alleged that the prices for the transportation of persons and articles of commerce were unduly and improperly enhanced by combinations among the different roads.”⁶⁷ While declining to affirm whether or not railroads exercised abuse of power as claimed, the Court said the context of the situation did not provide any proof that Congress limited the Sherman Act only to trusts and not to railroads.⁶⁸ In effect, Justice Peckham asked, if Congress found it necessary in the public interest to prohibit manufacturers from engaging in restraint of trade, how much more should such prohibitions affect common carrier transportation?

It is entirely appropriate generally to subject corporations or persons engaged in trading or manufacturing to different rules from those applicable to railroads in their transportation business, but when the evil to be remedied is similar in both kinds of corporations, such as which are unquestionably in restraint of trade, we see no reason why similar rules should not be promulgated in regard to both, and both be covered in the same statute by general language sufficiently broad to include them both.⁶⁹

Justice Peckham also wrote that if railroads were not included in antitrust regulations, Sherman’s “application is so greatly limited that the whole act might as well be held inoperative.”⁷⁰

Aftermath

Ironically, The Trans-Missouri Case did not spell the end for the Trans-Missouri Freight Association or for rate bureaus in general. The Association simply eliminated rules that imposed fines and penalties on members that did not institute the set rates, leaving members free to take individual action, and thereby following the letter, if not the spirit, of the law.⁷¹

Rate agreements, however, were not just a profit-maximizing scheme for the railroads. In order for goods to reach many destinations, railroads have found it necessary to set joint rates with connecting railroads.⁷² In fact, the Interstate Commerce Act required that railroads maintain reasonable through rates and joint rates and divisions of rates. To do so, by definition, required collaborative ratemaking. Therefore, railroads could not carry out their mandated duties without violating the antitrust laws.⁷³

The Interstate Commerce Commission seemed to recognize these facts. The Commission’s 1901 Annual Report stated that it had no duty to enforce the Sherman Anti-trust Act. It further stated that it could not judge the legality of railroad rate bureaus, and, as pointed out in the previous paragraph, that railroads could probably not

operate without collaborative arrangements.⁷⁴ However, while these ICC actions showed a recognition of the realities of the railroad industry, it remains a mystery why the Commission filed the lawsuit just a few years earlier to stop the practice. Was it unaware at that time of the need to collaborate to set joint rates, through rates, and rate divisions?

Conventional wisdom has it that the Transportation Act of 1920 had the effect of legalizing pooling. It did so, but only when approved by the ICC, and only when it did not "unduly constrain competition." Instructions to the Commission included the requirement that competition be preserved "as fully as possible."⁷⁵

The next attack on rate bureaus came from the executive branch. The Department of Justice, in 1944, brought suit against the Western Association of Railroads, the Association of American Railroads, and certain individual railroads. The Department claimed that the rate-making methods used by rate bureaus violated the Sherman Anti-trust Act and brought the case to the Supreme Court.⁷⁶ In 1940, the Supreme Court had ruled that price-fixing devices in industry are in violation of Sherman,⁷⁷ and in *Georgia v. Pennsylvania Railroad Company*, 1945, the Supreme Court ruled that Congress had not given the ICC the power to exempt rate-fixing combinations from anti-trust laws.⁷⁸

In answer to the Truman Department of Justice's lawsuits to prevent collaborative pricing by transportation companies, the Republican Congress passed the Reed-Bulwinkle Act in 1948 over the President's veto, but at the urging of the ICC.⁷⁹ It went into effect on July 17 of that year. Rate bureaus were legalized but placed under the control of the Interstate Commerce Commission in that rates had to be filed with and approved by the Commission.⁸⁰

Matters stood at that juncture until regulation began to be relaxed starting in the late 1970s. In July 1978, the ICC determined that single-line and joint-line rate proposals would be processed separately. That is, those proposals that involved one railroad would have a different processing procedure than those that involved at least two railroads in a freight movement. Further, it limited anti-trust immunity for discussing rate proposals.⁸¹ Approximately two years later, on August 14, 1980, the ICC issued a decision disapproving collective rate-making agreements. The decision, by a 5-2 vote, stated that collective rate-making tends to inflate rates by protecting less efficient carriers, and thereby, discourages innovative pricing.⁸² Exactly two months later, on October 14, President Jimmy Carter signed the Staggers Act into law.⁸³

The Staggers Act abolished discussion or voting on a rate by any railroad not "practicably" able to participate. The ICC began implementation of these provisions affecting rate bureaus very early in 1981, and by fall of 1982, collective ratemaking had begun to be a thing of the past. By January 1, 1984, only carriers forming a route would be allowed to discuss rates involving that route.⁸⁴ The ICC allowed only railroads connecting on a specific movement to be allowed to collaboratively set rates. The Commission's policy was that railroads could talk to customers and connecting railroads, but not to competitors. Rate bureaus were processing fewer and fewer rates, and therefore becoming less and less important.⁸⁵

Today, rate bureaus are an historical oddity. However, they played a major role throughout a large part of the history of the railroads in this country. They were also a

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very powerful force in the motor carrier industry as well.

Today collective ratemaking has been essentially outlawed in most cases, but it has also become a moot point. With the railroads merging into mega systems, two in the east and two in the west, the need for interlining has been eliminated to a large degree.

Notes

1. *United States v. Trans-Missouri Freight Association*, 166 U.S. 290 (1898).
2. Sidney L. Miller, *Railway Transportation Principles and Point of View* (Chicago, New York: A. W. Shaw Company, 1924), 754.
3. Ari and Olive Hoogenboom, *A History of the ICC: From Panacea to Palliative* (New York: N. W. Norton and Company, Inc., 1976), 34.
4. I. Leo Sharfman, *Railway Regulation* (Chicago: LaSalle Extension University, 1915), 8; Miller, *Railway Principles*.
5. Hoogenboom and Hoogenboom, *A History of the ICC*, 6.
6. *Ibid.*, 7.
7. Emory R. Johnson, *American Railway Transportation* (New York: D. Appleton and Company, 1906), 177.
8. *Peik v. Chicago and Northwestern Railway Company*, 94 U.S. 164.
9. *Munn v. Illinois*, 94 U.S. 113 (1876).
10. Hoogenboom and Hoogenboom, *A History of the ICC*, 7
11. *Ibid.*
12. *Ibid.*, 7-8.
13. Johnson, *American Railway Transportation*, 190.
14. *Wabash, St. Louis and Pacific Railway Company v. Illinois*, 118 U.S. 557 (1886).
15. Hoogenboom and Hoogenboom, *A History of the ICC*, 8-17.
16. Richard D. Stone, *The Interstate Commerce Commission and the Railroad Industry: A History of Regulatory Policy* (Westport, CT: Praeger, 1991), 6.
17. Sharfman, *Railway Regulation*, 170.
18. Stone, *The Interstate Commerce Commission and the Railroad Industry*, 6.
19. D. Philip Locklin, *Economics of Transportation*, 7th ed. (Homewood, IL: Irwin, 1972), 224-228.
20. Federal Reporter 56.
21. *Counselman v. Hitchcock*, 142 U.S. 547 (1893).
22. *Brown v. Walker*, 161 U.S. 591 (1896).
23. Joseph H. Tedrow, *Regulation of Transportation: Practice and Procedure Before the Interstate Commerce Commission*. 5th ed. (Dubuque, IA: William C. Brown, 1951), 46.
24. *Cincinnati, New Orleans and Texas Pacific Railway Company v. Interstate Commerce Commission*, 162 U. S. 184 (1896).
25. 16 S. Ct. 701-702.
26. *Interstate Commerce Commission v. Cincinnati, N.O. & T.P.R. Co.*, 167 U. S. 479 (1897).
27. Hoogenboom and Hoogenboom, *A History of the ICC*, 35.
28. *Interstate Commerce Commission v. Alabama Midland Ry. Co.* 168 U. S. 144 (1897).
29. Hoogenboom and Hoogenboom, *A History of the ICC*, 35-37.
30. *Ibid.*, 3.
31. Arthur T. Hadley, "Railroad Business Under the Interstate Commerce Act," *The Quarterly Journal of Economics*, No. 3 (1889): 170-187.
32. *United States v. Trans-Missouri Freight Association*, 166 U. S. 290 (1898); and 17 S. Ct. 541.
33. Hoogenboom and Hoogenboom, *A History of the ICC*, 36.
34. 17 S. Ct. 541.
35. *Ibid.*, 541-543.

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36. 53 Fed. 440.

37. 19 U. S. App. 36, 7 C.C.A. 15 and 58 Fed. 58.

38. 17 St. C. 545.

39. Anthony D. Becker, Department of Economics, Department of Statistics, St. Olaf College, Northfield, Minnesota, web site, "The Antitrust Case Browser," <http://www.antitrustcases.com/summaries/166us290.htm>

40. Ibid.

41. In addition, the Court addressed at least nine other key issues: 1) Congressional debates do not infer legislative intent; 2) the Trans-Missouri agreement was in restraint of trade; 3) even though agreements like Trans-Missouri may have been legal prior to the Sherman Act, their subsequent illegality due to Sherman does not constitute retroactive or ex post facto action; 4) common law restricted only "unreasonable" restraint of trade, not all restraint of trade, and Sherman uses the same language and it is public policy; 5) if not contradictory to an act, an act's title can be used by courts in interpreting an act; 6) technical words must be accepted at face value, based on long usage and common interpretation of meaning; 7) Sherman does not repeal ICA-sanctioned inter-railroad agreements to classify freight, and 8) when Congress enacts a statute, it becomes public policy, no matter what the courts have said in the past [17 SCR 540]. Other issues were apparent tactical issues of the case: dissolution of the association does not void the case; the bill does not have to state a dollar amount to sustain appellate jurisdictions – the dollar amount was enough anyway; despite the amount of money involved, the federal government has standing in court to sue alleged illegal combinations [17 SCR 540].

42. 17 S. Ct. 549.

43. Ibid.

44. Ibid.

45. Ibid., 548.

46. Ibid., 549.

47. Ibid.

48. Ibid., 549-550.

49. Ibid., 550.

50. Ibid.

51. Ibid.

52. Ibid., 551.

53. Ibid., 558.

54. Ibid., 555.

55. Ibid., 547-548.

56. Ibid., 548.

57. Ibid. 551.

58. Ibid.

59. Ibid., 554-555.

60. App. Cas. 535 (1894).

61. 17 S. Ct. 561-562.

62. Ibid., 563.

63. Ibid., 564.

64. Ibid.

65. In re Debs, 64 Fed. 724, 745, 755.

66. 17 S. St. 550.

67. Ibid., 550-551.

68. Ibid., 551.

69. Ibid., 552.

70. Ibid., 553.

71. Joseph H. Tedrow, *Regulation of Transportation*, 163.

72. Locklin, *Economics of Transportation*, 319.

73. Tedrow, *Regulation of Transportation*, 163.

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74. I. L. Sharfman, *The Interstate Commerce Commission: A Study in Administrative Law and Procedure*. J & J Harper Editions. (New York: Harper & Row, 1969), I, 34.
75. Locklin, *Economics of Transportation*, 324-5.
76. *Ibid.*, 325-6.
77. *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940).
78. *Georgia v. Pennsylvania Railroad Company*, 324 U.S. 439, 456 (1945).
79. Tedrow, *Regulation of Transportation*, 163.
80. *Ibid.*, 163-4; Locklin, *Economics of Transportation*, 326.
81. Interstate Commerce Commission, *92th Annual Report to Congress of the Interstate Commerce Commission for the Fiscal Year Ending September 30, 1978* (Washington, DC: GPO, 1979): 37.
82. *ICC Annual Report, FY 1980*, 10; "ICC's Rate Edict—And What It means," *Railway Age* (25 August 1980): 8.
83. Stone, *The Interstate Commerce Commission and the Railroad Industry*, 113.
84. U.S. Congress, *Staggers Rail Act of 1980*, 96th Cong., 2d Sess., P.L. 96-448.
85. Bill Fahrenwald, "Watching Washington," *Railway Age* (13 September 1982): 12.