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PRESSURE-GROUP ACTION AND THE DEMOCRATIC PROCESS: A STUDY OF THE RAILROAD SITUATION*

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For lawyers these are interesting times in which to live. This is because the law has primarily to do with human relationships, and human relationships are under great pressure and undergoing great changes. The pressure is due, of course, to the conditions created by the war. It is a pressure from which no frontier affords us the safety valve which the West provided for all previous generations. Our forefathers could escape from their difficult human relationships and avoid making needed social adjustments. But we are blessed by being forced to grow in the development of right human attitudes and relations: a growth which perhaps we would not make were it not forced upon us by stern necessity. What is not learned under the direction of intelligence often must be learned under the impulsion of suffering.

At no time in our history has there been such anxious scrutiny and criticism of the way in which our democracy conducts its industry and its government, and as serious a threat of the failure of both. As lawyers, we devote our lives to the working out of these problems of business and government. The failure of our governmental forms to meet the needs of the people is

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our primary concern; for, as lawyers, we have been largely responsible for the creation and administration of these forms.

Is the apparent failure of our system due to the failure of democratic principles or to their abandonment? Robert Bridges, in his *Testament of Beauty*, has said:

> Mortal Prudence, handmaid of divine Providence,
> hath inscrutable reckoning with Fate and Fortune:
> We sail a changeful sea through halcyon days and storm,
> and when the ship laboureth, our steadfast purpose
> trembles like as the compass in a binnacle.
> Our stability is but balance, and wisdom lies
> in masterful administration of the unforeseen.

The measure of the wisdom of a democratic people in the masterful administration of the unforeseen lies in its capacity to adapt its forms, under the necessities of a changed world, without sacrifice of its democratic principles. Democracies fall when they fail to meet the people's needs, because unable to meet its problems through intelligent adaptability. Like people, they break when they cannot bend. Conventional-mindedness prevents that bending. A depression, in reality, is the lag of intelligence in what is always the continuous "race between intelligence and catastrophe." A people's masterful administration of the unforeseen is possible only when a high intelligence permits that mastery by the abandonment of what was the right thing of the past for the adoption of the right thing for the present; for, in the relativity of truth, time is the fourth dimension of intelligence—the right thing at the wrong time being wrong. It is, consequently, inevitable that in the present crisis there is the conflict between the thinking of the present and the thinking of the future, between what is called conservative thinking and radical thinking, and, many times, between what is thinking and what is not thinking at all; and that people will reach out for fundamentals by which to judge these things.

A sympathetic critic of democracy recently said:

> Our fundamental requirement is to evolve a political form by which the community can take effective charge of the social and economic movements now in progress — movements which, if not controlled, threaten the disruption of society. This can be done only by intelligent thinking. And intelligent thinking must challenge even those first principles which to a democrat are axiomatic.

We now are trying to take effective charge of such movements through intelligent thinking. How far, and why, are we failing? What are the first principles of democracy which we are to regard as axiomatic? If they are challenged, what is the answer?

These are questions which I propose to bring to your consideration in the form of a discussion of the railroad problem. This is not because of its intrinsic importance (although it is a major national problem), but because it is a good clinic. It exhibits every important phase of the great question of how the country shall conduct its larger business and industry. Where shall these great enterprises be poised between a moderately regulated private ownership and management and the point where an increasing public participation culminates in the totality of government ownership and operation? How shall the great social enterprises be conducted? Aside from such questions of form, it illustrates certain difficulties arising out of the temperament of our people, which are more formidable. Is our democratic government capable of participation in business, whether in the form of intensive governmental regulation of private operation or by governmental operation, without the awakening of a truly democratic spirit? What is the democratic spirit?

The railroad industry is now passing through the most difficult time in its history and the breakdown of private ownership and operation is seriously threatened. It is clear that the system of regulated private ownership has failed. Nearly one-third of the railroad mileage of the country is now in the hands of the courts, bankrupt and paying no interest. Another third is threatened with bankruptcy. Some of the great systems did not earn enough last year to meet even their operating expenses and taxes. Only a small part of the mileage earned anything for reserves, improvements, or dividends. A great liquidation of investment values is in progress. Private capital is deserting the ship and the industry is thoroughly demoralized. It is believed by many informed people that the abandonment of private ownership is probable. There is, I believe, no substantial support for government ownership. If it comes, it will be because the continuation of private ownership proves impossible because we could not demonstrate the intelligence necessary to make it work.

There is quite common agreement as to the cause of this thorough demoralization: it lies in the unintelligent policies with reference to competition. The railroads have been permitted or required to engage in excessive competition among themselves, and with the other modes of transportation. Competition is dangerous for the railroads. No other important business requires such great capital expenditures. These result in high capital costs, which are always dangerous, because they cannot be reduced when a competitor enters the field and reduces the traffic. The investment is irrevocably committed; it cannot be withdrawn from the service and put to any other use without great loss. Consequently, the building of a competing railroad line, or a concrete highway, like an intelligently directed cyclone, destroys a substantial part, and sometimes all, of the railroad's property. Because a railroad has a great investment, there is no reason to believe that it is either strong or rich. For there is no animal so vulnerable and helpless as a whale in shallow water. Consequently, there are almost no countries in the world where competition among railroads is encouraged or maintained.

Furthermore, the transportation facilities of the country are greatly overdeveloped, due to the great increases in both the railroad and the non-railroad facilities made since the war. In 1920, when the railways had a virtual monopoly of transport, their total investment was approximately nineteen billion dollars. Between 1920 and 1932 investments in additional transportation facilities amounted to an additional twenty billion dollars.[1] This great increase was made with no corresponding increase in business and meant the destruction of railroad investment, particularly when there were sharp decreases of railroad traffic by the incursions of fuel oil, natural gas, and the transmission of electric power; and by the decentralization of the manufacturing business due to the fact that in order to avoid large railroad freight costs, large plants (formerly located in large centers of population and transporting their products by long railroad hauls) are now being broken up into small scattered plants whose products move

1. Transportation agency — Millions of dollars

Railways, additional	6,300
Pipe lines	424
Streets and highways	12,500
Waterways (U. S. Government)	604
Total	19,828

shorter distances, largely by trucks. The competition of the automotive carriers, the water carriers, and the pipe lines, has been sharply effective and has diverted great volumes of traffic away from the rail carriers. The traffic diverted by the trucks and pipe lines is not only large in bulk but contains most of the cream. It has been the policy of the government to encourage the fullest measure of competition with the water carriers and to subsidize the federal barge lines and the canals and waterways.

This excessive transportation plant and sharp competition requires that all preventable waste in railroad operation be prevented. But our railroads are operated on the basis of rugged individualism. There are hundreds of competing lines, and they operate on the principle of dog eat dog, devil take the hindmost. This individualism has had widespread uneconomic results. It has resulted in the tremendous duplication of service. From such points as St. Louis and Chicago, each day the competing and empty passenger trains move to common points at common hours of departure and arrival. It results in duplication of facilities. In Chicago there are terminal facilities, costing a billion and a half dollars, which even in times of good traffic are not used to capacity. It has resulted in various forms of indirect rebating in the form of leasing to shippers at subnormal rentals of warehouses, grain elevators and docks, and in other discriminatory practices. No other important country in the world attempts to maintain competitive railroad systems. England consolidated its lines in 1923 and Canada is now preparing to do so.

In our country almost every large railroad is a consolidation of a great many small lines. The railroads instinctively struggled in their earlier days to get free from competition, and consolidations into a few strong systems were in full swing when they were stopped in the Rooseveltian trust-busting days by the enforcement of the Sherman Anti-Trust Act. Similarly all efforts to pool traffic or to prevent destructive rate cutting were made unlawful. This opposition to the development of great systems was natural; it had its genesis in the class antagonism expressed in the Granger movement, and reflected the pressure-group action of the politically powerful agricultural and shipping classes. The roads had been built primarily with money secured or controlled in the East, and were directed by interests which were

alien to the agricultural communities. The early railroad magnates were two-fisted egotists, careless of public relations. Railroad regulation, thus, has had an emotional, rather than an economic, background: a motivation so operative as effectively to prevent the elimination of the competitive waste, the effect of which has gone far to bankrupt the railroads and the elimination of which has been regarded as essential in all foreign countries to enable economic operation.

The country awoke to the dangers of excessive competition immediately following the war. The government had operated the railroads during the war and returned them to their owners in such a weakened condition and with such increased operating expenses, due largely to wage increases, that it appeared possible to avert government ownership only by railroad legislation which would correct fundamental evils. Evidence of the greater economy and efficiency through eliminating competition had been afforded by the consolidated operations under federal control. The fear of government ownership united all the pressure groups to support the comprehensive program of the Transportation Act of 1920. This act went far to reverse the national policy as to competition. Consolidations were authorized. But the consolidations were hamstrung by the provisions that competition, even under effective commission regulation, was to be fully preserved, and consolidations were to be had only in accordance with the plan of the Interstate Commerce Commission. These provisions were burdening and few consolidations resulted. However, the Commission, under this act, did proceed to approve forthwith three unifications, which were regarded in the days of Theodore Roosevelt as great victories for liberalism and the people, but which, when viewed from the unemotional standpoint of intelligent regulation, seemed less significant. The result was that the depression found the railroads with competition unabated.

In 1933, it became apparent that action was necessary to prevent their collapse. The attention of the government was directed to the fact that great sums, estimated by some at over $700,000,000 a year, would be saved if the railroads were consolidated. The railroad executives, almost all of whom opposed consolidations because of their individualistic interest in the continuation of their separate lines, now proposed a coordinative

program under which, short of consolidation of the entire systems, it was estimated that about $300,000,000 a year could be saved. On the recommendation of the railroads themselves, coordinative legislation was adopted. Examples of such coordinations are the unification of the entire freight and passenger terminals of competing lines in the larger towns and cities, the pooling of less-than-carload-freight operations by means of national systems similar to the express companies, the pooling of all freight on either a regional or national basis, or the pooling of the cars of all lines in a manner similar to the Pullman Company unification of sleeping-car service. This work was under the administration of Joseph B. Eastman, a man of liberal tendencies and one of the best men in public life.

The entire project was abandoned by Congress in 1936 on the eve of a national election when the Washington air was surcharged with politics, due to the pressure-group action of railroad labor. Labor's objections to coordinations were natural enough; for, if the railroads could accomplish them, they could dispense with a large amount of unnecessary labor. To illustrate: Were the freight facilities in Chicago consolidated, 10,000 men could be released from work; in Kansas City, 1,600; and in cities like Portland, Oregon, about 250. If the railroads of the country were consolidated into a dozen large systems, the action would eliminate about 75,000 men.

No one thinks that these men should be discharged. Should Congress pass a law forbidding bankrupt farmers from discharging their hired men, or requiring all bankrupt manufacturers, on consolidating their factories, not to discharge any employees, the reaction against such legislation would shake the country. But the Emergency Transportation Act of 1933 had forbidden the railroads, on coordinating or consolidating their facilities or operations, to discharge any employees on the payrolls in 1933. In the summer of 1936, the railroad unions and the managements had, moreover, signed a contract, agreeable to both, under which full protection in the form of dismissal compensation was provided for railroad labor in all future consolidations. This is significant evidence of the awakening of the social consciousness to the necessity of protecting employees in some reasonable measure against the loss of employment that accompanies improvements in the method of conducting the busi-

ness. But, even with such protection, the unions insisted upon the abandonment of the coordinative movement and the government yielded to the pressure.

Even had 75,000 men lost their jobs and been unprotected by any dismissal compensation, such a loss of employment is not at all great compared with that caused by the demoralization and depression of the railroad business. The loss of employment, due to the decrease of business, from July, 1937, to June, 1938, was far greater—260,000 men. But great groups of the people, other than labor, are interested in the railroads. Forty per cent of our railroad bonds are in default. Over half of them are owned by insurance companies, savings banks, large and small town commercial banks and educational institutions. There are 64,000,000 holders of insurance policies, and fifteen per cent of the assets of these companies is in railroad bonds. There are 13,000,000 investors in mutual savings banks, $1,188,912,000 or eleven per cent of whose assets are in these securities. Other commercial banks, with 14,000,000 depositors, hold bonds in the amount of $1,187,000,000—about eight per cent of their assets. There are mililons of holders of railroad stock and bonds. The stock of a typically great railroad company is owned by as many as 150,000 or 200,000 stockholders, none of whom holds more than two or three per cent of the total stock, the most of whom are women. It is untrue that "Wall Street owns the railroads." The railroads are owned by the people. Wall Street has made money out of the sale of securities, but the people hold them.

The coordinative movement was an effort, through objective-minded legislation, to work out a scientific treatment of the railroad problem. Since the lapse of this legislation, Congress has made no effort to declare a national railroad policy. In the meantime, because the government has shown no intention of stabilizing the situation, the railroads have sunk deeper into insolvency. In the summer of 1938, Congress, under the pressure of labor and again on the eve of the election, declined to pass an act liberalizing the terms under which loans can be made to the railroads by the Reconstruction Finance Corporation; because the railroads, a third of whom were insolvent, would not consent to a provision stipulating that if they received the money they would not reduce wages. Strangely enough, the government, as the creditor, refused to lend the money if the railroads, as

the debtors, insisted upon attempting to follow a course which would tend to make both ends meet.

Today the railroad managements and the unions, after years of warfare, have combined on a program which they are endeavoring to force through Congress with the general opposition of the other interests. The managements, aware of their own political impotence, have agreed with the unions upon a program which purports to be one under which all other modes of transportation are to be brought under the same burdens of regulation imposed upon the railroads. This is interpreted by the shippers, the trucks, the buses, and the water carriers as a means of hamstringing their activity and is regarded not as a means of straightening out the railroad industry, but of putting all other transportation agencies under the same burdens. Congress is acting under the influence of the respective pressure groups; and the pattern of the regulatory scheme which will be adopted, instead of reflecting the impersonal consideration of objective intelligence, will take the battered form which will reflect the heavier blows dealt by the groups of greatest power. The program of the railroads and the unions contains nothing designed to reduce effectively the wastes due to competition between the railways, and falls far short of going to the root of the problem. Politics does not permit.

To analyze the situation: It is apparent that the railroad problem is essentially a human relationship problem; its cause lies in faulty human relationships, and its cure in the correction of them. While it involves issues lying in administrative or managerial technique, and could be cured by such processes, there is common agreement as to what is necessary from that standpoint. Progress has failed because what is clearly right as a matter of economical management is not politically possible. A conclusion, which will represent the point of poise resulting from the pressure of the pressure groups, is not the conclusion of objective thinking; it is the conclusion which results from group dictation.

Is this the democratic process? It purports to be democratic in form. But a Soviet or Nazi state may be that. It is not the form that determines the content, but the content that determines the form. The nature of a society is determined by the ideals which motivate it.

The American conception of the democratic ideal was a conception developed in the pioneer communities of the West. It was a pattern of human relationships, an expression of a certain distinctive attitude of man toward man. Its motivation was respect for one's fellowman: a recognition of the dignity of his personality, not a disrespect. The pioneer democrat would never have recognized as part of his thinking the ideas of some of our present day "liberals" whose philosophy is strongly affected by class consciousness and an intolerance for certain types or classes of people. There were no classes in the pioneer society.

My conceptions of democracy were obtained in the early 90's on the crooked streets of a mining town, planted in the bottom of a barren gulch in the Montana mountains. As my father walked that street, he greeted, with the same cordiality and good regard, the Governor with his black silk hat, the gambler with his green felt apron, the Governor's wife whose silk swept the dusty wooden sidewalk, and the rancher's wrinkled wife who had driven in sixty miles in a "dead-ax" wagon. "Sonny," he said, "gambling is a bad business and you probably won't want to be in it, but, after all, Hal Holden is an honest gambler; and, for all that, even if he were a 'black leg' (in the vernacular, a dishonest gambler), you have got to treat all people just alike."

This was no surface cordiality, no affectation by way of manners; nor did it involve any tolerance with low standards. For he was a scholar in the tradition of those times. He knew his Plato and Spinoza and boldly asserted that the only sound thing in all philosophy and religion, in whatever form expressed, was the recognition of an established and underlying unity of being, the indivisibility of which constitutes every relationship of man with man. By this understanding, the gambler and the governor, as well as himself, were actually one. Individuality did not lie in separatedness, but in an underlying unity. This is essentially a matter of metaphysics. As was recognized in a recent address by Mr. Roosevelt, the religious conception of human relationships is at the foundation of the democratic concept.

It seems apparent that pressure-group government of, for, and by, not the people, but groups of the people, and for the primary benefit of those groups, is essentially a denial of the democractic ideal, and is that class rule from which it was the

intention and boast of those who founded our country that we should and had become free. Looking at the railroad problem simply from the standpoint of intelligent business management, it is apparent that pressure-group action frustrates that objective thinking which is essential to the activity of the real intelligence, without which no real solution can be found in the field of good business technique. Anyone who understands the railroad problem knows that the railroads do not present a problem so tangled that intelligence cannot solve it. A high intelligence can work out the effective conduct of such a business in a way which is fair to everybody concerned. But there is no high intelligence without objective thinking, which rises above the domination or dictation of self or selves. We recognize that this objectivity is fundamental to the scientific attitude of mind; we insist upon it in the governmental administration of justice in the courts.

But it is equally fundamental when the government legislates. It is a *sine qua non* of right regulation of the railroads under private ownership and operation. It would be equally fundamental were the government their owner and operator. Under whatever system, the right administration of such a business must secure a fair apportionment of the benefits and the burdens of the industry among capital, labor, the managements, and those who receive its service. That administration requires an administrative authority which shall be absolutely even-handed in its dispositions. Equality before the law must be the supreme desideratum. The democratic ideal, which declares the equality of men and requires the equal recognition of the rights of all men, expressed as the fundamental conception of equality before the law, is an absolute essential in the regulation or conduct of business under the capitalistic system, or under any system short of that of a totalitarian government committed to overriding minority interests. In a free society these enterprises cannot be run primarily for the benefit of either capital or labor. Both capital and labor must proceed under the full protection of the law administered in even-handed justice. The capitalistic system cannot function successfully unless capital is given that protection which is its just due. The system cannot be run without private capital. It is essentially timid, and that timidity is the source of one of the great weaknesses of the sys-

tem. It will not invest, and there is no means by which it may be required to invest, if it is not reasonably safe. What are called the property rights of capital are actually human rights. On the other hand, labor must be rightly treated, because its wages determine the extent to which the man in its ranks can lead the abundant life. Elements of the highest human value are therefore involved. The breakdown of our conduct of the railroad industry is, then, due to the disregard of the fundamental democratic concept. If the government is to be the center of these great social enterprises, they must be run for the benefit of all the people, not for the benefit of any class. Our conduct of the business must express the objective thinking which is essential to intelligence, not the non-intelligence due to the direction of our processes by pressure rather than principle. There must be equality of all men before the makers of the law. The establishment of totalitarian regimes in Europe has ordinarily been preceded and caused by the breakdown of democratic government, due to its inability to meet national problems, which inability has arisen from the disunity of a divided people. The solution of these problems is found in the action of objective intelligence. That action is frustrated by the pressure of diverse and irreconcilable interests.

The harmony which proceeds from a non-antagonistic relationship between classes is imposed in the totalitarian states either by force or by mental discipline derived from propaganda resting upon a basis of force. The necessity of the democracy is to maintain that harmony by the far harder process of developing an attitude of mind as the result of the spirit and culture of the people. It was an attitude of mind readily attainable in a pioneer society where there was relative freedom from economic pressure and where there were common dangers to be met best by a unified community. It is an attitude of mind, without which democracy cannot succeed and has failed, which must be maintained under the changed conditions of today, and which is attainable, like all spiritual values, by an intelligent idealism.

Mr. Roosevelt has said that the cure for the problems of democracy is more democracy. Whether this statement is true depends upon what it means. If by "more democracy" is meant governmental policy and action, more definitely recognizing the

essential unity of the people and their equality of right and opportunity, it is true. If interpreted as the basis for the recognition of disunity of the people and a unity only within certain groups or classes, it is untrue and destructive of true democracy. The frustration and sterility of action in the regulation and administration of social relationships which proceeds from a basis of class or pressure-group action and a denial of the equality of democracy, is proved by what has happened in the railroad experience.