

THE HISTORICAL DEVELOPMENT OF EASTERN-SOUTHERN FREIGHT RATE RELATIONSHIPS

DAVID M. POTTER*

I

INTRODUCTION

For at least the past decade, the railway freight-rate question has been recognized as one of the major issues in the adjustment of the South to the national economy. As such it has been much discussed, but even the facts of the question are still rarely understood, and the historical origin of regional differentials has been almost wholly neglected.

Such neglect finds its explanation, at least in part, in the fact that few American institutions, economic or other, rival the freight-rate structure in complexity. In quantitative terms, this complexity takes the form of an accumulation of separate rates estimated at ten million pages on file with the Interstate Commerce Commission. In analytical terms, it takes the form of a situation in which factors and conditions are so intricate that few generalities can be stated without extended qualification, and few conclusions can be reached without putting the data through a sequence of processes.

There is no basic uniformity in rates, either according to the mileage traveled or according to the weight or bulk of the load carried. *A priori*, one might expect such uniformity, but the fact is that not even the severest critics of the existing system demand it, for it is recognized that goods must travel at a rate that will permit them to go to market, and uniformity does not allow this. For instance, California oranges must go to New York at a rate which will enable them to share the market with Florida oranges which have travelled less than one-third as far, and coal, valued by the ton, must move at a rate which it can pay, quite as much as quinine, valued by the ounce. One railroad official has said, "A rate is nothing more or less than an effort to comply with the necessities of commerce. A rate is no good if it is not moving traffic. You have got to make rates based on what the conditions are, and you cannot use a formula."¹ He might have added that the entire body of freight rates is not merely one containing differentials—regional and other—but that it con-

* A.B. 1932, Emory University; M.A. 1933, Ph.D. 1940, Yale University. Associate Professor of History, Yale University; Harmsworth Professor of American History, Oxford University, 1947-1948. Formerly Instructor in History, University of Mississippi, Rice Institute; formerly visiting Associate Professor of History, Connecticut College. Author, *LINCOLN AND HIS PARTY IN THE SECESSION CRISIS* (1942); editor, *TRAIL TO CALIFORNIA: THE OVERLAND JOURNAL OF VINCENT GEIGER AND WAKEMAN BRYARLY* (1945); contributor to historical periodicals.

¹ Testimony of A. F. Cleveland, in *Hearings before Committee on Interstate Commerce on S. 942, 78th Cong., 1st Sess. 1059* (1943). Mr. Cleveland might have added that a rate is sometimes a device for determining what traffic shall move, and to what destinations.

sists essentially of an immeasurable mass of carefully adjusted differentials, in which fairness should always be an objective, but in which uniformity cannot be. In such an intricate system no safe generalization can be derived from any individual rate, and no individual rate can be understood without a recognition of a number of basic features of the structure.

One of these basic features is the system of classification. Different commodities, obviously, may be conveniently grouped or classed together according to their similarity in bulk, value, or the like. Accordingly, a range of categories or classes is set up, and almost every conceivable article eligible for transport is classified in one or another of these categories. If the same classifications applied throughout the country one could analyze the question of rates purely in terms of the tariffs which applied to each class; but in fact there are, regionally, three separate classification areas—southern, western, and eastern or official—and articles which fall into the highest class in one of these territories may be assigned to a quite different class in another. Thus, of the 10,305 types of articles which are classified in both official and southern territory, at carload rates, only 4,934 are placed in class groups which correspond to one another (and, as will appear, the fact that they correspond does not mean that they will pay the same rate), while 1,344 are placed in a lower bracket in the South and 4,027 are in a lower bracket in the East.²

Classification, however, does not determine the tariff. It determines only what relation an article will bear to other articles in the payment of tariff, and, if it is not first class, what percentage of the first-class rate it will pay. The actual determination of tariffs or rates is quite separate, and where there are only three classification territories in the United States, there are five major rate territories. East of the Mississippi, these include the eastern or official territory, extending south roughly to the Ohio and into southern Virginia, and the southern territory, embracing all that does not fall within official territory. West of the Mississippi, the trunk-line, southwestern, and mountain-Pacific territories divide the field. The rate structures vary substantially among these territories, and until very recently the Interstate Commerce Commission has treated them as separate entities, with considerations applying to one territory not necessarily operative in another.

The interdependence of classification and rate making lays pitfalls for the analyst. Thus, an article in the South may pay a higher charge than the same article in the East either because it is in a higher class than the eastern article or because, although in an equivalent class (both first class, for instance), the rates for the two classes show a disparity. The freight charge may be raised or lowered on an article, without changing rates, by moving it from one class to another, or without changing the class, by altering the rate for that class. This provides complexity enough within a territory, but when an article crosses the Ohio or traverses the state of Virginia, it

² BOARD OF INVESTIGATION AND RESEARCH, REPORT ON INTERTERRITORIAL FREIGHT RATES, H. R. DOC. No. 303, 78th Cong., 1st Sess. 25 (1943).

moves into both a different classification and a different rate territory. The interterritorial complexities which result are not to be resolved by any simple process.

As if the intricacies of classification, of rate making, and of dissimilar territorial areas for each did not impart sufficient complexity to the subject, a third basic feature which must be recognized is that the bulk of America's railway freight traffic does not move on class rates at all, but on what are called commodity rates.³ Many types of products could not compete successfully in the market if they moved on class rates, and therefore certain specific commodities, especially when they represent a substantial traffic, often receive a special rate from one specific point to another, in one direction. These are commodity rates, and though sometimes bearing a loose relationship to class rates,⁴ they are wholly diverse, subject to no formula, governable by no generalizations, and susceptible to evaluation only one by one.

Where such intricacies exist, it becomes a major problem of analysis and research to demonstrate to what extent the rates of one territory are higher than another. This question has been treated elsewhere in this symposium and has received elaborate analysis in previous studies.⁵ No necessity requires that it be reexamined here. But in order to avoid discussing the historical origins of a situation without indicating what that situation is, it may be well to summarize the nature of the regional differentials. To begin with, it readily appears that first-class goods in southern territory pay a higher rate than first-class goods in official territory. This difference is shown in cents per mile per hundred pounds in a ratio of 79 cents to 62 cents for 100 miles; \$1.12 to 80 cents for 200; \$1.73 to \$1.22 for 500; and \$2.49 to \$1.82 for 1,000.⁶ Of course most articles which take class rates do not take first class, but elaborate computations have shown that the average relationship of all class rates to first class is about the same in southern and in official territories.⁷ Therefore the

³ An analysis of all railway traffic throughout the United States, made on September 23, 1942, showed that, excluding less-than-carload lots (which were only 1.65% of the tonnage), 14.8% of the carloads originating on that day moved on class rates and 85.2% on commodity rates. The class traffic, however, contributed 22.4% of the revenue, and commodity traffic 77.6%. *Id.* at 2.

⁴ Authorities agree as to the existence of some correlation between class rates and commodity rates, but disagree vigorously as to the degree of relationship. See, e.g., *Hearings before Subcommittee of the Committee on Interstate Commerce on S. Res. 99*, 76th Cong., 1st Sess. 182-292 (1939). Material on pp. 182, 186, 221, 223, 244, and 255 illustrates the tendency to link class and commodity rates, while material on pp. 185 and 292 emphasizes their separateness. C. E. Widell, General Traffic Manager, Tennessee Products Corp., declared (at 378), "We have an uneven rate structure in the South, and from the South to the North. . . . It has always been uneven. There has, however, grown up in a fairly uniform, reasonable development . . . a commodity rate structure in the South that is most vital to the South. It applies on lumber and logs, brick, sand and gravel, pig-iron, coal and coke, and pulpwood, taking in practically what we call our basic commodities. . . . It is undoubtedly as low as a similar basic commodity rate structure in the North."

⁵ The principal authorities are: J. HADEN ALLDREDGE, *THE INTERTERRITORIAL FREIGHT RATE PROBLEM OF THE UNITED STATES*, published as H. R. Doc. No. 264, 75th Cong., 1st Sess. (1937); ALLDREDGE, *SUPPLEMENTAL PHASES OF THE INTERTERRITORIAL FREIGHT RATE PROBLEM OF THE UNITED STATES*, published as H. R. Doc. No. 271, 76th Cong., 1st Sess. (1939); and BOARD OF INVESTIGATION AND RESEARCH, *REPORT ON INTERTERRITORIAL FREIGHT RATES*, H. R. Doc. No. 303, 78th Cong., 1st Sess. (1943).

⁶ BOARD OF INVESTIGATION AND RESEARCH, *REPORT ON INTERTERRITORIAL FREIGHT RATES*, cited *supra*, note 5, at 18-19. It should be observed, however, that despite the higher rate level in the South, the average freight revenue per ton-mile for the first-class railroads in the East in 1941 was 9.89 cents; in the South, 9.46 cents. This was because the lower grade of freight offset the higher rates. *Id.* at 152.

⁷ *Id.* at 25-27; see also ALLDREDGE, *INTERTERRITORIAL FREIGHT RATE PROBLEM OF THE UNITED STATES*, cited *supra*, note 5, at 11-12.

first-class differentials may be regarded as applicable for the entire class-rate structure. On this basis, investigators have concluded that southern class rates are 39 per cent higher than class rates in official territory.

These figures are impressive, but what of the commodity rates, with their great significance in moving the major part of the traffic? For this type of rate no general scale applies, and conclusions must be based upon an accumulation of comparisons for individual commodities. Investigators who have made such item-by-item comparisons conclude that the advantage consistently lies with manufacturers and producers who ship within official territory and that "on most of the commodities there are substantial regional differences in the levels, with higher rates in the South and West than in Eastern territory. In most instances, but not in all, the relative differences in rate levels are less than the differences in the levels of first-class rates in the same territories."⁸ Most significant, perhaps, is the conclusion that where the South enjoys favorable commodity rates these have usually applied to agricultural products and raw materials, rather than to manufactured goods.

In the movement between territories, also, there are differentials, both on class and commodity rates, adverse to the South. At one time, it was the practice to construct these interterritorial rates simply by adding the established rate for that part of the haul which lay within southern territory to the established rate for the part which lay within official. But this had the effect of charging for two short hauls rather than one long one, and since the short haul always costs more in proportion to the distance the result was usually a higher rate for the interterritorial haul than either territory would have charged for an internal haul of the same distance. This was palpably unfair, and the practice has now been eliminated. The more normal condition, in recent years, has been that the interterritorial haul would take a rate intermediate between the rates for hauls of similar distances in the two territories involved. At first glance this splitting of the difference seems entirely reasonable, but it is actually at this very point that the differential really operates to cause sectional advantages, for the northern shipper sending goods, say five hundred miles, to a point within southern territory does so at an advantage over the southern shipper who ships for the same distance to the same point. In contrast, the southern shipper, sending goods five hundred miles to a point within official territory, does so at a disadvantage in competition with the northern shipper who ships for the same distance to the same point. Since the great market of the nation is the eastern market, the differential borne by southern manufacturers seeking access to this

⁸ Quotation from BOARD OF INVESTIGATION AND RESEARCH, REPORT ON INTERTERRITORIAL FREIGHT RATES, 148. Conclusion based on analysis of seventeen groups of goods taking commodity rates. *Id.* at 92-150, 185-222. THE INTERTERRITORIAL FREIGHT RATE PROBLEM OF THE UNITED STATES, at 27-32, and SUPPLEMENTAL PHASES OF THE INTERTERRITORIAL FREIGHT RATE PROBLEM, cited *supra*, note 5, at 15-18, 41-48 contain extensive comparative data on commodity rates. See also data in *Hearings before Committee on Interstate Commerce on S. 942*, 78th Cong., 1st Sess. 137, 141, 238 (1943), and testimony of A. J. Ribe, of Birmingham, Ala., *id.* at 323: "Except textiles and cast-iron pipe, I know of no manufactured commodity in which the South excels the North [as to commodity rates]."

market has been aptly compared to a protective tariff operating in the interest of eastern industry.

Accepting the findings that these differentials exist, without attempting to determine whether the degree and importance of their disadvantage may have been overstated, it is the purpose of this paper to inquire into three questions: First, it will seek to show how distinctive economic features in the South caused the evolution of a regional rate structure sharply differentiated from that of the East. Secondly, it will deal with the process by which the differentials which grew up through the action of individual railroads were collectivized and institutionalized, as it were, directly by the group action of railroads, and indirectly by the Interstate Commerce Commission. Finally, it will consider the extent to which interest groups have sought to perpetuate the institutionalized rate structure as a bulwark of sectional advantage for industry in the East.

II

ECONOMIC EVOLUTION OF SOUTHERN RATE DIFFERENTIALS

From the day that the Charleston & Hamburg Railroad made its first run, in November, 1832, southern railroads have faced a number of fairly constant economic conditions which inevitably shaped their rate policy and rate structure along distinctive sectional lines.

One of the most basic of these factors was the low density of population. In population per square mile the South has always remained a half century or more behind the New England and Middle Atlantic states, and this has meant for the railroads that they must maintain a greater ratio of track in proportion to the number of people served, or, to express it in another way, that they could not distribute the cost of operation per mile over as large a number of shippers. In recent years a very thorough study has indicated that this population factor is no longer an economic handicap to the South, largely because eastern railroads find the advantage of population density offset by the disadvantage of high terminal costs in the great urban centers,⁹ but historically there seems little doubt that the thinly settled character of the southern country was detrimental to the prosperity of the southern roads. This must have been especially true when the population was less than half as great as today, and it was recognized by the United State Industrial Commission in 1902 as a primary cause of higher rates.¹⁰ The full extent of this disparity in density of settlement can be shown only by a statistical comparison, and for this purpose the states now in official territory are compared, in Table 1, with those now in southern or southwestern. From this it will appear that, while the density of southern population greatly increased from 1850 to 1900, and again from 1900 to 1940, it remained less than half of that in the East.

A second basic feature of the southern economy was the fact that the principal

⁹ The most recent and exhaustive analysis is FORD K. EDWARDS, RAIL FREIGHT SERVICE COSTS IN THE VARIOUS RATE TERRITORIES OF THE UNITED STATES, SEN. DOC. NO. 63, 78th Cong., 1st Sess. 8 (1943).

¹⁰ 19 REP. U. S. INDUSTRIAL COMMISSION 374 (1902).

TABLE I¹¹

POPULATION PER SQUARE MILE FOR STATES NOW IN OFFICIAL TERRITORY AND THOSE NOW IN SOUTHERN OR SOUTHWESTERN TERRITORY, IN 1850, 1900, AND 1940

OFFICIAL			SOUTHERN AND SOUTHWESTERN				
	1850	1900	1940		1850	1900	1940
Maine.....	16.66	23.2	27.3	North Carolina.....	19.10	38.9	72.7
New Hampshire.....	39.60	45.6	54.5	South Carolina.....	23.87	44.0	62.1
Vermont.....	39.26	37.7	38.7	Georgia.....	15.62	37.7	53.4
Massachusetts.....	137.17	349.0	545.9	Florida.....	1.48	9.6	35.0
Rhode Island.....	122.95	401.6	674.2	Alabama.....	15.21	35.7	55.5
Connecticut.....	78.06	188.5	348.9	Mississippi.....	12.86	33.5	46.1
New York.....	67.33	152.5	281.2	Kentucky.....	26.07	53.4	70.9
New Jersey.....	71.46	250.7	553.1	Tennessee.....	22.79	48.5	69.5
Pennsylvania.....	49.19	140.6	219.8	Arkansas.....	4.02	25.0	39.0
Maryland.....	53.00	119.5	184.2	Louisiana.....	12.52	30.4	52.3
Ohio.....	49.55	102.1	168.0	Texas.....	0.65	11.6	24.3
Indiana.....	29.24	70.1	94.7				
Illinois.....	15.37	86.1	141.2				

products, and therefore the principal outbound shipments, were agricultural staples, of which cotton was foremost. From the standpoint of railroad transport, this concentration upon the staples had a number of implications. Since these goods, as raw materials, could not be moved except at rather low rates, it meant that the railroads had to haul them on a small, or even negligible, margin of profit, and compensate themselves by unusually high rates on higher-grade goods. In other words, in the distribution of the rates the incidence of a low rate on this large segment of the traffic meant a disproportionately high rate on other freight. In 1876 the president of the Louisville & Nashville testified that the cost to his company of transportation was 1.23 cents per ton per mile, and that the average charge on freight moving north was also 1.23 cents per ton per mile, which meant no profits, but that the charges on southbound freight averaged 1.87 cents.¹² Furthermore, since the principal products were crops, the movement was highly seasonal, and the railroads found it necessary to secure most of their annual earnings in the four months between September and January.¹³ And as compared with industrial enterprise, which requires raw materials and produces goods in a constant flow, agriculture provides an astonishingly light traffic, for it requires no raw materials and produces goods only once a year. The contrast was strikingly illustrated in 1899 by a railroad president who said:

To show the difference in the density of traffic south of the Potomac and north, take Mr. Carnegie's concern at Pittsburgh; they produce a tonnage in and out that is about

¹¹ Table compiled from U. S. CENSUS OFFICE, THE SEVENTH CENSUS OF THE UNITED STATES: 1850, vol. 1, xxxiii (1853), and U. S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES, 1943, 6 (1944). The corresponding figures for Virginia, partly southern, partly official, were 23.17, 46.1, and 67.1.

¹² Testimony of Albert Fink, President of the Louisville & Nashville, in U. S. BUREAU OF STATISTICS, FIRST ANNUAL REPORT ON THE INTERNAL COMMERCE OF THE UNITED STATES, Appendix, 8, 27, 28 (1876).

¹³ WILLIAM Z. RIPLEY, RAILROADS: RATES AND REGULATION 381 (1912).

4½ times the tonnage of the entire cotton crop of the United States; under the control of one man. This, of course, is not in value, but it is the tons moved, from the railroads' standpoint. I can show you little towns in Western Pennsylvania of 10,000 inhabitants that will produce a tonnage equal to the wheat tonnage of such roads as the Great Northern.¹⁴

Somewhat related to the agricultural nature of the traffic were certain factors affecting the distance and direction of traffic movements. Most of the early southern railroads were built by or at the stimulus of coastal or river ports which wished to tap the agricultural region of the interior. The Charleston & Hamburg, the Georgia Railroad, the Central of Georgia, the Western & Atlantic, the Mobile & Ohio, the New Orleans, Jackson & Northern, and the Louisville & Nashville were all early examples of this tendency. This meant that instead of forming a through system of connecting roads—instead of serving as links in a trunk line—they reached out as conflicting radii from various cities. This, in turn, meant that they carried very little through traffic, but relied almost wholly on local traffic. It was estimated in 1887, for instance, that 80 per cent of the net earnings of the Louisville & Nashville resulted from traffic "which is moved to and from local stations."¹⁵ The handling of local traffic is more costly than hauling traffic on a through basis from seaports to interior carriers, or as an intermediary between other carriers, and this offered another handicap to the southern lines.

Later, when longer lines were put through, connecting the South with the Northeast and with the cities of the Middle West, a new difficulty arose, and this was the imbalance of northbound and southbound traffic. The South tended to send its cotton to Atlantic seaboard markets for export or for delivery to textile mills in New England, and it tended to buy its foodstuffs at Louisville or Cincinnati, thus drawing on the upper Mississippi Valley. Consequently, there was a chronic excess of northbound traffic on the seaboard, and an even more acute excess southbound in the Ohio-Mississippi Valley. This entailed the expense of hauling cars empty in one direction. The magnitude of the disparity is shown in the fact that in 1874-75, southbound traffic on the Louisville & Nashville amounted to 157,520 tons while northbound traffic totalled only 73,410. Twelve years later, the same railroad estimated the excess of loaded cars bound south over those bound north at 57,092.¹⁶

¹⁴ Testimony of John K. Cowen, president, Baltimore & Ohio R. R., 4 REP. U. S. INDUSTRIAL COMMISSION 318-319 (1900). See also *id.* at 279.

¹⁵ Argument of E. B. Stahlman of the Louisville & Nashville before the ICC, May 27, 1887, in DIGEST OF THE HEARINGS BEFORE SENATE COMMITTEE ON INTERSTATE COMMERCE, SEN. DOC. NO. 244, 59th Cong., 1st Sess. 307 (1906), cited hereafter as ELKINS COMMITTEE DIGEST; WILLIAM Z. RIPLEY, RAILROADS: RATES AND REGULATION 422 (1912).

¹⁶ ELKINS COMMITTEE DIGEST, 311. Albert Fink, also speaking for the Louisville & Nashville, had testified in 1876 that traffic south to and north from Nashville was as follows (U. S. BUREAU OF STATISTICS, FIRST ANNUAL REPORT ON INTERNAL COMMERCE OF THE UNITED STATES, Appendix, 29 (1876)):

	<i>Southbound</i>	<i>Northbound</i>
1871-72	161,997 tons	41,531
1872-73	168,573 tons	71,591
1873-74	158,745 tons	75,257
1874-75	157,520 tons	73,410

In addition to all these difficulties of low population density, poor-grade cargo, seasonal business, one-way traffic, light volume, and local rather than through hauls, the southern railroads faced, at one time, an unusually stiff competition from water-borne carriers. In the Seventies and Eighties, river boats still plied not only the Mississippi, the Ohio, and the Tennessee, but also many of the small rivers of the South, both of the coastal plain and of the Mississippi system. It was also true, at that time, that the traditional method of sending goods to New York or other north-eastern points was by coastwise vessels from Atlantic or Gulf Coast ports. The railroads could secure this through traffic only in so far as they could wrest it from the water carriers, with their low rates.¹⁷

A time later came when the railroads apparently brought most of the water traffic under their domination, or at least their influence, and at that point they sometimes used the plea of steamboat competition as an excuse for certain discriminatory practices. This naturally provoked the retort that the whole emphasis upon the water-borne competition was a sham, and it apparently did become that in part. But it is incontestably true that, in the first decades after the Civil War, riverboat and coastal steamer were a real menace to railroads which were already struggling with other regional handicaps.¹⁸

These characteristics of the traffic and of the competition had operated, by the beginning of the twentieth century, to shape a distinctive regional rate structure. The basic characteristic of this structure, as will appear, was a generally higher level of rates than prevailed north of the Potomac. Conspicuous exceptions, as will also appear, were made where local competition or the nature of the freight necessitated them. Sometimes these exceptions, because they were invidious, attracted more attention than the basic high level of rates.

¹⁷ Before the Civil War the amount of cotton shipped overland by rail to northern ports or textile centers was negligible, but the traffic increased from 7,661 bales in 1855 to 108,676 in 1860, to 380,813 in 1870, and to 695,622 (out of a total crop of 4,632,313) in 1876. Even in 1876, however, rail movements were customarily combined with water shipment north of Norfolk, and there was still no record of cotton crossing the Potomac in rail transit. In the delivery of cotton to southern ports, also, railroads were encroaching upon water traffic; in 1855, Mobile had received 436,343 bales by river, none by rail; in 1875, this city received 144,263 bales by river, 230,409 by rail. U. S. BUREAU OF STATISTICS, FIRST ANNUAL REPORT ON INTERNAL COMMERCE OF THE UNITED STATES 142, 145 (1876).

¹⁸ The importance of water competition as a justification for special rates at river towns and ports is stressed in petition of the Louisville & Nashville to the ICC and the argument of E. B. Stahlman for the Louisville & Nashville, in ELKINS COMMITTEE DIGEST, 303, 308, 312, 314-318; see also testimony for Southern Railroad, *id.* at 434-435. The United States Industrial Commission's reports contain testimony by some witnesses that this water competition was or had been a very genuine factor: Martin Knapp, Chairman, ICC, 4 REP. U. S. INDUSTRIAL COMMISSION 134, 137 (1900); M. C. Markham, Illinois Central Railroad, 9 *id.* at 435-436 (1901); T. M. R. Talcott, Seaboard Air Line, 9 *id.* at 628-629; and P. J. McGovern, Chairman, Southern Classification Committee, 9 *id.* at 678. Other witnesses, including Judson Clements, Member, ICC (4 REP. U. S. INDUSTRIAL COMMISSION 155 (1900)), Edward P. Wilson, of the Cincinnati Board of Trade (9 *id.* at 696-697 (1901)), and James M. Langley, Merchants Association of New York (9 *id.* at 874-875), expressed the view that water competition no longer meant anything. Langley said, "There is no competition between the coastwise water lines and the railroads" (*id.* at 875). The Commission itself spoke of water competition as a cause for low rates to certain terminal points (4 REP. U. S. INDUSTRIAL COMMISSION 12 (1900)), but in its final report it spoke cautiously of rivalry by water carriers as an "alleged reason" for the long-and-short-haul discriminations, after which it proceeded to show certain cases of discrimination where no navigable waters were involved. 19 *id.* at 374-377 (1902).

Apparently rates in the South had been higher from the earliest days of railroading, for as early as 1848 Daggett's *Railroad Guide* attempted to list the number of railroads, the mileage, and the average rates per ton mile, first- and second-class, for each state. In a situation where every railroad had its own classification and its own rates the calculations could not have been precise, but they were certainly indicative, and it is striking that the states now in official territory, in almost every case, showed lower rates. The exact figures appear in Table 2.

TABLE 2¹⁹FREIGHT RATES IN 1848, ACCORDING TO DAGGETT'S *Railroad Guide*

STATES NOW IN OFFICIAL TERRITORY

State	Number of Railroads	Mileage	RATES PER TON MILE	
			First Class	Second Class
Maine.....	3	226	5.68	3.38
New Hampshire.....	2	99	5.25	5.00
Vermont.....	1	33	4.00	4.00
Massachusetts.....	36	1929	5.47	4.54
Rhode Island.....	2	91	6.37	4.39
Connecticut.....	4	253	5.75	3.50
New York.....	20	798	9.04	5.79
New Jersey.....	4	155	13.57	11.66
Pennsylvania.....	9	355	6.75	5.25
Maryland.....	9	661	4.56	3.12
Ohio.....	4	307	6.60	4.62
Indiana.....	1	86	8.00	5.81
Michigan.....	3	241	8.44	6.50

STATES NOW IN SOUTHERN TERRITORY

State	Number of Railroads	Mileage	RATES PER TON MILE	
			First Class	Second Class
North Carolina.....	2	248	9.83	6.37
South Carolina.....	2	204	10.75	5.50
Georgia.....	5	602	9.33	4.78
Mississippi.....	1	70	24.39	17.30
Alabama.....	1	67	16.83	8.00
Kentucky.....	1	28	9.00	9.00

From the middle of the century until its end rates generally fell. Southern rates bore a share of the reduction, but relatively they remained higher than rates in the East, and, in the case of local rates (*i.e.*, rates charged between points located on the same road), did not even decline proportionately. The Interstate Commerce Commission fully demonstrated this fact in 1902, when it made an elaborate historical analysis of rates for the preceding forty years. As part of this analysis, local rates on thirty-three roads were studied in detail. Table 3 shows the rate in cents

¹⁹ CAROLINE E. MACGILL, *et al.*, HISTORY OF TRANSPORTATION IN THE UNITED STATES BEFORE 1860 576 (1917). The corresponding figures for Virginia, partly southern, partly official, were 6 railroads, 264 miles, 10.44 first class, 4.69 second class.

per hundred pounds on first- and second-class commodities, as charged for trips approximating 200 miles on the lines which were in official and southern territories. This illustrates emphatically the higher level of southern local rates, and their tendency to remain fixed during a period when other regions were experiencing a reduction of such rates.

TABLE 3²⁰

LOCAL RATES BETWEEN 1872 AND 1900 FOR FIRST- AND SECOND-CLASS COMMODITIES FOR TRIPS APPROXIMATING 200 MILES, ON VARIOUS RAILROADS IN SOUTHERN AND OFFICIAL TERRITORIES

(The roads lettered (o) are in what is now official territory; those marked (s) are southern. The Savannah, Florida & Western became part of the Atlantic Coast Line system.)

Railroad	Distance of Haul	FIRST CLASS					SECOND CLASS				
		1872-1876	1884-1886	1887	1890	1900	1876	1884-1886	1887	1890	1900
(o) Maine Central.	200	54	45	44	35
(o) N. Y. & N. E.	204	..	42	38	30	30	..	37	34	25	26
(o) N. Y., L. E., & W.	203	..	35	35	35	35	..	28	30	30	30
(o) Lehigh Valley.	208	58	41	35	35	35	46	32	30	30	30
(o) Pennsylvania.	194	45	35	33	33	33	30	30	28	28	28
(o) Buf., Roch., & Pitts.	206	..	27	30	26	30	..	22	26	22	26
(o) Lake Shore.	198	..	40	30.5	30.5	33	..	34	27	27	28.5
(o) Michigan Central.	209	..	45	33	33	37	..	35	30	30	32
(o) Grand Rapids & Md.	200	..	52	35	35	40	..	42	30	30	34
(o) Grand Trunk.	204	..	41	40	26	30	..	32	30	24	26
(s) Louisville & Nash.	200	..	74	74	74	74	..	64	64	64	64
(s) Sav., Fla., & Western.	200	..	85	88	85	85	..	74	75	74	74

Although the southern rate structure manifested one of its most extreme differentials in the matter of local rates, the higher southern level was by no means confined to this phase, and southern class rates, generally, were much higher than those in official territory. This may be illustrated by a comparison of rates in official territory from New York to Chicago, a distance of 890 miles, and from Louisville to Atlanta, which is only 472 miles. Despite the shorter distance, rates for all classes of commodities were consistently higher from Louisville to Atlanta throughout the last quarter of the nineteenth century. This is shown in Table 4.

Rates within the South, therefore, had already become fixed at levels higher than those within the East. By a fairly natural extension, this meant that rates from southern points to points in the East were higher than for similar distances wholly within official territory. But while this interterritorial differential should not be minimized, it is important to recognize that (1) interterritorial rates were not as high as those wholly within the South, and (2) where southern railroads had a

²⁰ Table constructed from data in INTERSTATE COMMERCE COMMISSION, RAILWAYS IN THE UNITED STATES IN 1902, PART II, A FORTY YEAR REVIEW OF CHANGES IN FREIGHT RATES 163-209 (1903). This report superseded the rate data prepared by C. C. McCain and published in 1892 by the Finance Committee of the Senate under the title, WHOLESALE PRICES, WAGES AND TRANSPORTATION, SEN. REP. No. 1394, 52d Cong., 2d Sess. (1892). The FORTY YEAR REVIEW contains incomparably full information, but handles it in such a way as to make regional comparisons difficult.

TABLE 4²¹

FREIGHT CHARGES FOR VARIOUS CLASS COMMODITIES, NEW YORK TO CHICAGO AND LOUISVILLE TO ATLANTA,
FROM 1862 TO 1900 (CENTS PER 100 POUNDS)

Year	FIRST CLASS		SECOND CLASS		THIRD CLASS		FOURTH CLASS	
	New York to Chicago	Louisville to Atlanta	New York to Chicago	Louisville to Atlanta	New York to Chicago	Louisville to Atlanta	New York to Chicago	Louisville to Atlanta
1862.....	160	...	128	...	107	...	66	..
1870.....	140	161	125	134	100	114	80	84
1871.....	150	150	130	125	100	100	70	85
1880-1881.....	60	119	50	104	40	89	28	76
1885.....	75	107	60	92	45	81	35	68
1887.....	75	107	65	92	50	81	35	68
1890.....	75	107	65	92	50	81	35	68
1895.....	75	107	65	92	50	81	35	68
1900.....	75	107	65	92	50	81	35	68

competitive incentive to do so, they reduced rates considerably below the norm. Both of these factors are illustrated in the rate from Atlanta to New York, which, though not nearly so low as the rate for the comparable haul in official territory from New York to Chicago, was almost as low as the much shorter haul, within southern territory, from Louisville to Atlanta. Clearly the southern road, in this case, was accepting a lower rate for its portion of the haul in order to reach the metropolitan market. No doubt it was stimulated to do so by the competition of coastwise shipping, as is indicated by the fact that between Atlanta and Chicago, where such competition did not exist, rates were substantially higher. But the longer haul from Chicago to Savannah, to connect with ocean carriers, actually cost less than the haul to Atlanta.

TABLE 5²²

INTRATERRITORIAL CLASS RATES AS CONTRASTED WITH INTERTERRITORIAL CLASS RATES, BETWEEN
1876 AND 1900
(Numbers are cents per 100 pounds for first-class commodities)

	Miles	1872-76	1882-86	1887	1890	1900
Intraterritorial						
Official territory						
New York to Chicago.....	909	75-125	45-75	75	75	75
New York to Pittsburgh.....	440	45	43	45	45	45
Southern territory						
Louisville to Atlanta.....	472	150	119	107	107	107
Memphis to Atlanta.....	419	105	104	103	103	103
Memphis to Charleston.....	728	140	92	91	91	91
Interterritorial						
New York to Atlanta.....	876	145	114	108	114	114
Chicago to Atlanta.....	733	150	157	147	147	147
Chicago to Savannah.....	1002	162	145	135	135	135

²¹ Table constructed from data in the FORTY YEAR REVIEW, cited *supra*, note 20, at 23, 39, 44, 78, 127.

²² Table constructed from data in *id.* at 23, 121, 131, 132, 139, 168. Where more than one rate is available within the time spans indicated in the table, I have included what seemed to be the more representative rate or, where one date is used, the rate chronologically nearest to that date.

All this becomes extremely complex in detail, but it seems to reduce itself to a fairly simple basic policy: because of economic circumstances, southern railroads maintained a higher rate level than those in other parts of the country. This affected interterritorial rates also. But where competitive necessities or market possibilities offered an inducement, exceptions were made which mitigated, if they did not eliminate, the differential. These exceptions took various forms: on the seaboard, through traffic to North Atlantic ports received reductions to meet coastal steamer competition; within the South, river towns or others with real or artificially created competitive advantages were designated as "basing points" and as such received lower rates than neighboring communities. Here arose an easily dramatized long-and-short-haul abuse which violated the Interstate Commerce Act, became a *cause célèbre*, and was generally regarded as the characteristic feature of the southern rate structure. But the low rate to the basing point stood in bold relief primarily because of the high rate level against which it operated. The primary factor was the general rate level. As the Industrial Commission declared in 1902, "Local rates have decreased very unevenly in different parts of the country. [Reduction] does not seem to have occurred in the Southern States. . . . Freight rates in the Southern States are very much higher per mile than for any other section of the country."²³

Stated in different terms, this means that the southern railroads intended to levy higher rates upon the traffic of the South than eastern railroads levied upon the traffic of their region. But it does not mean that they wished to throttle southern industry. What it may signify is that, where later critics sought to encourage southern industry by destroying freight differentials, the southern railroads were prone to attack the problem by making specific exceptions to the structure of differentials. For instance, as will appear subsequently, they moved vigorously to establish rates that would place southern cotton textiles on a sound competitive basis in the northern market. In doing so at a time when the rail system of the country consisted of dozens of independent lines, they could always find a northern carrier which would respond to the inducement of extra traffic by joining them in establishing a special rate to northern markets.

So long as the differential in the rate structure represented nothing more than the policy of southern railroads to levy a higher average rate, exceptions could always be made to avoid flagrant disadvantage to southern products in northern markets. But there was clearly an economic danger for the southern economy in the existence of such differentials. This danger was greatly enhanced when the collective action of the railroads and the tacit sanction of the Interstate Commerce Commission molded these aggregations of separate differentials into sharply defined, collectivized, regional structures, with a system of "private judicature" to extend the

²³ 19 REP. U. S. INDUSTRIAL COMMISSION 373 (1902). In testimony before the Commission, a member of the ICC declared that "rates are usually lower in the north than they are in the south, both local and through," and the president of the Baltimore & Ohio, John K. Cowen, agreed that "the Southern rates I know are higher, but that is a very sparsely populated country and they are bound to be higher. . . ." 4 *id.* at 155, 318 (1900).

parity of rates throughout one region and thus to sharpen the contrast with the disparity of rates in the adjoining region. The danger was further and more acutely enhanced when the railway interests of official territory began to recognize that these institutionalized rate differentials could be used as a barrier to exclude producers from other territories, and thus to monopolize the richest metropolitan markets for their own shippers.

III

INSTITUTIONAL DEVELOPMENT OF TERRITORIAL UNITS AND REGIONAL DIFFERENTIALS

The history of a region, far more than that of a nation, deals with intangibles. The nation is an entity; it has governmental machinery, territorial boundaries, citizens, and jurisdiction. The region has none of these. The South, for instance, is not a political entity; the only political entities are twelve states, more or less. It has no citizens, and though the people are alleged to conform to a regional type, they in fact exhibit a wide range of traits, and can be considered homogeneous only by that special type of part-truth known as generalization. Of course, even the nation is not as much an entity as the terms "American policy," "American tradition," *et cetera*, would suggest, but generalization reaches a peculiarly treacherous phase when applied to regional or sectional topics.

If the freight rates of the South and of other territories had remained what they were in origin—merely the aggregation of all the rates levied by separate railroads, independently of each other—then generalizations about a "southern rate structure" would be as elusive as those about the "southern character," and would be specimens of the same fallacy of treating a mere tendency as if it were an institution. Considered individually, southern railroads vary among themselves as much as, collectively considered, they may vary from the roads of another region.²⁴ But the analyst need not generalize upon them, for they have generalized themselves. Although southern rail rates originated with separate roads, and though there yet remains some basis for independent action, the fact is that rate-making became collectivized seventy years ago, and has so remained ever since. Not, as one might suppose, by the action of the Interstate Commerce Commission, but through the work of associations of railways, later sanctioned by the Interstate Commerce Commission, a distinctive southern rate structure applicable to an explicit southern rate territory was created.

In the matter of railway rates, then, as in almost no other regional matters, the sectional tendency took a tangible institutional form. Since Appomattox, "the South" has had no boundaries, no capital, no political authority. But the Southern Classifi-

²⁴ "As between individual railroads in any one of the existing historic rate groups, operating costs vary both above and below the group average. If the variation of the outlying cases from the average is materially wider than any variations between two or more territorial group averages, would the substantial rights of the carrier be violated by dissolving the groups and nationalizing the freight rate structures?" ALLDREDGE, *THE INTERTERRITORIAL FREIGHT RATE PROBLEM OF THE UNITED STATES*, H. R. Doc. No. 264, 75th Cong., 1st Sess. 54 (1937).

cation Bureau and the Southern Freight Association have boundaries more tangible than the Confederacy ever achieved; their capital is Atlanta; and there they make decisions which apply from Chesapeake Bay to the Gulf of Mexico. The fact that a member road retains the legal right to reject the group decision and to establish an independent rate does not seriously qualify the fact that, in effect, rates are made by regional associations.

The shaping of the structure into such a distinctive sectional framework prepared the way for the normal and universal friction between various shipping interests to be formulated into sectional patterns and accentuated along sectional lines. This would have happened in any case, but the institutional structure greatly enhanced it.

As late as the 1870's and Eighties, there were countless different rate systems in the United States. The railway network consisted not of a few trunk lines, but of many little connecting roads, and each road had its own classification and its own tariffs. Some had a number of classifications, varying with the direction of the traffic or what not.²⁵ At one time there were 138 separate classifications in what is now official territory alone, and the shipper consigning goods to any great distance had to plunge boldly into the unknown.

It was inevitable that, as through traffic increased and connecting lines were developed, some more general system or systems of rates would replace the impenetrable mass of separate rate schedules which had grown up in the era of unconnected roads serving local markets. But though the change itself was certain to occur, it was not certain whether this regimentation of rates would be achieved by government control or by the collective action of the railroads, nor was it certain whether several regional authorities or one national authority would emerge, though even a national authority could hardly impose a uniform national structure, in view of regional differences in the economy.

At a later time the railway system became genuinely national, but at this formative stage in the development of rate structures the railways of the country fell more or less naturally into regional groupings. The Mississippi, the Ohio, and even the Potomac provided serious barriers to uninterrupted shipment from South to North, and most of the traffic was regional. Not until 1874-1875 did James B. Eads and Albert Fink complete the first bridges which enabled rail traffic to span the broader reaches of the Mississippi and the Ohio. With this physical and economic isolation, cooperative action naturally moved along sectional lines, and, as it happened, the first major cooperative association of railroads originated in the South. This was the Southern Railway & Steamship Association, which was formed in 1875.²⁶

²⁵ Before 1887 a shipper over the Wabash Railroad might be compelled to consult six classifications: in the area of the Southern Railway & Steamship Association, eighteen classifications; in the Mississippi Valley, five; in the "revised western," nine; in the eastern trunk-line, thirteen; in western trunk-line, five. Some of these applied to traffic only in one direction. 19 REP. U. S. INDUSTRIAL COMMISSION 391 (1902). In the South "the Savannah Line used nine classes, and the Charleston and Coast Lines worked five and six classes." Hudson, *The Southern Railway and Steamship Association*, 5 QUAR. J. OF ECON. 70, 84 (1891).

²⁶ Hudson, *loc. cit. supra*, note 25, at 70-94, has an excellent account of the history of this organization.

The decade of the Seventies found southern railroads struggling to recover from the devastation of the Civil War, and to maintain their solvency upon a very small volume of traffic. Though there were numerous points where two or more roads were in competition, there was none where the volume of traffic was more than one road could have handled.²⁷ Competition for traffic, therefore, was intense, and had its impact upon roads so close to bankruptcy that only a minor rate war was required to finish them. The only salvation of the roads seemed to lie in an agreement to apportion all competitive traffic on a pro rata basis. But apportionment of traffic could not be stabilized without equalization of rates, and this meant that the individual roads must surrender the right to fix their own rates at competitive points.

The formation of railroad pools later came under criticism because of its monopolistic tendency, and antitrust legislation later limited the sphere of collective action. But on December 21, 1874, when the railroad representatives of the southeast met at Macon, Georgia, they did so in the unabashed conviction that group control would serve to avert the financial collapse of the southern transportation system and to eliminate recognized evils such as rebates and discriminatory charges. At a subsequent meeting in Atlanta, twenty-two railroads and three steamship companies formally combined themselves in the Southern Railway & Steamship Association, bound themselves to a written agreement containing thirty articles, and selected Albert Fink, of the Louisville & Nashville, as their general commissioner.²⁸

Fink was a man of remarkably versatile genius. A native of Hesse-Darmstadt, he came to America when the democratic movement of 1848 failed in Germany. Beginning his American career as a civil engineer and bridge builder, he constructed a number of important railway bridges, but his talent in the operational field led to his appointment as a vice-president of the Louisville & Nashville and to his writing, in 1874, a report on the cost of transportation. This report established Fink as "the father of railway economics" in America. By 1875 he was ready to retire from business, but he deferred this step in order to accept the commissionership of the Southern Association. To this post he brought not only unusual intellectual power and great force as a leader, but also intense conviction that pooling was a meritorious and beneficial practice. Although he served as commissioner for only six months, he created for the southern roads the first successful large-scale railway pool in America.²⁹

²⁷ *Id.* at 70.

²⁸ Account of formation in *id.* at 71-72. Articles of agreement in U. S. BUREAU OF STATISTICS, FIRST ANNUAL REPORT OF INTERNAL COMMERCE OF THE UNITED STATES, Appendix, 16-19 (1876). The member railroads included the Western & Atlantic, the Central of Georgia, the Southwestern, the Savannah, Griffin & North Alabama, the Mobile & Girard, the Augusta & Savannah, the Eatonton Branch Railroad, the Georgia Railroad, the South Carolina Railroad, the Richmond & Danville, the Piedmont Railroad, the North Carolina Railroad, the Atlanta & Richmond Air Line, the Memphis & Charleston, the East Tennessee, Virginia & Georgia, the Western of Alabama, the Montgomery & Eufaula, the Wilmington, Columbia & Augusta, the Charlotte, Columbia & Augusta, the Wilmington & Weldon, the South & North Alabama, and the Nashville, Chattanooga & St. Louis.

²⁹ See the sketch of Fink in 6 DICTIONARY OF AMERICAN BIOGRAPHY 387-388 (1931), and Hudson, *loc. cit. supra*, note 25. Also see the numerous transcripts of testimony which Fink offered in explanation and defense of his ideas. These appear in U. S. BUREAU OF STATISTICS, FIRST ANNUAL REPORT ON IN-

Much of the work of the Association lies outside the limits of this paper (for instance, the division of freight between member roads), but one of its major functions was the control of competitive rates, especially to the East, and thus, indirectly, the creation of a regional rate structure. By the Association's first articles of agreement in 1875, the twenty-two member roads gave to the commissioner unequivocal power "to decide as arbitrator, . . . when they cannot be agreed upon between the members of the association . . . the competitive rates between rail and water lines . . . and the regulation of rates between the various centers of competition when they discriminate against certain localities . . . [and] the adoption of local rates protective of competitive rates." The Association also stated its purpose to "provide proper means to enforce effectively and promptly all agreements that may be entered into." As the articles were enlarged and renewed from year to year, a fully developed machinery for the making and enforcement of rates emerged. Just before the enactment of the Interstate Commerce Act this machinery consisted of an executive committee, with a subsidiary committee on rates. The rate committee was authorized, upon the unanimous agreement of its members, "to make all rates and classifications to and from all points East and West into Association territory." Failing such agreement, the executive committee was empowered to act, with rights of review and final and conclusive action by a board of arbitration. Members were specifically "forbidden to reduce the rates made by the Rate Committee," and if accused and found guilty by the board of arbitration of making such reductions, the members were subjected to heavy fines.³⁰ The reality of such penalties is indicated by the fact that one road was fined \$5,000 and others were tried by the arbitrators; the vigilance of enforcement is indicated by the fact that inspectors of the Association between October 1, 1886, and June 1, 1887, corrected weight or classification data on thousands of shipments of goods in order to prevent any indirect cutting of rates by means of under-weighting or under-classifying shipments.³¹ It was generally agreed that the Association effectively accomplished its purpose, which means that a regional authority had replaced independent action as a means of rate making, as early as 1880.

Not only did the operation of the Southern Association tend to bring rates under the control of a single regional authority; it also tended to maintain the higher regional level of rates which economic conditions had made necessary. Had southern

INTERNAL COMMERCE OF THE UNITED STATES, Appendix 1-48 (1876); THE RAILROAD PROBLEM AND ITS SOLUTION AS EXPLAINED BY ALBERT FINK BEFORE THE COMMITTEE ON COMMERCE OF THE U. S. HOUSE OF REPRESENTATIVES (1880); ARGUMENT OF ALBERT FINK BEFORE THE COMMITTEE ON COMMERCE OF THE U. S. HOUSE OF REPRESENTATIVES (1882); ARGUMENT BEFORE THE COMMITTEE ON COMMERCE OF THE U. S. HOUSE OF REPRESENTATIVES BY ALBERT FINK (1884); TESTIMONY OF ALBERT FINK BEFORE THE SELECT COMMITTEE ON INTERSTATE COMMERCE OF THE UNITED STATES SENATE (1885); and REPORT OF THE SENATE SELECT COMMITTEE ON INTERSTATE COMMERCE, SEN. REP. No. 46, 49th Cong., 1st Sess. 89-126 (1886).

³⁰ First articles of agreement in U. S. BUREAU OF STATISTICS, FIRST ANNUAL REPORT ON INTERNAL COMMERCE OF THE UNITED STATES, Appendix 16-19 (1876); articles for 1886-87 and 1887-88 in Hudson, *loc. cit. supra*, note 25, at 115-130.

³¹ Hudson, *loc. cit. supra*, note 25, at 80-92.

railroads been operating in unrestricted competition, their rivalry for traffic would probably have resulted in a reduction of rates far below the point indicated by economic factors. But competition in rates was eliminated. A vice-president of the Louisville & Nashville, testifying on this matter in 1887, declared:

The Southern Railway and Steamship Association was one of the earliest organizations of that kind created in this country. Through it and through similar appliances we have been able to adjust our trouble, so that we have been comparatively free from wars. The Louisville and Nashville Company, although it traverses a vast territory and is considered a strong line, is not in a position to arbitrarily demand anything or to fix an arbitrary adjustment of rates to and from any point. . . . The lines directly interested in . . . traffic to and from . . . various centers come together and agree among themselves what the rates shall be, and if they cannot agree, the question is submitted to arbitration. This method . . . has enabled the lines of the South to avoid the rate wars so frequent between the trunk lines of the East and the railroads of the West.³²

Not for long, however, did the southern area remain in exclusive possession of the pool. After only six months of success in organizing the Southern Association, Albert Fink was called to the building of an even greater combination—the Trunk Line Association, which included all the major roads from the Middle West to New York. This was easily the most important pool in the country, and by 1885 it had reached what is described as “a high degree of efficiency.”³³ Also by that date, a Western Freight Association had emerged from earlier pooling attempts in the West, and, so far as the voluntary action of railroads could accomplish it, the country had already been divided into its principal territorial groupings.

The enactment of the Interstate Commerce Act in 1887 and of the Sherman Act in 1890 presented a major challenge to the pools. The first of these measures specifically forbade the pooling of freights, and the second prohibited combinations in restraint of trade. Clearly, the railroads could not continue to apportion freight, and it was a question whether they could legally agree to equalize and maintain rates. In 1897 and 1898, in the *Trans-Missouri Freight Association* case and the *Joint Traffic Association* case, the Supreme Court held such rate-fixing practices to be illegal.³⁴

With both of the major functions of the pool thus outlawed, the regional associations faced a precarious future. But in fact the newly formed Interstate Commerce Commission had neither the power, the facilities, nor the desire to fix rates, and no one wanted to go back to the chaos and uncertainty of an arrangement in which each line maintained its own separate system of classification and rates. Moreover, the time had now arrived when the major part of the traffic was through traffic,

³² Testimony of E. B. Stahlman before ICC, May 27, 1887, in *ELKINS COMMITTEE DIGEST*, 312. Cf. the testimony of William Z. Ripley, Jan. 7, 1901, that “the existence in a very large part of the southern states of what is practically a pool makes the freight rates into and out of those southern states considerably higher than in those parts of New England where competition still prevails.” 9 *REP. U. S. INDUSTRIAL COMMISSION* 289 (1901).

³³ 19 *REP. U. S. INDUSTRIAL COMMISSION* 333 (1902); Hudson, *loc. cit. supra*, note 25, at 72.

³⁴ *United States v. Trans-Missouri Freight Association*, 166 U. S. 290 (1897); *United States v. Joint Traffic Association*, 171 U. S. 505 (1898).

on which no rate could be fixed without joint action by the roads involved. Consequently the rate associations were, in effect, permitted to reorganize and to continue on a conference basis, though without power to coerce their member roads. As early as 1889 the Interstate Commerce Commission officially stated that it intended to permit the carriers to work out all details of tariffs, and in 1890 it flatly declared that "railroads in the matter of rates, cannot be considered singly. In that respect, the railroad interest must be regarded as substantially a unit."³⁵ In 1889 the Commission held that, in determining the reasonableness of a rate, it was immaterial whether railroad companies had acted jointly or separately in deciding upon such a rate.³⁶ Further encouragement to joint action had also been given by the ruling that if a railroad wrote to the Commission acknowledging the authority of an association to issue tariffs in its behalf the Commission would thereafter accept schedules filed by the association as if they had been filed by the member roads.³⁷ These rulings were cast into some shadow by the Supreme Court decisions of 1897-98, but they had indicated the attitude of the Commission, and, essentially, that attitude remained; nor was the Commission isolated in its view, for as early as 1899 the Attorney General issued a ruling in which he recognized the necessity of rate conferences, and sanctioned their continuance.³⁸

Thus the Commission indicated a complete readiness to recognize the joint action of the railroads themselves in the rate-making process. There was a question, however, whether it would prove equally tolerant of the regional divisions which had emerged from the formation of the early pools, or whether it would insist upon a greater degree of national uniformity. This question did not arise actively in connection with the actual tariffs, for it was conceded that they could not be reduced to uniformity, but it did arise very emphatically in connection with classification.

Classification of freights, as has been indicated, is distinct from rate making, in that it determines how the burden of rates shall be distributed among the various categories of freight but fixes no specific charges. In the period of independent action by separate roads each road had maintained its own classification, as well as its own rate schedule. Pools like the Southern Railway & Steamship Association had tended to collectivize both. But on the eve of the Interstate Commerce Act there were still fifty different classifications in effect in what is now official territory.³⁹ The imminence of the Act at that time persuaded the roads that a greater uniformity would

³⁵ THIRD ANN. REP. I.C.C. 235 (1889); FOURTH ANN. REP. I.C.C. 28 (1890).

³⁶ *New Orleans Cotton Exchange v. Cincinnati, N. O. & T. P. Ry.*, 2 I.C.C. 289 (1888).

³⁷ *In re Joint Tariffs*, SEVENTH ANN. REP. I.C.C. 131 (1893).

³⁸ The letter of the Attorney General to the I.C.C., December 30, 1899, replied to the question whether rate associations were subject to prosecution under the Sherman Act. To justify prosecution, he replied, "It must be shown that there is a 'contract, combination or conspiracy in restraint of trade. . . .' In the first place, there is no contract, combination or conspiracy shown. There is consultation by representative railroad men in committee respecting suggested changes in classification. There is subsequent independent action by railroad companies in the adoption of the new classification recommended by the committee. . . . It must be conceded that a common classification by railroad companies operating in the same territory is a desirable thing. . . ." THIRTEENTH ANN. REP. I.C.C. 16, 18 (1899).

³⁹ ELEVENTH ANN. REP. I.C.C. 62 (1897).

be required in the future, and in February, 1887, the railroads of the Northeast appointed a committee to work out a uniform classification. This committee met, and in the space of eleven days, "with a zeal and pertinacity unprecedented," it devised a single system of classification, which was adopted.⁴⁰

Ironically, the promptness of this action created the false impression that the difficulties of classification could easily be solved, and that a nationally uniform classification would soon be devised. Apparently Congress would have enacted a law requiring such a classification if it had not believed that voluntary action would soon achieve the objective. In 1891 and 1893 the Commission recommended that a uniform classification be imposed by law, and in the meanwhile the railroads had appointed a standing committee which appeared to be making progress.

Yet at this very time, when the highest hopes of nationalization prevailed, the process of regionalization was being completed. The western roads had adopted a joint western classification in 1883; the action of the eastern roads, as just described, had placed their classification on a regional basis in 1887; and the southern carriers in 1889 adopted the classification already in use by the Southern Railway & Steamship Association. This effectively concluded the blocking out of the separate classification territories which have remained to the present. Regional peculiarities of traffic prevented the railroads in different territories from agreeing upon uniform classification.⁴¹ Many of their objections to uniformity seemed to have real merit, and the Commission slowly modified its insistence upon uniformity. A few minor steps were taken, such as the adoption, in 1911, of a nationally uniform system of description (as to packing, etc.) of the freight articles to be classified, and the agreement, in 1919, to publish all three classifications in parallel columns in a single book, instead of maintaining three separate publications.⁴² But these advances left the separate territories essentially undisturbed, and by 1916 the Commission at last seemed to have accepted the territorial divisions as a permanent fixture, for it stated in its annual report that "the existing classifications have grown up in the light of the conditions prevailing in the different classification territories."⁴³

If, in the end, the Commission accepted territorialism in classification, it had accepted territorialism in rate making from the beginning. In the case of *Schumacher Milling Company v. Chicago, Rock Island, and Pacific Railway*, in 1893, the Commission had declared that the fact that different rates and classifications were in force in different sections of the country would not, in itself, "warrant an extension

⁴⁰ The best account of the history of attempts to secure uniform classification is Barton, *Uniform Freight Classification and the Interstate Commerce Commission*, 18 J. OF LAND AND PUB. UTIL. ECON. 312-322 (1942). Also see FIFTH ANN. REP. I.C.C. 23, 24 (1891); 9 REP. U. S. INDUSTRIAL COMMISSION 656-662 (1901); 19 *id.* at 391-397 (1902); Class Rate Investigation, 262 I.C.C. 447, 459-465 (1945).

⁴¹ For statement of the regional objections to uniformity, see ELEVENTH ANN. REP. I.C.C. 64 (1897); 4 REP. U. S. INDUSTRIAL COMMISSION 100, 217, 277 (1900); 9 *id.* at 633, 656 (1901).

⁴² Barton, *loc. cit. supra*, note 40, at 319; testimony of J. A. Little, Nebraska State Railway Commissioner, in *Hearings before Subcommittee on Interstate Commerce on S. Res. 99, 76th Cong., 1st Sess.* 277 (1939).

⁴³ THIRTIETH ANN. REP. I.C.C. 13 (1916).

of the lower rate and classification to the section where the higher rate and classification are applied."⁴⁴

With the Commission declaring that "rate-making and classification committees . . . perform a valuable and important service to the public as well as the railroads,"⁴⁵ such organizations continued to play a vital part in initiating rates. Consequently they have continued to the present time, with various shifts in organization but with a great deal of basic continuity from the pools of the Eighties. By the beginning of the present century the Joint Traffic Association was the principal agency of joint action in the East. The western roads had been ordered under the Sherman Act to dissolve their Trans-Continental Freight Rate Committee, but within two months after the decision they had formed the Trans-Continental Freight Bureau, which continues to the present time. In the South, the Southern Railway & Steamship Association had succumbed in 1893 to the combined impact of the laws against pooling and the panic of 1893, and two groups, the Mississippi Valley and the South-eastern Freight associations, had taken its place. Later a third, the Associated Railways of Virginia and the Carolinas, further subdivided the South.⁴⁶ But the essential continuity which projected itself through all these changes is shown by the fact that when the Southern Freight Association was formed in 1920, it included not only railway members, but also the same steamship lines which had constantly been affiliated with the railroads of the Southeast, ever since the original Southern Railway & Steamship Association. They still maintain this affiliation in 1947.⁴⁷

At the present, each of the three classification territories and the five rate territories has its corresponding classification and rate associations, and, in addition, certain subdivisions within the regions necessitate additional association groups. In official territory the Trunk Line Association, Central Freight Association, and New England Freight Association are all engaged in rate making, while the Official Classification Committee handles all questions of classification except those on intrastate traffic in Illinois. In the South, the Southern Freight Association and the Southern Classification Committee, which was established in 1899 and reorganized on its present basis in 1917, are the principal agencies.⁴⁸

In terms of authority and of formal constitution, these associations are somewhat intangible. They are voluntary, unincorporated associations, which until the First World War were not required to file with the Interstate Commerce Commission a statement of the nature of their organization,⁴⁹ and which sometimes refrained from

⁴⁴ 6 I.C.C. 61 (1893); also see *Western Newspaper Union v. Aberdeen & Rockfish R.R.*, 34 I.C.C. 326, 328 (1915).

⁴⁵ *Harvard Co. v. Pennsylvania R.R.*, 4 I.C.C. 213, 223 (1890).

⁴⁶ *In re Transcontinental Freight Bureau*, 77 I.C.C. 252 (1923); 19 REP. U. S. INDUSTRIAL COMMISSION 336, 337 (1902).

⁴⁷ Testimony of Joseph G. Kerr, chairman, Southern Freight Association, in *Hearings before the Committee on Interstate Commerce on H. R. 2536*, 79th Cong., 2nd Sess. 1249 (1946).

⁴⁸ On the organizations at present, see testimony of James E. Kilday, *id.* at 823-833, 839-885; BOARD OF INVESTIGATION AND RESEARCH, REPORT OF RATE-MAKING AND RATE PUBLISHING PROCEDURES OF RAILROAD, MOTOR, AND WATER CARRIERS, H. R. DOC. NO. 363, 78th Cong., 1st Sess. 7-54 (1943).

⁴⁹ *Hearings before Senate Committee on Interstate Commerce on S. 942*, 78th Cong., 1st Sess. 977 (1943).

drawing up formal articles of agreement. In a legal sense, they have no compulsory power, and their decisions are not binding upon any road which does not individually accept them, though members are pledged to delay for a fixed period before taking independent action. In an operational sense, however, the pressure to accede to the opinion of the majority is no doubt strong, not only because of a sense of community of interest, but also because through rates necessitate agreements, because a non-conforming member may be subjected to various reprisals, and because the majority is likely to appeal to the Interstate Commerce Commission to suspend the independently filed rate. If such an appeal is successful, the effect is to give legal force to the decision of the association.

If these associations are informal in constitution, they are by no means so in procedure. Indeed, they operate as quasi-judicial bodies, and when a change of classification or of tariff is proposed by carrier or shipper they place it on the docket for public hearings which are announced well ahead of time. Many routine proposals are disposed of by mail, but important changes are treated in a way which justifies the term "private judicature." Recent critics have assailed the vesting of this function in private hands, but no one questions that, by whomever administered, the system must operate with some degree of collaboration, for every change of rate at one point is likely to impinge upon scores of other rates from competitive points, and no change can wisely be made without permitting all interested shippers and carriers to express their views.⁵⁰

In terms of regional rate differentials, the vital significance of these territorial associations lay in the fact that the Interstate Commerce Commission tended to accept the work of each of them, thus conceding the validity of each region's operating separately, and embracing sectional disparities which it would scarcely have evolved for itself. Moreover, the Commission possessed and used the power to sanction differentials, thus giving legal authority to what was otherwise merely a business arrangement among railroads, or, more properly, an economic gap between separate business arrangements.

This paper has already noted the initial readiness of the Commission to accept territorialism in the fixing of tariffs, and its later acceptance of the same factor in classification, but for many years the cases which came before the Commission were so limited in scope that no formal recognition of territories or territorial distinctions was necessary. In 1920, however, when Congress adopted the Transportation Act of that year, it provided that recognition should be given to "such rate groups or territories as the Commission may from time to time designate."⁵¹ This, for the first time, gave the Commission authority to recognize, and even to alter, the territories, and it led to a serious consideration of the whole matter in a case known as *Ex parte 74*, in 1920.⁵² At this time, the Commission determined that it would

⁵⁰ For account of the procedure of these organizations, see references in note 48.

⁵¹ 41 STAT. 488 (1920).

⁵² Increased Rates, 1920, 58 I.C.C. 220 (1920).

recognize the existing territories. The wholeheartedness with which it did so is indicated by a dictum in a later case, that "one of the best tests of the reasonableness of a rate is by comparison with rates on like traffic in the same territory."⁵³ But the first important application of this new control occurred when the Commission instituted a sweeping review and revision of southern class rates. This *Southern Class Rate Investigation*, completed in 1925, was followed by several other territorial surveys.⁵⁴ In each of them, the tendency was to start with the existing rate structure, reared by the freight associations and classification committees, and to impose modifications upon these systems. In a qualified sense, the decisions of groups which could not legally impose their will upon their own members were now being enacted, by Interstate Commerce Commission endorsement, into administrative law.

The regional differentials of fifty years before were in pattern still somewhat the same, but in form they had evolved astonishingly. Having begun as the aggregate of individual actions by individual roads, they had first been collectivized by private, voluntary action on a territorial basis. Then, through acceptance and authorization by the Interstate Commerce Commission, they had achieved a status that entrenched them firmly behind the barriers of legal sanction.

IV

THE RATE STRUCTURE AND REGIONAL ECONOMIC DISCRIMINATION

The two preceding sections of this paper have traced the development of two factors, the importance of which, in the broad historical sense, is undisputed. Despite present controversies which rage around the questions of the effect of rate differentials upon the economy of the South, and of the degree to which rate associations are or are not monopolistic, all parties are agreed that the rate structure of the South evolved with different patterns and higher general levels than that of the eastern railroads, and that the formation of classification and rate committees along territorial lines contributed to the institutional fixing of these sectional patterns, especially since the Interstate Commerce Commission recognized the territories as units, conceded to the territorial associations a recognized function as the agents of roads in their geographical groups, and gave legal sanction by its rulings to territorial differentials.

These basic points of agreement are important to emphasize, for the reason that in 1945 the dispute over differentials entered a new and confusing phase. In that year the southern governors, including Ellis Arnall of Georgia, won a decision from the Interstate Commerce Commission ordering an adjustment of class rates in southern and official territories to bring the two structures nearer to a parity.⁵⁵ The Com-

⁵³ Traffic Bureau of Sioux City Chamber of Commerce *et al.* v. Baltimore & Ohio R.R., 120 I.C.C. 7, 14 (1926).

⁵⁴ Southern Class Rate Investigation, 100 I.C.C. 513 (1925); Consolidated Southwestern Cases, 123 I.C.C. 203 (1927); Western Trunk-Line Class Rates, 164 I.C.C. 1 (1930); Eastern Class Rate Investigation, 164 I.C.C. 314 (1930); Western Trunk-Line Class Rates, 173 I.C.C. 637 (1931); Western-Southern Class Rates, 226 I.C.C. 497 (1938); Class Rate Investigation, 1939, 262 I.C.C. 447 (1945).

⁵⁵ Class Rate Investigation, 1939, 262 I.C.C. 447, 487 (1945).

mission's decision was appealed to the federal courts, and to many it seemed that a Supreme Court ruling sustaining the Commission was the only thing necessary to complete the triumph of the campaign against sectional discrimination. But Arnall had previously decided to extend the fight to an attack on the rate associations as monopolies and even on the Interstate Commerce Commission for countenancing them. Consequently, the State of Georgia, in 1945, filed a suit, now pending, against the Pennsylvania Railroad Company and others, in which the monopolistic intent of the rate associations in general, and of the Association of American Railroads in particular, was asserted.⁵⁶ It would appear from the record that some of the objectives and actions of the AAR were, indeed, designed to exercise a control not altogether voluntary over the railroads of the country. But many people who were in sympathy with Arnall's fight for regional parity disagreed completely with his attack on the rate associations, which in their view performed an indispensable service. Consequently, a contest which had begun on the issue of sectional discrimination now focused upon the merits of rate associations. The new emphasis was particularly confusing in terms of the original issue, because there had previously been times when the heads of the southern rate associations were the most vigorous and effective foes of interterritorial discrimination, and they continued to fight for favorable rates for southern goods in northern markets. What then was the issue that separated them from the Georgia governor? It would seem to be that he was seeking to end discrimination by destroying the differential system and the institutions which had operated it. They, in the belief that regional economic disparities necessitated rate-structure disparities also, were seeking to avoid the discriminatory effect of such disparities by making special competitive rates wherever the rigid application of differential rates would victimize the southern shipper. For the first twenty years of the present century they had been reasonably successful in making such rates, but this was always because they had the cooperation of carriers in official territory. Without such cooperation, the differential rates would apply. And the differential rates could be and have been employed by interests in official territory as a weapon of sectional economic advantage. Upon this point the spokesmen of the Southern Governors' Conference and the Southern Freight Association are agreed.

The complaint that the South, as an economic entity, was victimized by the freight rate structure probably extends back well into the nineteenth century. It can be documented as early as 1900. On June 14 of that year, a freight manager of an alkali company in Michigan, M. R. Bacon by name, testifying before the Industrial Commission, denounced what he called the "prohibitive freight rate to southern seaboard cities." Continuing, he exclaimed:

Take the South for illustration, with its great natural resources. It should be the home of the biggest manufacturing plants in the world. Let the railroads give that country

⁵⁶ Leave to file a complaint before the Supreme Court in the case of *State of Georgia v. Pennsylvania R.R.* was granted March 26, 1945. 324 U. S. 439 (1945). For views of Arnall on the I.C.C., see *Hearings before Senate Committee on Interstate Commerce on H.R. 2536, 79th Cong., 2nd Sess., 422-426* (1946).

reasonable freight rates, then watch the country prosper. Then see the diversified industries that will gather there. Then note the increased business of the railroads from every point of the compass to her growing manufacturing centers. I can see no effort or disposition on the part of the railroads to bring this about. It can only come from a reasonable and just classification of freight rates, by one traffic association, under the supervision of the Interstate Commerce Commission. . . .⁵⁷

Mr. Bacon did not enlarge upon the problem of territorial discrimination, but developments had already occurred which showed a tendency among the roads to adopt a conscious policy toward the economic growth of different areas. In fact, one of the first indications of such a policy is to be found as early as 1878. At that time the system of through connections was just emerging, and as it did so it automatically precipitated a rivalry between eastern seaboard and middle-western roads seeking a dominant position in supplying the southern market. Traditionally most of the manufactured goods which went South had been drawn from the seaboard, where the first American industry originated; and the staples needed by the South, such as packing-house products, grain products, and the like had been brought from the upper Mississippi and Ohio valleys by way of Cincinnati, Louisville, and St. Louis. This traditional division of functions was now jeopardized by the growth of industry in the West, and by the competitive enterprise of certain eastern interests in seeking to divert west-south traffic, bringing it east and thence south.

Here was a situation potentially likely to create a rate war, and the Southern Railway & Steamship Association was thoroughly committed to preventing all such competitive outbursts. As a result, it entered in 1879 into an agreement, partly formal and partly informal, to fix rates in such a way that eastern industry would have a monopoly of the delivery of manufactured goods, and western producers would have a monopoly of the delivery of staples.⁵⁸ Under this agreement, the rates were devised in such a way that manufactured goods moved from Cincinnati to Atlanta at 94 per cent of the rate for the same articles, New York to Atlanta, although on the basis of distance Cincinnati should have paid only 54 per cent as much. But on flour, where

⁵⁷ 9 REP. U. S. INDUSTRIAL COMMISSION 75 (1901).

⁵⁸ In *Freight Bureau v. Cincinnati, N. O. & T. P. Ry., et al.*, 6 I.C.C. 195, 216, 217 (1894), the I.C.C. reported that from records at the trial it appeared that this arrangement had been made at a convention of all the parties interested, and the "object was disclosed to be 'to protect to the Green Line Roads the business which is peculiar to the northwest, and to the eastern lines, the business peculiar to their territory.' . . ." The agreement then formed was renewed from year to year and in 1892 was expressed in formal terms as follows: "For the mutual protection of the various interests, . . . it is agreed that what are termed western lines shall protect the revenue derived from transportation by what are known as eastern lines, under the rates as fixed by this Association [the Southern Railway and Steamship Association], . . . and that eastern lines shall in like manner protect like revenue of western lines."

Sixteen years later, essentially the same case was brought before the Commission again, the Hepburn Act meanwhile having given the I.C.C. power to determine rates. In this case, *Receivers & Shippers Ass'n v. Cincinnati, N. O. & T. P. Ry.*, 18 I.C.C. 440 (1910), the I.C.C. reexamined the question whether an agreement had ever been made to protect the place of eastern manufacturers in the southern market, and concluded that no such agreement had been made, but that the agreement was solely to divide traffic, regardless of its character, along geographical lines. The Commission admitted that a protection of eastern manufacturers had been proposed, but found no evidence that it had been adopted. This finding is hard to accept after an examination of the evidence cited in the original finding.

Cincinnati was to be encouraged, the rate was only 69 per cent of the New York rate.⁵⁹

In 1892 complainants brought this situation before the Interstate Commerce Commission; in 1894 the Commission ordered the defendant roads to correct their rates on a specified basis, in order to eliminate this discrimination.⁶⁰ The Supreme Court, however, refused to uphold this order, on the ground that the Interstate Commerce Commission had no power (at that time) to fix rates.⁶¹ The rates, therefore, remained, and at the beginning of the present century the rate structure still reflected this arrangement.

The territorial agreement of 1879 did not discriminate primarily against the South, though it did prevent the South from choosing freely between an eastern and a western source of supply. But it is a matter of leading significance that the railroads had already recognized that their action could shape the economic destiny of an area, and had demonstrated their power by an arrangement which for more than a quarter of a century controlled the economic relationships between the South and the West. Clearly this was a power of the most basic and vital kind, with a direct impact upon the welfare of every citizen.

In the whole problem of interterritorial relationships, however, there seemed to be one enduring factor of safety: that was the continuing desire of the various and numerous roads to secure traffic, even though at each other's expense. This largely offset the differential between the sections in rate levels, for it meant that the roads would usually make a special rate when one was necessary in order to move traffic between territories. It also offset the grouping of the roads into territorial blocs, for it meant that there was always a road in official territory which would join with the southern carriers in order to make a rate that would permit southern products to reach northern markets. Expressed in another way, this is to say that in practical terms a shipper does not care whether he confronts a rate level which is on the average higher than his competitor's; the average is an abstraction, and what concerns him is his capacity to reach a market at specific rates comparable to his competitor's rates. The action of individual carriers, both South and North, usually gave the southern shipper just such specific rates, and this seemed to provide a safety valve for the whole complex of differentials. Diversities of rate structure can have no applied results except when they impinge at the same point, upon one market or one shipper, and if the factor of difference is eliminated at all such competitive points, then the existence of the differential becomes more a matter of theoretical analysis than of concrete economic reality.

So long as the Sherman Act remained reasonably effective, and so long as numerous, independent railroads vied with one another for traffic, the operation of this safety factor prevented appreciable territorial discrimination. To illustrate specifically

⁵⁹ See 9 REP. U. S. INDUSTRIAL COMMISSION 688 (1901), for this data and other testimony on the conspiracy.

⁶⁰ *Freight Bureau v. Cincinnati, N. O. & T. P. Ry.*, 6 I.C.C. 195 (1894).

⁶¹ *Cincinnati, N. O. & T. P. Ry. v. I.C.C.*, 162 U. S. 195 (1896).

with a situation which later became famous in railway circles, there was a time when the Louisville & Nashville, sending products into the markets of the upper Middle West, could propose joint rates to a number of roads, all eager for traffic. At Cincinnati, it could work through the Cincinnati, Hamilton & Dayton, the Cleveland, Cincinnati, Chicago & St. Louis, the Chicago, St. Louis & Pittsburgh, or the Cincinnati, Indianapolis & Western. At Louisville, the Ohio & Mississippi, the Jeffersonville, Madison & Indianapolis, the Louisville, New Albany & Chicago, the Chicago, Indianapolis & Louisville, and the Evansville & Terre Haute were available. Here were nine independent roads in official territory, all with an important stake in south-north traffic, and all prepared to join in the making of favorable through rates.⁶²

So long as this situation prevailed, southern producers, including manufacturers, secured good competitive rates. As early as 1892 southeastern textile mills received rates to Chicago on a parity with those from Fall River to Chicago.⁶³ Similarly, southern producers of stoves and ranges for many years enjoyed rates which, although slightly higher, were low enough to enable them to compete with northern stove manufacturers in Ohio, Illinois, and Indiana markets.⁶⁴

All this, however, depended upon the continued independence of the connecting lines. These lines alone held off the potential handicap of higher rate structure and territorial grouping. And beginning about 1920, the connecting lines began to lose their independence.

Almost from the inception of railroading, the process of consolidation had been on the march. At first this extension took the form of the merging of short, separate, connecting lines, in order to create one through connection. Thus the Louisville & Nashville system was created by the consolidation of 125 separate lines, the Southern by the consolidation of 105 lines.⁶⁵ In the interest of traffic movements on more than a local scale, this was undoubtedly a desirable trend; but in 1898 a new type of consolidation began to occur, in which the mergers that took place were between competing lines, rather than connecting lines; and as early as 1902 the Industrial Commission estimated that more than half of the railway mileage of the United States was under the control of only six financial interests.⁶⁶ After this rapid development, consolidation tended to mark time during the period of Theodore Roosevelt, Taft, and Woodrow Wilson, who were all, of course, hostile to the growth of

⁶² Testimony of E. R. Oliver, Feb. 29, 1932, in Docket No. 12,964, Supplement, 2120-2122, Interstate Commerce Commission. I am indebted to Mr. Frank L. Barton for calling my attention to the valuable data in this docket.

⁶³ *Id.* at 2120.

⁶⁴ *Id.* at 2128.

⁶⁵ FAIRFAX HARRISON, A HISTORY OF THE LEGAL DEVELOPMENT OF THE RAILROAD SYSTEM OF THE SOUTHERN RAILWAY COMPANY (1901); testimony of A. J. Ribe in *Hearings before Senate Subcommittee on Interstate Commerce on S. Res. 99, 76th Cong., 1st Sess.* 380 (1939).

⁶⁶ 19 REP. U. S. INDUSTRIAL COMMISSION 307-308 (1902). The railroads of the South were, of course, undergoing a similar consolidation, and by 1925 the I.C.C. stated that there were but four major systems—the Southern Railway System, the Louisville & Nashville-Atlantic Coast Line System, the Seaboard Air Line System, and the Illinois Central System—which dominated the railway network of the South. 100 I.C.C. 513, 525 n. (1925).

monopoly. Beginning with the First World War, however, the emphasis changed, and under the Transportation Act of 1920 pooling, consolidation, and other collectivist practices received explicit sanction. As a result, the small roads, including those connecting lines which had joined with southern railroads in carrying southern goods north from the Potomac or the Ohio, began to fall under the control of the great trunk lines, such as the Erie, the Pennsylvania, the New York Central, and the Baltimore & Ohio. Thus, by 1929, of the nine independent connecting lines which had once linked the Louisville & Nashville with northern markets, one had passed into the hands of the New York Central, one to the Chesapeake & Ohio, two to the Pennsylvania, and three to the Baltimore & Ohio. An eighth had been absorbed by the ninth, the Chicago, Indianapolis & Louisville, or Monon, as it is usually called. This ninth, as a subsidiary of the Southern and the Louisville & Nashville, alone remained free from the domination of the trunk-line roads.⁶⁷

The strategic importance of the Monon now illustrated the precarious nature of southern access to northern markets, for repeatedly it was this road alone which prevented gross territorial discrimination by other official roads. The trunk lines which had taken over the eight connecting lines were concerned primarily with long hauls of east-west traffic in their own area, rather than short hauls north from the Ohio. Consequently, when southern roads in 1921 sought to secure a market for sugar imported at Savannah by proposing to the Central Freight Association the establishment of an interterritorial rate competitive with the official territory rate, the northern group rejected the proposal. The Monon thereupon announced that it would independently agree to a joint rate with southern lines, and when it did so the other roads in official territory also complied, since, if the traffic was going to move at all, they desired a share. But they had sought to stop it completely. Similarly in 1928, official lines in the Illinois Freight Association refused a proposal by southern lines to establish competitive rates for paper from Alabama, and again the independent action of the Monon caused them to make such rates against their expressed will.⁶⁸

In other cases the official lines were successful in withholding their compliance, and at times they were able to use the fourth section of the Interstate Commerce Act as a weapon. This section, which prohibits lower rates for a long haul than for a shorter haul included within the long haul, would, unless the Commission granted relief, prevent a competitive rate to a point in official territory if that rate were lower than the rate to an intervening point in southern territory. In other words, it would prevent southern carriers from maintaining a higher rate level in the South while by-passing that level when they desired to compete in northern markets, and in this sense it placed the southern differential as a weapon in the hands of northern railroads bent on monopolizing northern markets for their own shippers. To illustrate: carriers in official territory had long joined

⁶⁷ Testimony of E. R. Oliver, I.C.C. Docket No. 12,964, Supplement, 2120-2122.

⁶⁸ *Id.* at 2140.

southern carriers in special joint rates for cotton piece goods; but when an order was issued, September 9, 1931, for a review of these rates, the leading official territory lines at once "declined longer to participate in competitive rates on this traffic from points in Southern territory to destinations in Official territory," and they proceeded to file a petition seeking permission to suspend such competitive rates.⁶⁹ Somewhat the same thing happened in connection with iron and steel articles, so that Mr. E. R. Oliver, vice-president in charge of traffic of the Southern Railway, declared, "the principal Official territory lines . . . have seized upon the opportunity [of the fourth section] to wipe out competitive rate adjustments of long standing applying on manufactured products from Southern territory to Official territory."⁷⁰

In 1932, the Baltimore & Ohio took steps which convinced the southern roads that it was about to attempt to seize control of the Moñon under certain provisions of the Transportation Act of 1920. This stimulated a vigorous response, and in hearings before the Interstate Commerce Commission in 1932 spokesmen of the southern roads expressed themselves with unusual candor about the policy of official lines. Joseph G. Kerr, of the Louisville & Nashville, was questioned by an examiner who asked:

I understand you to say that it had been for a number of years past the fixed policy of these four railroads [Erie, Pennsylvania, New York Central, and Baltimore & Ohio] . . . who are seeking the control of all the railroads north of the Ohio and Potomac rivers . . . to prevent as far as they could the movement of traffic from the South generally into the Northern territory on competitive terms. Is that correct?

To this, Mr. Kerr responded: "On competitive terms wherein it in any way affects the east and west traffic."⁷¹ E. R. Oliver, vice-president of the Southern Railway, was even more forthright in his statement. He declared:

The Southern carriers have always followed the policy of maintaining competitive rates from the South into Official territory in line with the rate level prevailing within Official territory in order that manufacturers in Southern territory can reach the large markets in the North and East in competition with manufacturers located North of the Ohio and Potomac rivers. The Southern carriers were able, over a long period of years to carry out this policy until the end of Federal control on February 29, 1920. . . .

The absorption of the [independent] lines in this Northern territory by the larger systems whose chief interest is in traffic moving eastbound and westbound has changed the whole complexion of this situation so that the north-and-south lines thus controlled

⁶⁹ *Id.* at 2137-2138.

⁷⁰ *Id.* at 2124-2126. A number of cases which illustrate the attempts of northern roads to cancel competitive rates or to prevent their establishment are *Auburn Automobile Co. v. Pennsylvania R.R.*, 151 I.C.C. 120 (1929); *Hosiery from Southern Points*, 156 I.C.C. 117 (1929); *Export and Import Rates*, 169 I.C.C. 13 (1930); *Stoves, Ranges, Boilers, etc.*, 169 I.C.C. 169 (1930); and *Iron and Steel Products from the South*, 176 I.C.C. 345, 352 (1931). In the last of these cases the Commission declared, "The evidence upon this record leaves no doubt that the southern manufacturers would have serious, if not insurmountable difficulty in competing with the northern manufacturers in the destination territory if the proposed rates became effective. Since the demand in southern territory for the articles manufactured by them is much less than they can supply, it must be that if their market in the north were thus seriously restricted, the very existence of some of these southern manufacturers would be threatened."

⁷¹ I.C.C. Docket No. 12,964, Supplement, 2202.

no longer agree to establish or continue rates on Southern manufactures into this Northern territory in competition with rates enjoyed by manufacturers in Official territory directly served by the east-and-west lines.

The new policy of these connections is to build a rate wall at the Ohio and Potomac rivers which will prevent or greatly curtail the movement of Southern products into Official territory.⁷²

Although this situation was illustrated especially well by the developments at the Ohio River crossings, it was by no means confined to that area. The principal connections of the southern lines at the Virginia gateways were also, in a competitive sense, blocked, and the Baltimore & Ohio and the Pennsylvania opposed "every effort of the Southern lines to establish or maintain rates from the South into Official territory in line with the rates within Official territory."⁷³ From the standpoint of traffic movement, this did not seriously obstruct northbound shipments, for the southern roads could and did rely heavily on water-borne connections north of Norfolk. But in this utilization of steamships in the East, as in their utilization of the Monon line in the West, the southern roads were placed in the insecure position of relying upon a limited group of somewhat exceptional connections, rather than upon a broad basis of equitable interterritorial rates.

It was at about this time that the Interstate Commerce Commission announced a conclusion which might well have astonished those who looked upon the Commission as the effective guardian of justice in the American rate system. In the case of *Alabama v. New York Central Railroad* it declared:

The contention that the Northern carriers, which participate in the interterritorial rates, do not control the rates within the North appears to be contrary to the facts. . . . We are persuaded that the Northern carriers as a group actually do effectively control the rates within the North and also the northbound interterritorial rates except to points on and west of the Monon line.⁷⁴

At the end of the decade of the Twenties, therefore, the freedom of southern producers to sell in northern markets was threatened as never before. The disappearance of independent north-south connecting lines removed the possibility of arranging special joint rates into official territory. This forced the South to face, for the first time, the intersectional consequences of the differential in rate levels and the demarcation of territories. Northern railroads freely utilized these factors to monopolize their own markets for their own shippers, and the Interstate Commerce Commission admitted that these northern roads were in full control of the situation.

It was already a grave state of affairs, but the decade of the Thirties brought a number of new developments which increased its gravity. First of all, this era brought the Great Depression, which immeasurably sharpened the incentive of all business enterprises to seize upon any economic advantage, any means of procuring or of retaining business. This meant that northern carriers and shippers would

⁷² *Id.* at 2119-2124.

⁷³ *Id.* at 2150.

⁷⁴ 235 I.C.C. 255, 329 (1939).

employ to the fullest any sectional advantage which inhered in the rate structure. Second, it brought to a climax a drive by the South to capture a greater part of the nation's industry. In doing this, southern promoters, in some cases with the cooperation of their state governments, publicized fully every advantage which the South could offer. Southern wages were low because living costs were low and labor was not unionized.⁷⁵ Overhead costs of operation were lighter because taxes were not as heavy as in metropolitan areas and, at times, exemption from taxes was granted for a term of years. Climatic advantages permitted more continuous operation in some types of industry than was possible in the rigors of a northern winter. In short, almost every advantage seemed to lie with the South, and the migration of industry from New England reached proportions that have cast a lasting blight over some of the oldest industrial areas in the country. It was not surprising, therefore, that northern industry began to fight back. To offset the wage differential, many an eastern industrialist who would never have done so otherwise gave his support to a uniform national wages and hours law, and the enactment of that measure assumed a distinctively sectional character.⁷⁶ One of the few indubitable advantages which the North still possessed was the favorable rate structure, and the utilization of every such advantage became increasingly imperative.

A third factor which contributed to bringing the rate question into a new phase was the virtual suspension of the antitrust laws during the first years of the New Deal. Collective action in industry had made great strides during the Twenties, but the climax came with the adoption of the National Industrial Recovery Act in 1933, with its avowed purpose to promote "the organization of industry for the purpose of cooperative action among trade groups" and its suspension of the antitrust laws in so far as they conflicted with compliance with the Act.⁷⁷ President Roosevelt had specifically indicated that he regarded collective action in the railway field as valid, for he had declared at Salt Lake City on September 17, 1932, "I believe the policy of enforced competition between railroads can be carried to unnecessary lengths. . . . We have . . . frequently required them to compete unreasonably with each other." The adoption of the Emergency Railroad Transportation Act of 1933⁷⁸ seemed to lend further sanction to the idea of group action, and this impression was confirmed when the Federal Coordinator of Transportation, appointed under the Act, urged the roads to form "a more perfect union."⁷⁹

Accordingly, the railroads began to strengthen the agencies in which they were associated. The Pennsylvania Railroad acted as the spearhead of this movement,

⁷⁵ The specific relationship of the intersectional wage differential and the intersectional rate differential has been recognized by Governor Arnall. See his testimony in *Hearings before the Senate Committee on Interstate Commerce on H. R. 2536*, 79th Cong., 1st Sess. 417-418 (1945).

⁷⁶ Speaking of the Fair Labor Standards Act, Carl B. Swisher declares, "It was believed that the proposed statute would curtail the incipient industrial development in the South and that it was intended to do so." *AMERICAN CONSTITUTIONAL DEVELOPMENT* 910 (1943).

⁷⁷ 48 STAT. 195, 198 (1933).

⁷⁸ 48 STAT. 211 (1933).

⁷⁹ Testimony of R. V. Fletcher, Association of American Railroads, in *Hearings before the Senate Committee on Interstate Commerce on H. R. 2536*, 79th Cong., 2nd Sess. 1376 (1946).

and at a meeting, now famous, at the Metropolitan Club on November 14, 1933, a group of the nation's leading capitalists, industrialists, and railroad executives planned to reorganize the innocuous old American Railway Association into a new and potent successor.⁸⁰ This successor emerged about a year later as the Association of American Railroads.

Whatever the objectives of the new association were, they did not relate primarily to interregional rate controls. Eastern railroads had more to fear from pipe-line competition, or from motor-truck competition, than from their southern associates. Consequently, the major part of their activity was directed to other matters. But though the association was careful, in deference to the antitrust laws, to avoid abridging the legal right of its members to independent action, it was certainly somewhat monopolistic in spirit. It sought to prevent disputes between carriers from going to the Interstate Commerce Commission, and to this end it set up an elaborate mechanism for arbitration;⁸¹ it adopted a resolution that "no further request for suspension of tariff publications of one group of lines will be filed with the Interstate Commerce Commission by other lines, unless there has first been a conference of representatives of both parties with the officers of this organization."⁸² When one of the member lines showed a tendency to disregard the policies of the association, J. J. Pelley, president of the association, reminded the offender of the possibility of "extensive retaliatory developments."⁸³ All along the line there was a tendency to centralize action in a limited number of hands: in southern territory, for instance, a new Traffic Executive Association for southern territory was established, with authority to handle matters of concern to all southern roads, and the Southern Freight Association acknowledged this authority; but only eleven members belonged to the Executive Association, and thus small southern lines were faced with the dilemma of accepting this authority in which they were not represented, or of withdrawing from the Southern Freight Association, which had been made the instrument of their submission.⁸⁴

In terms of interterritorial relationships, the principal threat to southern shippers and carriers lay in the development of a policy which would avoid carrying questions to the Interstate Commerce Commission, and in the creation of an array of interterritorial committees in which the representation was arranged in such a way as to assure the dominating influence of official roads. Of this there were two outstanding examples. The first was the Joint Conference of Central Freight Association, Trunk Line Association, and New England Freight Association. The func-

⁸⁰ For transcript of proceedings of this meeting, see the exhibits in the Plaintiff's Trial Brief, Part II, 18-21, in the case of *Georgia v. Pennsylvania R.R.*, in the Supreme Court of the United States, October Term, 1945, No. 11 Original.

⁸¹ See Articles of Organization of this association in *Hearings before the Senate Committee on Interstate Commerce on H. R. 2536*, 79th Cong., 2nd Sess. 1548-1555 (1946).

⁸² Resolution, May 5, 1935, in Plaintiff's Trial Brief, cited *supra*, note 80, at 70-71.

⁸³ Letter of Pelley, April 16, 1936, *id.* at 58-59.

⁸⁴ The plan of organization of the Traffic Executive Association and the reorganized articles of the Southern Freight Association, recognizing the authority of the new body, are in *id.* at 145-164.

tion of this conference of the three sub-regional groups within official territory was to consider proposals for rates, lower than regular class rates, from other territories. This meant, in effect, that if a southern carrier wished to arrange a special rate it would first have to submit the matter to the Southern Freight Association, and at the same time to the three official territory associations, any one of which could reject it, even though the rate under consideration did not extend to the sub-region which exercised the right of rejection. Upon an appeal, the matter would go to the Joint Conference of eastern territory lines, where a three-fourths majority within each of at least two of the three eastern associations would be required to sustain the appeal. Under this plan, a rate from the South might easily be blocked by representatives of a sub-region in the East to which the rate was not applicable.⁸⁵ Legally, of course, individual roads still retained a right of independent action in agreeing upon and filing joint rates, but clearly there was heavy pressure to prevent this.

The second of the important interterritorial groups was the Joint Conference of Contact Committees, constituted of representatives of the seven principal rate-making associations, of which one is southern, one southwestern, one western, and four are within official territory. This, of course, conferred a potential majority upon official territory over all other territories combined, and it has been asserted that this advantage was fully utilized by the official representatives' practice of voting as a unit.⁸⁶

Railway representatives, denying the significance of these arrangements, have made vigorous assertion of the frequency with which the individual roads continue to file independent rates,⁸⁷ but it does not appear that many of these are joint rates crossing the interterritorial barrier.

Nor does it appear that, so long as the great trunk lines dominate official territory, the situation would be altered appreciably by a dissolution of the new interterritorial agencies, for the full effect of the sectional barrier had made itself felt before these agencies were constituted. In this sense, the State of Georgia's case does not reach to the heart of the problem, though it does deal with an important aspect.

It is hardly to be supposed that the Supreme Court's rulings, either in its review of the *Class Rate Decision* of 1945⁸⁸ or in its disposition of the case of *Georgia v.*

⁸⁵ Rules of procedure of these conferences, *id.* at 120-122.

⁸⁶ Rules of procedure of this conference, *id.* at 171-174. See also, at 174, memorandum of S. B. Mitchell of Southern Freight Association, as follows: "As you know, the Official Classification lines, i.e., C.F.A., E.T.U., N.E., and I.F.A. vote separately in the Joint Conference of Contact Committees and their votes are nearly always a unit. Having four votes, necessarily they have an advantage and can often control the action of the Joint Conference of Contact Committees. Our only hope in getting a fair deal with our interterritorial proposals that go to the Joint Conference for disposition is through the Illinois Freight Committee. Until the recent past that Committee required only one negative vote to defeat a proposition, therefore, to illustrate, a proposal from the South to Chicago, while favored by a majority of the Illinois lines, their vote would be in the negative if one east to west line voted in the negative."

⁸⁷ Joseph G. Kerr has stated that the members of the Southern Freight Association filed 19,000 rates directly with the I.C.C. and without approval by the Freight Association in the years 1933 and 1934. He concedes that this was an abnormal time, but also states that in the three years ending in 1943, the Southern Railway filed 152 separate actions, and the Seaboard filed 78. *Hearings before the Senate Committee on Interstate Commerce on H. R. 2536, 79th Cong., 2nd Sess., 1290-1293 (1946).*

⁸⁸ 262 I.C.C. 447 (1935). [This decision of the Commission was upheld by the Supreme Court on May 12, 1947. See the FOREWORD to this symposium. Ed.]

Pennsylvania Railroad, will provide a final solution for a problem of such complexity and long standing as that of regional rate differentials. Arrangements which have stood since the heyday of the cotton economy and since the Ohio and Mississippi were unbridged are not to be supplanted easily or at once. But, however these cases may be decided, and however the decisions may be applied in establishing a new system, the concurrent importance of the two cases at the present time illustrates the continuing parallelism of the two factors which alone have operated or may operate to prevent differential rates from being discriminatory rates. One of these factors is competition among carriers, which has maintained the access of southern goods to northern markets by special rates during a long period when the Interstate Commerce Commission lacked the power or the impulse to modify regional differentials. The other is public authority, represented by the Commission, which was until very recently content to play a more passive role than most Americans realized in accepting the rate patterns as they had evolved, or as the carriers had fixed them. Because of the first of these factors the South has never been subjected to such an economic blockade as some publicists have implied; though the trunk lines have at times sought to utilize the differentials as a tariff wall, southern goods have escaped decisive or permanent exclusion. But in the absence of small, independent carriers, the basis for competition narrows increasingly. As it does so, the responsibility of public authority increases. Readiness to meet the responsibility has been indicated by the *Class Rate Decision* of 1945. By any measure, this decision would seem to mark a turning point in the history of regional differentials, for whether the Commission attempts a solution by the gradual elimination of all territories, or by the imposition of equitable rates between them, it appears that the transition has been made from a system of differentials tempered by competition to one of differentials tempered or eliminated by active public regulation.