

# Railroads and the Granger Laws

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# BOOK REVIEW

## Railroads and the Granger Laws

by George H. Miller, University of Wisconsin Press,  
Madison, Wisconsin, 1971 (296 pp).

The "Granger railroads" are those lines radiating from Chicago and Milwaukee which have served, since the middle of the 19th century, as the rail highway to market for the harvests of the Upper Mississippi Valley. A century ago these companies—the Milwaukee, the North Western, the Burlington, the Rock Island, for example—were among the largest and most powerful of business enterprises. They acquired the name "Granger" because they were subjected to the Granger laws, the most famous of the early attempts to regulate railroad freight rates and passenger fares. The memorable struggle of these carriers to avoid what they considered punitive regulation by the States of Illinois, Iowa, Wisconsin, and Minnesota in the late 1860's and early 1870's is the subject of an excellent new book, *Railroads and The Granger Laws* by Professor George H. Miller, Chairman of the History Department at Ripon College, Ripon, Wisconsin.

The reasons why the four states of the Upper Mississippi Valley moved to rate regulation in the period immediately following the Civil War are indeed complex. So also were the interests of the parties to the controversy—railroads, shippers, and farmers, the marketing interests, and the states themselves. But the mythology of the Granger struggle is simplicity itself, a David and Goliath story. In this well known fable, the embattled farmers of the Upper Middle West, crushed by exorbitant and discriminatory railroad rates rise up to slay Goliath, a conspiracy of eastern capitalists who control the iron highway to market and exact the ruinous tolls as the price of passage. The farmer organization which accomplished this feat is the Order of the Patrons of Husbandry, otherwise known as the National Grange, and the weapon is rate regulatory legislation. In the myth, this form of legislation is assumed to be some new concept in American jurisprudence.

In his book, Professor Miller explodes the myth. In demonstrating that the National Grange was not a major force in shaping this regulation, he also helps to redeem the perhaps unfairly tarnished images of the Granger railroads. Further, he also shows that, surprisingly, the interests of the railroads and the Grange were often united, the real adversary of the carriers being the commercial interests of the cities with unfavorable tariffs.

This volume is a work of first rate scholarship. To one such as this reviewer, whose vocation is law and whose avocation is railroading,

Professor Miller's book is one to be read at one sitting. It is objective and thorough and it manifests the author's deep understanding of the subject—both from the historical and legal standpoints.

A collision between the colonizing prairie railroads and the states they literally built was inevitable, and Professor Miller takes the reader past each milepost on the collision route. In doing so, he establishes beyond doubt who the real antagonists were, what the issues were, and that there were equities on all sides.

The reader understands from the outset that the whole problem of railroad rate regulation was compounded by the inadequacy of the common law of the mid-19th century to cope with the "railroad problem," that is, the emergence of America's first "big business." For one thing, the common law of rate regulation was geared to a system of non-competitive highways (turnpikes, rivers, and canals) served by competitive carriers. Railroads constituted competitive highways over which operated non-competitive carriers. The whole of the common law of carriers before the railroads was based on prohibition of discrimination against persons by competitive carriers, not taking into account the potential for discrimination against localities by competitive highways. In addition, the American law of corporations was only in its infancy at the time and there was a failure to fully appreciate the distinction between purely private corporations and those privately held but operated in the public interest.

Against the legal background Professor Miller lays the background for the struggle of the 1870's by showing that in the railroad expansion era that followed the panic of 1837, state legislatures in the upper mid-west were more or less willing to waive their sovereign power to regulate rates in order to entice capitalists into building railroads. The common inducement was a charter delegating to the company the right to fix its own rates with full knowledge that the contract clause of the constitution as interpreted in the Dartmouth College case could impair any future attempt at regulation.

The author also demonstrates that one facet of the problem was competition between the markets of the Eastern Seaboard and the South which developed as competition between the rail and water carriers and which fostered fierce competition between the Great Lakes ports of Chicago, Milwaukee, and Duluth, and trans-shipment points on the Mississippi and its tributaries.

Professor Miller points out that, contrary to popular belief, the matter of rate regulation as being within the police power of the state was generally conceded, even by the railroads, long before the Granger laws. There was a history of regulation in the East and legal scholars of that day simply assumed that state sovereignty included the right to

regulate the rates of the common carriers. It is perhaps an oversimplification of the issue to state that what really was at stake as the Granger laws were lobbied through the state legislature of Illinois, Iowa, Minnesota and Wisconsin, was the resolution of the policy question of whether rates would be dictated by the legislature or whether they would be fixed by administrative bodies with the right of judicial review. Illinois, for example, chose the latter system, and the Illinois law became the model for the Interstate Commerce Commission in 1887. Wisconsin adopted strict legislative regulation, and its law was found to be unworkable and repealed, even though sustained as constitutional. What is generally forgotten is that the adoption of the Illinois type of Granger law was really a limited victory for the railroads, not at all out of harmony with the position of the National Grange.

For lawyers, one of the most interesting points of the book is the author's description of the turbulent litigation which led to the famous Granger Cases being heard in the United States Supreme Court in 1877. Here for the first time we encounter the newly adopted Fourteenth Amendment asserted to protect the property rights of the railroad corporations from confiscatory state action. The arguments of the railroad companies before the Supreme Court were parallel, if not identical, to the arguments today advanced under the Fourteenth Amendment in constitutional challenges to state legislation in the civil rights area. The author carefully traces for the reader the strange phenomenon of the first use of the reconstruction amendments in advancing the cause of vested business interests.

This book is an excellent piece of work. It can be recommended without reservation or qualification to the legal or railroad historian. If the book has any failing it is in the relatively obscure and hard to read maps prepared by the University of Wisconsin Cartographic Laboratory. These accompany the chapters on the laws of each of the four states under discussion.

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