

The Interstate Commerce Commission—The First Century of Economic Regulation

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This issue of the *Transportation Law Journal* is proudly dedicated to the centennial anniversary of the nation's first independent regulatory agency—the Interstate Commerce Commission. Transportation was the first American industry to enjoy comprehensive economic regulation, and paradoxically, the first to be significantly deregulated. That potentially makes this issue of some historical significance.

Congress created the Interstate Commerce Commission with the promulgation of the Act to Regulate Commerce of 1887. President Grover Cleveland appointed the distinguished jurist, Thomas Cooley, the first Chairman of the Interstate Commerce Commission. A complete list of all the men and women who have been appointed to the Commission is set forth in an appendix to this issue of the *Journal*.

A century of evolution of regulatory policy and statutory change is reflected in these pages. We begin the symposium with an article on the history of the Commission, followed by the proceedings of the ICC Centennial Celebration, which was held in Washington, D.C., on April 3, 1987. We are indebted to the officers and members of the ICC Centennial

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Planning Committee, and its chairman, Fritz Kahn, for making these proceedings available to the *Journal* for publication.

The *Journal* played no role in planning the proceedings.¹ As the reader will see, the program was dominated by speakers advocating the prevailing contemporary philosophy in Washington—that of deregulation. In these times, when regulation has fallen into disfavor, that is to be expected. But the pendulum on such things has a tendency to swing on such important issues of economic and political policy. Government supervision of various aspects of the privately owned infrastructure industries may well return.

For the historian curious as to how the Interstate Commerce Commission was perceived at its 50th and 75th anniversaries, we recommend volumes 5 and 31 of the *George Washington Law Review*, respectively. In both, scholars, jurists, government officials and commentators enthusiastically applauded the excellence demonstrated by the Commission in protecting the public interest in safe, adequate, reasonably priced and dependable rail, motor and water carrier services.

For example, at the agency's fiftieth anniversary, the Commission was praised for its "vigor, spirit, and statesmanlike administration . . ." ² A Congressman said of the ICC, "Without desire to aggrandize itself, but actuated by what it believed to be in the public interest, free from partisanship or politics and resisting pressure from whatever source, it does its work."³

At the Commission's 75th Anniversary, it was Supreme Court Justice Felix Frankfurter who eloquently summarized the agency's strengths:

[T]he Commission illustrates, throughout its life, unblemished character . . . character meaning a fastidious regard for responsibility, a complete divorce-ment between public and private interest, and all other concomitants of a true and worthy conception of public duty. Alas, that cannot be said of all public bodies, but it can be said that this Commission throughout its seventy-five years has had a career of unblemished character.

Secondly, . . . we are here to celebrate a manifestation of competence in government as any I know of in the three branches of government. . . .

Thirdly, it is a necessary condition, before a Commission can effectively act, that it be independent. . . .

It has maintained not merely formal independence, but actual independence of word and deed, and has been a laboratory demonstration of how

1. All speakers and topics for the ICC Centennial Celebration were selected by its planning committee, the members and officers of which are set forth elsewhere in this issue.

2. Aitchison, *The Evolution of the Interstate Commerce Act: 1887-1937*, 5 GEO. WASH. L. REV. 289, 321 (1937).

3. Esch, *The Interstate Commerce Commission and Congress—Its Influence on Legislation*, 5 GEO. WASH. L. REV. 462, 463 (1937).

economic problems may be worked out by trial and error. Finally, by virtue of all these considerations, the Commission has been a pacemaker, a model, for the subsequent commissions which, in turn, have been created in response to economic and social demands in their fields of activity.⁴

As you read the proceedings of the ICC Centennial Celebration, you will see what many of the contemporary critics think of the agency. Some came to bury Caesar, not to praise him. Others recognized the important work which Congress commissioned the agency to do, and urged it to look to the spirit of its past, to reassert its autonomy from the White House, and return to the responsible performance of its statutory mission.⁵ Many repeated the succinct commands of the dynamic ICC Chairman Joseph Eastman in his "Twelve Points," and these too are reproduced in the appendix to this issue.

Unless we learn from our history, we are doomed to repeat it. It is not only for the present audience, but those who follow us, that the *Transportation Law Journal* proudly publishes this Symposium issue devoted to the Centennial of the Interstate Commerce Commission.

4. F. FRANKFURTER, OF LAW AND LIFE AND OTHER THINGS THAT MATTER 236 (1965). Justice Frankfurter also prophetically foresaw the things which could cause the demise of the ICC. See Dempsey, *Transportation Deregulation—On A Collision Course?*, 13 *TRANSP. L.J.* 329, 378 (1984).

5. This, indeed, has been the position taken by the author on several occasions. See Dempsey, *The Dark Side of Deregulation: Its Impact on Small Communities*, 39 *ADMIN. L. REV.* (1987); Dempsey, *Antitrust Law & Policy in Transportation—Concentration Is the Name of the Game*, 21 *GA. L. REV.* (1987); Dempsey, *The Interstate Commerce Commission: Disintegration of An American Legal Institution*, 34 *AM. U. L. REV.* 1 (1984); Dempsey, *Rate Regulation and Antitrust Immunity in Transportation: The Genesis and Evolution of This Endangered Species*, 32 *AM. U. L. REV.* 335 (1983); Dempsey, *Congressional Intent and Agency Discretion—Never the Twain Shall Meet: The Motor Carrier Act of 1980*, 58 *CHI. KENT L. REV.* 1 (1982).

100TH CONGRESS, 1ST SESSION
S.J. RES. 80

Designating April 3, 1987, as "Interstate Commerce Commission Day."

JOINT RESOLUTION

Designating April 3, 1987, as "Interstate Commerce Commission Day."

Whereas the Interstate Commerce Commission was created by Congress in 1887 to implement the congressional mandate to regulate interstate transportation, and 1987 marks the one hundredth year of its continuous public service;

Whereas the Commission was the first independent, quasi-judicial, administrative agency created by Congress as a pioneering concept in a growing Nation's legal system with a leading role in the development of an increasingly important body of administrative law;

Whereas the one hundred-year period of the Commission's regulatory responsibility has embraced the challenge of two world wars and other major international conflicts, as well as continuous fluctuations in the Nation's economy and business cycles which span the Great Depression, postwar booms, and the beginnings of the nuclear and space ages;

Whereas the Commission's record of national service has encompassed tremendous changes in technology and competition accompanying the development and growth of waterways, railroads, pipelines, motor carriers, and air carriers;

Whereas the Commission has steadfastly endeavored to guard and protect the public interest in the development and regulation of the Nation's transportation system; and

Whereas, under its one hundred years of regulatory oversight dedicated to the development, promotion, and preservation of a national system of transportation under a free enterprise economy, a transportation system unsurpassed throughout the world has been established: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That April 3, 1987, is designated as "Interstate Commerce Commission Day." The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that day with appropriate ceremonies and activities to recognize the one hundredth anniversary of the establishment of the Interstate Commerce Commission.

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