

Although judicial purity has of late years come to be deemed an indispensable accompaniment of high civilization, it is one which has been realized in very few times and countries. Hesiod complained that the kings who heard the cause between himself and his brother received gifts to decide against him. Felix expected to get money for loosing St. Paul. Among Orientals to this day an incorruptible magistrate is a rare exception.¹ In England a lord chancellor was removed for taking bribes as late as the time of George I. In Spain, Portugal, Russia, parts of the Austro-Hungarian monarchy, and even in Italy, the judges, except perhaps those of the highest court, are not assumed by general opinion to be above suspicion. Many are trusted individually, but the office is not deemed to guarantee the honour of its occupant. Yet in all these countries the judges are appointed by the government, and hold either for life or at its pleasure,² whereas in America suspicion has arisen only in States where popular election prevails; that is to say, where the responsibility for a bad appointment cannot be fixed on any one person. The shortcomings of the Bench in these States do not therefore indicate unsoundness in the general tone either of the people or of the profession from whom the offenders have been taken, but are the natural result of a system which, so far from taking precautions to place worthy persons on the seat of justice, has left the choice of them in four cases out of five to a secret combination of wirepullers. Thus we may note with satisfaction that the present tendency is not only to make judges more independent by lengthening their term of office but to withdraw their appointment from popular vote and restore it to the governor, from whom, as a responsible officer, the public may exact the utmost care in the selection of able and upright men.

¹ In Egypt I was told in 1888, that there might be here and there among the native judges a man who did not take bribes, but probably not more than two or three in the whole country. Things are, however, now mending there.

² There is the important difference between these countries and England that in all of them not only is little or no use made of the civil jury, but public opinion is less active and justice more localized, *i.e.* a smaller proportion of important suits are brought before the supreme courts of the capital. The centralization of English justice, costly to suitors, has contributed to make law more pure as well as more scientific.

CHAPTER CIII

RAILROADS

No one will expect to find in a book like this a description of that prodigy of labour, wealth, and skill—the American railway system. Of its management, its finance, its commercial prospects, I do not attempt to speak. But railroads, and those who own and control them, occupy a place in the political and social life of the country which requires some passing words, for it is a place far more significant than similar enterprises have obtained in the Old World.

The United States are so much larger, and have a population so much more scattered than any European state that they depend even more upon means of internal communication. It is these communications that hold the country together, and render it one for all social and political purposes as well as for commerce. They may indeed be said to have made the West, for it is along the lines of railway that the West has been settled, and population still follows the rails, stretching out to south and north of the great trunk lines wherever they send off a branch. The Americans are an eminently locomotive people. Were statistics on such a point attainable, they would probably show that the average man travels over thrice as many miles by steam in a year as the average Englishman, six times as many as the average Frenchman or German. The New Yorker thinks of a journey to Chicago (900 miles) as a Londoner of a journey to Glasgow (400 miles); and a family at St. Louis will go for sea-bathing to Cape May, a journey of thirty-five or forty hours, as readily as a Birmingham family goes to Scarborough. The movements of goods traffic are on a gigantic scale. The greatest branch of heavy freight transportation in England, that of coal from the north and west to London, is not to be compared to the weight of cotton, grain,

bacon, cattle, fruit, and ores which comes from the inland regions to the Atlantic coast. This traffic does not merely give to the trunk lines an enormous yearly turnover;—it interests all classes, I might almost say all individuals, in railway operations, seeing that every branch of industry and every profession except divinity and medicine is more or less directly connected with the movements of commerce, and prospers in proportion to its prosperity. Consequently, railroads and their receipts, railroad directors and their doings, occupy men's tongues and pens to a far greater extent than in Europe.

Some of the great railway companies possess yet another source of wealth and power. At the time when they were formed the enterprise of laying down rails in thinly-peopled, or perhaps quite uninhabited regions, in some instances over deserts or across lofty mountains, seemed likely to prove so unremunerative to the first shareholders, yet so beneficial to the country at large, that Congress was induced to encourage the promoters by vast grants of unoccupied land, the property of the United States, lying along the projected line.¹ The grants were often improvident, and they gave rise to endless lobbying and intrigue, first to secure them, then to keep them from being declared forfeited in respect of some breach of the conditions imposed by Congress on the company. However, the lines were made, colonists came, much of the lands has been sold, to speculators as well as to individual settlers; but much long remained in the hands of two or three companies. These gifts made the railroads great landowners, gave them a local influence and divers local interests besides those arising from their proper business of carriers, and brought them into intimate and often perilously delicate relations with leading politicians.

No wonder, then, that the railroads, even those that held no land beyond that on which their rails ran, acquired immense

¹ These grants usually consisted of alternate sections, in the earlier cases of five to the mile along the line. The total grant made to the Union Pacific Railway was 13,000,100 acres; to the Kansas Pacific, 6,000,000; to the Central Pacific, 12,100,100; to the Northern Pacific, 47,000,000; to the Atlantic and Pacific, 42,000,000; to the Southern Pacific, 9,520,000. Enormous money subsidies, exceeding \$60,000,000, were also granted by Congress to the first trans-continental lines.

power in the districts they traversed. In a new and thinly-peopled State the companies were by far the wealthiest bodies, and able by their wealth to exert all sorts of influence. A city or a district of country might depend entirely upon them for its progress. If they ran a line into it or through it, emigrants followed, the value of fixed property rose, trade became brisk: if they passed it by, and bestowed transportation facilities on some other district, it saw itself outstripped and began to languish. If a company owned a trunk line it could, by raising or lowering the rates of freight on that line through which the products of the district or State passed towards the sea, stimulate or retard the prosperity of the agricultural population, or the miners, or the lumbermen. That is to say, the great companies held in their hands the fortunes of cities, of counties, even sometimes of States and Territories.¹ California was for many years practically at the mercy of the Central Pacific Railway, then her only road to the Mississippi Valley and the Atlantic. Oregon and Washington were almost equally dependent upon the Oregon Railroad and Navigation Company, and afterwards upon the Northern Pacific. What made the position more singular was that, although these railroads had been built under statutes passed by the State they traversed (or, in the case of Territories, wholly or partially under Federal statutes), they were built with Eastern capital, and were owned by a number, often a small number, of rich men living in New York, Boston, or Philadelphia, unamenable to local influences, and caring no more about the wishes and feelings of the State whence their profits came than an English bondholder cares about the feelings of Chili. Moreover, although the railroads held a fuller sway in the newer States, they were sometimes potent political factors in the older ones. In 1870 I often heard men say, "Camden and Amboy (the Camden and Amboy Railroad) rules New Jersey." In New York the great New York Central Railroad, in Pennsylvania the Pennsylvania Railroad under its able chief, exerted immense influence with the legislature, partly by their wealth, partly by the oppor-

¹ This was of course especially the case with the newer Western States; yet even in the older parts of the country any very large railway system had great power, for it might have a monopoly of communication; or if there were two lines they might have agreed to "pool," as it is called, their traffic receipts and work in harmony.

tunities of bestowing favours on individuals and localities which they possessed, including the gift of free passes and possibly influence exercised on the votes of their employés. Sometimes, at least in Pennsylvania and New York, they even threw their weight into the scale of a political party, giving it money as well as votes. But more commonly they have confined themselves to securing their own interests, and obliged, or threatened and used, the State leaders of both parties alike for that purpose. The same sort of power was at one time exerted over some of the cantons of Switzerland by the greater Swiss railway companies; though, since the Constitution of 1874, it is said to have quite disappeared.¹

In such circumstances conflicts between the railroads and the State governments were inevitable. The companies might succeed in "capturing" individual legislators or committees of either or both Houses, but they could not silence the discontented cities or counties who complained of the way in which they were neglected while some other city obtained better facilities, still less the farmers who denounced the unduly high rates they were forced to pay for the carriage of their produce. Thus a duel began between the companies and the peoples of some of the States, which has gone on with varying fortune in the halls of the legislatures and in the courts of law. The farmers of the North-west formed agricultural associations called "Patrons of Husbandry," or popularly "Granges," and passed a number of laws imposing various restrictions on the railroads, and providing for the fixing of a maximum scale of charges. But although the railroad companies had been formed under, and derived their powers of taking land and making by-laws from, State statutes, these statutes had in some cases omitted to reserve the right to deal freely with the lines by subsequent legislation; and the companies therefore attempted to resist the "Granger laws" as being unconstitutional. They were defeated by two famous decisions of the Supreme Federal court in 1876,² establishing the right of a State to impose restrictions on public undertakings in the nature of monopolies. But in

¹ The Swiss railways are now under the control of the Federal Government.

² See *Munn v. Illinois*, and *Peake v. Chicago, Burlington, and Quincy Railroad*, 94 U. S. Reports.

other directions they had better luck. The Granger laws proved in many respects unworkable. The companies, alleging that they could not carry goods at a loss, vexed the people by refusing to construct branches and other new lines, and in various ways contrived to make the laws difficult of execution. Thus they procured (in most States) the repeal of the first set of Granger laws; and when further legislation was projected, secret engines of influence were made to play upon the legislatures, influences which, since the first wave of popular impulse had now spent itself, often proved efficacious in averting further restrictions or impeding the enforcement of those imposed. Those who profited most by the strife were the less scrupulous among the legislators, who, if they did not receive some favour from a railroad, could levy blackmail upon it by bringing in a threatening bill.¹

The contest, however, was not confined to the several States. It passed to Congress. Congress has no authority under the Constitution to deal with a railway lying entirely within one State, but is held entitled to legislate, under its power of regulating commerce between different States, for all lines (including connecting lines which are worked together as a through line) which traverse more than one State. And of course it has always had power over railways situate in the Territories. As the Federal courts decided a few years ago that no State could legislate against a railway lying partly outside its own limits, because this would trench on Federal competence, the need for Federal legislation, long pressed upon Congress, became urgent; and after much debate an Act was passed in 1887 establishing an Inter-State Commerce Commission, with power to regulate railroad transportation and charges in many material respects. The companies had opposed it; but after its passage they discovered that it hurt them less than they had feared, and in some points even benefited them; for having prohibited all discriminations and secret rebates, and required them to adhere to their published list of charges, it has given them a ready answer to demands for exceptional privileges.²

¹ A few years ago the legislature of Iowa passed a statute giving the State Railway Commission full powers to fix charges; and injunctions were obtained from the Courts restraining the Commission from imposing, as they were proceeding to do, rates so low as to be destructive of reasonable profits.

² It also attempted, though as yet with incomplete success, to put an end to

The time has hardly yet come for estimating the results of this momentous statute, but it cannot be pronounced a success, for it has given rise to a swarm of difficult legal questions, and while hampering the railroads has scarcely lessened the complaints of the farming and commercial classes. That the railroads had exercised autocratic and irresponsible power over some regions of the country, and had occasionally abused this power, especially by imposing discriminations in their freight charges, is not to be denied.¹ They had become extremely unpopular, a constant theme for demagogic denunciations; and their success during some years in resisting public clamour by their secret control of legislatures, or even of the State commissioners appointed to deal with them, increased the irritation. All corporations are at present unpopular in America, and especially corporations possessed of monopolies. The agitation will apparently continue, though the confidence felt in the honesty of the Commission has done something to allay it, and attempts be made to carry still more stringent legislation. There is even a section of opinion which desires to see all railways, as well as telegraphs, in the hands of the nation, and that not merely for revenue purposes, but to make them serve more perfectly the public convenience. The objection which to most men seems decisive against any such arrangement is that it would not only encumber government with most difficult rate-problems, affecting local interests, and therefore involving the certainty of local political pressure, but would also throw a stupendous mass of patronage and power into the hands of the party for the time being holding office. Considering what a perennial spring of bitterness partisan patronage has been, and how liable to perversion under the best regulations patronage must always be, he would be a bold man who would toss an immense number of places,—the railroads employ nearly 900,000 persons,—many of them important and highly paid, into the lap of a party minister. Economic gain, assuming

the bestowal of free passes for passengers, a form of preference which had assumed large proportions.

¹ It would appear that the freight charges on American railways were, before 1887, generally lower than those in England and in Western Europe generally. English third class passenger fares are slightly lower than those in the ordinary American cars.

that such gain could be secured, would be dearly bought by political danger.

Their strife with the State governments has not been enough to occupy the pugnacity of the companies. They must needs fight with one another; and their wars have been long and fierce, involving immense pecuniary interests, not only to the shareholders in the combatant lines, but also to the inhabitants of the districts which they served. Such conflicts have been most frequent between the trunk lines competing for the carriage of goods from the West to the Atlantic cities, and have been conducted not only by lowering charges so as to starve out the weaker line,¹ but by attacks upon its stocks in the great share markets, by efforts to defeat its bills in the State legislatures, and by law-suits with applications for injunctions in the courts. Sometimes, as in the famous case of the struggle of the Atchison Topeka and Santa Fé railway with the Denver and Rio Grande for the possession of the great cañon of the Arkansas River,² the easiest route into an important group of Rocky Mountain valleys, the navvies of the two companies fought with shovels and pickaxes on the spot, while their counsel were fighting in the law courts sixteen hundred miles away. A well-established company has sometimes to apprehend a peculiarly annoying form of attack at the hands of audacious adventurers, who construct a competing line where the traffic is only sufficient to enable the existing one to pay a dividend on the capital it has expended, aiming, not at the creation of a profitable undertaking, but at levying blackmail on one which exists, and obtaining an opportunity of manipulating bonds and stocks for their own benefit. In such a case the railway company in possession has its choice between two courses: it may allow the new enterprise to go on, then lower its own rates, and so destroy all possibility of profits; or it may buy up the rival line, perhaps at a heavy price. Sometimes it tries the first course long enough to beat down the

¹ In one of these contests, one railway having lowered its rates for cattle to a figure below paying point, the manager of the other promptly bought up all the cattle he could find at the inland terminus, and sent them to the coast by the enemy's line, a costly lesson to the latter.

² This so-called "Royal Gorge" of the Arkansas is one of the most striking pieces of scenery on the North American continent, not unlike the grandest part of the famous Dariel Pass in the Caucasus.

already small prospects of the new line and then buys it; but although this may ruin the "pirates" (as they are commonly called) who have built the new line, it involves a hideous waste of the money spent in construction, and the shareholders of the old company as well as the bondholders of the new one suffer. This is a form of raid upon property which evidently ought to be prevented by a greater care on the part of State legislatures in refusing to pass special Acts for unnecessary railroads, or in so modifying their law as to prevent a group of promoters from using, for purposes of blackmail, the powers of taking land and constructing railroads, which general statutes confer.

This atmosphere of strife has had something to do with the feature of railway management which a European finds most remarkable; I mean its autocratic character. Nearly all the great lines are controlled and managed either by a small knot of persons or by a single man. Sometimes one man, or a knot of three or four capitalists acting as one man, holds an actual majority of the shares, and then he can of course do exactly what he pleases. Sometimes the interest of the ruling man (or knot) comes so near to being a controlling interest that he may safely assume that no majority can be brought against him, the tendencies of many shareholders being to support "the administration" in all its policy. This accumulation of voting power in a few hands seems to be due partly to the fact that the shares of new lines do not, in the first instance, get scattered through the general public as in England, but are commonly allotted in masses to a few persons, often as a sort of bonus upon their subscribing for the bonds of the company.¹ In the United

¹ "It is an extraordinary fact," says Mr. Hitchcock, "that the power of eminent domain which the State itself confessedly ought never to use save on grounds of public necessity should be at the command of irresponsible individuals for purposes of private gain, not only without any guarantee that the public interest will be promoted thereby, but when it is perfectly well known that it may be, and has been, deliberately availed of for merely speculative purposes. The facility with which, under loosely drawn railroad laws, purely speculative railroad charters can be obtained has contributed not a little to develop the law of receiverships. In Missouri there is nothing to prevent any five men whose combined capital would not enable them to build five miles of track on a level prairie from forming a railroad corporation with power to construct a road five hundred miles long, and to condemn private property for that purpose, for a line whose construction no public interest demands, and from which no experienced man could expect dividends to accrue."—Address to the American Bar Association, 1887.

States shares do not usually represent a cash subscription, the practice being to construct a railway with the proceeds of the bonds and to regard the shares as the materials for future profit, things which may, if the line be of a speculative character, be run up in price and sold off by the promoters; or, if it be likely to prosper, be held by them for the purpose of controlling as well as gaining profits from the undertaking.¹ It is partly also to be ascribed to the splendid boldness with which financial operations are conducted in America, where the leaders of Wall Street do not hesitate to buy up enormous masses of shares of stock for the purpose of some *coup*. Having once got into a single hand, or a few hands, these stock masses stay there, and give their possessors the control of the line. But the power of the railways, and the position they hold towards local governments, State legislatures, and one another, have also a great deal to do with the phenomenon. War is the natural state of an American railway towards all other authorities and its own fellows, just as war was the natural state of cities towards one another in the ancient world. And as an army in the field must be commanded by one general, so must this latest militant product of an eminently peaceful civilization. The president of a great railroad needs gifts for strategical combinations scarcely inferior to those, if not of a great general, yet of a great war minister—a Chatham or a Carnot. If his line extends into a new country, he must be quick to seize the best routes,—the best physically, because they will be cheaper to operate, the best in agricultural or mineral resources, because they will offer a greater prospect of traffic. He must so throw out his branches as not only to occupy promising tracts, but keep his competing enemies at a distance; he must annex small lines when he sees a good chance, first "bearing" their stocks so as to get them

¹ The great Central Pacific Railway was constructed by four men, two of whom were when they began storekeepers in a small way in San Francisco, and none of whom could be called capitalists. Their united funds when they began in 1860 were only \$120,000 (£24,000). They went on issuing bonds and building the line bit by bit as the bonds put them in funds, retaining the control of the company through the shares. This Central Pacific Company ultimately built the Southern Pacific and numerous branches, and became by far the greatest power in the West, owning nearly all the railways in California and Nevada. When one of the four died in 1878, his estate was worth \$30,000,000 (£6,000,000).

cheaper; he must make a close alliance with at least one other great line, which completes his communications with the East or with the farther West, and be prepared to join this ally in a conflict with some threatening competitor. He must know the Governors and watch the legislatures of the States or Territories through which his line runs; must have adroit agents at the State capitals, well supplied with the sinews of war, ready to "see" leading legislators and to defeat any legislative attacks that may be made by blackmailers or the tools of rival presidents. And all the while he must not only keep his eye upon the markets of New York, prepared for the onslaught which may be made upon his own stock by some other railroad or by speculators desiring to make a profit as "bears," and maintaining friendly relations with the capitalists whose help he will need when he brings out a new loan, but must supervise the whole administrative system of the railroad — its stations, permanent way, locomotives, rolling stock, engineering shops, freight and passenger rates, perhaps also the sale of its land grants and their defence against the cabals of Washington. No talents of the practical order can be too high for such a position as this; and even the highest talents would fail to fill it properly except with a free hand. Concentration of power and an almost uncontrolled discretion are needed; and in America whatever commercial success needs is sure to be yielded. Hence, when a group of capitalists own a railway, they commit its management to a very small committee among themselves, or even to a single man; and when the shares are more widely distributed, the shareholders, recognizing the necessary conditions of prosperity, not to say of survival in the struggle for existence, leave themselves in the hands of the president, who has little to fear except from the shares being quietly bought up by some syndicate of enemies seeking to dethrone him.

Of these great railway chieftains, some come to the top gradually, by the display in subordinate posts of brilliant administrative gifts. Some begin as financiers, and spring into the presidential saddle at a bound by forming a combination which captures the railway by buying up its stock. Occasionally a great capitalist will seize a railroad only for the sake of manipulating its stock, clearing a profit, and

throwing it away. But more frequently, when a really important line has passed into the hands of a man or group, it is held fast and developed into a higher efficiency by means of the capital he or they command.

These railway kings are among the greatest men, perhaps I may say are the greatest men, in America. They have wealth, else they could not hold the position. They have fame, for every one has heard of their achievements; every newspaper chronicles their movements. They have power, more power — that is, more opportunity of making their personal will prevail — than perhaps any one in political life, except the President and the Speaker, who after all hold theirs only for four years and two years, while the railroad monarch may keep his for life. When the master of one of the greatest Western lines travels towards the Pacific on his palace car, his journey is like a royal progress. Governors of States and Territories bow before him; legislatures receive him in solemn session; cities seek to propitiate him, for has he not the means of making or marring a city's fortunes? Although the railroad companies are unpopular, and although this autocratic sway from a distance contributes to their unpopularity, I do not think that the ruling magnates are themselves generally disliked. On the contrary, they receive that tribute of admiration which the American gladly pays to whoever has done best what every one desires to do. Probably no career draws to it or unfolds and develops so much of the characteristic ability of the nation; and I doubt whether any congressional legislation will greatly reduce the commanding positions which these potentates hold as the masters of enterprises whose wealth, geographical extension, and influence upon the growth of the country and the fortunes of individuals, find no parallel in the Old World.

It may be thought that some of the phenomena I have described belong to an era of colonization, and that when the West has been filled up, and all the arterial railways made, when, in fact, the United States have become even as England or France, the power of railroads and their presidents will decline. No doubt there will be less room for certain bold ventures and feats of constructive strategy; and as the network of railways grows closer, States and districts may come

to depend less upon one particular company. At the same time it must be remembered that the more populous and wealthy the country, so much the larger the business of a trunk line, and the number of its branches and its employés; while the consolidation of small lines, or their absorption by large ones, is a process evidently destined to continue. It may therefore be conjectured that the railroad will long stand forth as a great and perplexing force in the economico-political life of the United States. It cannot be left to itself — the most extreme advocate of *laissez faire* would not contend for that, for to leave it to itself would be to make it a tyrant. It cannot be absorbed and worked by the National government; — only the most sanguine state socialist would propose to impose so terrible a strain on the virtue of American politicians, and so seriously to disturb the constitutional balance between the States and the Federal authority. Many experiments may be needed before the true mean course between these extremes is discovered. Meanwhile, the railroads illustrate two tendencies specially conspicuous in America, — the power of the principle of association, which makes commercial corporations, skilfully handled, formidable to individual men; and the way in which the principle of monarchy, banished from the field of government, creeps back again and asserts its strength in the scarcely less momentous contests of industry and finance.

CHAPTER CIV

WALL STREET

No invention of modern times, not even that of negotiable paper, has so changed the face of commerce and delighted lawyers with a variety of new and intricate problems as the creation of incorporated joint-stock companies. America, though she came latest into the field, has developed these on a grander scale and with a more refined skill than the countries of the Old World. Nowhere do trading corporations play so great a part in trade and industry; nowhere are so many huge undertakings in their hands; nowhere else has the method of controlling them become a political problem of the first magnitude. So vigorous, indeed, is the inventive genius of American commerce that, not satisfied with the new applications it has found for the principles of the joint-stock corporation, it has lately attempted a further development of the arts of combination by creating those anomalous giants called Trusts, groups of individuals and corporations concerned in one branch of trade or manufacture, which are placed under the irresponsible management of a small knot of persons, who, through their command of all the main producing or distributing agencies, intend and expect to dominate the market, force manufacturers or dealers to submit, and hold the consumer at their mercy.¹

Here, however, I am concerned with the amazing expansion of joint-stock companies in America, only as the cause of the not less amazing activity in buying and selling shares which the people display. This is almost the first thing that strikes a European visitor, and the longer he remains the more deeply

¹ The question what is the legal status (if any) of these Trusts, the first of which was created in 1869, has been much discussed by American jurists. When Congress legislated against them in 1890 there existed at least thirty.