

THE ESTABLISHMENT OF THE TEXAS RAILROAD COMMISSION:

FROM POPULAR NOTION TO POLITICAL REALITY

THESIS

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By

Johanna L. Posey, B.A.

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PREFACE

Originally, this thesis began as a study of A.W. Terrell's influence on the creation of the Texas Railroad Commission. He remains important in the events leading up to the Commission's establishment, but my research led me to other key figures as well. These leaders included John H. Reagan, who brought attention to the matter of railroad regulation on the federal level, and James Stephen Hogg, who became the champion of the cause on the state level. However, since Terrell, Reagan, and Hogg would not have been effective in the face of powerful opposition from the railroads without popular support, I needed to take a look at the concerns of the voters as well. In doing so, I found that the underlying causes of the interest in railroad regulation actually went further back than I suspected, and at the same time, were influenced by anxiety about the future. Therefore, I hope here to present the establishment of the Texas Railroad Commission not as an event or series of events, but as a process.

This thesis could not have been written without advice, support, and, in some cases, tolerance from a large number of people who have seen me through this process. I am grateful to Dr. Everette Swinney, my thesis director, for his skill in crystallizing meaningful statements from my sometimes fuzzily-expressed ideas. Dr. Ronald Jager helped me tremendously with the beginning stages of this work. I am also pleased that Dr. Ronald Brown and Dr. Theodore Hindson agreed to be on my thesis committee. I would also like to thank Dr. Kenneth Margerison, who has always encouraged and believed in me even when I have not been at my best. Dr. Joseph H. Koo has been a wealth of sound advice. Others I would like to thank are all the Poseys, the Wuest family, Dr. Susan Dalterio, Mrs. Kathryn Gault (Grandmom), Walter and Gini Bouzard (my parents), and my brothers and sister, all of whom have been sources of encouragement and support during this project. Most of all I would like to express my profoundest gratitude to my husband and dearest friend, Steve.

DEDICATION

To Steve: Thank you for your love, patience, thoughtful questions and good ideas.

INTRODUCTION

After the Civil War, Texas entered an era of rapid growth and bewildering change. Railroads, which had been in use in Texas since the 1850's began to cross and transform the state. A new technology, less than half a century old, the railroads progressed from curiosity to vital economic necessity. As the need for railroads increased, so did their financial power. Post-Civil War railroad construction was so desirable that voices calling for caution and moderation early on in the process were not heard.

During Reconstruction, the Republicans-dominated state government held control over Texas' economic destiny. When political power returned to the Democrats, economic power was not to follow. The railroads, upon which the economy was growing progressively more dependant, were mainly owned by companies situated in the North. While the state had tremendous resources in land and raw materials, not everyone seemed to be benefiting from them. New technologies allowed for greater production, particularly in

farming, and the railroads provided faster transportation of goods to markets than ever before. However, farmers and small businesses did not seem to be making a proportionately larger profit. The realization grew that Texas economic prosperity still belonged to forces outside the state that were not necessarily concerned with the best interests of Texans.

Communication between the railroads and the people they served was typically unproductive. To the farmers and small businesses, the railroads appeared greedy and overbearing. To the railroads, their customers seemed stingy and ungrateful for all of the benefits provided. As distrust grew, so did the demand for railroad regulation.

The role of the state government was unclear. The Constitution of 1876 gave the legislature the power to regulate railroads, but whether that authority should be exercised and, if so, how, became issues of wide disagreement. The legislature had neither the expertise nor, initially, the inclination to effectively deal with the problem. Judge Alexander Watkins Terrell campaigned heavily for the creation of a commission to regulate railroads, and brought attention to the idea.

Ultimately the concept of a commission to regulate railroads became popular, and the concept gained further momentum with the Interstate Commerce Act, which was passed mainly due to the effort of a Texan in the House of Representatives, John H. Reagan.

In 1890, a new leader, James Stephen Hogg, emerged to make railroad regulation a reality in Texas. The popular anxiety over the changes brought by the railroads had roots going all the way back to before the Civil War, and the bitter experience of Reconstruction highlighted the unpleasantness of having outside interests exerting power over the economic direction of the state. By demonstrating an understanding of those old anxieties, as well as new worries provoked by unchecked corporate power, Hogg was able to secure the office of governor and begin to address these problems through the establishment of the Texas Railroad Commission.

CHAPTER ONE

RAILROAD CONSTRUCTION: EARLY HISTORY AND THE EMERGENCE OF RAILROAD CRITICS

The Texas Legislature was supportive of railroad development in the state from the time that the very first tracks were constructed. The first chartered railroad to begin actual construction was the Buffalo, Brazos, and Colorado, incorporated February 11, 1850.¹ The terms of its charter were common to the charters of later roads. Section 7 gave the railroad the power of eminent domain,² and Section 15 made the obstruction of railroad construction a crime punishable by imprisonment.³ The BB&C charter, like those that followed, outlined some general policies for the organization of the companies but contained nothing that was truly regulatory in nature. As close to regulation as early railroad charters came was to provide time limits for the construction of working mileage.⁴ However, even these provisions were not generally enforced with any particular vigor until James Stephen Hogg became Attorney General for Texas more than thirty-five years later.

Prior to the Civil War, the Legislature passed two important measures to encourage railroad growth. The first, in 1854, initiated a generous policy that gave chartered railroads sixteen sections of land per mile of track.⁵ The second law, passed in 1856, allowed railroads to borrow from the school fund.⁶

The earliest law pertaining to railroad regulation came from the Fourth Legislature's "An Act to Regulate Railroad Companies."⁷ The provisions of this law, however, were not particularly regulatory. Railroads were required to furnish annual financial reports to the State, but there were no minimum standards that the railroads were required to meet. The rest of the act provided minimal "common sense" kinds of restrictions: railroad bridges could not obstruct navigable rivers, bankrupted companies were prohibited from paying dividends, and engineers were required to remain sober while on duty.⁸

Despite financial encouragement and laissez-faire, railroads in pre-Civil-War Texas grew very slowly. These land grants and loans were insufficient to cover the cost of construction, profits were low in sparsely populated areas, and the impending threat of war discouraged investment.⁹ Thus, by 1860, Texas railroading was still in its infancy.

The promise of effective, cheap feeder-line transportation was unrealized and the potential power of public railroads was unimagined.

The Texas Constitution under the Confederacy did not change Texas' railroad policy; however, during the war the Legislature remained active in encouraging growth. The Ninth Legislature resolved that the completion of the Texas and New Orleans was vital to the Southern war effort, both for communication and to "avoid many of the annoyances incident to a blockade."¹⁰ It also extended time for interest payments on bonds and deadlines for construction.¹¹ But these modest efforts to sustain the railroads had little impact. By the end of the war, Texas had less than five hundred miles of track.¹² The few lines which existed were heavily in debt and in disrepair. Eighty-three miles of the important Texas and New Orleans track had been removed to construct a Confederate fort, and over six more miles were destroyed to keep the tracks out of the hands of the Union Army.¹³

In the decades following the Civil War, Texans were eager to encourage railroad growth. The railroads could make farming more profitable by providing fast and inexpensive transportation to markets. Industry would

surely follow. New areas could be settled. A town that could attract a railroad would have a tremendous advantage over its neighbors. The enthusiasm for railroad development was tempered, however, by the bitterness of Reconstruction. Most railroads were owned by Northerners, which led to discontent when prices were too high or service too slow. The resulting ambivalence toward the railroads led to inconsistent legislation that reflected both optimism and distrust.¹⁴

Texas was spared much of the devastation suffered by other Southern states during the Civil War. That is not to say, though, that the state was unaffected. When Provisional Governor, A.J. Hamilton arrived in Austin in the summer of 1865, he found the state treasury looted and the capital building without a roof. Lawlessness was prevalent, and few vestiges of any state government remained. The new government quickly set up taxation authorities, sent troops to the worst of the lawless areas, and began providing for the election of delegates to a state constitutional convention.¹⁵

Texas had two advantages that seemed to guarantee a quick economic recovery: it had great amounts of public land which could be used for subsidies, and it was in a prime

position for a transcontinental route.¹⁶ During these early days of Reconstruction, there was little hostility toward railroad interests, so there was not yet any reason to demand regulation. At the time, the need for the encouragement of railroad growth was obvious. Most members of the Constitutional Convention of 1866 were friendly to railroad interests, and some, such as James Throckmorton had business ties with them. The new constitution, then, was favorable to the railroads. It stated that the encouragement of railroad growth was designed to "develop the resources of the State, and promote the happiness and prosperity of her citizens."¹⁷ The document permitted the issuance of state bonds for \$15,000 per mile of road constructed, although it was never put into practice.¹⁸

Meeting in 1866 under the new Constitution, the Eleventh Legislature passed a number of measures designed to encourage construction. It liberally granted new and revised existing charters.¹⁹ It enacted a general law permitting local authorities to support railroad building efforts.²⁰ It reinstated the land-grant policy of 1854, which provided each railroad with grants of sixteen sections of land for each mile of track built.²¹ And it passed a law which allowed the railroads to set their own rates. In

addition, the state took some tentative steps in the direction of modest regulation. Once the roads set rates, they could not be changed for one year. Railroads were also required to operate with at least some regularity, although these requirements were quite vague.²²

Local communities supplemented legislative subsidies. Many were willing to support sizable bonds in order to promote construction through their towns. Local grants of land were added to those from the state. Towns also supplied cash bonuses to railroads. For instance, the town of Brenham paid a bonus of one hundred fifty thousand dollars to attract a railroad.²³ Despite such support, political uncertainty would soon hamper railroad growth. An 1866 *Galveston News* article foreshadowed the disintegration of the public's good will towards the railroads when it expressed concern that railroads controlled by Northerners might eventually control the state.²⁴

An election was held in 1866 to select a governor, U.S. Senators, state legislators, and to approve amendments to the state constitution. James Throckmorton won the Governor's race, and O.M. Roberts and David Burnett were elected to the United States Senate; all were former Secessionists.²⁵ The new state Legislature also consisted

largely of erstwhile Confederates who promptly infuriated many Northern Republicans by their refusal to ratify the Thirteenth and Fourteenth Amendments. This behavior was used by Congress to justify a tougher reconstruction policy for Texas under the Military Reconstruction Act of 1867.²⁶ Political officials elected prior to the Military Reconstruction Act were replaced with Unionists, whose salaries rose steadily despite the financial hardships being faced by the population and tax rates that totaled roughly twenty-one percent.²⁷

A new constitutional convention was called, this time controlled by Union Loyalists. The resulting Constitution of 1869 was not satisfactory to anyone, "except the reconstructionists."²⁸ Adding to the chaos was the Radical proposal to declare the Constitution of 1866 null and void, which would negate all contracts entered into during the time period in which it was in effect. This would also have nullified railroad charters made since the previous constitution recognized by the Radicals, that of 1845. Fortunately for the railroads, the measure, after much debate, was defeated.²⁹

The era of Radical control over Texas fomented deep resentment that was intensified by the fact that government

was perceived as not only unrepresentative of the best economic interests of Texas, but it was also humiliating to former supporters of the Confederacy. While the people experienced an increasing tax burden, more of them were becoming disfranchised. The inability to take the "iron-clad oath," which stated that the oath-taker had never borne arms against the United States government made more Texans unqualified to vote, serve on juries, or hold political office. The districts of Democratic judges were eliminated simply by redrawing the boundaries. Judges and juries, then, were becoming more difficult to obtain. Criminals took advantage of the situation, knowing that their crimes might well go unpunished, and violence against Blacks and Unionists was frequent.³⁰

Railroad construction continued under the Republicans, but there were some changes. The Twelfth Legislature granted railroads more time to pay their debts to the state school fund. If they were behind in their payments, they could ward off state seizure of their property by paying a portion of the interest owed.³¹ Even with such measures, however, not every railroad was able to meet its obligations. For example, the Houston Tap and

Brazoria, one of the oldest roads in Texas, defaulted and was seized by the state for auction.³²

The Republican-controlled Legislature and Governor E.J. Davis implemented a policy towards railroads that was not in line with the rest of their party elsewhere in the country, and certainly not in line with the wishes of the people of Texas: their state constitution prohibited granting land to railroads to aid in development.³³ Towns were allowed to continue subsidizing railroads as they saw fit.³⁴ Although there could be no disagreement about the necessity of railroads at this time, the degree of and type of state subsidization of railroads was a source of contention. This situation threw the railroads into alliance with the Democratic minority and conservative Republicans, like Senator Webster Flanagan, who supported railroad subsidies. Flanagan, an early Republican convert to railroad interests, eventually became the roads' candidate for Governor 1890.³⁵ The Democrats accused the Republicans of being controlled by the railroads, yet the Democrats themselves were much more supportive of subsidies than were the Republicans.³⁶ A coalition of Democrats and conservative Republicans overrode two of Governor Davis' vetoes of railroad subsidy bills, passed in violation of the state constitution. Ironically,

Democrats later pointed to those same subsidies as examples of Radical corruption.³⁷

In 1870, as the Radicals held the reins of government, Texas farmers were seeing conditions that were vastly worse for them than in the days before the war. Between 1860 and 1870, the value of farms dropped from \$88,101,320 to \$60,149,150 and the acreage of farms dropped from 25,343,928 to 18,396,523.³⁸ Texas was in the unenviable position of having both the pains of Radical Reconstruction faced by other states of the South and the high interest rates and lack of money for development faced by the West.

Popular opinion did not include any sympathy for the railroads, despite their financial difficulties, which were not well-hidden.³⁹ The *Galveston Tri-Weekly News* in 1872 voiced the growing popular resentment against the railroads. Since the people had helped finance the railroads through subsidies, taxes, and bonuses, the paper contended that the will of the people should be legally binding. The people of Texas, it went on to say, were willing to continue financing railroad development, but they would not tolerate being unfairly charged.⁴⁰

In 1872, Texas returned to Democratic control.⁴¹ The Legislature was once again dominated by Democrats, and

Richard Coke was elected to replace E.J. Davis in 1874. The Democrats now had the delicate task of encouraging railroad growth without creating the appearance of being under railroad influences. It was a difficult appearance to maintain, particularly after granting repeated time extensions for the construction of the Texas and Pacific Railroad, even to the point of extending the legislative session.⁴²

Some of the Texas railroad industry's greatest allies as well as its future foes were gathered at the 1873 Democratic state convention. Among the friends of the railroads were George Clark, a lawyer who became the railroads' principal defender, and Gustave Cook, who later became the anti-commission candidate for the Democratic nomination for the 1890 governor's race. Grange leader W.W. Lang was also in attendance, as was T.J. Brown, who in 1889 would do much to clarify the viewpoint of commission supporters. John H. Reagan, later the father of the Interstate Commerce Act, was the chairman of the Committee of Platforms and Resolutions. In 1873, however, no one seemed particularly inclined to do anything that might hinder railroad growth. They wanted more railroads, and said that "to encourage the investment of capital in such

enterprises, we favor the granting of liberal charters to companies able to build such railroads, and of donating to such companies alternate sections of vacant lands,"⁴³ vowing to continue until there were enough railroads to serve the whole state.

To this end, railroads were given generous grants of land by the Thirteenth Legislature. The Texas and Pacific was granted twenty sections of land for each mile completed, payable every ten miles. Failing to meet the construction terms would prevent the road from gaining additional land, but anything already granted could be retained. Furthermore, the railroad could take as long as eight years to dispose of the first quarter of the lands it acquired from the state, and twenty years to part with the last of its lands, except those required for actual operation.⁴⁴ Other railroads chartered by the same Legislature had similar terms, although they were granted only sixteen sections of land per mile.⁴⁵ Despite legislative efforts to encourage growth, the Panic of 1873 worsened the situation for the railroads. County tax officials seized freight cars and, in one case, even a locomotive for non-payment of taxes.⁴⁶ Railroads needed to raise their rates to keep up with their debts. At the same time, they were forced to cut rates by competition

at cities served by more than one railroad, called competitive points. Ruinous price wars resulted; but those who used the railroads' services had their own problems, and they held the railroads at least partly to blame.

Railroads had expanded rapidly in the state, but the industries needed to provide a customer base were slower to arrive. Newspaperman Edward King, on an 1874 visit to Texas, remarked that the state was in desperate need of manufacturing interests, and that the state could expect it shortly because of the improvements in transportation.⁴⁷ Textile mills in Hempstead and New Braunfels were prospering, despite limited investment. King doubted that even a million dollars had been invested into textile manufacturing in the entire state.⁴⁸ He estimated that in 1874 there were almost 1,100 miles of railroad in Texas, and that it only remained for industry to move into the setting provided. The people of Texas were "making a genuine effort to secure Northern and Western capital."⁴⁹

King noted the potential of Texas cities, particularly those with a strong railroad presence. Houston and Galveston were competitors for commerce and railroads. Houston had grown into a central railroad hub.⁵⁰ H&TC connected at Dennison to the MKT, which ran through Indian

Territory and then met the Missouri Pacific and ran to St. Louis.⁵¹ The International and Great Northern ran from Columbia to Houston to Palestine to Longview, where it connected with the Texas and Pacific, en route to Arkansas and ultimately St. Louis.⁵² The Houston and Texas Central ran from Houston to Hearne, where it joined the International and Great Northern leading into Shreveport, Louisiana. Houston and Galveston also competed for the cotton trade. Galveston was confident that with its ports and cotton presses, it would be able to secure the majority of the cotton traffic. Houston, however, with connections into St. Louis and New Orleans via rail, held the advantage.

King claimed that the Texas and Pacific would bring civilization to the frontier and drive out the Native Americans who had controlled West Texas since the end of the Civil War.⁵³ However, domination of the industry by Northerners was not particularly welcome: the prediction made by the *Galveston News* that Northerners would dominate the Texas railroad industry seemed to be coming true. The Galveston, Houston and Henderson Railroad was controlled in 1874 by Thomas W. Pierce of Boston, who was also in the process of building the Galveston, Harrisburg, and San Antonio Railroad.⁵⁴ Galusha A. Grow, a politician from

Pennsylvania, was president of the International and Great Northern. Thomas Alexander Scott, who had served as Assistant Quartermaster General for the Union Army, was president of the Texas and Pacific, which was headquartered in Marshall from 1872 to 1880.⁵⁵

Texans in the years immediately following the end of Reconstruction had an unshakable belief that the state was destined to flourish, despite the prevailing conditions. King's contemporary observations are examples of such optimism. That boom was, however, always just around the corner. As the decades progressed, the railroads' promise of prosperity seemed to be fading without ever having actually arrived. The railroads' choice to use such rhetoric in their resistance to regulation was unfortunate for their interests: people were tired of hearing it and gradually came to stop believing it.

In 1875, a convention was called to create a new constitution for the state. Many of the delegates were members of the Grange.⁵⁶ Since they were among those who felt most oppressed by the railroads, it is not surprising that there was a growing interest in railroad regulation. Prominent at this convention was John H. Reagan, a Granger and a U.S. Congressman who had been instrumental in the

regrowth of the Democratic party in Texas during Reconstruction.⁵⁷ Reagan had been Postmaster General for the Confederacy, and in that capacity had dealt extensively with the railroads operating in the South. At first, the railroads cooperated with the Confederate Post Office, agreeing to reduce fees and streamline routes.⁵⁸ But postal delays interfered with railroad business and profits, and as the war progressed, cooperation decreased. The agreements made between Reagan and railroad executives at the start of his term as Postmaster were ultimately ignored by the railroads.⁵⁹ This experience, no doubt, tempered Reagan's future attitude towards the railroads. Reagan, however, was not entirely anti-railroad. In fact, at the 1875 convention, he opposed an amendment which, had it been passed, would have prohibited land grants or state subsidies to any corporation.⁶⁰ The *Austin State Gazette* of October 19, 1875 reported that Reagan held that the state needed to encourage more railroad growth, and that he believed that previous legislatures had done too much to restrict that growth. Railroads paid taxes, increased property values, and saved the state money by surveying land.⁶¹ Reagan even opposed a measure which would have prohibited "exclusive privileges . . . given to any corporation for railroads."⁶²

At this point, then, it does not seem that Reagan had any particular dislike towards the railroads, but a dozen years later, he became the author of the Interstate Commerce Act, the passage of which the railroads fought every step of the way.

The Democratic platform opposed the Republican practice of granting monetary subsidies to the railroads, condemning such subsidies as "unequal in the distribution of burdens and benefits, and unjust in principle."⁶³ The platform also inserted a note of suspicion toward the railroads. The land distributed to the railroads was to be subject to "proper restrictions, and with such provisions of law as will protect the people against oppression and unreasonable exactions."⁶⁴

The idea of a state commission for the purpose of regulating railroads was not formally proposed at the convention, but it was mentioned.⁶⁵ In January of 1876, Governor Coke proposed the adoption of a commission, but its powers would have been advisory only. Instead, Article X, Section 2 provided that railroads would henceforth be considered public highways and that as such, the Legislature was empowered to regulate rates and to punish violators of railroad regulations.⁶⁶ The constitution became effective

in February of 1876, over the protests of the railroads and "other speculating and monopoly interests."⁶⁷

In his address to the Legislature in April of 1876, Governor Coke chose strong words in reference to the business practice of the railroads. "That abuses exist in the operation of some, if not all, the railroads in Texas, is unquestionable; where the remedy for them is to be found, is not quite so clear."⁶⁸ He went on to suggest that the Legislature examine the commission in place in Massachusetts for an example of how such an organization might function. The commission he suggested would be advisory in nature, and Coke cautioned that the Legislature be careful to avoid harming railroads operating lawfully.⁶⁹

The Fifteenth Legislature took no action regarding Coke's advice. Its acts were an odd blend of concessions and regulations. The attempts to encourage railroad growth were tempered by suspicion. On one hand, in Article 4238, Section 22, railroads were recognized as having the power of eminent domain.⁷⁰ In Section 23, railroads were given the power "to regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor . . .",⁷¹ but the Section adds that such compensation would be subject to laws passed by the

Legislature, at the time or in the future. Incorporation of a railroad became easier, but meeting requirements for keeping the charter became more difficult. In order to qualify for a state land grant, the railroad needed to subscribe one thousand dollars for each mile it intended to build, and five percent of that amount needed to be in the hands of the railroad's directors in advance. After that, it was just a matter of submitting the proper forms to the secretary of state before a railroad was incorporated.⁷²

Section 31, however, set specific deadlines for the actual construction of the railroads, as follows:

If any railway corporation organized under this act shall not, within two years after its articles of association shall be filed . . . construct, equip, and put in good running order at least ten miles of its proposed road, and if any such corporation after the first two years shall fail to construct, equip, and put in good running order at least twenty additional miles of its road each and every succeeding year, until the entire completion of its line, such corporation shall, in either such cases, forfeit its corporate existence, and its powers shall cease. . . .⁷³

The Fifteenth Legislature's attention to railroad matters was of tremendous interest to a new legislator named Alexander Watkins Terrell. To Terrell, corporations were a threat to freedom, and there could be no freedom without laws. Those laws had to control the corporations or the corporations would control the state. Life under the

domination of the corporations would be as odious as Texans had found life under the Radicals.⁷⁴

Terrell was a native of Virginia, who spent the early part of his life in Missouri. In 1852, the health of his wife required a move to a warmer, drier climate, so he brought his family to Texas. They moved to Austin, where over the years Terrell met the people who would become his friends, colleagues, and heroes. Among these were Judge Tom J. Brown and John H. Reagan. He also made the acquaintance of Sam Houston, who Terrell admired greatly and whose belief in the value of public education and dislike of corporations helped shape Terrell's later behavior as a state legislator.⁷⁵

Terrell was persuaded to run for the judgeship in the Second Judicial District in 1857. The election was close, but Terrell prevailed. His skill as an orator and his trustworthy demeanor were the keys to his victory. Part of his success, critics and supporters alike believed, was attributable to a mule. Terrell rode a mule from one campaign site to another, and soon the creature became as famous as his master.⁷⁶

Terrell joined the Confederate army in 1862 and served until the end of the war. It was not his service as

a soldier, though, but as an administrator during the Civil War that shaped his future political career.⁷⁷ In September 1863, Terrell sought and obtained a position on the investigating committee of the Cotton Bureau in Houston. The investigating committee examined official state documents pertaining to the sale and transportation of cotton, in order to discover any evidence of graft.⁷⁸ After his service on the investigating committee, Terrell returned to a field assignment. He commanded a cavalry regiment until news of Robert E. Lee's surrender reached Texas. Thoroughly disheartened by the outcome of the war, Terrell moved to Mexico.⁷⁹

He was encouraged to return when a friend wrote from Texas to tell him that the South had not been subject to utter tyranny as he had feared. He also returned out of a sense of loyalty to his state:

My resolution to return home was greatly influenced by a letter from an old friend . . . who assured me that President Johnson's policy looked to a speedy return to ante-bellum conditions, slavery excepted . . . that General Grant then all powerful refused to sanction a harsh use of victory, and that my friends desired me to return and help them reconstruct.⁸⁰

When Terrell returned to Texas, all of the traits that would influence his approach to state legislation were in place: his commitment to education, his loathing for

corporations, his drive to avert corruption in government and business, his distrust of Federal authority and his loyalty to his state. He eventually returned to his political life and was elected to the state Senate in 1875. His attacks on government corruption commenced immediately upon his election. One of his earliest actions was to introduce a bill for reform of the jury system, which he felt had been debased during Reconstruction. His proposal shortly became law.

As the established political leaders in Austin harangued and dealt with the problems of Reconstruction, a future politician and railroad opponent was finding his way in East Texas. James Stephen Hogg was born on March 21, 1851. His father was active in politics and some of the most influential men in Texas visited his family's home. These visitors included Sam Houston, Oran M. Roberts, and John H. Reagan. Even as a young boy, Hogg was already interested in listening in on their political discussions.⁸¹

At the age of twelve, he was orphaned. His father fell ill and died while serving as a general for the Confederacy, and his mother died only a year later.⁸² James Hogg worked alongside his siblings to keep the family's dwindling land holdings productive. In the nearby town of

Rusk, he found employment as a printer's assistant when he was sixteen. There he had the opportunity to listen to discussions among the influential politicians of East Texas, because the newspaper office in which he worked was a popular gathering place. Reconstruction was a frequent topic, and although he was no less resentful of it than any other Texan, he believed that people should be working to bring it to a close. He had read a widely-publicized letter which Reagan had written during his imprisonment at Fort Warren after the Civil War. The Fort Warren Letter had accurately predicted the imposition of military government and had tried to encourage Texans to overcome their hostility. Hogg admired Reagan's insight and agreed that it was time to move beyond past antagonisms.⁸³

After working for several small papers, Hogg established his own paper, the *Longview News*, in 1871. It was during this time that Hogg made many of the small-town newspaper contacts that would aid him in his later political battles. These contacts included lifelong friend Horace Chilton, who later became his campaign manager.⁸⁴

It was also during his early days as a newspaperman that Hogg first took on the railroads. In response to a Tyler paper's claim that the people of the county were

willing to take any steps necessary to get tracks built there, Hogg warned that they should not "offer all you are worth to get them."⁸⁵ He saw what measures towns and counties were taking to attract railroads and worried that they were giving away too much. What Hogg had already come to recognize as early as 1871 would gradually be noticed by Texans over the next two decades.⁸⁶

END NOTES

CHAPTER ONE

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¹²Robert Lewis Peterson, "State Regulation of Railroads on Texas, 1836-1920" (Ph.D. diss., University of Texas, 1960), 47.

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¹⁵Charles William Ramsdell, *Reconstruction in Texas*, (New York: Longmans, Green and Company, 1910), 59-61 and W.D. Wood, *Reminiscences of Reconstruction in Texas and Reminiscences of Texas and Texans Fifty Years Ago* (n.p. 1902), 5.

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²⁰Goodrich, *Government Promotion*, 224.

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²²Gammel, *Laws of Texas*, 1002-4.

²³Richardson, *Texas: The Lone Star State*, 318.

²⁴John Martin Brockman, "Railroads, Radicals and Democrats: a Study in Texas Politics, 1865-1900" (Ph.D. diss., University of Texas, 1975), 207.

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CHAPTER TWO

CORPORATIONS AND FARMERS

The murmuring of discontentment emanating from farmers who were disappointed in their inability to share in the country's increasing wealth grew to a roar by the mid-1880s. Radical control was gone, but Texas agrarians still did not control their own economic destinies. The agriculturists watched with suspicion as the men of big business became wealthier as they themselves grew poorer. The business practices of giant corporations served to spread the mistrust. This was especially true of the railroads, whose business had a direct bearing on the prosperity or impoverishment of the farmers. This resulting insecurity led to the farmers' movements of the 1870s and 1880s and to the demand for substantial railroad regulation. While agricultural groups created pressure on the state legislature from without, representatives sympathetic with the farmers began to work on the railroad issue from within.

During his first session in the Texas House, Terrell introduced a bill providing for the establishment of free

schools for all citizens of Texas, black and white. He also fought for the establishment of a state university. Terrell asked for four million acres of land: two million for the public schools and two million for the state university. The chief opponents of his plan were the holders of the land certificates. In April 1882, Terrell defended his request in the Senate:

We ask for two million acres. The champions of the railroad land certificates say that this is too much . . . and that those certificates constitute a prior claim against the public domain. . . . I would be recreant in my duty to them, to the state, and to their own posterity yet unborn, if I failed to oppose them. . . . ¹

The school grant controversy brought into opposition two issues close to Terrell's heart: his belief in the importance of education and his dislike of corporations, in this particular case the railroads.

To Terrell, big business was not just an enemy of education, it was an enemy of freedom. It was his conviction that business controlled too great a portion of the country's wealth. With their almost limitless financial resources, they could manipulate governments. Worse still, in Terrell's estimation, corporations did not have any loyalty to the state in which they operated.²

The lack of state loyalty that Terrell sensed in corporations was especially troubling to him because he thought that states should be responsible for regulating their behavior. He not only denied that the federal government had the power to regulate businesses, he doubted whether it had the capacity to do so. He expressed his reservations in an 1886 speech:

We are now living under a Constitution made for the Union of States before steam and electricity had invaded the domain of production and commerce. . . and so, laws made before we knew how to use these subtle and powerful agents, under corporate control, now seem unsuited to secure the common welfare.³

Terrell warned that no one had taken seriously enough the threat of the corporate giants. He decried their defiance of the Constitution and pointed out that there were no state laws to prevent their depredations on the fabric of society.⁴

Corporate opposition, according to Terrell, was the reason why he lost his bid to fill a vacant seat in the United States Congress. His campaign, however, sparked such an excitement in the issue of a railroad regulatory commission that he was credited as being "the man more responsible for the creation of sentiment in its favor than any other man."⁵ Although he felt that his stand had cost him politically, he continued to be outspoken in his criticism of corporations. By far his favorite targets for

such criticism were the railroads.⁶ If corporate interests had, indeed, influenced the election as Terrell claimed, they might well have made a error: the man who won the Senate seat was Terrell's good friend, John H. Reagan, who had initiated the fight for railroad regulation in the House. After the loss, Terrell continued to act as the voice of the farmer, calling for stricter controls on the growth of monopolies, particularly among the railroads.⁷

As early as 1876 Terrell began to argue for a state railroad commission. The bill he introduced in that year was soundly defeated. In 1882, he submitted a similar proposal, but it too was defeated. Nonetheless, by the time of the defeat of Terrell's second bill, the idea of a commission to regulate railroads had taken hold in the minds of the general population, which was by then becoming annoyed with the railroads.⁸

One of the principal causes of popular resentment against the railroads was the fact that there were few roads operating in Texas that were not heavily financed by investors based in the North. In this sense, the "Carpetbagger" influence remained in Texas long after Reconstruction was over, prolonging the bitterness towards Northern businessmen who seemed to be taking advantage of the economic hardship of the Southern states. Northern investment in Texas' railroads was nothing new; it had been

present since construction first began.⁹ The Civil War had destroyed existing lines and made capital scarce. Thus, continued investment of Northern capital was a necessity.¹⁰ It was the attitude towards such investment that had changed. Texas railroads still actively sought Northern and Eastern capital, and as a result many lines ended up being owned by out-of-state interests.¹¹ Like the Radicals who had been in control before, these Northern capitalists had an agenda that did not include the best interests of Texans or Texas-based railroads.

Such was the resentment against this outside influence that angry taxpayers began to refuse payment of taxes intended for retiring railroad subsidy bonds. Residents of the town of Tyler declared that they would not pay their taxes because a portion of the revenue would be going into the hands of investors who were not Texas residents.¹² Rather than taking steps to protect the financial interests of the railroads, the legislature actually helped the town to repudiate the subsidy bonds by creating a law that allowed tax collectors to collect state and county tax revenue without including the taxes intended for the retirement of the railroad bonds. The legislature, then, had provided a way for taxpayers to repudiate their local bonds, which in turn put the railroads into deeper financial trouble.¹³

Farmers mistrusted the railroads' attempts, by various means, to make the business of transportation profitable. Business practices that were perfectly reasonable from the viewpoint of the railroads were seen as unfair by customers. One perceived abuse practiced by the railroads was long-haul/short-haul discrimination. Reagan's home town of Palestine suffered from this kind of discrimination.¹⁴ Farmers particularly hated this practice, because it made transportation rates seem confusing and arbitrary. Actually, while the rates were indeed confusing, they were not as arbitrary as they might have appeared. The railroads' cost to move freight was lower per unit in proportion to the amount hauled. The more they moved, the less it cost the railroads, and there was more to move on long runs. Short runs between local points were less profitable, because cars might not be full. Moreover, there was more competition on long runs, since long hauls generally terminated in towns served by competing lines.¹⁵ This situation was complicated by the fact that rate wars often broke out at competitive points, making people who were in areas where prices failed to decrease wonder why they were getting less favorable treatment. More confusing still was the further reduction of rates at competitive points by railroads whose own participation in rate wars had resulted in the company being forced into receivership.¹⁶

An 1883 law designed to remedy the situation, in practice only further complicated the matter. The law prohibited railroads from charging more to provide transportation of goods along shorter routes than longer ones. The legislature, however, did not have any jurisdiction over interstate commerce, only traffic both originating and terminating within state boundaries. The result of the law was to bring harm to the smaller Texas' roads, while lending advantages to the larger "foreign" roads that served interstate traffic. The roads with interstate service could, without violating the letter of the 1883 law, charge less to transport the products of Texas' farms and industry out of the state than an intrastate road could afford to charge for transportation services between one Texas city and another. While large railroads could charge low rates at competitive points because they were shipping out of the state, smaller roads could not reduce rates at competitive points without doing the same for all areas they served. The 1883 law had the further consequence of drawing raw materials, chiefly cotton, out of the state, because it was cheaper to ship to an out-of state manufacturer. The resulting drain of raw materials was harmful to Texas' industries. Furthermore, in-state lines were deprived of further opportunities to ship these materials again as finished products.¹⁷

Stockwatering was another common abuse practiced by the railroads. The railroads did not go to great efforts to deny that the practice existed. In a 1890 article in the *Southern Mercury*, an Alliance newspaper, T.J. Brown argued that railroad stocks and bonds were sold for about four and one-half times more than the actual dollar value the railroads had invested. Brown also noted that the fortunes of the railroad men seemed to grow as the stocks and bonds increased.¹⁸ Whether the stocks were excessively watered or not, in order to pay their obligations under them, railroads had to charge rates that were higher than their customers thought were fair. The solution, farmers felt, was "Honest capitalization of railroad property," which would "make possible a material reduction in rates."¹⁹

High rates and out-of-state control of many railroads were important sources of bitterness toward them, but there were other causes of concern. Railroads were unsafe and unreliable. Occasional negligence and frequent financial distress, particularly in the depression following the Panic of 1873, led to poorly maintained tracks and bridges which were prone to collapse. Delays were common, even expected. The nicknames Texans had for the railroads reflected public opinion on railroad reliability. The D&W (Dallas and Wichita) was also known as the "Descend & Walk." The East Line & Red River (EL&RR) was known as the "Ever

Late & Rarely Runs." If someone expected service from the Texas & Pacific, then they needed to remember that the T&P stood for "Time & Patience."²⁰

The public outcry for better service and especially for better rates was occurring simultaneously with the growth of railroads' interest in self-regulation. Railroads came to believe that they, too, needed protection from railroads.²¹ Pooling agreements, such as the Texas Traffic Association (established in 1885), stabilized shipping prices temporarily.²² Member railroads would pool their earnings in an effort to reduce the incentive for competition. The participating railroads divided their profits among themselves, regardless of which line had actually carried the freight or passengers, provided that they earned at least as much as they had earned in 1883. Member railroads divided business in areas served by more than one line in an effort to further limit competition.²³ Smaller railroads, formerly unable to compete against such giants as Gould and Huntington, found greater profits in the Texas Traffic Association. While the railroads enjoyed the end of rate wars and the stability brought about by pooling, the elimination of competition was not seen as beneficial by critics. Railroad rates were imposed on Texans by all of the participating railroads, including those whose interests lay outside the state.²⁴

The farmers of Texas became increasingly vocal about their burdens from the end of the Civil War up through the passage of the act creating the Texas Railroad Commission. The post-war economic distress that seemed to be diminishing for other occupations was growing worse for the farmers. They were producing more than they ever had before, yet their debts continued to grow.

One reason for the worsening economic condition of the Texas farmer was the crop lien system. Money was scarce, and it was difficult to find a lender. Farmers frequently turned to their local merchants for help. The farmer purchased his equipment and seed from the merchant on credit guaranteed against the next season's crop. When the crop was ready, the farmer would sell it and pay the merchant. In practice, the system was less than ideal. Merchants who provided the equipment required the farmers in debt to them to consign their crop through them, enabling merchants to exact a commission high enough to keep farmers from completely eliminating their debt, thus obligating the farmer to the merchant for another year.²⁵

The merchant could also place demands on the farmer as to what kind of crop he could plant. Merchants often demanded that the farmers in debt to them plant a cash crop, principally cotton. The price of cotton dropped steeply due to the resulting overproduction. In 1866, cotton brought

thirty-one cents per pound, but by 1880 the price was just ten cents.²⁶ An 1889 snippet from the *Galveston Daily News* reflected the hope that farmers still held out for cotton profits, announcing that "The first two bales of cotton ever raised in Scurry county were brought to town yesterday and sold. . . . They were curiosities to the boys."²⁷ Even as cotton dropped in price, the planting continued, mainly because it was easy to grow and had a long season. Another advantage was that it grew quickly. One farmer, in describing the ruinous cycle into which he had been drawn said, "We were poor, and had nothing to go on, had no collateral, and we just had to plant the crop that would bring money right away. We did not have time to wait."²⁸ This farmer's statement, however, was in retrospect. At the time, few farmers really believed that they were at fault for overproducing.²⁹ They believed the merchants were at fault for not placing a high enough value on their crops, as were the railroads for charging too much to transport them. Small increases in shipping prices had little impact when prices were high, but were disastrous as agricultural prices fell. Farmers believed that such price increases were not necessary for the survival of the railroads, but rather to satisfy the greed of "large corporations which are enabled to rob the people through special laws granted by a Congress

whose election has been secured by the free use of money wrung from the people by the charge upon watered stock."³⁰

Texans faced transportation problems, especially high rates, that were typical of both the Southern and Western portions of the country. Production was typically lower than in the East, so railroads had to charge what the market would bear for their services in order to make up for the cost of hauling mostly empty cars on the return trip.³¹ Railroads were able in some cases to actually lower their rates, but Southerners tended to believe that they were not getting as much of a reduction as the rest of the country.³² Additionally, the railroads were encouraging large numbers of settlers to come to Texas and take up farming. These new settlers brought business for the railroads, but they also brought additional competition for resident farmers and added to overproduction.

Contemporaries saw this pattern of economic decline for farmers, but they also noticed a marked erosion in their social well-being as well. Those few who became wealthy moved to the towns, leaving their lands in charge of tenant farmers who did not have any reason to care about making improvements, thus contributing to the physical deterioration of farms. The absentee landlords had no reason to care about the upkeep of roads or the quality or availability of schools in the areas they left behind.

Postal facilities were vastly inferior, keeping rural people from getting information (for example, crop prices) in a fashion which was timely enough to be useful. Information about politics was also slow to arrive, and, if a farmer wanted to write to his representative, he might have to travel many miles to reach a post office from which to send his letter. One writer lamented that the political leaders were no longer the "county gentlemen" of the past, but the businessmen and absentee landlords who now knew "so little about what would promote the prosperity of farmers that they have favored measures that have greatly injured agriculture."³³

Another source of farmer discontent was land scarcity, particularly in the last decades of the nineteenth century. Free, or at least cheap land, had been always been available. Now that precious resource was becoming progressively harder to obtain. Land that towns, citizens, and the state once gave freely to the railroads now seemed to have been squandered. Texas had bestowed well over thirty-two million acres of state lands upon the railroads.³⁴

An 1890 *Forum* article examined the trends in the disposal of state and federal lands and concluded that governments had anticipated too soon the need for land, spurring development in areas that might have otherwise been

left for the benefit of future generations. It became apparent that, in the near future, if bad crops or bad choices ruined a man's finances, he would no longer have a place to start over. He had to stay where he was and fight to make it work.³⁵

In his 1872 report, Land Commissioner W.C. Walsh suggested that Gould and his ilk were poised to gobble up the lands of Texas and that the law would allow him to do so. Railroad land ownership had led to wild land speculation. Walsh suggested that the amount of land that corporations could own should be limited. Otherwise, a financial crisis could force agriculturists to sell out and "throw millions of acres into the hands of alien owners and bring the hardship of absenteeism to our doors."³⁶

The growing land hunger, accompanied by high taxes, high transportation costs, general social decline, and falling cotton prices made the environment right for the growth of a means for farmers to speak out for what they believed to be their rights and make the politicians listen. Oddly, what took root was an organization the was avowedly apolitical.³⁷

The Grange, also known as the Patrons of Husbandry, was a national farmer organization that found many eager participants in Texas. It first appeared in the state in 1873, and by the spring of 1874 there were 360 granges

meeting throughout the state and by the following year the Grange in Texas could boast some thirty-thousand members.³⁸ Although the Grange encouraged its members to participate in politics, the organization did not purport to have a political agenda. Instead, it promoted social interaction, the sharing of information, and literacy programs. The last was particularly important because illiteracy, which stood at about thirty-three percent of the rural population, hindered the ability of farmers to understand the views of non-farmers and politicians, leaving them unable to defend their own views adequately.³⁹

The Grange was actually much more political than it was designed to be, and quickly gained a reputation for being anti-railroad. The Grangers declared that monopolies were "in violation of the spirit and genius of free republican government," and they called for the regulation of railroad rates.⁴⁰ In defense of the Grange's position, Worthy Master of the Texas Grange W.W. Lang insisted in his 1874 address to the Texas State Grange:

I am unable to discover any antagonisms to railroads or to transportation companies by the Patrons of Husbandry. The time, objects, and intentions of the order being to elevate and ennoble by educating the mind, to promote the interest and advance the condition of the poverty-stricken producers of the country: and the purposes of transportation companies being to furnish the means of conveyance, the two are dependent

upon each other. There can be no opposition; for unless the farmers are successful, there would be but little to transport. Railroads are indispensable auxiliaries to the agricultural prosperity of the country. To correct the ills and evils too frequently incident to monopolies, is not opposition to the monopoly. Let us, my friends, in a spirit of charity, apply the corrective should the necessity arise, without any intention of injury to any of the great industrial interests of the country. Make no war upon railroads. They have been of incalculable benefit to our country, and are indispensable to our prosperity.⁴¹

Lang's statement was indicative of the attitude of agriculturists toward their relationship with the railroads. He recognized that no farmer could hope to compete if he did not ship his crops to market in the most efficient manner possible, that is, by rail; but the railroads were merely assistants to the activities of the farmers. However, by their control of the best means of transportation, railroads held a monopolistic power over the farmers, and by Lang's account "ills and evils" were inherent to monopolies. To the "poverty-stricken producer," the corruptness of the railroads was manifested in high rates. Lang's speech naturally put the emphasis of the railroad-farmer relationship on the importance of the farmer. His admonition to the farmers not to fight the railroads was not consistent with the underlying attitude he expressed or with the reality of the antagonism between the two.

The farmer was, after all, a capitalist, just like the industrialist or the railroad man. Each sought to gain

the highest profit possible from his labors. The railroads were simply in a better position to make a profit.

Railroads were fortunate in that farmers were plentiful and growing more productive all the time, so there were plenty of crops to haul. Population centers were scattered, limiting competition for railroads in remote areas. The farmer, like the industrialist, applied modern technologies to his trade. Such technology was expensive, necessitating a mortgage or crop lien to acquire it.⁴² Labor-saving machinery such as the mower and steam plow meant that less labor was required to produce more food. It was good for the industrialist, so why not the farmer? The industrialist and the railroad man, unlike the farmer, did not have to compete with a third of the working population engaged in the same enterprise. The end result was that the farmers faced the problem of overproduction, so no matter how many animals or how much cotton they raised, they always got less and less money for their efforts. Moreover, since much of Texas is arid or semi-arid, overproduction still required a great deal of work. Profits that the farmers no doubt felt should have been theirs went instead to the middle-men, who were the merchants and railroads.

Farmers had more to resent about the railroads than the rates that cut into their profits. Storage elevators, often owned by the railroads, were given preferential

treatment over the farmers.⁴³ This practice was especially detrimental in Texas because corn was the state's second-most important crop next to cotton. Railroads did not permit the farmers to load their products directly from their carts into the freight cars. Farmers had to store their corn in the elevators until the railroads were ready to transport it. Farmers had to pay a fee for the storage of their product, as corn prices, like the prices of all agricultural products, dropped steadily, from a high average of 64.7 cents in 1874 to 28.3 cents by 1889.⁴⁴ The attempts of the Grange and later agricultural groups to fight the system by building their own elevators proved unsuccessful. They were expensive to build and railroads required them to remain open all year.⁴⁵ The indifference of the railroads to complaints heightened the impression that they were only concerned with getting as much money out of the farmers as possible in order to satisfy the out-of-state holders of watered-down stock.

Like the railroads, many of the mortgage-holders of farmland were situated in the Northeast. The result was that scarce money was drained out of Texas through the payment of interest.⁴⁶ Local mortgage brokers would find financing, earning their profits from whatever difference in the percentage of interest existed in between what borrowers would pay and lenders would accept.⁴⁷

Creditors were not operating entirely without risk, but the rewards were good. A risk was that mortgage brokers tended to overvalue the land, thereby increasing the amount of the loan and the broker's commission and profit, but at the same time increasing the probability that the farmer would be unable to repay the loan when it became due. Default could result in the lender being stuck with land worth far less than the mortgage. This danger could be overcome if the farmer wanted to refinance and would accept a higher interest rate.⁴⁸ Also, lenders gained from the deflationary spiral of the times.

Currency had depreciated during the Civil War. As the country recovered, currency began a general trend of appreciating. The result was that loans made when money was worth one amount had to be repaid in a time when it was worth more. Farmers were therefore paying more than their loans plus interest because they were always paying in dollars that were worth more than when the debt was originally acquired.⁴⁹ It was not a wonder that every significant agricultural reform movement operating in the state (and elsewhere) favored monetary policies that created inflation such as the issuance of more Greenbacks and the free coinage of silver.

About the same time that the Grange took hold in Texas, a native-born movement was starting in the state.

The Farmers' Alliance started in West Texas in 1875. The original organization was short-lived due to its involvement in area politics, but the movement revived in 1880. Within three years, Alliance lecturers were canvassing the state, spreading information and gathering members. Within another three years, the Alliance claimed one hundred thousand members and had spread to other states.⁵⁰

As the Alliance movement expanded, its leaders hoped to create a national organization. Several factors frustrated advocates of unity. One problem was that members of the Southern Alliance wanted to keep rituals secret; and another was that they also wanted to avoid including Blacks. Unlike their Northern counterparts, Southern Alliance men were not at first as concerned about the railroads.⁵¹

A possible explanation of these divergent views is that the railroads in Texas were for the most part newer than in most Northern states and territories, where the railroads had not been destroyed by the Civil War. The regulatory nature of the laws of the Fifteenth Legislature would indicate that the abuses of the railroads were already becoming evident, but Texas' higher priority was the construction of additional roads to serve its widely scattered settlements and conquer its great distances. For most of the first decade following the Civil War, Texans

were just delighted to have access to the rail lines. The disenchantment would come later.

By 1886, the demands of the Farmer's Alliance had taken a decidedly anti-railroad turn. The meeting of the Grand State Farmer's Alliance in Cleburne in August of 1886 reflected the growing distrust of corporations, in general, and railroads, in particular. The members demanded that public-school lands, which were falling into the hands of railroads and speculators, be reserved for settlers. They also demanded that lands owned by railroads or other corporations who had lost their charters be returned to the state government for redistribution to settlers. The Alliance men wanted the state to assess railroad property at the full value of its stock, in hopes of ending the stock-watering that they believed brought them higher freight rates. The convention at Cleburne also demanded the creation of an interstate commerce law that would guarantee reasonable transportation rates, determined by distance rather than by quantity. The interstate commerce law that they wanted would also prohibit pooling and the practice of giving rebates to large shippers.⁵² In short, they were supportive of what John H. Reagan was already trying to establish.

The convention did not propose the creation of a state commission for the purpose of regulating railroads,

but it did focus on ending the alleged abuses of the railroads. The Alliance convention of 1888 in Dallas again made no demand for the creation of a state railroad regulatory commission; however, it advocated that the state establish and enforce maximum transportation rates "upon a basis that will provide no more than a reasonable income on the money actually invested in the roads and to defray the cost of repairs and operating the roads."⁵³

M.M. Crane, who wrote a first-hand account of the establishment of the Texas Railroad Commission, contended that the citizens of Texas only sought regulation of railroads as a last resort, that is, when communication failed. In Dallas, on June 8 and 9 of 1889, a convention of farmers, merchants, and railroad men met to discuss a possible reduction in rates.⁵⁴ Letters were sent from the convention to Senator Richard Coke and to John Reagan asking them if they would be supportive of a commission with the power to regulate railroads. Both replied that they would. The convention, however, accomplished little else. The railroad men in attendance were interested only in discussing whether or not the rates were too high. Crane, who was present at the convention, said that to farmers and the merchants, there was no doubt that the rates were too high. The principal result of the convention was to

reinforce the impression that the railroads cared nothing for the problems of those that depended on them.⁵⁵

The Grange and the Alliance contributed to the awareness among farmers and politicians of the problems allegedly brought about by the greed of the railroads. Politicians were responsive to the demands of the Grange and Alliance because these farmers' movements grew so rapidly that it would be foolhardy for anyone interested in holding a political office to ignore them.⁵⁶

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CHAPTER TWO

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⁴²Ayers, *Promise*, 217.

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⁵⁴ Wallis, "Life of Terrell," 26.

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CHAPTER THREE

REGULATION: PUBLIC OPINION FORCES POLITICAL ACTION

The public demand for railway regulation increased steadily during the 1880s, and by 1889 had resulted in major legislative changes on the national and state levels. While political leaders such as Reagan and Terrell vigorously pursued regulation, railroads and their supporters stolidly opposed it. Deep-seated animosities and miscommunication and misunderstanding eroded any chance of compromise. The ambiguity expressed in early railroad regulation diminished as both pro- and anti-regulation forces clarified their position. As it became evident to supporters of railroad regulation that a commission was the only practicable solution, candidates evolved to advance their cause.

The agitation for railroad regulation was addressed on the national level by John H. Reagan, though it had not yet become a pressing issue when he was first elected to the House of Representatives in 1875. By 1877 Reagan was appointed Chairman of the Committee on Commerce. His previous record had shown no real hostility toward

railroads, despite his bitter experience with them during the Civil War. Only a few years earlier he had helped bring the International and Great Northern Railroad to his home town of Palestine.¹ Convincing the railroad to build had been costly both in money and land to his community, and, additionally, the town suffered long haul/short haul discrimination.² Then from his position on the Committee on Commerce, he got a thorough look at the business practices of the railroads, which strengthened his growing suspicions of them and their political manipulations.³

In May 1878, Reagan proposed a bill to regulate interstate railroad traffic. It addressed the same problems that had become a concern to Texas farmers: favoritism toward large shippers, long-haul/short-haul discrimination, and, most important to Reagan, pooling. Reagan said that there were "the strongest reasons to believe that pooling would be the very perfection of monopoly power and that the destruction of competition would operate altogether against the interests of the people."⁴ Rebates would be prohibited, and shippers would be required to post their rates. This was Reagan's first attempt to introduce railway legislation, and it was met with derision. A particular target was the long-haul/short-haul clause (Section 4) which stated that a uniformity of rates needed to be observed, in turn implying that someone would have to set the rates.⁵ He was ill-

prepared to take on such a complex subject and such a powerful lobby the first time, but he determined to educate himself for the future. He had become convinced of the necessity for regulatory legislation to the point that he turned down the Democratic nomination for governor in the 1878 election in order to return to Congress and pursue the matter.⁶

Reagan resubmitted his bill in 1881 with extensive revisions, saying that the first bill was rejected due to "too much verbiage and technicality."⁷ His second attempt was taken more seriously, and he was ready for the attacks of railroad advocates. Although Reagan was careful to avoid language that could be construed to mean that Congress would be establishing standard acceptable rates, the bill still had enemies. Doubts remained about Congress' authority to create such legislation and the potential effectiveness of it. Representative Edward S. Bragg of Wisconsin claimed that states' rights were being ignored in the matter of railroad regulation:

I feel that in judging the question of States rights, after the great struggle which has taken place in which it has risen to be the bugbear in the minds of all modern statesmen, we must guard against running away from the doctrine of State rights and running in the contrary direction. In trying to get away from one evil you are apt to drop into an evil greater than it.⁸

The House passed the Reagan bill, but it was defeated in the Senate. Reagan continued to argue for interstate railroad regulation, but was unable to secure another victory in the House over the course of the following three years, although he received support from farmers' and labor organizations as well as businesses which had received unfair treatment from the railroads. The Texas legislature sought his advice about establishing a commission on the state level similar to the one he proposed in Congress.⁹

Reagan again submitted his bill in 1882, then spent three days rebutting, point by point, the arguments against it. The railroad supporters opposed any kind of regulation, but seemed to be particularly anxious to protect pooling. Reagan, in response, rejected the assertion that pooling lowered prices by protecting railroads from competition, calling it "the most dangerous theory which has been advanced in connection with the discussion of the railroad problem." He argued that it worked entirely to the advantage of the railroads.¹⁰

He charged that the railroads could and would manipulate shipping charges for their own advantage. They could control markets by changing the price for shipping a commodity. They could make or destroy a city's financial viability on a whim. Through their control of shipping costs, they had the power to tax any part of commerce they

chose.¹¹ The question faced by Congress, then, was "whether the people, through the machinery of their own government, are to be the masters of their rights and liberties, or the railroad corporations to be the masters of the people. . . ." ¹²

Reagan reintroduced the railroad regulation bill in 1883 and again in 1884, but ill health prevented him from promoting it. In 1885, the Reagan bill passed the House, but it again met trouble in the Senate.¹³ However, circumstances were changing. The public demand for federal regulation could no longer be ignored, despite railroad claims that such legislation would destroy railroad transportation.¹⁴

The Senate passed a substitute measure, which Reagan did not care for because penalties were limited to collecting the difference if a railroad was caught overcharging.¹⁵ He did, however, like the fact that the Senate bill did not involve a commission, which had been included in the House version over his objection.¹⁶ The joint conference committee worked the bill into its final form, and Reagan compromised on the issue of a commission. Reagan also agreed to small changes in the long-haul/short-haul measures contained in the bill.¹⁷ One point on which he would not budge was the ban on pooling. He successfully defended this provision by threatening to withdraw his

support of the bill altogether if pooling was allowed. The Senate passed the Reagan bill on January 14, 1887, and the House approved it a week later. The *Congressional Record*, (Senate) indicates that on February 7, 1887, the Reagan bill, now called the Interstate Commerce Act, was signed into law.¹⁸

Meanwhile, Texas legislators who sought railroad regulation on the state level met with less success. Neither the railroads nor the people who relied on them were happy with legislative attempts to regulate railroad rates. The increased agitation of the farmers was ample evidence that the state legislature was not succeeding in making railroad rates that farmers found acceptable. The railroads, naturally, argued that the legislature did not know enough about the business of railroad transportation to regulate it adequately.¹⁹ Actually, that was the one point on which all sides could agree.

Nonetheless, each successive legislature added more laws of a regulatory nature than the preceding one. After the passage of the Interstate Commerce Act, the number of new acts designed to curb the railroads increased notably.²⁰ The challenge of the legislature was to create fair and equitable rates and to do so in a very short span of time. The reactionary nature of the Texas Constitution limited the

legislature's ability to regulate railroads simply by its short sessions. It was ironic, then, that the same party that had advocated a state constitution that was so limiting to the power of state government now found that the state needed more power to regulate the railroads.

By the time of the creation of the Interstate Commerce Commission in 1887, it was already clear that something along the same lines would be needed on the state level, which was what Terrell had been promoting for years. The only problem was that there was nothing in the Texas Constitution that would permit the creation of such a separate regulatory body. Railroad advocates still had a weapon, then, in their fight against meaningful regulation.

The question of a regulatory commission was not new, but it became the focus of efforts to control railroad rates and services. S.G. Reed, in his *History of the Texas Railroads*, saw corporate opposition as the major impediment in creating a commission:

It is surprising that with an unquestioned majority of the Legislators favoring a Commission and differing only as to constitutionality, it did not agree on submitting an amendment to the Constitution authorizing one when the question first arose. One cannot escape the conclusion that the railroads did some very effective work in prolonging the contest between these two factions.²¹

The railroads were not reserved about encouraging legislators, particularly new ones, to see things their way.

Proposals to create a commission, each similar to the others, were rejected during each session from 1882 through 1889. During the 1885 session, Terrell convinced a new legislator named M.M. Crane of the necessity of a railroad commission to protect farmers and businesses that were located far from ports or state borders. Crane later wrote that "His arguments on that question seemed to me unanswerable."²² Terrell explained to Crane, as he had to many, that the railroads had become indispensable due to Texas' large size, lack of navigable rivers, and roads that were frequently not fit for travel. He explained that the dearth of factories in Texas made the railroads much more of a necessity, since manufactured goods had to be brought into the interior.²³

These ideas were expanded upon in Terrell's 1886 speech, "The Cormorant, the Commune, and Labor," in which he voiced his growing concern over the polarization he saw between the rich and poor. The gap between the classes was widening "alike to the danger of the favored few and the discontented many."²⁴ He predicted that corporate power, used unjustly, was driving farmers and laborers into poverty, and would eventually cause people to turn toward communism.²⁵

Tracing the origins of this division, Terrell claimed that the growth of Northern industries, protected in their infancy by tariffs, had made the states of the West and South into colonies. When it became clear that industry no longer required a protective tariff, industrialists had to find a way to keep it. They pointed to the worker, "and with ghastly hypocrisy, wanted a tariff for his protection."²⁶ Terrell said that the tariff ultimately came back to harm Texas farmers:

Of the forty millions of cotton values Texas produced last year, what has become of the money? Much of it went in freight charges, to pay interest on watered railroad bonds to New York gentlemen. All your freight charges went there, except what was used for axle grease and to pay railroad labor. The rest of your cotton values went through the pocket of your merchant into the pocket of the northern and new England manufacturer, or has been paid out for whisky and left the state.²⁷

Terrell held up railroads as examples of monopolies which had also received preferential treatment by national and state governments. He considered land granted to railroads as squandered and held that the railroads did not even need them. He pointed out the more railroad mileage had been constructed in 1882, when land grants were repealed in Texas, than in any previous year.²⁸

In sum, the Northern industrialists, protected by tariffs, worked along with the railroad magnates, who had built their lines using subsidies they did not need, to

enrich themselves to the detriment of the rest of society. The root of discontent among workers and farmers was the fact that government, which was supposed to protect all people equally, had instead shown partiality to a few.²⁹

Terrell believed that few people were sufficiently aware of the seriousness of the problem. Through control of transportation costs, the railroad man (Terrell specifically used Gould as an example) could make or break towns and individuals. Anyone who supported railroad regulation did so at his own financial peril. Yet, any legislator that ignored the demand for it did so at his political peril.³⁰

In an article written late in his life, Crane recalled that the issue of a railroad commission was raised in the legislature during his first session. The main argument against it was constitutionality. Crane supposed that the reason for some legislators resisting the idea was that "those opinions were largely influenced by the acts of similar bodies created by the Reconstruction government for other purposes."³¹ He added that he thought that no one who had not experienced life during Reconstruction firsthand could understand why such bitterness persisted.³² In saying that, however, Crane's article did not take into account that very person who had convinced him of the need for a railroad commission.

Terrell left Texas during the initial stages of Reconstruction, but when his friends convinced him that things were not so bad, he had returned to Texas in time to experience the unhappy days of Radical rule. Terrell used those same experiences to reach a different conclusion than those legislators who opposed a commission. Largely out of bitterness over what Democrats saw as abuse of power by the Radicals, the State Constitution ratified in 1876 had severely limited the powers of the government, and conservative legislators were not in a hurry to change that. Terrell saw that the railroads controlled the economic destinies of Texans. The roads had abused their power; in order to control them, state government needed to be expanded rather than limited.

Crane found that it was among the younger members of the legislature that the idea of a railroad commission was most readily accepted. The Constitution gave the legislature the power to set rates that were fair to all parties. However, "A rate just," Crane said, "when passed by the legislature, might because of changed conditions quickly become unjust."³³ The younger members of the legislature believed that since it was impossible for the legislature to do what the Constitution required of it, the power to create a commission was implied.³⁴

After the passage of the Interstate Commerce Act, the possibility that a similar commission on the state level might be becoming closer to a reality alarmed the defenders of railway interests. The *Houston Daily Post* for several days following the passage of the act ran front-page articles denouncing state regulation of railroads. These articles included a statement made to the Senate by J. Waldo, Commissioner of the Texas Traffic Association, denouncing the latest attempt to create a railroad commission. Waldo argued that similar regulatory agencies in other states had failed because politicians who directed them did not really know what problems their constituents faced or what was workable for the railroads. He entreated the Senate to resist those who would scare away commerce through unreasonable restrictions on economic activity, "all from the baseless claim that the people want it."³⁵ Waldo alleged that very few people wanted any kind of regulation, apart from what the railroads could do to regulate themselves. Then he went on to defend the Texas Traffic Association, which was established "For the purpose of preventing sudden and extreme fluctuations in rates, alike injurious to the public and transportation companies."³⁶ The Texas Traffic Association, operating at the expense of the member railroads, would be better at enforcing the laws of Texas than any commission could be. Waldo insisted that,

in this respect, the railroads and the state were partners, because they were interested in seeing the laws of the state upheld.³⁷

The main reason for the agitation of the farmers, Waldo opined, was that the farmers did not understand the benefits they received from the railroads. Everyone depended, at least indirectly, on the farmers, to whom the railroads had brought prosperity. Buyers would go to the producers and bid for his goods, instead of the farmer taking what little he could. Waldo claimed that the people were beginning to lose their prejudice against the railroads because they realized all of the good that had been done for them.³⁸

Waldo's final argument against the creation of a commission was that the future actions of the newly created Interstate Commerce Commission might be in conflict with state laws. Any state legislation on the matter would be a waste of time, since the Interstate Commerce Commission could render such legislation obsolete.³⁹ His argument played on the uncertainty that would have been produced by the passage of such an important piece of legislation, and it may have been a factor in the Legislature's failure to pass a commission bill that year. However, Waldo was not correct in his assertion that the people were becoming content with the railroads.

Another of the *Post* articles from the days following the passage of the Interstate Commerce Act pointed out the economic disaster which was sure to come if the state followed up with similar legislation. Typical of articles written in opposition to railroad regulation, the editorial stressed that Texas was on the eve of a gigantic boom which only reckless legislation could stop. Railroad regulation would cause all development to cease. Investment capital would seek safer climes, and those railroads able to survive would only do so by cutting back on services. It was a grim outlook, almost as alarming as the dark image of uncontrolled railroads the same article accused the pro-commission forces of creating. It said that people were being led to believe that the railroads held them in a "death-like grip," and that they could not go outside after dark "without fear of being thugged by one of their agents."⁴⁰

The Twenty-First Legislature came very close to passing such a proposal, but again the question of constitutionality arose. The House passed a measure establishing a commission with plenary powers, but the Senate rejected it.⁴¹ Regulation advocates finally struck upon a solution: if the Constitution did not allow for Legislature to delegate its regulatory powers to another body, then it would need to be amended. The Constitution

already declared railroads to be public highways and empowered the legislature to enforce laws against "discrimination and extortion . . . through adequate penalties."⁴² The amended version added that the Legislature: "to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable."⁴³ The amendment would go to the people in the next election, which would also determine the next Texas governor. The voter's choice for governor, therefore, became intricately tied to his opinion on the creation of a regulatory commission.

Well before the Democrats nominated their candidate, newspapers around the state began a lively debate on the merits of a commission. Most rural papers predictably favored the commission amendment. Urban papers, with the exception of the *Fort Worth Gazette*, initially opposed it.⁴⁴ The successful efforts of the Grange and Farmers' Alliance to create a greater measure of literacy among their members drew more interest in the cause of a railroad commission amendment.⁴⁵ The *Southern Mercury* began weekly reports on the success of commissions in other states. Though the Alliance continued to hold that it was not a political organization, its paper encouraged voters to discover which

candidates would support a commission, and to "Put none but Commission men on guard."⁴⁶

The commission concept, popularized by Terrell and soon to be before the people, was now clarified by another Democrat, Judge Thomas J. Brown. His eloquent argument for a commission was presented in the *Southern Mercury*. In a series of twelve articles, Brown challenged the notion that the legislature could effectively control the activities of the railroads. For one thing, other states which had tried to regulate through legislation had failed miserably. Several states had repealed their legislative enactments and had replaced them with regulatory commissions.⁴⁷

Brown also called into question the fairness of railroad rates established by legislation. He pointed out that great distances between population centers and scattered rural populations made equitable rate setting impossible on a statewide scale and too detailed a matter to be addressed by the legislature. A commission would not have the legislature's impediment of short infrequent sessions, so its members could make decisions that were better informed and fix problems arising out of their decisions more expediently than could the Legislature.⁴⁸

Critics of the commission plan charged that regulation would drive investment out of the state,

financially ruining the railroads. Brown addressed their claims by saying that given the choice between the railroads staying and the people of Texas being out from under their control, he would just as soon see the railroads pack up and leave.⁴⁹ However, he did not think that such was the case. He analyzed profits for railroads operating in states with commissions and compared his results to railroad profits for states without commissions. He discovered that profits were better and investment was about fifty percent higher in commission states.⁵⁰ Brown's articles in the *Southern Mercury* helped to clarify the merits of the commission amendment.

The newspapers throughout the state speculated on the possibility that State Attorney General James Stephen Hogg, who had done much to make the railroads obey the laws and the terms of their charters, would run for governor on a pro-commission platform. Throughout his political career he had gained a reputation for fairness and tough enforcement of the law. Hogg's political career had progressed quickly. In 1873, the twenty-two year old newspaper proprietor ran for Justice of the Peace and was elected.⁵¹ After passing the bar examination, Hogg went on to become County Attorney for Wood County in 1878 and District Attorney for the

Seventh District in 1880.⁵² In 1886, he was elected State Attorney General. In his speech accepting his nomination for a second term as Attorney General, Hogg pointed out that there existed two forces that represented a threat to the financial well-being of the state:

On the one extreme stands an organized class whose purpose seems to be to remodel society by regulating property upon new theories. . . . On the other, is to be seen a federation of voracious individuals whose insatiate avarice leads them on to feast indiscriminately upon the vital substance of every class within their way, without respect to the comfort or welfare of society at all. The first has for its chief weapon the terror of force, propelled by inflamed passion under the guidance of distempered reason. The second holds within its grasp the power of wealth as the means of its triumph. . . . The encroachments of one are as dangerous as the stealth of the other.⁵³

His view on the division of society, which closely resembled that expressed by Terrell in his "The Cormorant, the Commune, and Labor" address, was a recurring theme in his speeches.⁵⁴ If the greed of corporations, particularly the railroads, could be controlled, the threat of communism would disappear.

In the Attorney General's office, Hogg had taken legal action against railroads, and in so doing, had gained popularity. He had compelled the roads to live up to the terms of their charters, while still trying to be lenient towards them when circumstances required it. For instance, by cooperating with the owner of the Sabine and East Texas

Railway Company, letting him know that the progress of the repairs and extension of the road were unsatisfactory, Hogg was able to avoid fighting the railroad in the courts.⁵⁵

In a letter to a friend he described most Texas railroads as being "in a fearful condition,"⁵⁶ which is perhaps why he was always willing initially to accept promises offered by the railroads that their roads would be fixed. He was not, as railroad officials had good reason to suppose, anti-railroad. He did, however, insist that the railroads maintain their lines and obey the laws of Texas. When they failed to satisfy the terms of their charters, Hogg used the courts to compel them to do so or face having their charters revoked. Additionally, he insisted that each new charter include a clause prohibiting railroads from participating in pools.⁵⁷

When Jay Gould allowed the rolling stock of his International and Great Northern Railroad to deteriorate and then leased that same equipment to the Missouri, Kansas and Texas Railroad, Hogg filed suit. Hogg successfully argued that the I&GN operated in competition with the MKT, therefore the lease constituted a combination of rival lines, which was strictly forbidden by the state constitution.⁵⁸

Hogg opposed pooling and combinations in the form of the Texas Traffic Association. The railroads had always asserted that competition, rather than legislation, could best regulate the railroads. Hogg pointed out that nine Texas railroads had joined into an association designed to eliminate competition. The participants in the Texas Traffic Association, according to Hogg, were in violation of Article X, Section 5 of the Texas Constitution. The court agreed, and in April 1888, Hogg won his case. The dissolution of the pool formalized in Texas what the Interstate Commerce Act had already banned anyway, so the effect of eliminating the Texas Traffic Association was minimal in an immediate sense. The success of Hogg's lawsuit had significant implications for Hogg's political future; the voters did not forget that he had brought an end to the unpopular pool. The Grange and the Alliance were advocating the election of Hogg to the office of Governor well before he had even been convinced to run.⁵⁹

Hogg felt that he was already in precisely the right position to fight the railroads and that his work was too important to leave for the sake of campaigning. Nonetheless, by 1889 he had become convinced that neither the legislature nor the Attorney General's office was really capable of keeping up with the monumental task of making sure that the railroads operated lawfully and fairly. His

reluctance to run proved that he really did not particularly want to be governor, and he even confided to a friend that he felt he was too poor for the position.⁶⁰

While his friends, who included A.W. Terrell and Horace Chilton, encouraged Hogg to run, several of the larger urban papers were hopeful that he would not.⁶¹ The newspapers, typical of the day, were not particularly concerned with presenting an unbiased view, and were openly aligned with political parties and special interests. The editor of the *Galveston News*, upon learning that Clark was not planning to run for governor, asked him to work against Hogg's nomination. The *Houston Post*, under the control of Collis P. Huntington, president of the powerful Southern Pacific Railroad, expressed fears about Hogg's possible candidacy, insinuating that he was somehow in league with Jay Gould. The paper alleged that Gould would gain control of the International and Great Northern Railroad in exchange for his help in securing the governorship for Hogg. The *Post* claimed to regard Hogg as basically an honest man whose political ambitions were clouding his judgement.⁶²

The newspapers that opposed Hogg found what they saw as further opportunity to tarnish his image in a controversy that developed between the Attorney General and Land Commissioner Hall. This was perhaps Hogg's most widely publicized political battle as attorney general; it involved

land grants to the Houston and Texas Central Railroad. In October 1889, Hogg wrote to Hall asking him not to issue any more patents for land to the railroad in question. He explained that the land patents were illegal because they had been obtained for the construction of sidings and switches, rather than exclusively for main line track, as was the intent of the railroad's charter. Hall argued in an open letter in reply to Hogg that almost all of the major railroads had obtained their lands for sidings and switches, as well as the main lines. Moreover, most of those lands, Hall contended, had been sold to settlers. If the attorney general persisted in his insistence that those lands still belonged to the state, the people who had purchased those lands would be victimized. Hall asked Hogg if it was an error that the land patents were given illegally to the railroad, and if so, was it right for the state to try to remedy the problem after the fact? Hall accused Hogg of trying to reimburse the state ". . . at the expense of individual citizens now holding in good faith. It matters not whether they be corporations or individual citizens or aliens."⁶³

The *Galveston Daily News* joined the fight on Hall's side, printing an editorial that denounced Hogg for discouraging immigration and investment. "It is difficult to convince people living 1000 miles away from Texas, in the

face of the mischief-making agencies at work, that such a thing as a clear title to property can be had in Texas."⁶⁴ The Fort Worth and Denver Railroad had just finished a huge campaign to attract settlers and investment, spending two hundred thousand dollars on the endeavor, the editorial noted, and then Hogg's actions had frustrated all of that effort.⁶⁵

Hogg countered Hall's claims by quoting an 1876 law defining the terms under which railroads would receive land grants. The act provided that a railroad completing and putting into operation ten or more miles of road could receive sixteen sections of land for each mile. The act further required that the road be sufficiently prepared to provide full service for passengers and freight. Hogg commented: "How a railroad can be complete or fully equipped for the transportation of both freight and passengers without sidings, switches, or turnouts, even expert railway men would refrain from saying."⁶⁶ Hogg asserted that the framers of the 1876 Constitution also intended that the additional construction of sidings and switches was part of creating a working railroad. This was not really additional track providing service into new areas. Just because the law had been misinterpreted in the past was not a sufficient reason to continue allowing the law to be abused.⁶⁷

In closing, Hogg defended his position, even though it might harm some individuals who had purchased lands gained illegally by the railroads. First of all, he said that it was neither his nor Hall's position, as members of the executive department, to make decisions which actually belonged to the judicial department. He was, however, confident that the rights of any innocent purchasers would be protected. His duty was to make sure that Texas was not cheated out of lands rightfully belonging to the school fund. Moreover, ninety percent of the lands granted to railroads, under the assumption that the lands would be sold to settlers, were instead in the hands of non-resident business interests. The lands had also been held by the railroads long in excess of the time allotted by law.⁶⁸

The *Fort Worth Gazette*, edited by W.L. Malone, another friend of Hogg's, printed Hogg's response to Hall's claims in full. Hogg was alarmed that Malone's impartiality might be read as support for Hogg's candidacy, and wrote his friend a letter of thanks which warned him not to put the financial future of his paper at risk by such actions. The publication of Hogg's response added to his popularity. It helped to clarify that he was interested in opening up as much land as possible to settlement, even though some of that land would have to be pried from the hands of the railroads who held it illegally.⁶⁹

While Hogg's friends continued to pressure him to run for governor, he wrote to his friend and campaign manager, Horace Chilton, that he found all of the encouragement to run "simply astonishing";⁷⁰ however, he reiterated that he did not want the office. He even offered to help find a suitable candidate. In a letter dated December 18, 1889, Hogg declared that anyone who would promise to work for the passage of laws to eliminate corporations dedicated to land speculation, remove corrupt judges, and create a railroad commission would have his support.⁷¹ To those who were encouraging him to run, the description fit Hogg perfectly. In February 1890, Hogg was still resolved not to run and, instead, encouraged his friend Sawnie Robertson to enter the race. Robertson refused, saying that Hogg was the choice of the Alliance, the Grange, and a good many businessmen and lawyers. His friends were finally able to convince him to enter the race by promising to campaign for him while he fulfilled his duties as Attorney General in several lawsuits against the railroads that were not expected to be resolved until April.⁷²

As the campaign of 1890 got underway, so did the name-calling. Hogg did not make any campaign speeches until April, so it was difficult for his opponents to attack his position directly.⁷³ His supporters, however, were another

matter. It was common to label commission supporters as communists and anarchists, but that was far from the truth. Terrell was vociferous in his opposition to "communistic devilment."⁷⁴ Oppressed people would, he asserted, look to alternate forms of government if those they lived under failed them. The only real way to protect democracy was to enact laws that would control corporations, especially railroads.⁷⁵

The Alliance also soundly denounced socialism. In its 1890 Dallas County convention, the Alliance declared that such paternalism was detrimental and could be avoided by good laws. The Alliance called it "discouraging to the producers, whose wants are the simplest, and who constitute the most defenseless class of our population."⁷⁶ The demand for government ownership of railroads had by 1890 disappeared from the Alliance demands; in its place was a recommendation for its members to vote for the commission amendment.⁷⁷

END NOTES

CHAPTER THREE

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²⁷*Ibid.*

²⁸*Ibid.*, 8.

²⁹*Ibid.*

³⁰*Ibid.*, 10 and Mizell Ferguson Kennedy, "A Study of James Stephen Hogg, Attorney-General and Governor" (Master's Thesis, University of Texas, 1919), 108.

³¹Crane, "Recollections," 479.

³²Ibid., 479.

³³Ibid.

³⁴Ibid.

³⁵*Houston Daily Post*. 8 February 1887.

³⁶Ibid.

³⁷Ibid.

³⁸Ibid.

³⁹Ibid.

⁴⁰Ibid., 5 February 1887.

⁴¹Robert Crawford Cotner, *James Stephen Hogg: A Biography* (Austin: University of Texas Press, 1959), 371.

⁴²Kennedy, "Study of Hogg," 112

⁴³Gammel, *Laws of Texas* IX, 1199.

⁴⁴Reed, *History of the Texas Railroads*, 241.

⁴⁵Cotner, *Hogg*, 286.

⁴⁶Ibid., 350.

⁴⁷Peterson, "State Regulation of Railroads," 116.

⁴⁸Ibid., 62-8.

⁴⁹Reed, *A History of the Texas Railroads*, 238.

⁵⁰Peterson, "State Regulation of Railroads," 74.

⁵¹Cotner, *Hogg*, 64.

⁵²Ibid., 77-82.

⁵³ Hogg, James Stephen. *Speeches and State Papers of James Stephen Hogg*, ed. C.W. Raines (Austin: State Printing Company, 1905), 29.

⁵⁴ *Galveston Daily News*, 20 April 1890 and Terrell, "Cormorant," 5 and Hogg, *Speeches*, 29.

⁵⁵ Cotner, *Hogg*, 130.

⁵⁶ *Ibid.*, 141.

⁵⁷ *Ibid.*, 178.

⁵⁸ Reed, *History of the Texas Railroads*, 581.

⁵⁹ John Martin Brockman, "Railroads, Radicals and Democrats: a Study in Texas Politics, 1865-1900" (Ph.D. Diss., University of Texas, 1975), 254 and Cotner, *Hogg*, 170-1.

⁶⁰ Cotner, *Hogg*, 171; 185.

⁶¹ *Ibid.*, 265.

⁶² *Houston Daily Post*, 22 May 1889.

⁶³ *Austin Statesman*, 12 October 1888.

⁶⁴ *Galveston Daily News*, 18 October 1889.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Austin Statesman*, 12 October 1888.

⁶⁹ Cotner, *Hogg*, 182-3.

⁷⁰ *Ibid.*, 275.

⁷¹Ibid., 183.

⁷²Ibid., 282-3.

⁷³Ibid., 190.

⁷⁴Terrell, "Cormorant", 5.

⁷⁵Ibid., 20.

⁷⁶ Ernest William Winkler, ed., *Platforms of Political Parties in Texas* (Austin: University of Texas Press, 1916), 283.

⁷⁷Ibid., 282.

CHAPTER FOUR

THE ELECTION AND AFTER

After years of frustration, the election of 1890 was a triumph for farmers and small businesses. The railroads had failed to convince their customers that they were being treated fairly, and the people demanded regulation. The campaign foreshadowed the form that this regulation would take, as the candidates revealed their ideas on the responsibilities and limitations of railroad corporations and of state government. The outcome produced a mandate for the creation of a commission, but this did not mean that the agency would necessarily be in keeping with the ideals of the people's choice for governor. Commission advocates still had to work against legislators who were sympathetic to the railroads in order to produce a law that provided the commission with some genuine power to regulate.

On April 19, 1890, Hogg initiated his campaign in a speech given at Rusk, the community where he had found his first job.¹ The *Galveston Daily News* (which claimed to have the largest circulation in the state) printed the speech

the following day, even though, like most large papers, it opposed him. In Hogg's opening speech, Terrell's influence is strongly evident, particularly concerning the role of corporations. Hogg expressed his distrust of corporations and his doubts about the ability of the federal government to keep them in check. Hogg asked, "Shall corporate power or the state control? The fight is on and the issue is unmistakably presented."² He foresaw a polarization in the country, with the common man on one side, wealth on the other, and the federal government standing by helplessly. The end result would be anarchy. Only by taking steps to strengthen the power of the state against corporate interests could the rights of the people be protected.

Hogg demanded that Texas be allowed to deal with matters concerning Texans. The federal government might "be honored and respected within its legitimate sphere"; but it was his opinion that people felt oppressed when the federal government was either willing or unable to protect its population against unreasonable transportation charges and the "licensed oppression"³ practiced by the railroads. The Interstate Commerce Commission was not sufficient to deal with the problem. It needed to be supplemented by a commission on the state level. Moreover, Hogg believed

that the federal government's jurisdiction in the matter remained unclear.

Although his mistrust of corporations was evident, Hogg was not opposed to their existence. In his Rusk speech, he acknowledged that corporations had rights that government was obliged to protect.

The very section of the Constitution which creates the office of Attorney General requires him to look after private corporations. It says "He shall especially inquire into the charter rights of all private corporations, and from time to time in the name of the State take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power . . . Not authorized by law."⁴

The State Constitution gave Hogg two points from which to attack the railroads during his campaign. First, the state was empowered to regulate private corporations; and, second, railroads were defined as public highways, subject, of course, to state control. Consequently, whether one saw railroads as private corporations or public highways, the state had ample regulatory power.

Hogg saw the roads as public highways, and he was prepared to counter all conflicting arguments. He pointed out in his Rusk speech that public highways had always been financed by the people who used them, with the government serving as an intermediary to make sure that those hired to

build and maintain public highways did so. Government had traditionally determined the maximum charge that could be levied by operators of the roads, and those fees were collected only with the permission of the government. In other words, his view was that regulation of railroads was no different from any other public road. He claimed that only the names had changed and that public highways "are now called private enterprises."⁵

Hogg discussed the Supreme Court's interpretation of the Fourteenth Amendment, which in the 1886 *Santa Clara v. Southern Pacific Rail Road* case had declared that railroad corporations were people deserving equal protection of the laws under the Constitution.⁶ "In discussing the question [of railway regulation] they assume the railway company to have the same legal status as a citizen or a business firm."⁷ Hogg agreed with the Supreme Court that business firms had the same legal status under the law as citizens. But he denied that railroads could be considered business firms. They were public roads "organized under laws passed by the Legislature"; therefore, they were "creatures of the government, authorized to act for the public good, and are subject to state control."⁸

Within the text of his Rusk speech, Hogg referred

to the claims of the railroad interests that through the Interstate Commerce Act, federal power was encroaching on states' rights. It is interesting that both pro-commission and anti-commission forces chose to point up this deep-rooted antagonism. Hogg asserted that if it were not for the abuses of the railroads, interference by the federal government would be unnecessary.⁹ Hogg charged that the railroads were hypocritical. Their advocacy of states' rights was merely a ploy to avoid regulation; they were certainly very fond of federal power where it served their interests, as in land grants, subsidies, and receiverships. His language on this point was particularly strong.

"Special among the objects of their hatred is the independence of the States of which the Federal government is composed. You know as well as I do that they avoid our State courts and ignore the people who support them."¹⁰

Hogg's predictions of the polarization of people over the issue of regulation might have been designed to reverberate in the ears of the those who had come through this country's greatest division, the Civil War. Moreover, its inspiration doubtless came from the same source, those older politicians that influenced Hogg. It certainly echoed Terrell's warning about the gap between classes and

government favor toward big business. In his speech he equated federal power with railroad power, claiming that the railroads hid behind federal laws at every turn.¹¹

In saying that, Hogg was alluding to railroad magnate Jay Gould. Gould made frequent visits to Texas between 1881, when the idea of a commission was first formally introduced in the legislature, and 1890, when Hogg was elected governor on a platform supporting the commission amendment.¹² These visits were supposedly made for the sake of his health, a claim which Hogg found doubtful. To illustrate the manipulations of the railroad men, Hogg pointed out some of Gould's activities on the East Line and Red River Railroad.

Without any corresponding benefit to the railroad or to the people whose patronage supports it, this gentleman, whose "health" is so bad that to restore it he is in Texas writing interviews now on the timidity of capital, placed upon that narrow gauge road a bonded indebtedness of \$35,000 to the mile. In this one transaction over \$3,000,000 was made without a single honest day's labor. The traffic of the country has to bear increased tolls and rates to pay for it.¹³

Hogg cited other examples where Gould had made profits without really doing anything beyond issuing stocks and bonds so far in excess of his original investment that the return was unreasonable.¹⁴ Since the only way for railroads to satisfy the debts created by such tactics was

to charge higher prices, it was necessary to implement controls. A commission that set the rates would force railroads to charge reasonable prices, eliminating the generation of profits through watered stock.

The *Galveston Daily News*, in the weeks prior to Hogg's official campaign opening, printed an interview with Jay Gould discussing the prospects for future railroad expansion in Texas. Interestingly, on the same page appeared an article entitled "Communism Among the Farmers." The interview covered the time from which Gould's "magic influence was first felt in northern Texas."¹⁵ In the interview, Gould praised the Texas climate and marveled at the state's rapid growth. He also used the opportunity to point out that the railroads throughout the state had vastly improved their facilities and roadbeds, and noted that "you very seldom have a wreck."¹⁶ (The same paper that published this interview had just six months before reported three accidents on Texas railroads in the space of six days.)¹⁷ His statement on the relative safety of the roads was not, however, what evoked the greatest stir from his critics.

When asked about the future of railroad growth in the state, Gould replied that "Capital has grown timid for

certain reasons."¹⁸ Hogg and other supporters of the commission amendment interpreted this as a veiled threat to halt railroad construction in order to frighten voters into opposing the amendment. Gould expressed tremendous optimism in the state's potential, indicating that on his travels the people he met were "well-off and contented."¹⁹ He said that he hoped Texans would plant more corn with which to raise more cattle. He also mentioned that exploitation of the long-leaf pine was another potential source of growth for the state's economy. Even Gould's optimism about the state did not escape criticism. Two weeks later, shortly after opening his campaign, Hogg said in a Houston speech that Gould had been busily making promises of bringing more railroad services and depots, as well as investing in local industries at each of the towns he visited. He left every town with the impression that they would be experiencing their very own boom. Eventually, Hogg predicted, the promised boom would evaporate, and Gould would blame the proposed amendment for frightening investment away.²⁰

Hogg's speech at Houston also demonstrated that the practices of some railroads had important implications to his educational goals for Texas. Quoting from the Texas

Constitution, Hogg stated that education was "essential to the preservation of the liberties and rights of the people."²¹ Hogg had put great effort into securing his own education, and the subject was dear to him, just as it was important to Reagan and Terrell. Hogg believed that by taking back lands unrightfully held by railroads who had failed to live up to their obligations, an extended school term could be enacted without an additional burden to the taxpayers. Failing that, however, he said he would increase taxes if it was needed for education.²²

Throughout the campaign, Hogg's opposition continued to allege that Hogg and his supporters were dangerous "Union-Laborites, Anarchists, and Communists."²³ The earlier association between the Alliance and the Knights of Labor created an opportunity for those who opposed the commission to fabricate a link between Communism and the Alliance's support of the commission bill. The call for a commission, then, could be more readily dismissed as mere Alliance agitation. The *Dallas News* declared that the commission would make government the tool of Communism. Hogg countered that such preposterous accusations gave people in other states the false impression that Texas was "a wild, lawless, and dangerous land."²⁴

In selecting their candidate, the Democrats were also choosing on which side of the amendment issue they would stand. There was plenty of opposition to the commission amendment within the Democratic party, which was led by Judge George Clark of Waco, the railroads' principal Democratic advocate. Clark would not even support candidates favoring a weak commission. The most promising Democratic opponent was former governor James W. Throckmorton, who supported a commission with very limited powers. Throckmorton, who had been removed from the governor's office by the military government during Reconstruction, would likely gain the "old soldier" vote and was widely respected. Hogg's supporters worried that Throckmorton would win the nomination; however, he ultimately was forced to withdraw due to ill health. Senator M.M. Crane, one of the many convinced by A.W. Terrell of the value of a regulatory commission, was skeptical, saying the real reason was that Throckmorton "was not in favor of what the people wanted."²⁵

The choice of the Clark camp was H.D. McDonald, who had always shown himself to be favorable to railroad interests and who opposed a commission of any nature. However, McDonald withdrew from the race when former

Throckmorton supporters flocked to Hogg. Clark was forced to find another candidate. Neither Thomas Benton Wheeler nor Land Commissioner Richard M. Hall were acceptable because both favored a limited commission. Clark wanted a candidate who would oppose the amendment altogether.²⁶

Rather late in the campaign, Clark threw his support behind Gustave Cook, a former Confederate General from Houston. Cook was not only a staunch anti-commission man, but was also an opportunity to draw the "old soldier" vote away from Hogg. A.W. Terrell and other veterans who supported Hogg were offended by Clark's tactics.²⁷

Gustave Cook's campaign had a rather inauspicious beginning. Most of the expected crowd at his opening campaign speech in Kyle stayed home because of rain. Those who came could not have been awed by Cook's admission that he might have a better record to recite if he had perhaps "been more diligent, or possibly had more humility." Nor could they be impressed by his hope that they would judge him by his intentions rather than by his accomplishments.²⁸ Regarding regulation, he asserted that every form of commission imaginable had been tried, and all had failed. This was not what his audience, many of them farmers, wanted to hear. The sentiment for a strong regulatory

commission was already too great.

Cook's campaign style might not have been the most appealing to the farmers he hoped to impress in his opening speech, but he did have some excellent insights into the basic contradiction of the farmers' demands of the railroads. The role of government, he said, was to "refrain the strong from imposing on the weak."²⁹ Governments overstepped their bounds when they sought to force people to do what was right rather than confining itself to preventing people from causing harm. The imposition of a railroad commission would be tantamount to the railroads being compelled to do what the farmers thought was right.

The commission amendment would be redundant. Did not, he asked, the legislature already have the power to regulate the railroads? The same attorney general who was advocating a commission had been successfully correcting the abuses of the railroads in the courts. Corporations had no substance; they were made up of people, and people were already protected from one another by civil and criminal law. Cook argued that railroad development would cease if the commission became reality.³⁰ On the day following Cook's speech, the Missouri, Kansas and Texas

canceled proposed plans to build three hundred miles of track, released several engineers, and announced that all railroad construction would be suspended pending the outcome of the vote on the commission amendment.³¹

The nominating convention for the Democratic Party met in San Antonio in August of 1890.³² This gathering drew a great deal of criticism from within the party. George Clark referred to the convention as the "Farmer's Alliance Picnic."³³ The *Galveston News* charged that many of the most prominent men of the party had stayed away from the convention because they opposed the commission, which, it was argued, combined the branches of government. The younger Democrats, the paper argued, had chosen to press for regulation, which alienated the rest of the Democrats and "cut off a large share of the brains and experience of the party."³⁴ The *News* denounced the upstarts for embracing Communism and ousting their rightful leaders in a grab for political power.³⁵

It would seem from the *News* that the younger Democrats had effectively eliminated the influence of the older Democrats on the idea of a commission. Such an assumption overlooked the fact that Throckmorton, before withdrawing from the race, had supported a commission,

albeit a very limited one. More importantly, it overlooked the fact that Terrell, certainly a respected elder statesman, was the most ardent supporter of the railroad commission amendment.

It is not entirely untrue that some members of the party left. Crane believed, however, that the political leadership in the state had not changed significantly. In fact, "many of the most ardent opponents of Governor Hogg subsequently changed their minds as to the wisdom of the laws for which he contended, and became among the most useful men in public life."³⁶ Others who opposed Hogg, such as Clark, chose to remain in the party and work for his defeat.

One of the established politicians that anti-commission Democrats believed had been chased from the party was former governor O.M. Roberts. Roberts sent out a notice in October 1889 stating that he did not intend to run for governor. The *Galveston Weekly Gazette* claimed that he had decided not to run because he was not in accord with the newer politicians, particularly where regulation was concerned. Roberts had, in fact, exhibited great optimism about the future prospects of railroad growth in the state and was not anxious to see that hindered. In his

book, *Governor Roberts' Texas*, he asserted that all of the chartered railroads would soon be built. Moreover, he argued that the proposed joining of Huntington's Southern Pacific with the Galveston, Harrisburg, and San Antonio Railway, along with the expansion of the Texas and Pacific would make Texas the center of commerce in the nation. With the addition of a deep-water port, Texas would be the ideal spot for business.³⁷

Roberts believed that popular disappointment with the railroads would eventually vanish. People would come to recognize that the roads would save both time and money. Railroads were cheaper and faster than ox teams, and would gradually bring an increase in jobs, population, and capital. The problem was that people expected too much too soon. Land values would not go up until the demand for land increased. Transportation prices would not go down until there was enough competition. The utility of railroads would surely be realized.³⁸ At the time that Roberts made his decision not to seek election in 1890, eight years after his optimistic book was published, not enough had improved to satisfy the customers of the railroads. The Democratic party responded to the impatience of the voters.

Horace Chilton, Hogg's campaign manager and close friend, submitted Hogg's name to the convention, and, pointing out Hogg's initial reluctance to run, said that the masses had "seized him . . . in affection and confidence," and that he would carry out "the great reform."³⁹ William Fly of Gonzales seconded, remarking that the time had come for "a native-born Texan for governor."⁴⁰ Hogg was nominated on the first ballot. Thomas Benton Wheeler, the only other candidate remaining at the time of the convention, picked up only a few votes.⁴¹

The sixth plank of the party platform pledged support of the constitutional amendment authorizing the legislature to create a commission. The minority report of the Democratic Platform stated that support of the commission plank did not prove or disprove loyalty to the party.⁴²

By 1890, Texas was still so solidly Democratic that there was little chance of that party's nominee not being elected governor. The real campaign for governor had taken place in the nomination process. Hogg was the only candidate to support a commission with strong plenary powers.⁴³ According to Hogg's friend Crane, that was the only "kind of a railroad commission that a large majority

of the people wanted and certainly needed," and it did not even matter to them that Hogg had only recently converted to the idea which Terrell had long advocated.⁴⁴

Hogg's Republican opponent in the race was Webster Flanagan, who had once served in the Legislature during Reconstruction. Long a friend of the railroads, he opposed any form of commission.⁴⁵ Texans went to the polls on November 4 and elected James Stephen Hogg to be their Governor. The count was 262,452 for Hogg, and 77,742 for Flanagan, giving Hogg an overwhelming majority. The amendment was also approved by the voters by a substantial margin: 181,954 voted for it, 73,106 were opposed.⁴⁶

A great deal of the credit for the growth in popularity of the commission issue can be given to Terrell. He had clarified the idea in his many speeches and had made it an issue in each of his campaigns as he canvassed the state on the back of his mule. By 1890, when Hogg had used the issue in his successful run for governor, political critics of the day recognized the role Terrell had played in publicizing it. One even remarked that Hogg had "stolen Terrell's mule to ride into office."⁴⁷

Hogg persuaded Terrell to run for the Texas House, with the understanding that Terrell was to assist in the

formulation of a railroad commission law. Terrell was joined in the House by Judge Tom J. Brown, who also ran for office in order to take part in the creation of a commission. Brown had gained notoriety by his eloquent argument in favor of a commission published in the *Southern Mercury*,⁴⁸

Tom Brown was assigned the task of introducing Hogg's plan in the House. It was accepted by the House, but when the proposal reached the Senate, it became clear that creating a bill that would be acceptable to both houses of the Legislature would be difficult, particularly with the pressure being applied by supporters of railroad interests. A majority of Senators opposed an appointive commission and would not accept an agency with as much power as the House bill proposed.⁴⁹ Hogg selected Crane to head the pro-commission forces in the Senate. Although the voters had approved the amendment, it was nonetheless "bitterly contested by the rail carriers and other corporate interests."⁵⁰

Crane wrote an account of the process by which the legislature refined the railroad commission bill. Crane was on the Internal Improvements Committee which handled the Senate bills. There were so many commission bills that

Crane recommended the creation of a joint Senate-House subcommittee to sift through the proposals. Then, when this subcommittee was implemented, Crane found himself excluded. He assumed that the lack of progress thereafter was due in part to pressure from the large contingent of anti-commission forces at work in the Legislature. He was finally able to ask a member of the subcommittee about it, a friend, E.J. Simkins, who also supported a strong plenary commission. Simkins told him that he had not been attending meetings because he was not in agreement with the rest of the members. Simkins had heard that the members of the subcommittee had agreed to adopt a very weak commission bill, and that Hogg was in favor of it. Crane, felt that the committee had ignored the wishes of the people; voters had "asked for a fish," and the legislature had "handed them a serpent."⁵¹ Crane and Simkins then happened to see Hogg in the hallway of the Capitol building and learned that the measure was not at all acceptable to the governor. Hogg then arranged to meet with Crane, Simkins, Terrell, and Brown, and the five continued to meet until they had created a substitute bill.⁵²

The group decided to have Terrell introduce the new bill before the House, because he "had done so much to show

the public the necessity of such a measure."⁵³ The substitute passed in the house by a large majority; however, there was considerable opposition in the Senate. The opponents of the commission were not yet ready to yield.

If a commission itself were inevitable, then perhaps they could limit its power. Opponents of the commission introduced measures to weaken it. For example, a proposal to make the rates set by the commission indisputable looked like a strong measure at first glance, but had it passed, it would have strained the constitutionality of the commission, possibly causing the law to be overturned in court.⁵⁴ A less severe measure was adopted that allowed for greater flexibility in adjusting rates or even altering commission rules if deemed necessary by the commissioners. Furthermore, railroads would have ten days to appeal new rates before they went into effect.⁵⁵ Another measure designed to weaken the commission by making the seats elective rather than appointive was introduced in the House by John King.⁵⁶ This issue became the primary focus of the debates as legislators set about the task of determining the shape of the commission.

A popular movement had created the pressure that

resulted in the amendment authorizing the legislature to create a commission. Now the principal proponents of the idea had to make sure that what they perceived as the best interests of the people who had voted for the amendment were preserved. To Hogg and his supporters, the only way to keep the commission from falling under the control of those it was supposed to regulate was to make its members appointive. Hogg realized that he might well be defeated in this matter; but since his campaign had centered upon a commission that would be appointive, he was determined that, at least at the outset, this is the way it would be.⁵⁷ If the people ever chose to do so, Hogg suggested the constitution could be amended to make the positions elective. He cautioned constituents, however, to stagger the terms, because "there is nothing that could be more fatal to the success of the Commission, nor more gratifying to its enemies, than to have all of the commissioners elected at one time."⁵⁸ In order for the substitute to pass, though, supporters of the commission bill had to compromise. The Commission would become elective after 1894.⁵⁹

Another way commission proponents hoped to keep the members of the commission free from the control of the

railroads was to prohibit the officeholders from seeking another political office for a period of two years following the end of their terms on the commission. The Senate opposed this provision and it was withdrawn. Terrell thought that the exclusion of the measure weakened the bill considerably.⁶⁰ The Senate finally passed the bill with some modifications that required the meeting of a conference committee of the House and Senate. Crane and Senator Clark from Red River County were appointed to serve on the committee, along with Brown, from the House, and Terrell, who was the chairman. There was, according to Crane, a substantial lobby still at work to defeat the bill which created a "good deal of bitterness of a temporary character in the city."⁶¹

The joint committee finally approved what became known as the Terrell bill, which was adopted by both houses on April 3, 1891, establishing the Texas Railroad Commission. The law obviously used the Interstate Commerce Commission as the model.⁶² The legislative intent was set forth in its title, which spared no words: "An Act to establish a railroad commission of the State of Texas whereby discrimination and extortion in railroad charges may be prevented and reasonable freight and passenger

tariffs may be established; to prescribe and authorize the making of rules and regulations to govern the commission and the railroads, and to afford the railroad companies and other parties adequate remedies; to prescribe penalties for the violation of this act, and to provide means and rules for its enforcement."⁶³

A brief summary of its provisions can do much to explain why the railroads opposed the law so much that the lobby, in Hogg's words, "hovered around the legislative halls from the beginning until now. In numbers it has equaled, perhaps, either body of the legislature."⁶⁴ The law, in its final version, gave the Commission power to set rates, and if an injustice was perceived, the burden of proof was on the plaintiff (Section 7). The Commission had the right to inspect the books and papers of any railroad company, and if inspection was refused, a fine of one hundred and fifty to five hundred dollars would be imposed each day until compliance (Section 10). Special rates and rollbacks were, prohibited, and fines of up to five thousand dollars could be imposed on any railroad found to be guilty of charging a rate higher than that set by the Commission (sections 14 and 15). To determine whether violations had occurred, the Commission could compel

witnesses to testify, even if their testimony was self-incriminating, although such testimony could not, of course, be used against them (Section 13). All contracts entered into between connecting railroads had to be approved by the Commission (Section 21).⁶⁵

The formulation and passage of the railroad commission law represented the culmination of the ideas which Terrell had supported for years. It was at once a strike at corporations and an assertion of the notion of state regulation in preference to federal regulation. In helping to make the idea of a railroad commission a reality, Terrell hoped he was procuring for the next generation the most important gift of the nation's founders, "Liberty, regulated by law."⁶⁶

Crane believed the fight for a commission was "unnecessarily bitter,"⁶⁷ and asserted that the railroad defenders had tried to convince the public that regulation was a nearly criminal idea. The Supreme Court upheld the validity of the act which created the Texas Railroad Commission in *Reagan v. Farmer's Loan and Trust Company*,⁶⁸ and its supporters were thereby vindicated. Crane also noted that, more than fifty years later, none of the dire consequences predicted by the commission's opponents had occurred.⁶⁹

END NOTES

CHAPTER FOUR

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⁵*Ibid.*, 75.

⁶United States Supreme Court, *Santa Clara County v. Southern Pacific Rail Way* 118 U.S. 394 (1885).

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¹⁵*Galveston Daily News*, 12 April 1890.

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¹⁷*Galveston Daily News*, 17-23 October 1889.

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²⁰Robert Crawford Cotner, *James Stephen Hogg: A Biography* (Austin: University of Texas Press, 1959), 198.

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²³*Galveston Daily News*, 8 June 1890.

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²⁵Martin M. Crane, "Recollections of the Establishment of the Texas Railroad Commission." *Southwestern Historical Review* 50 (April, 1947): 485.

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⁴¹Georgia Permelia Wilson, "John Henninger Reagan and the Texas Constitution of 1876" (Master's Thesis, Texas Technological College, 1937), 289.

⁴²Peterson, "State Regulation of Railroads," 116.

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⁴⁶Mary Ella Wallis, "The Life of Alexander Watkins Terrell: 1827-1912" (Master's Thesis. University of Texas, 1967), 87.

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⁴⁹Crane, "Recollections," 481.

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⁵⁶Texas, *House Journal*, 1891.

⁵⁷Cotner, *Hogg*, 240.

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⁵⁹Texas, *Senate Journal*, 1891.

⁶⁰Texas, *House Journal*, (1891,) 663.

⁶¹Crane, "Recollections," 482.

⁶²Reed, *History of the Texas Railroads*, 587.

⁶³Wallis, "Life of Terrell," 97.

⁶⁴Texas, *Senate Journal*, (1891,) 661.

⁶⁵Texas, *Laws of Texas, Twenty-Second Legislature*, 59.

⁶⁶Alexander Watkins Terrell, "Stephen F. Austin: A Memorial Address," *The Southwestern Historical Quarterly* 14 (1911).

⁶⁷Crane, "Recollections," 482.

⁶⁸Crane, "Recollections," 486.

⁶⁹United States Supreme Court, *John H. Reagan v. Farmers Loan and Trust Company* 154 U.S. 362 (1894)

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Hogg chose John H. Reagan to serve on the newly established commission. Reagan was not easily persuaded to give up his Senate seat, but Hogg convinced him that he was the right person for the job. Reagan could not be accused of being controlled by the railroads. Hogg had always valued Reagan's judgment and considered him wise, and he trusted in his ability to make the commission law function optimally. Persuaded by Hogg that he could be of greater service to Texas as a member of the commission, Reagan resigned his Senate seat and returned to Texas to serve on the commission.¹ The other commissioners, L.L. Foster and W.P. McLean selected Reagan to be the commission chairman.² The commission remained controversial throughout Hogg's administration, but as it withstood the tests of time and constitutionality, its benefits became apparent. The First Annual Report of the Railroad Commission of Texas defended its role in regulating the railroads:

There are those who insist that the freight agents and traffic managers are the proper persons to make freight rates and that the transfer of that to a Commission is

unjust to the railroad companies and some say an interference It should be borne in mind that the freight agents and traffic managers represent the railroads and not the people and that there is a direct antagonism between them.³

The economic necessity of the railroads had given them power that Texans were not willing to let them keep. Whether the economy was in the hands of Republican Radicals or Northern Capitalists, Texans resented outside control. The election of 1890 was their effort to redirect their economic future, and Hogg was whom they trusted to lead them.

Even Hogg's staunchest supporters did not credit him with originating the commission concept or even popularizing it. As his friend Horace Chilton explained it, a good idea can vanish without the right leadership to propel it forward.⁴ Hogg's role was to bring strong leadership to the railroad commission issue. The politicians Hogg chose to emulate had used bitter experiences of the past to identify potential new problems and to point them into the future, and Hogg led the voters in the same direction.

The jurisdiction of the Texas Railroad Commission has grown over the 100 years since its establishment. Oil pipelines, like the railroads, were declared public carriers in 1917 and were placed under the jurisdiction of the

Railroad Commission, and natural gas production followed in 1920. The Commission was a logical choice to regulate new fuel sources and modes of transportation as they developed. Commercially operated buses and trucks came under the Railroad Commission's control in 1928 and 1929, respectively. Liquefied petroleum gas and compressed natural gas production and transportation, as well as surface mining and reclamation have also been placed under it. Although the scope of its powers has increased, the role of the Texas Railroad Commission has gradually shifted away from economic regulation towards safety, with much of the change coming in deference to Federal regulation.⁵

END NOTES

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¹Ben H. Proctor, *Not Without Honor: The Life of John H. Reagan* (Austin: The University of Texas Press, 1962), 279-81.

²Robert Lewis Peterson, "State Regulation of Railroads on Texas, 1836-1920" (Ph.D. diss., University of Texas, 1960), 129-30.

³S.G. Reed, *A History of the Texas Railroads* (Houston: St. Clair Publishing Company, 1941), 453.

⁴Mizell Ferguson Kennedy, "A Study of James Stephen Hogg, Attorney-General and Governor" (Master's Thesis, University of Texas, 1919) 66.

⁵*Railroad Commission of Texas Chronological History* [cited 11/20/96]; available from <http://www.rrc.state.tx.us>.

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