RAILROAD REGULATION IN THE CONSTITUTIONAL CONVENTION OF 1873

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RAILROAD regulation was not only the concern of midwestern farmers in the post-Civil War years; it was also the concern of many Pennsylvania businessmen. This concern was a major factor in the movement which resulted in the Pennsylvania Constitutional Convention of 1873. The metropolis, the big city political machine, the nationalized corporation, the labor union organized on an industry-wide basis—all these had appeared in Pennsylvania in the Civil War decade during which the state had experienced a significant economic and social growth. This growth had been accompanied by inevitable stresses and problems. The convention of 1873 was called to provide a constitutional basis for governmental action to solve the various problems which had arisen from rapid industrialization and urbanization. Moreover, at least three special conditions had led directly to this convention: first, the widespread corruption of the state legislature which had destroyed public confidence in the integrity of that body; second, the emergence of a corrupt political machine in Philadelphia whose power was based upon its control of the election machinery of that city; and third, various abuses of power by railroad corporations.²

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¹In 1871 the voters decided to call a constitutional convention. A year later they elected 133 delegates to the convention. Sixty-nine Republican, sixty-one Democratic, and three Liberal Republican delegates were elected. The convention held four sessions: the first ran from November 12 to November 27, 1872, the second from January 7 to March 28, 1873, the third from April 15 to July 16, 1873, and the last from September 16 to November 3, 1873. The first session was held in Harrisburg and the last three in Philadelphia. William Meredith of Philadelphia served as president of the convention until his death in 1873; he was succeeded by John Walker of Erie. The electorate ratified the new constitution on December 16, 1873. It went into effect on January 1, 1874. A. D. Harlan, Pennsylvania Constitutional Convention 1872 and 1873 (Philadelphia, 1873). This manual contains valuable material on the background of the convention.

²Pittsburgh Gazette, November 7, 8, 9, 11, 12 and 27, 1872, and Philadelphia Public Ledger, November 14, 1872.
By 1872 railroad corporations were viewed by many Pennsylvanians as a mixed blessing. No one questioned their great importance to the continued expansion of the state's economy. But many questioned the wisdom and justice of various policies of the officers and managers of these corporations. Many, among whom were stockholders and shippers, were convinced that public control of these policies was essential to the preservation of a democratic political order, and even of the property rights of many individuals and business enterprises.³

Anti-railroad opinion had existed in Pennsylvania for many years, and came from two sources. The first was the old anti-charter and anti-corporation opinion which had flourished in the Jacksonian era and which had been directed at that time against turnpike and banking corporations. This opinion turned easily to a criticism of railroad corporations in the years immediately preceding and during the Civil War,⁴ and was particularly strong among many older Pennsylvanians living in the interior counties. The second source was the series of developments which gradually convinced many who had originally welcomed the railroad that its management was inimical to the public welfare. Of course, these developments served also to strengthen the older anti-corporation opinion. They included the circumstances leading to the sale of the main

³Not much documentary evidence exists to illuminate the development of public opinion demanding that a constitutional convention be called to provide for railroad regulation. Probably this is due to the fact that the convention of 1873 did not result from a broad, popular movement which mobilized mass opinion in support of constitutional reform. Rather, the convention was called because opinion in favor of this action emerged in influential circles. The Union League Club of Philadelphia was the most important body to demand this reform. Favorable action by governor and legislature followed almost immediately upon the decision of the Union League. From 1869 to 1872 there was little discussion in the press of the issues which would come before the convention. The referendum upon calling a convention and the election of delegates were decidedly peripheral matters in the elections of 1871 and 1872. Thus one must turn to fragments in the debates of the legislature in 1871 and 1872, to newspaper editorials, and the resolutions of delegates to the convention to find evidence of public opinion which demanded railroad regulation. But even though these voices were scattered and few in number, it does not follow that there was no large body of opinion which supported railroad reform. Rather the vigor and determination of the pro-regulation element among the delegates would indicate that such opinion existed. Cochran, Howard, and Patterson were not radicals speaking for a lunatic fringe. They were responsible spokesmen for responsible citizens who regarded railroad regulation as necessary, and this is indicated by the number of delegates who supported their position.

line of the Pennsylvania Canal to the Pennsylvania Central Railroad in 1857, the repeal of the tonnage tax in 1861, the investigation by a state senatorial committee of railroad rate discriminations in 1867, the attempted nine-and-a-half-million-dollar "steal" of railroad bonds held by the state treasury known as the Allegheny Railroad Bill in 1870, the organization of a railroad combination which arbitrarily forced up rates and broke the anthracite strike of 1871, the refusal of the Credit Mobilier to pay its taxes to the state government, and the abortive attempt of railroad managers and oil refiners to control the oil industry and trade in the form of the South Improvement Company in 1872.\(^5\)

Anti-railroad, more particularly anti-Pennsylvania Railroad, opinion in Pittsburgh and Allegheny County was strong.\(^6\) This opinion had been caused not only by the developments already referred to, but by such other occurrences as the controversy over the repudiation of Allegheny County railroad bonds, the temporary voiding of the charter of the Pittsburgh and Connellsville Railroad, and the rate discriminations practiced by the Pennsylvania which had harmed various Pittsburgh shippers. As Pennsylvanians soberly reviewed these developments, they could not readily escape the conclusion that state regulation of certain railroad practices and the prohibition of other practices were imperative. Given the susceptibility of the legislature to control by railroads, the citizens of the Commonwealth could seek relief only through a constitutional convention.

The railroad abuses to which Pennsylvanians objected were similar to those which disturbed citizens of other states. Foremost among these abuses were such rate discriminations as the long-and-short-haul discrimination, the charging of higher rates on non-competitive routes than on competitive routes, the special


rate to large shippers, and the secret rebate to favored shippers. Pittsburgh shippers were particularly disturbed by the lower rates granted shipping points in Ohio on freight destined for Philadelphia. The legal background of rate practices of Pennsylvania railroads sheds light upon this aspect of the railroad problem. The basic railway law of 1849 gave the railroad companies considerable freedom in fixing rates for passenger and freight transportation. By this law a railroad was declared to be a public highway, but the president and board of directors had the power to make regulations including toll and rate schedules to govern its use. Control of motive power remained exclusively with the railroad, which could charge tolls for the use of its road and make additional charges for the use of its motive power. But railroads were limited in the amount of tolls which they could demand of shippers who used their facilities; this law set a maximum rate of three cents per ton mile, and two cents per mile for each railroad car. Thus shippers could provide their own cars and merely pay the railroad a nominal toll per ton mile or per car mile in order to avoid excessive tariffs.

Another practice of railroad management which had led to widespread complaint was the inside or fast freight line controlled by the officers of a railroad. Such a company provided cars which were hauled over the tracks of a certain railroad. The fast freight line provided a superior service for certain shippers at higher rates. But other shippers complained because they believed that the cars of the fast freight company were given preference over the regular cars of the railroad company, and the stockholders of the railroad complained when they compared the high dividends paid by the fast freight companies to the meager dividends paid

7 *Debates of the Convention to Amend the Constitution of Pennsylvania* (Harrisburg, 1873), I, 147, 217; III, 522-523, 503-504, 500-501. Hereafter called the *Debates.*
9 In 1865 the Pennsylvania Supreme Court rendered a decision in case of *Timothy Boyle v. Philadelphia and Reading Railroad Company* in which it distinguished between tolls and tariffs. The toll was defined as a fee paid for the passage of cars over the tracks of a railroad company. The toll could not exceed the legal maximum. Then, in addition, the railroad could charge “rates” or “tariffs” for furnishing cars, motive power, superintendence, and other services. Tariffs were not subject to control. The convention of 1873 accepted this distinction; both terms were employed in those sections of the railroad article dealing with rate policies. *Ibid.*, 87.
by the railroad. Two such companies, the Star Union Line and the Empire Line, used the tracks of the Pennsylvania Central. The "inside" construction company was also regarded as an evil to be eradicated by the convention; this was the corporation, again controlled by officers of a railroad, which was granted contracts to construct railroad facilities at inflated rates. Stockholders also were disturbed by the practice of "watering stock" and of piling up the bonded indebtedness of their railroad—practices again advantageous to the officers of a railroad.

Another complaint had to do with the consolidation of non-competing and competing lines; in effect, this threatened to give one railroad corporation complete control of the traffic of a particular region.\footnote{Ibid., I, 197, III, 420-423.} Special laws passed in 1870 and 1871 had granted to the Pennsylvania power which it used to gain control of smaller "feeder lines." These laws authorized the Pennsylvania to purchase the stocks and bonds of other roads. The Pennsylvania system was rapidly expanded until it dominated the traffic flow across the state. Indeed, by 1872 a single holding company controlled all the various corporations which made up the Pennsylvania system. Linked with this was the policy pursued by certain roads of purchasing valuable timber and mineral lands and manufacturing plants along their right-of-way.\footnote{Ibid., III, 456-457, 461.} It was feared that such acquisitions would give the railroad control not only of the transportation facilities in a particular area, but of other basic industries as well. The Philadelphia and Reading had raised such fears by its widespread purchases of anthracite coal lands in the Schuylkill region.\footnote{Ibid., III, 340-341.}

Other matters had irritated certain segments of the public to the point that they demanded remedial action by the convention. To end the threat of another Allegheny Railroad bill it was proposed that the legislature be denied the power to transfer corporation bonds owned by the Commonwealth except upon the payment of money to the state treasury. To preserve intact the legal position of persons injured by railroads it was suggested that the legislature be denied power to pass laws limiting the amount of damages in suits brought against railroad companies for personal injury or loss of life. Protection was also sought for cities and
boroughs from legislative acts authorizing corporations to construct street railways without requiring the approval of local authorities. Many delegates also were determined to limit the issuance of the free pass by railroads—indeed to prohibit the issuance of the free pass to all officeholders. The pass was denounced as giving the railroads an enormous influence over government and as having a corrosive effect upon political morality. Even more important was the widespread belief that the railroads systematically and regularly corrupted the legislature. When taken together, these particular abuses led to a widespread fear that the railroads were gaining a dominant economic and political power in the state at the expense of the political and property rights of the people. The time had come to curb this power.

Nevertheless, several considerations kept the convention from rash and precipitate action in preparing the article on the railroads. One was the realization that the Pennsylvania Railroad was engaged in a bitter, competitive struggle with three other trunk lines—the New York Central, the Erie, and the Baltimore and Ohio—for the trade of the Middle West. The convention had no desire to jeopardize the competitive position of the Pennsylvania by adopting unwise regulations, for fear that it would lose this contest. Secondly, many smaller roads depended upon the larger and wealthier roads, such as the Pennsylvania, for the capital needed to finance the construction and expansion of their facilities. These smaller roads were essential to the economic growth of various sections of the state. The convention had to be careful that its decisions would neither hinder nor stifle the development of the local railroads. Finally, by 1872, the major railroads of the state had been constructed or were nearing completion. This fact suggests that the railroads in Pennsylvania had attained a degree of maturity which enabled them to accept certain controls which promised a measure of stability to the transportation industry and which did not seriously threaten management’s capacity to earn profits. Finally, a psychological factor might be suggested, for many Pennsylvanians shared the pride which Eli Kirk Price expressed in the railroads of his state:

Now no one has more grieved over some things the railroad companies have done than I have, especially in

\[14 \text{ Ibid., VIII, 283, 291.}
\[15 \text{ Ibid., I, 392; II, 493-494.}
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procuring legislation, and though when in the Senate I would not accept their free tickets, I am not willing to forget the great public benefits of their works, for which we should treat them as friends and not enemies. . . .

All the successful internal improvements of this country have been made in my day; the Lancaster and Pittsburgh turnpikes in my infancy; the National road and all the canals and railroads since the beginning of my manhood, and their progress, and the consequent development of the whole country under their benign influences, has been to me an incessant source of pleasure, ever increasing with the number of my years, but to go on increasing, and not to culminate in their greatness for ages and centuries to come. I have never received a favor from one of them; yet, as the City of Philadelphia has been largely developed by them, and the coal regions made accessible by them, they have for me, as well as for all others, added value to my investments, and have my gratitude. Who can step into a Pennsylvania car at Jersey City, lettered with the name of our beloved State, and not feel a pride that he may be transported thence in a palace car to the remotest South and the farthest West with the ease and comfort of his home life, yet charmed by the scenery of every variety of country—agricultural, with rolling surface, or the wide prairie, and the rivers and mountains, until he shall behold the Pacific?16

The delegates knew that certain railroad regulations were demanded by the people, but they knew also that there were limits beyond which they could not go in their search for solutions to problems which railroad development had brought to their state.

The delegates to the convention were men of importance in national and state affairs. On the whole they were also men of property.17 The majority were either lawyers or men engaged in manufacturing and commercial enterprises.18 One newspaper reporter noted that the two most important railroads in the state were well represented: the Reading by its president, Franklin Gowen, and the Pennsylvania by its chief counsel, Theodore Cuyler, and a member of its board, Edward C. Knight. At least

17 Pittsburgh Gazette, November 22, 1872.
18 Harlan, op. cit., 28-90. These pages contain brief biographical sketches of the delegates which provide information as to their professional and business interests.
one other delegate was prominently identified with railroad management. He was a former governor of the state, William Bigler, who was president of the Philadelphia and Erie Railroad.

None of these men, however, served on the standing committee which prepared the proposed article on railroad and canal corporations. The chairman of this committee was Thomas E. Cochran of York, a Republican, who had served a term as state senator and a term as auditor general. In the debates in which the provisions of the railroad article were hammered out, certain delegates took a strong position in favor of stringent regulations: among these were Cochran, Tom Howard, and young T. H. B. Patterson of Pittsburgh, and Jeremiah Black of York. Among the opponents of strict regulation were George Lear of Bucks County, J. W. F. White of Pittsburgh, Hugh McAllister of Centre County, and George Woodward of Philadelphia. It must be noted that few delegates argued for granting the railroads complete freedom in carrying on their affairs; the differences among the delegates were over the character of the controls to be included in the new constitution. Of course, this could and sometimes did mean the difference between token and effective regulation. Party affiliation had little importance in this debate; for example, of the delegates noted above as advocates of strict regulation two were Republicans, one was a Democrat, and one a Liberal Republican. To a degree sectional or regional economic interests were important in determining the position of certain delegates; many delegates from the central and western counties favored strong controls while many delegates from the southeastern counties supported provisions for limited controls. But even these interests did not control all delegates from a particular area. Probably the state-wide importance of the railroads is reflected in the support they received from delegates from all parts of the Commonwealth.

The convention worked upon the railroad article on four different occasions: it considered it upon first reading from April 17 to April 25, on second reading from July 10 to July 15, on third reading on October 15 and 16, and the report of its special committee from October 21 to 24. This article was among the last to be considered on each reading.

The article as proposed by the committee on railroad and
canal corporations was first brought up for consideration on April 17. In the early stages of the debate certain basic positions were taken by various delegates concerning the general question of railroad regulation. Involved in each position was an assumption as to the character of the railroad corporation and its role in Pennsylvania's economy. The position of the majority of the committee was articulated by its chairman, Thomas Cochran. He held that the railroad corporation was a public utility, and that such corporations had no right to exist except as they promoted the general welfare. They were possessed of both a public and a private character, but the former was more important than the latter. He justified this position, as follows:

A railroad or canal corporation is invested with certain public powers and functions, which strictly private corporations do not possess . . . but I say that the benefit to the private stockholder is the incident, and the public good is the great paramount object for which such corporations should be constituted, and for which only they ought to be, or can be constitutionally constituted in a republican government.19

This principle provided the justification for the series of strict controls which the committee originally proposed in its report.

On the other hand, George Lear of Bucks County was opposed to governmental control per se; he denounced restrictions as representative of an out-dated anti-corporation opinion. Although a member of the committee, Hugh McAllister of Centre County refused to admit that the railroad corporation was invested with a public function. Consequently it should not be dealt with differently from other private corporations. Incidentally, McAllister had not attended the committee sessions in which the majority report had been prepared, but he submitted a separate report of three sections as a substitute for the committee's proposal.20 The first section of his report declared railroads and canals to be public highways free to all persons for the transportation of their persons and property under regulations prescribed by law; the second would have empowered the legislature to establish reasonable maximum rates for railroad transportation; and the third would

19 Debates, III, 323.
20 Ibid., III, 479.
have prohibited free passes to all but officers and employees of railroads and indigent persons. The first two sections would have merely enshrined in the new constitution existing laws; the third would have dealt only with one of the numerous abuses of railroad management. This position was essentially one of opposition to a program of strict controls, though it would have granted the legislature a limited power to regulate railroad practices. George M. Dallas of Philadelphia introduced a fourth position in the debate when he urged the convention to adopt the English common law principle holding only "unreasonable" discriminations against customers to be illegal.21

The article which was proposed by the committee majority on first reading contained two proposals for agencies to control railroad management. The first agency was entirely unofficial and private in character—the curiosity and vigilance of the private citizen or individual stockholder who would be able to go to a public office which the railroad would be required to maintain wherein he could note transfers of stock and examine the books of the corporation. The second agency was to be official and public—the office of the Secretary of Internal Affairs. This was a new office; the chief officer of each railroad was to submit a sworn annual report to this official including a detailed financial statement and such other matters relating to its business which were then or "... would hereafter be prescribed by law or required by said secretary."22 In acting on this section opponents of strict control succeeded in modifying the first provision so as to deny access to railroad corporation records to the general public. Such inspection was to be permitted only to stockholders and bondholders. But the second provision was made more specific when the convention adopted a substitute section which gave the Secretary of Internal Affairs broad powers to police railroad management. This section transferred the Auditor General's powers and duties in relation to railroads to the Secretary of Internal Affairs. Furthermore, it vested additional powers in this new officer; he could require special reports at any time upon any subject relating to a railroad from its officers; he could require them to maintain their properties in good condition; he was to investigate all com-

21 Ibid., III, 316-318.
22 Ibid., III, 322.
plaints that a railroad had violated the law or its own rules to
the injury of the complainant.

Two sections of the proposed article were meant to deal with
problems arising from railroad consolidations. The convention
agreed without debate to the section which prohibited the consoli-
dation of parallel or competing railroads. However, considerable
debate arose over another section which would have prohibited
consolidations between common carriers by purchase of stock,
facilities, or franchises. This section would have permitted one
road to lease the facilities of another for a period of twenty-five
years, provided that the lease was approved by two-thirds of the
stockholders of the road involved and the legislature. This pro-
posal was opposed by McAllister on the grounds that it would
prevent the building of railroads in the interior of the state.21
According to McAllister, adoption of this provision would imperil
the system whereby local capital organized a local railroad com-
pany and built the roadbed, while a trunk line would lay the rails
and supply the locomotives and cars, in return for a first mortgage
on the property of the local railroad. Charles Hunsicker also was
opposed to this section because it would not dissolve existing com-
binations, but would only make it difficult for new combinations to
come into existence. This would give the Pennsylvania, Reading,
and Lehigh Valley a permanent advantage over smaller lines.
For these reasons the convention voted down this section. While
opposed to the consolidation of parallel or competing lines, the
majority was not opposed to the consolidation of non-competing
railroads.

The further acquisition of the properties of manufacturing and
mining corporations by railroads was prohibited when the con-
vention on first reading forbade to railroad companies the right
to subscribe to the securities of other corporations. As originally
proposed, this section also would have forbidden the purchase of
the securities of other railroads, but this was deleted. These pur-
chases were forbidden, whether made in the name of the railroad
corporation, through its officers, or through trustees. The last pro-
vision is most interesting as indicating some knowledge of the
importance of trusteeship as a consolidation device. This section
was adopted even though Franklin Gowen pointed out that the

21 Ibid., III, 396.
Reading had helped establish many firms along its road by guaranteeing the bonds of those companies in return for a first mortgage on their property. Another section was adopted which prohibited common carriers and their officers from engaging in the mining and manufacturing of commodities for transportation on the works of those railroads, and which forbade railroads to hold all lands except those necessary to the carrying on of their business. Still another section sought to eliminate the “inside” shipping company by prohibiting to the officers of railroads the right to engage in the business of forwarding or transporting any commodities on the roads under their control.

Probably the most important proposal of the majority report was the one which was meant to end various types of rate discriminations. The proposed section was inclusive in its provisions to end the various rate abuses. The first clause held “... that no corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof”; a second provided that such corporations should carry the persons and goods of Pennsylvanians on as favorable terms as those of other states brought into or carried through Pennsylvania on the facilities of those corporations; a third clause said that “... no higher rate per ton mile shall be charged for the transportation of goods, or higher rate per mile for passengers, than shall be charged for like service in this State to the people of other States ...”; a fourth provided that rates for the same classes of freight should be uniform and that freight rates and passenger fares should be the same for equal distances; a fifth held that “... a higher charge shall never be made for a shorter distance than is made for a longer distance ...”; and a sixth clause prohibited both direct and indirect drawbacks.

As might be expected, a lengthy debate arose over these provisions. However, when the debate had ended, the convention agreed to this section with only two minor amendments. One permitted the sale of commutation tickets at special rates, and the second permitted reasonable extra charges for distances of less than fifty miles. The committee had won a notable victory. The

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21 Ibid., III, 424-425.
22 Ibid., III, 479.
section on rate practices made illegal all the rate discriminations which had troubled shippers: the rebate and drawback, the lower rate offered foreign shippers moving their freight across the state to Philadelphia or New York, and the long haul-short haul discrimination.

The problem of enforcing the proposed article upon railroad corporations whose charters antedated the convention had been raised during the debate. Various delegates had insisted that the proposed article would not be binding upon such corporations because their charters were contracts with the state government. These contracts were sacred and were protected by the federal constitution. Should this doctrine prevail none of the provisions of the proposed article could be applied to the existing railroads. To deal with this contingency the committee submitted a proposal which denied to every existing railroad any beneficial legislation, by general or special laws, except on condition of complete acceptance of all provisions of the railroad article. Young John Campbell of Philadelphia, speaking for the committee, justified this proposal as the only means by which the great railroad monopolies could be made to obey the new constitution. Both Franklin Gowen and Theodore Cuyler denounced the proposed section as a violation of the sanctity of contract, and as an effort to compel the railroads to surrender their charter rights. Cuyler went further to characterize as futile all efforts to achieve equality among railroads by law. Competition and inequality were natural incidents of trade and finance. To ignore natural laws would be "... to put an extinguisher upon the business interests of the country." But the convention refused to heed his warning and the section was agreed to by a decisive majority.

On April 25 the first reading of the proposed railroad article was completed. The railroad committee had met with several defeats, but it had won acceptance of the principle that railroads were public highways and properly subject to regulation by the state.

The convention undertook and completed the second reading of the proposed article on railroads in five sessions extending from July 10 through July 15. In terms of environmental conditions this probably was the most difficult period in the entire convention.

26 Ibid., III, 614. 27 Ibid., III, 622.
The delegates were tired; they were fatigued by the heat of a Philadelphia summer and the demands of a protracted session, which had begun in January and had been interrupted by only one brief recess in the early spring. At the end of the session the convention adjourned for a long summer vacation. Needless to say, there were many absentees during this July session. On several occasions little more than a quorum, a simple majority of the total membership, was present and voting. This meant that some decisions were made by approximately one-fourth of the delegates.

Several sections were adopted on second reading in the same form as that in which they had been accepted in committee of the whole. On the other hand, several were changed. The section which prohibited the "inside" fast freight company was revised to permit officers and agents of railroads to hold stock in an intermediate company using the facilities of their company. However, they could not have an interest other than that of a stockholder. The specific control powers of the Secretary of Internal Affairs were deleted, though this official was still granted a general power to supervise transportation companies, and the power to require annual and special reports from their officers. A new section was adopted in a further effort to end the preferred position of the fast freight company. This section prohibited the abatement and drawback, and voided special agreements between railroads and transportation companies. Another new section was adopted which prohibited the granting of free passes to any persons except officers and employees of a railroad company. Andrew Curtin, the Civil War governor who was a member of this convention, gave some indication of the dimension of the free-pass practice when he pointed out that legislators received as many as thirty passes in addition to their own. On several occasions in the course of the debate, the delegates reminded one another that they had been given and were using railroad passes to attend sessions of the convention.

The committee suffered a partial defeat when a provision was deleted from another section which would have prohibited the officers of railroad corporations from owning and operating mines and factories whose products could be carried over their roads. However, a more important provision was retained—that which

\footnote{Ibid., VI, 699.}
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forbade such ownership and operation to the common carriers as such.

For more than two days the convention debated the section which was designed to outlaw numerous rate abuses. A strong effort was made to eliminate the provision assuring Pennsylvania shippers of rates as favorable as those granted out-of-state shippers whose goods were transported into or across the state. Theodore Cuyler insisted that this provision would mean the loss of the Pennsylvania's huge investment in securing the trade of Chicago and St. Louis. He held that it was too late in the development of railroad systems to control their operations by state regulations of this sort. William Ainey and William Lilley argued that local traffic rates must necessarily be higher than through traffic rates because the cost of local service exceeded that of through service. They held that it was impractical to charge the same per-ton-mile rate for all types of traffic.

Although the section was defended vigorously by members of the committee, it seems probable that they realized that a restatement of the section was necessary to make it clear that their concern was with aggregate rather than with pro rata charges. For example, railroads would be free to set their rates on shipments which were going not more than fifty miles as they chose, but they could not charge more for a distance less than fifty miles than for fifty miles. Railroads would be free to bring goods from the West to Pennsylvania at the rate they chose, but from that point eastward they could not charge a Pennsylvania shipper more in the aggregate for the same service than they charged the western shipper.

Consequently on July 12 J. H. B. Patterson moved the following substitute for the section which had been adopted on first reading:

No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers between or against the people thereof, nor make a higher charge for a shorter distance than for a longer distance, including such shorter distance; and no special rates or drawbacks shall either directly or indirectly be allowed, except excursion and commutation tickets.

Ibid., VI, 623-624.
Ibid., VI, 647-648.
This substitute was eventually agreed to by a decisive majority on July 14. The railroad committee had surrendered nothing in principle by the adoption of this section.

The convention did not begin the third and final reading of the railroad article until October 15, and it finally completed its work on October 24. These seven sessions were marked by the most determined parliamentary struggle and the most acrimonious debate of all. However, the real struggle did not begin until the third day. Indeed, in the first two days the proceedings were rather placid, as proponents of the proposed article defeated all motions to amend. Finally, late in the session of October 16, the article was passed on third reading by an overwhelming majority. Of the twenty-five votes cast against passage, sixteen were cast by Republican delegates from the southeastern counties, including Philadelphia, but on the other hand seven nays were cast by western delegates, among whom was Matthew Edwards of Allegheny County. At this moment it seemed that the convention had completed its work on the whole troublesome problem.

But then Charles Buckalew of Columbia County, the Democratic leader, made a motion to reconsider the entire article. This was agreed to, as some of the delegates who had voted for final passage voted for reconsideration. Some may have voted for final passage in order to be able to support a motion for reconsideration, and thus gain at least one more day in which pro-railroad delegates could win support for a milder article.

When the convention took up the reconsideration of the proposed article the next day, it became evident that the delegates opposed to strong controls had reorganized for a concerted effort to defeat many of the committee's proposals. After several speakers, including Buckalew, had explained their opposition to the proposed article, William Corbett of Clarion County moved that the chair appoint a special committee to rewrite the article. This motion was seconded by Cuyler and agreed to by a comfortable majority. When the result of the vote was announced, blunt Tom Howard of Pittsburgh cried: "My own judgment is that the power of the railroads has been exercised most wonderfully here today, and I am willing that what I say shall go upon

\[\text{iibid., VIII, 38-39.}\]

\[\text{iibid., VIII, 39-40.}\]
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the record." Thus the convention had suddenly taken control of the railroad article from the men who had prepared it and had guided its progress through the convention, and had now transferred it to men who were opposed to it. The strategy had been to delay opposition until the force of the reformers was largely spent. The new special committee, as appointed by President John Walker, was chaired by William Corbett and composed of men who had voted for its creation.

The report of the special committee was submitted on October 21. Among other changes the prohibition against a higher charge for a shorter distance than for a longer distance was deleted, together with the requirement for stockholder inspection of railroad corporation records and the prohibition of the free-pass practice. However, on the next day, the convention agreed to substitute the original report for the special report. Probably some delegates voted to substitute the original report because of President Walker's ruling that it could be amended.

The convention then proceeded to refashion the whole article using ideas and principles from both the original and the special report. Wayne MacVeagh, a Republican delegate and son-in-law of Simon Cameron, played a decisive role in this process. The article as developed in this way is the article that exists in the present constitution of Pennsylvania. On the matter of rate discriminations the conservatives won a notable victory by the narrow but decisive margin of three votes; the section adopted was essentially the one proposed by the special committee, prohibiting undue and unreasonable discrimination in rates for traffic within or passing through the state. On the long haul-short haul discrimination it provided that "... persons and property transported over any railroad shall be delivered at any station within the state at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station." Moreover, the Pennsylvania Railroad was not denied the power to grant more favorable rates per ton mile to out-of-state traffic. The legislature and the courts were given the

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33 Ibid., VIII, 71.
34 Philadelphia Public Ledger, October 22, 1873.
35 Debates, VIII, 203.
36 Ibid., VIII, 263-264.
37 Ibid.
responsibility of determining the existence of undue and unreasonable rates. On October 24 the convention agreed to the revised article by a vote of seventy-six to eleven.\textsuperscript{38} Of the eleven irreconcilables six were Republicans and five were Democrats, while eight represented eastern counties and only three the western counties. Thus, at the end of the debate, as at the beginning, party affiliations were not decisive in controlling the decisions of the delegates.

In preparing this article the convention had entered into a new area of constitutional action for Pennsylvania. As is common in the democratic process, the result was a compromise, though one more favorable to those seeking to preserve the status quo in railroad management than those seeking to change it. Thus, the article did not interfere with certain policies important to the Pennsylvania Railroad, such as the continued acquisition of lateral roads, and the continued imposition of discriminatory charges in favor of through traffic from the Middle West. Indeed it prohibited only those rates which were unduly and unreasonably discriminatory, and it placed upon the legislature and the courts the task of defining these rather ambiguous terms. No limitation was placed upon the use of the holding company as a means through which the consolidation of various lines was to be achieved. On the other hand, the free railroad principle was placed in the constitution, though probably railroad development had reached the point in Pennsylvania where this provision would have little practical effect. By giving to each railroad the right to connect with any other railroad, a state-wide network was assured. So far as regulation was concerned, a reasonable protection was provided against the long haul-short haul discrimination. The abatement and drawback were prohibited. The "inside" transportation company and the mining and manufacturing subsidiary were forbidden. Free passes could no longer be distributed to any persons except officers and employees. The consent of local authorities was now necessary to the construction of street railways.

The enforcement of these provisions would depend upon the use made by the legislature and by the enforcement agency provided for in the constitution of the sanctions given to them. An important sanction was provided for in the section which denied the

\textsuperscript{38} Ibid., VIII, 304.
benefits of future legislation to any existing railroad which did not accept the provisions of the article. Supervisory powers were given to the Secretary of Internal Affairs, and the legislature was given authority to enforce the provisions of the article by appropriate legislation. Thus, in the final analysis, the efficacy of the article would depend upon the action taken by the legislature, by the Secretary, and by the courts. Still, the convention had achieved a measure of success in composing a constitutional formula for the regulation of a modern industry which was making rapid economic and technological advances.