

What the transportation policies of the government shall be in event of war must be determined upon a consideration of the contemporaneous general economic situation and the applicable provisions of law. If we are to draw any valuable lessons from the World War, we must look at the current economic conditions and the state of the law as of that time, and also the subsequent changes in both law and economic conditions.

Fifteen years ago the European War created emergency economic conditions here which profoundly affected all business relations and resulted in certain legislation. It is axiomatic that war compels a coordination of the nation's transportation agencies with the military forces, and that for the time ordinary commercial activities or agencies of transport must be subordinated to military needs. This requires a different relation between governments and the agencies of transport in times of war or threatened war than in times of peace. The supply and control of transportation is intimately connected with and often indistinguishable from control of production and distribution, and all of these matters are closely connected with price control. In the absence of price control, a shortage in transportation in times of either peace or war inevitably and speedily leads to profiteering.

The United States has had a major experience in war under modern conditions. To appraise those experiences and make them available for present-day purposes, some historical review of the special circumstances which surrounded and are surrounding the railways is necessary. The circumstances which preceded Federal control were either physical, as related to the character and location of the railroads themselves, and the abnormal climatic conditions of the winters of 1916-1917; or were economic, such as the tremendous increase in traffic and the new channels taken by trade, with the result of the demoralization of the transport machine of the nation; or were social, and in this way we may consider the regulatory relations between the government and the carriers and their users. I take it you are quite familiar with the physical and economic features of the situation, and I will deal mainly with the social or legal questions which instantly obtrude themselves when we think of Federal war control of railways.

Provisions of law which stood in the way of coordination

When this country entered the war, there stood on the statute books certain provisions of law which tended to facilitate unified operation of the railroads during the war, and there were

others which, if enforced even half-heartedly, would make unified operation impossible. The Act to Regulate Commerce was the principal regulatory act. It accepted the competitive principle as salutary. It was originally drawn in time of peace, and was designed with times of peace only in mind; it looked to protection of the shipper and the public against unjust or unfair treatment by the carrier, and not to protection of the nation and its commerce in time of war, by utilization of all the forces and resources of its transportation systems to their fullest extent as a military adjunct.

In the original act, in Section 5, was a stringent prohibition of pooling traffic. This was one of the main inducements for the original act, and was doubtless of much importance in times of peace, when the intent was to compel competition. But it had an unexpected effect in time of war, for it prohibited any agreement or combination of carriers for pooling freights of different competing railroads, so that concerted action by the executives of the railroads such as everyone could see was absolutely necessary was punishable as a conspiracy to violate a law of the United States. The antipooling statute was therefore a real obstacle to unification.

The Sherman Antitrust Act was another statutory impediment to necessary steps for an adequate conduct of transportation during war. It forbids any combination or joint agreement of railroads, which, by its necessary operation, destroys or restrains free competition among those engaged in interstate commerce; and forbids unreasonable restraints of trade by shippers, through contracts or combinations, or conspiracy. Carriers in cooperation with their customers undertaking a course of conduct which would ration trade or control prices would find themselves in a forbidden conspiracy, for the punishment of which the penitentiary doors are open.

In such times the prevention or overcoming of traffic congestion is of primary importance, and one means of practical relief is the avoidance of waste in transportation and of unnecessary movement of relatively unimportant character. The amount of cross hauling of commodities which goes on in time of peace as ordinary commercial routine is surprising; and yet, throughout decades of peace, that very freedom of intercourse has been deemed to be of utmost importance as a means of the equal, wide, and complete development of the nation. Any system of zoning of commerce, or of movement of traffic under permits --- which is the initial step in restriction of waste transportation --- runs directly counter to these prohibitions of law, and lays the administrator who gives the order, the carrier and shipper who acquiesce, and all intermediary persons who knowingly join in furtherance of the object, under heavy penalties.

Certain indirect restrictions upon unified operation were in force in 1917. The shipper had the right to designate which of several through routes or competing carriers should be utilized for the movement of his shipment. There was a requirement that there be no discrimination in moving traffic as between shippers, localities, and commodities. Elasticity as to precedence or priority in moving traffic was necessary in such an emergency, and could not be afforded by any rail carrier except under penalty of damages for giving undue preference or for violating the shipper's routing instructions.

Provisions of law which facilitated
Federal coordination

Federal control of the railways was assumed December 26, 1917. The nation then had been in a state of war eight months and 20 days. By the Army Appropriations Act of August 29, 1916, commonly known as the Federal Possession and Control Act, Congress had with much foresight conferred broad powers upon the President to assume the control of transportation systems in time of war. This was the statutory basis for the taking over of the railways and other transportation systems by the President for Federal control during the World War. This provision is still in force. Its pertinent language is as follows:

"The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportations, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable."

By the provisions of the Overman Act of May 20, 1918, the President was authorized to redistribute the functions of any executive department, commission, bureau, agency, office, or officer, in such manner as in his judgment should seem best to carry out the purposes of the act, namely, the national security and defense, and successful prosecution of the war. This might be accomplished by either transfer, consolidation, or utilization of duties, powers, or personnel and property. Such action was limited in effect to the war period, and the Overman Act is not now law.

An important legislative factor in force during a part of the critical period which culminated with the assumption of Federal control was the Esch Car Service Act of May 29, 1917. It forms the backbone of the present wide emergency powers as to service possessed by the Interstate Commerce Commission. The distressing car shortage which reached a most acute stage in 1916, led the commission to advise Congress that a reasonable degree of desired and necessary improvement could be reached within any reasonable time only by vesting powers to regulate these questions for all railroads in an appropriate central body; and also by providing means by which rules and regulations promulgated could be enforced. The Esch Car Service Act was the response. Throughout the latter part of the year 1917 the method of meeting the problem of car service and securing the maximum use of equipment was by cooperation between the commission, the transportation priorities director, the food administrator, and the fuel administrator.

The manner in which coordination was attempted
prior to Federal control

In the main this was the way the law stood at the latter part of the year 1917. Valiant efforts had been made to operate the railway machine in the most efficient manner possible, under terrific conditions of overloading, within the bounds of the law, and with the national security as both the first and the ultimate goal. What steps had to be taken are highly suggestive to us now, and we are warranted in examining them in some little detail.

Activities of War Department Boards

Immediately following our entry into the War, the General Munitions Board attempted, through a committee on priority, to guide giving of preference in the manufacture of articles especially needed for war purposes, as with respect to the requirements of the Government for steel and other materials.

About August 1, 1917, Judge Robert S. Lovett was made a member of the War Industries Board, which had been created by the Council of National Defense to take over the work of the General Munitions Board and in general to coordinate with the industrial requirements of the war. Mr. Lovett was given particular charge of matters of priority and had much greater authority than the old Board had in this respect. Shortly thereafter the President designated him as administrative officer under the priorities provisions of the act of August 10, 1917. The duties of this

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office were to determine the relative importance of the various kinds of commodities so that materials and articles most essential be given precedence in transportation over others less important to the national interest.

Evidently the policy of the administration, headed by the President, the Commander-in-Chief, contemplated the minimum of interference with the form of cooperative effort then being attempted by the carriers. Effective at midnight, December 31, 1917, all orders were suspended with the advent of Federal control. The priority director's functions were taken over by the Car Service Section of the Division of Operation of the United States Railroad Administration. The orders of the Priority Administration were not revived.

Priority in transportation is not to be confused with priority or preference in production and manufacture. The latter priorities were determined during the war by the War Industries Board through its Priority Division, which was also in charge of Mr. Lovett during the latter part of the year 1917 and first part of 1918.

In its report to the Senate Committee on Interstate Commerce, December 22, 1917, the chairman of the Railways' War Board stated its accomplishments, its hopes and its difficulties, and suggested legislation deemed to be of immediate help to the railroads. The general statement was made that a large part of the work of the committee had been to stimulate the railroads to greater efficiency and to eliminate unnecessary competitive practices, largely through the agencies of the commission on Car Service and its subcommittees, whereby cordial and cooperative relations were established with the public. Epitomizing the statement of "Some things the War Board has done" we find the following which are highly significant as a catalogue of administrative details of this particular sort, called for by war, which were not a part of the usual peace-program.

1. Formulation of car-service rules; pooling box and coal carrying cars; transfer of locomotives from line to line.

2. Cooperative arrangements with the commercial bodies, shippers, State commissions, and organization of 6 departments co-extensive with those of the Army and subcommittees of the car service commission.

3. Conducting an active campaign for the conservation of facilities through intensive loading of cars, locomotives, etc., and of increasing the efficiency of the process of repair of equipment, and reduction in unnecessary passenger train-miles.

4. Development of a policy relocating cars by ordering their movement empty; contact between the commission on Car Service and officials of the Interstate Commerce Commission, "thereby subjecting all orders issued by the commission on Car Service to the approval of the Interstate Commerce Commission" under the Esch Car Service Act.

5. Creation of a coordinating committee on exportations, to assemble information in relation to bottoms for export shipments, in order to divert traffic where necessary to prevent congestion and expedite shipments, such as by the regulation of grain for export.

6. Collaboration with the committee of the Council of National Defense, in the pooling of Lake cargo and tidewater coals. Attention was directed to the fact that the coal problem was largely one of distribution, and that unnecessary long hauls resulted from the exercise of the shipper's right to route his traffic.

7. Recommendation to the Food Administrator which resulted largely in the transfer of the movement of foodstuffs and other exports through the southern and Gulf ports.

8. Steps taken to secure priorities in manufacture for materials required for the construction of locomotives and cars.

9. Simplification of accounts between the carriers and the Government for transportation.

10. Submission to the War Department of a simplified basis for military war tariffs and waybilling and assessing freight charges on Army impediments.

11. Design of armored cars and special hospital and troop train equipment.

12. Preparation of mobilization charts for the movement of troops to the requisite points on the Mexican border, and Atlantic and Gulf ports, whereby more than two million troops were moved.

13. Systemization of settlements between the Government and the carriers.

14. Creation of a subcommittee on express transportation to coordinate the work of the express companies.

15. Movement of 144,935 cars of materials and supplies for the Government and for the Shipping Board.

The War Board was a voluntary organization, with no official status, and it had no power to command obedience to its plans. Its rule was only through suasion and appeals to patriotism. It ran up against the prohibitions of the law, and was hampered by the personal greed of some of those who would be deprived of opportunities to profiteer by compliance with the directions of the Board. To an extent it used the powers given to the Interstate Commerce Commission under the Esch Car Service Act, but it made no effort to use any mandatory process. The independent operation of the railways still largely persisted.

All these efforts helped, but the aggregate was insufficient. It was perfectly obvious that the needs of the emergency were not being met, and could not be met, by a continuance of these efforts. The situation became progressively more grave, so that the Interstate Commerce Commission supplemented its annual report by a special report to Congress, December 5, 1917. The Commission detailed the facts as to the existing situation, the legal obstacles to any possible unification of operation, and reported that the situation did not permit of temporizing, and that placing and keeping the transportation system on the plane of highest efficiency could be secured only through unification of their operation during the period of the War.

The assumption of Federal control

The result of all this was that the President, through the Secretary of War, assumed control at noon, December 28, 1917, of each and every railroad and railroad controlled water line system of transportation and appurtenances thereof, located wholly or in part in continental United States. His action was in terms based upon the provisions of Army Appropriations Act, already quoted, and upon all other enabling powers he possessed, which apparently meant the War powers under the Constitution. He designated a Director General of Railroads, and empowered him to perform the duties imposed upon him through the boards of directors, receivers, officers, and employees of said systems of transportation; until and except so far as he should from time to time provide, such boards, receivers, officers, employees should continue the operation thereof in the usual and ordinary course of business, in the names of their respective companies; such systems, until and unless otherwise ordered by the director, should remain subject to the existing statutes and orders of the Interstate Commerce Commission and all statutes and orders of regulating State commissions in which the systems or parts thereof

were situated; the orders of the Director General to have paramount authority and be obeyed as such.

Sleeping car companies, wire and wireless transmission systems, were taken over, and by Presidential proclamation, effective at midnight July 31, 1918, were placed under the control of the Postmaster General. Marine cable systems owned or controlled and operated by any company or companies organized and existing under the laws of the United States or any State thereof, were taken over by Presidential proclamation effective midnight November 2, 1918.

Legislation in aid of the President's action in taking over the railroads and in line with his recommendations was obviously necessary. It was forthcoming in the Federal Control Act of March 21, 1918. The chief objects of that act were:

1. To confer authority upon the President to make agreements with railway companies touching compensation which the Government shall pay or guarantee for the use of the property during the period of Government possession and operation; for its maintenance in the meanwhile; and for its return in good condition, at the end of the period.
2. To provide a method and tribunal for the determination of the just compensation for such use, guaranteed by the Constitution, in event the President and any railway company disagreed.
3. To provide for additions, betterments, extension, found necessary to make any railway property adequate for war needs.
4. To centralize the rate-making power during government control, and operation.
5. To fix the period for such possession, control, and operation.

There is a remarkable parallelism between the experiences of Great Britain and the United States as to the manner of utilization of their railways during the war period. It is interesting to note that during the Civil War the Federal authorities assumed a control of certain railways, and that the Confederate States early took over the railways of the South under an even more complete military control than was brought about in the North.

The Period of Federal Control

As the law now stands, the President may again take possession and control of the railways under like circumstances. How the President, through his Director General, met the situation becomes of great significance --- or, at least, it suggests most clearly many administrative details which would doubtless force themselves upon any form of centralized war administration of the railways. Obviously volumes could be written on this subject; all that can be attempted in these few minutes is a hasty outline sketch of the salient features of the activities of the control administration.

The period of Federal Control had two distinct active phases --- excluding from present consideration the period of liquidation --- the first, which continued until May 21, 1918, was virtually one of the control; the second, which began on that date and continued to the end of the control period, was one of control and operation. A third, passive stage, that of decontrol, is also important. The point of complete departure was the determination of the Director General to place a federal manager in direct charge of each property for operating purposes, who should report to the Director General's regional director, and who was required to sever official relations with his corporation and to become an exclusive representative of the Railroad Administration. After this was accomplished, operation by the Administration was in all respects as if the properties had been in the common ownership of the Director General, subject only to the limitations imposed in the Federal Control Act. Prior thereto his actions were largely those of supervising control.

In many important respects the Commission, either collectively or by individual commissioners, in addition to its regular duties, prosecuted important studies and inquiries at the request of the Director General, the results of which were available to him. The law provided that he might avail himself of the advice, assistance, and cooperation of the Commission and of the members and employees thereof, and a number of investigations were instituted and prosecuted to a conclusion for him, and the counsel of the Commission was given in many important matters.

As a matter of administrative routine the Commission was required to certify the net average railway operating income as the primary basis for negotiations as to compensation between the Director General and the carriers. Members of the Commission and of its force served upon many boards of referees for the determination of particular controversies.

Steps the Director General found Necessary to
Take after Railroads were Taken Over

The orders which the emergency required the Director General to issue in the early stages of Federal control are of interest. Their variety indicates the complexity of the ramifications of an undertaking of this character.

General Order No. 1, of December 29, 1917, supplemented the proclamation of the President. In addition the Director General ordered that until further order (1) all officers, agents, and employees of the transportation system might continue in the performance of their present regular duties, reporting to the same officers as theretofore, and on the same terms of employment; (2) that retirement from employment should be upon usual and seasonable notice to the proper officer to the end that there might be no interruption or impairment of the transportation service required for the successful conduct of the war and the needs of general commerce; (3) all transportation systems covered by the proclamation were to be operated as a national system of transportation, the common and national needs being in all instances held paramount to any actual or supposed corporate advantage. All terminals, ports, locomotives, rolling stock, and other transportation facilities were to be fully utilized to carry out this purpose without regard to ownership; (4) the designation of routes by shippers was to be disregarded when speed and efficiency of transportation service might thus be promoted; (5) traffic agreements between carriers were not to be permitted to interfere with expedited movement; (6) through routes, not previously established, were to be established and used whenever expedition and efficiency of traffic would thereby be promoted; (7) existing schedules and rates and outstanding orders of the Interstate Commerce Commission were to be observed, but conflicts therein with the purposes of the proclamation or with the general order of the Director General should be brought to his immediate attention.

General Order No. 2, bearing the same date, notified the chief executives of the railroads that until otherwise directed no changes in the present methods of accounting as prescribed by the Commission would be required, and to close the accounts of their companies as of December 31, 1917, and open as of January 1, 1918, as theretofore.

General Order No. 3, related to free time for loading and unloading commodities, and increased demurrage charges and penalties. It was cancelled, January 29, 1918, by General Order No. 7, which was amended several times.

General Order No. 4, of January 18, 1918, classified the railroads into three groups and established regional directors, and provided that orders issued by the regional directors would be issued by authority of the Director General and respected accordingly.

General Order No. 5, of January 18, 1918, created a railroad wage commission to make a general investigation of the compensation of persons in the railroad service.

General Order No. 6, of January 28, 1918, ordered that the carriers' operating revenue should not be expended (1) for the payment of agents or other persons employed to effect legislation; (2) for the employment of attorneys not actually engaged in the performance of necessary legal work for the company; (3) for the payment of expenses of persons or agents constituting associations of carriers unless such association was approved in advance by the Director General; (4) for any political purpose, or to influence the election of any person or affecting any public measure. He also directed that free passes or transportation should not be issued except in conformity with the act to regulate commerce. Upon the advice of the Interstate Commerce Commission, this latter provision was slightly amended by supplemental order of March 26, 1918.

General Order No. 8, of February 21, 1918, required full compliance with the safety acts of Congress; it deprecated overtime employment, but authorized it in case of emergency and related to terms of employment and compensation.

General Order No. 9, of February 23, 1918, related to the creation of additional offices and the filling of existing offices of the carriers, and required the Director General's approval as to certain higher officers.

General Order No. 10 of March 14, 1918, related to the inventory of materials and supplies as of the beginning of the Federal control period.

General Order No. 11, of March 16, 1918, prescribed universal interline waybilling in standard forms.

General Order No. 12, of March 21, 1918, prescribed rules to be observed with respect to all railroad work involving charges to capital account.

General Order No. 13, of March 22, 1918, approved an understanding with the "Big Four" railroad brotherhoods for the basis of compensation and regulation of employment.

General Order No. 15, of March 26, 1918, stated the requirements to be observed in respect of the construction, maintenance, and operation of new industry tracks, and the operation and maintenance of existing industry tracks.

General Order No. 16, of March 28, 1918, ordered that the President of each company should be treated by the administration as the company's principal executive authority in all matters of operation under Federal control, and ousted the chairman of the boards of directors or committees thereof from exercising functions connected with the operation of the railroads under Federal control.

General Order No. 17, of April 3, 1918, prescribed regulations as to recording and accounting for all transactions which arose during Federal control.

General Order No. 18, of April 9, 1918, (afterwards twice amended) prescribed that suits against carriers while under Federal control must be brought in the county or district where the plaintiff resided or the cause of action arose.

General Order No. 19, of April 13, 1918, related to the continuance in service of the officers, agents, and eminent employees of certain coastwise steamship carriers which had been taken over by the President's proclamation, as of April 13, 1918.

General Order No. 20, of April 22, 1918, directed discontinuance of technical and arithmetical examination and checking of operating bills and statements of accounts.

General Order No. 21, of April 22, 1918, prescribed regulations for apportioning freight revenues to individual carriers subject to Federal control which performed inter-road freight service.

General Order No. 22, of April 22, 1918, appointed a general manager for the New York Canal section of the administration.

General Order No. 23, of May 2, 1918, required a weekly cash report by each carrier subject to Federal control.

General Order No. 24, of May 16, 1918, as to the renewal of expiring fire insurance policies.

General Order No. 25, of May 20, 1918, was designed to place the collection of transportation charges by Federally

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controlled carriers on a cash basis and to discontinue credit accommodations in conflict with the regulations prescribed.

General Order No. 28 increased the freight rates and passenger fares generally throughout the United States upon Federally controlled roads.

These orders summarize the general orders entered to the beginning of the second active stage of the administration, when, by the requirement that Federal managers sever their corporate connections, operation by the administration was assumed directly and fully. Thereafter the operation was quite comparable with that of a hypothetical railway system embracing about a quarter of a million miles of track, and presents no special features for our consideration. The decontrol period was without special military features.

The present situation

We are not rattling the sabre if we look at our scheme of social control and study how it would work in the event that unhappily we should be involved in another armed conflict. We would find that some of the impediments which the law imposed to coordination of transport in 1917, still stand in full force on the statute books; we would also find that many of the difficulties which confronted the Railway War Board, in the way of laws forbidding concert of action, and in securing acceptance for their directions, can not be avoided by the use of the extraordinary service powers conferred on the Interstate Commerce Commission by the Transportation Act of 1920.

The Situation in Event of Another War

The antipooling and antitrust laws still bar effectual coordination of the traffic of interstate common carriers, including railroads, express, shipping car, pipe lines, and water lines when operated under a common control or management with rail lines. There is a means of securing a limited degree of relief from the antipooling provision of law, as to railway traffic, but only under the impossible condition that competition shall not be unduly restrained. The antitrust acts have not ^{been} modified as a result of war experience, in any manner relevant to war conditions.

As to the right of the shipper to route his shipments, which the Director General of Railroads found necessary to eliminate in favor of routes most available to expedite movement and relieve congestion, machinery exists for the removal of this restriction upon coordination and cooperation, when necessary in

the public interest. Therefore this feature of the law will not operate in the future as a factor in forcing Federal control.

The Overman Act, used as an instrument of coordinating the exercise of administrative functions during the war, has lapsed. If reenacted in substance, it might facilitate achievement of necessary administrative unity as respects transportation.

In any national transportation emergency the order in which persons and property are to be served with transportation is of high concern. The carriers owe a general duty to move all traffic, without discrimination or preference. If emergency conditions prevent a carrier from moving all that is offered, the law says which commodities shall be moved, and which deferred but the general duty of equality of treatment continues so far as it is possible of accomplishment by making all shippers share the burden of transportation shortages. This legal duty in practical results may prove to be unfavorable to the public interest; hence there has evolved in emergencies of great scope the practice of issuance by some public authority of directions for the priority in movement. The Hepburn amendment, June 29, 1906, provides: That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given over all other traffic to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic. The word "carriers" here refers only to those classes of carriers subject to the provisions of the interstate commerce act, and thus does not include a number of important classes of carriers, as motor, air, and (in general) water transport. The law has a weak spot in its structure at this point.

During the late war two special acts were enacted, each limited in terms so as to lapse with the termination of the war. They provided: (1) for the imposition of a penalty for the obstruction or retardation of the orderly conduct or movement of interstate or foreign commerce, and authorized the use of the armed forces of the United States to prevent any such interference. This act was aimed to prevent sabotage, and served a useful purpose. (2) The other embraced comprehensive provisions authorizing the President to direct priority of transportation during the war, by himself or through such person as he might designate, or through the Commission. The Act authorized the carriers to maintain in Washington an agency empowered to receive his orders, and enjoined upon them the duty of carrying out his orders promptly under penalty for knowing and willful noncompliance.

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A carrier complying with any such direction for preference was exempted from civil and criminal liability by reason of giving the directed priority.

Soon after the Armistice the Commission recommended a policy to the Senate, that for the future the fundamental aim or purpose should be to secure transportation systems that would be adequate for the nation's needs even in time of national stress or peril, which should cover the following matters:

Prompt merger, without friction, of all carriers' lines, facilities, organizations into a continental and unified system in time of stress or emergency; the President should be by law authorized in time of national stress or peril to assume possession, control, and operation of the transportation systems of the country to such extent as may be necessary to serve and protect the general public safety and welfare. Development should be encouraged of inland waterways in coordination with the rail transportation systems.

The Transportation Act, 1920, attempted to meet impediments of law which existed in 1917, in that it provided means for a limited legalization of pooling of traffic and earnings.

Complete power to make, alter, and suspend car service rules was lodged in the Commission. The Esch Car Service Act of 1917 was thus amplified and made more workable in event of emergencies. Emergency powers of sweeping character were lodged in the Commission to give directions as to priorities, embargoes, common use of terminals and motive power; over the routing and rerouting of traffic, and in the creation of temporary through routes. The provisions for priorities, however, are not so broad in respect of the classes of carriers affected as were the provisions of the priorities act of 1917, which lapsed with the termination of the war. The Commission is now authorized, in the exercise of some of those powers, to give its directions through such agencies as it may delegate for the purpose. It may to the extent it deems proper utilize the services of an agency such as the American Railway Association.

The Transportation Act did not suspend in any particular the antitrust acts, except to the extent that the accomplishment of consolidations, mergers, and acquisitions of control under the scrutiny and authority of the Commission relieves from the operation of contrary acts, and as far as pooling may now be permitted.

A complete plan was adopted for the approval of railroad securities.

The Commission may require the acquisition by a carrier of facilities to perform its duties as to car service, and to extend its line --- though the extent of the latter power is doubtful and is in litigation.

Provision was made for the merger of four principal express companies into one, which has since been accomplished.

The Commission is authorized to avail itself of the cooperation, facilities, and services of the State Commissions.

Administrative machinery was set up for the adjustment of controversies as to wages and conditions of employment of railroad employees. The operation of the machinery proving unsatisfactory, the present tribunal, the Board of Mediation, was created in substitution, with functions of mediation rather than mandate, and with less centralized authority.

The rate functions of the Commissions were fully restored. A Congressional declaration as to the rule of rate-making was formulated. Under it, and within 5 months from the end of Federal control, in a normal manner, after full hearing, rate increases were authorized to compensate for the unduly low basis left by the Railroad Administration at the termination of Federal control, and for the subsequently authorized wage increases and readjustments.

An elaborate system of guaranties provided for the decontrol period and transition during the six months following Federal control; and many short line carriers received compensation for what was deemed to have been rather summary treatment they received. Provision was made for the ascertainment and liquidation of accounts between the carriers and the Government growing out of Federal control.

The ordinary function of the Commission is to administer the interstate commerce act impartially, and it is not responsible for production and distribution problems, and is not to pick or choose between shippers or traffic. Its extraordinary, emergency, functions, are of exactly the reverse character. In both 1920 and 1922, in emergency conditions which partook somewhat of the nature of those in times of war, the Commission had forced upon it the unwelcome duty of determining what transportation should be afforded, and what should be denied, and to coordinate the railways in order to meet national emergencies. The experiences of 1920 and 1922 clearly suggest the need in such an emergency for a single authoritative public voice to state the problem from the National standpoint, while leaving to the Commission the detail of carrying out the policy so defined.

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Federal control was expensive, but necessary. On December 31, 1930, there stood a net profit and loss deficit growing out of Federal operation of transportation systems by the Director General, of \$1,092,584,354.66. This sum does not include payments under the six months' guaranty period after termination of Federal control which was provided by the Transportation Act, 1920, the certifications under which have amounted to about \$529,000,000. Under section 204 of the Transportation Act an aggregate of about 10 millions of dollars additional has been certified. There were still \$33,998,585 outstanding on loans to railways made under section 210 of that act. The true cost of Federal control, however, would be found in the extra accounting, litigation, and in wastes of whatever kind incident to the change into and out of Government operation, and to Government management in so far as it may have been in its net effect more wasteful than private operation under war conditions.

Should war come upon us again with some degree of Federal control of the railways, the cost, expressed in terms of direct liability of the Government under the Fifth Amendment, will be largely determined by the character of the control exercised. It may vary according to the nature of the taking and utilization, from merely nominal damages, not recoverable from the Government, to the full rental value of property completely utilized or actual value if the dispossession be complete and permanent. The carrier is entitled to receive the value of what it has been deprived, and no more. If there is a merely technical control of the property by the Government of such a character that it does not cause any loss to the carrier, such control does not justify the award of any compensation. This all suggests the utilization of the emergency powers of the Commission instead of a direct assumption of control.

Enlarged Capacities, and Changes Generally Improving Ability to Meet Emergencies in the Future

Since the War there has been a marked betterment of the administrative machinery provided by law for the handling of emergency transportation situations, and that machinery has been tested under conditions of great stress and found to be workable. Economic changes which have been so forceful as to amount to a second industrial revolution are still in progress.

In the last 15 years there have been marked increases in the efficiency and size of the operating plant of the railways; the water tonnage has increased both in foreign and domestic service; and inland waterways which were hardly more than projects have become actualities; there has been an incredibly rapid

development and widespread use of motor truck and auto bus service, upon a highway system enormously expanded and improved since 1917; the advent of the aeroplane as a commercial factor; the development of the system of pipe lines conveying oil or gas, the petroleum products; and the long distance transmission of electric power. These factors have the effect of either increasing the capacity of the railroad's plant, or of taking away from it huge amounts of traffic which but a short time ago could move only by rail. It seems conceivable that the railroads can again be subjected to such a strain as was put upon them in 1917.

The entire lack of training of industrial personnel and management in meeting such emergency conditions as we faced in 1917 was a decided factor in the then inefficiency and resulting confusion and congestion. Attempts to meet the emergency trained the personnel and management of carriers, of shippers, and of the administrative branch of the Government as well.

Recommendations for Changes in Legislation

If a military emergency should come, we know that the more that cooperation in service assimilates itself to unification, the less will be the cost and the more efficient will be the service, and the less the disturbance of usual economic relations in the country. Unification should be sought as soon as the emergency arises. To permit prompt and unhesitating action, war carriers or shippers should not be subject to the penalties of the antitrust acts for things they do in response to the emergency request or demand of the President or other agency of the Government.

At as early a stage in the emergency as possible, an officer or agent should be designated by the President, with functions which might be termed those of a Director General of Transportation. He should carry the authority of the President and Commander in Chief; he should act as the coordinating agent between all branches of the military and civil establishments, and carriers of all descriptions; --- rail, water, highway, air, or pipe line, --- individually or collectively, so far as transportation is concerned and as may be deemed necessary. To that end he should be able to formulate the problem set to be met by the carriers and by the regulatory bodies, Federal and State, and he should speak responsibly and definitely as to where the public interest lies in respect of transportation, and as to production and distribution, so far as affected by transportation.

Three distinct courses would be open to the President as Commander in Chief to coordinate the agencies and resources of the Government and of the carriers:

1. Utilization of the existing agencies provided by law, particularly by the use of his own statutory powers as to the order of priority of movement, through his Director General of Transportation and by use of mandatory expanded emergency powers of the Commission in the execution of the plan. Exercise of these powers may be supplemented by such voluntary cooperation through organizations of carriers as he accepts.

2. Acquisition of possession and control under the Federal Possession and Control Act, and exercise of that control in a manner which falls short of actual Government operation, as to selected carriers or groups of carriers, or to an extent limited so as not to oust the owners from the beneficial occupancy of their properties.

3. Assumption by the President of possession and control and actual operation of particular systems of transportation or of all transportation systems.

Of these possible courses, the first is ^{the} most desirable. The second course, of limited possession and control should not be entered upon if utilization of the existing laws or agencies will meet the emergency; and the third, full possession and operation, should only be undertaken as a last resort.

To minimize direct expense to the Government, control should be exercised under the regulatory power as far as possible, rather than by actual appropriation of property or of the beneficial use thereof under the war power. No formal guaranty of earnings or awarding of just compensation would be necessary unless what was done was equivalent to a taking of the property.

Financing the needs of the carriers may be accomplished as was done during the transition period following Federal control. There was then created a revolving fund from which loans were to be made to necessitous carriers upon the certificate of the Commission as to public interest and adequacy of security. It is not wise that a railroad finance corporation should seek to raise large sums in competition for funds with the Government.

Certain rather simple modifications of existing laws are desirable, in order that they may be made available promptly if an emergency should occur.

1. The Federal Possession and Control Act of August 29, 1916, should be clarified so as to avoid uncertainty as to what is meant by "any system or systems of transportation" which the President takes under Federal possession and control.

2. The Commission should be permitted in time of war, with or without hearing, to authorize promptly the pooling or division of traffic or earnings, regardless of the effect upon competition. The present law requires as a condition precedent that competition shall not be unduly restrained. Exigencies of war may require competition to be done away with for the time.

3. In time of war or threatened war the Commission should have a summary power as to rates, similar to its emergency powers as to service and routes, so that it may promptly fix emergency rates limited to a period to be declared by the Commission. The resulting rates should be subject to review and correction upon a complaint or investigation on the Commission's own motion, as in the case of rates established by the carriers in usual course.

4. The definition of "car service" and the scope of the interstate commerce act should be broadened so as to include other forms of transportation service than railroad, in time of war or threatened war, and "carrier by railroad" should be made to include other kinds of carriers than railroads, so that the emergency powers of the Commission as to service may cover all forms of interstate transport. Such broadening of power should be limited to the emergency period, to be called into operation by appropriate legislative act or executive proclamation under authority of law.

5. Power should be vested in the President, in time of war and for a brief transition period thereafter, enabling him to readjust functions as between various executive and administrative departments and agencies of the Government. This was done by the temporary Overman Act of May 20, 1918.

These modifications would greatly simplify the task of prompt conversion of the transport system of the nation from a mere facility of commerce to an effective military engine.