But that was not sufficient. When in 1887 Congress finally did exercise the right given it by the Federal Constitution to regulate commerce between the States and establish the Interstate Commerce Act, that body felt the

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necessity of making at the start a full statement, the reasons why it had been established. It had come about that where Congress had been prompt in regulating commerce on the ocean and on the rivers, they had been very slow in regulating commerce by land, for the simple reason that there was so little of it.*

It was felt, too, that the rules of the common law were adequate. Nobody faithfully attempted to monopolize the highway, but when steam came in there was another thing. Much had been done about canals since. they usually were State corporations, and each State provided for their regulations. The feeling was that transportation should be left, so far as possible, to the State. Now the States constructed the Interstate highways, that is, they granted them charters. Federal interference seemed unnecessary. As a matter of fact the first interference was largely against the States. When the railroad felt that it had been wronged it appealed to the Judicial Department of the Government to stop what it called interference. The result of this was that the railroads had been able to fight off the States and to become largely a law to themselves. Of course there was the common law, but it turned out to be inadequate. For obvious reasons, said the Interstate Commerce report, that the new

* Page 236, Langsam

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method of land transportation, that is the railroad, was wholly unknown to the common law and so different from those under which the common law ruled. The doubts and differences of opinion as to the extent to which those rules could be made applicable was inevitable. (Quote P. 238

It showed a different thing from our common highway than the fact that it was a copporation largely owned by private citizens. It was one of those cases in which business had to be developed before law could be made to govern it - fully govern it. You could not depend in this case upon the restraining effects of ethical law.- the rules of fair play.- if there were no social considerations in the minds of those who governed the railroads.you

Note) Here I might introduce Owen Young's comment on the way that law works on the development of the business before it chrystallizes itself.

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The promotor was looked upon as a public enemy ~~benefactor~~, so large a proportion of the money, both public and private investors invested in railroads was lost.

That is, it was the consciousness of the incorporaters in the fact that they were little better than adventurers that had done so much to stir the public against the railroad and to force the Federal Government to take a hand in their regulation.

Commenting on the system of rebates, drawbacks, etc., the report declares that the willingness to break down this effort was not wanted among intelligent shippers. It was the common observation, even among those who might hope for special favors, that a system of rates open to all and fares between localities would be far preferable to a system of special contracts into which so large a personal element entered or was commonly supposed to enter.

Nobody really could do business with any certainty under the great system; that is the system which Mr. Rockefeller thought necessity to bring order into the business. It really was bringing the greatest disorder.

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An excellent point that the report makes is that the law was so strong against the practice that had the case been properly brought to a judical test there is no doubt that it would have been held illegal under the common law. ~~The trusts were difficult~~ Ref - ? and those who fixed the rates were strong and even if you won your case in the long run you might suffer more than you had from the rebates.

It was natural enough as the report shows that those effected instead of going to the Court turned their energy to securing same service for themselves.

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