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## FEDERAL CONTROL OF INTRASTATE RAILROAD RATES.

So much has been said, written and published concerning the legislative control of railroad rates and the jurisdiction respectively of State and National authority over such rates that it is difficult at this late day to contribute to the discussion anything of real value. Moreover, an exhaustive review of the "Evolution of Federal Regulation of Intrastate Rates"[1] which has recently appeared in the Harvard Law Review over the name of an accomplished writer, William C. Coleman, Esquire, of the Baltimore Bar, contains a complete résumé of the leading cases, as well as a full discussion of the latest decisions of the United States Supreme Court and furnishes a new reason for regarding further elaboration of the subject unnecessary. However, the conclusions reached by Mr. Coleman with reference to the most important of these recent decisions, *viz.:* The Minnesota Rate Case [2] and the Shreveport Case,[3] are believed to be fundamentally unsound, and this belief, taken in conjunction with the importance of the questions involved, must constitute the excuse for a brief consideration of the decisions in question and of the views urged by Mr. Coleman.

[1] 28 HARVARD LAW REVIEW, 34 (Nov. 1914).
[2] 230 U. S. 352 (1913).
[3] Houston East & West Texas Ry. Co. v. U. S., 234 U. S. 342 (June, 1914).

In the first of the decisions referred to, *viz.*, the well-known Minnesota Rate Case, the Supreme Court of the United States decides that the States retain the right to regulate intrastate railroad rates so long as such regulation does not conflict with any legislation of Congress on the subject, and consequently refuses to condemn certain State statutes establishing intrastate rates which in the light of the evidence adduced were claimed to constitute a burden on interstate commerce. In reaching this conclusion, however, the Court suggests that the power of Congress to regulate interstate commerce may justify, in certain circumstances, a degree of control over interstate rates, as, for example, a prohibition of undue discrimination against an interstate shipper where such undue discrimination results from the establishment by State authority of an intrastate rate which gives an intrastate shipper a preference over an interstate shipper desiring to forward property to a common consuming market. This principle is later definitely established in the Shreveport Case wherein the Court decides, further, that Congress has prohibited such discrimination in the Interstate Commerce Act, and that a State rate becomes inoperative when, after proper investigation, the Interstate Commerce Commission finds, as a matter of fact, that it creates undue discrimination against some locality outside the State.

Taken together, these two cases have established the important rule that Congress is clothed with authority under the Constitution to legislate with respect to intrastate rates when such legislation is necessary to the effective and complete legislation of interstate commerce. It is this principle which Mr. Coleman seems to regard as an unjustifiable intrusion upon the legislative authority of the State and an unwarranted departure from the principles of prior decisions of the Supreme Court. His conclusion in this regard is believed to be unsound in both particulars, and a review of the decisions will show, it is submitted, that the case finds full justification in principle in all the important precedents bearing upon the commerce clause. It is not intended, however, to refer to these cases in detail, since conceded principles of constitutional law seem to furnish ample support for this contention.

In the first place, it is to be noted that the decisions of the Supreme Court referred to fully recognize the inherent power of the State to regulate intrastate rates. Accordingly, the State power in this regard is given the same status as its other powers of internal police. In the exercise of these powers of internal police it is conceded to have full discretion except when the measures it adopts impose a direct burden on interstate commerce, or what is, perhaps, the same thing, when they deal with interstate commerce in a matter of national concern. The great central conclusion of the Minnesota Rate Case is that the regulation of intrastate rates by the States does not, in and of itself, necessarily place a direct burden on interstate commerce or affect it in a matter of national concern.

But the law has never permitted a State statute to operate, even when passed under admitted powers, if it comes in conflict with an Act of Congress passed in the exercise of a duly granted power; and there is no more reason why the rate-regulating power of the State should rise to a higher level than its power of internal police. This last named power has time and time again been held inoperative when it has come into collision with the lawfully exerted power of the Federal Government. In fact, the Minnesota Rate Case, by conceding the State's right to regulate intrastate rates in the absence of action by Congress disposed of a doubt which had been gaining strength to the very *existence* of such power under modern commercial conditions, and, to this extent, confirmed the State's view of the controversy.

The only question, then, on which any doubt might conceivably be entertained is whether the power of Congress to regulate interstate commerce extends to the control of intrastate rates. And here it is to be noted, first, that the Court does not hold that the power of Congress extends to the regulation of *all* intrastate rates, but to the regulation of those only, which, if unregulated by it, may injuriously operate upon interstate commerce. Thus in the Minnesota Rate Case, the Court says, at page 402:

> "Our system of government is a practical adjustment by which the national authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local

> efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, *although it may have such a relation to interstate commerce* as to be within the reach of the federal power. In such case, Congress must be the judge of the necessity of federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our constitutional system has thus been made possible."

And again, in the Shreveport Case, the Court says, at page 351:

> "The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter, or preclude the federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field."

It is obvious, therefore, that there is no wholesale assertion of jurisdiction over intrastate rates, but only the statement of the principle that such rates are properly subject to federal control where the freedom of interstate commerce and its proper regulation cannot otherwise be secured.

In other words, the right to regulate intrastate rates is a power implied from the right to regulate interstate commerce and may be exerted when there is such a relation between the two kinds of commerce that the effective regulation of the latter involves some control of the former. This, however, is nothing more than an illustration of the application of the long-settled doctrine of the implied powers, a feature of the situation which Mr. Coleman seems to overlook entirely. That is to say, his difficulty apparently results from a belief that the power to regulate

intrastate rates is not an inherent part of the power to regulate interstate commerce. But even if this should be conceded, there is ample justification for the Court's decision, since the principle it lays down is confined to the case where the regulation of the intrastate rate is "necessary and proper" to the effective regulation of interstate commerce.

As far back as *Gibbons* v. *Ogden*[4] such a situation seems to have been contemplated by the great Chief Justice who delivered that opinion. In confirming the State's right to regulate commerce within its borders, he does so with a qualification which would scarcely have been more apposite had he had in mind the precise controversy presented in these rate cases. Thus he says, at page 194:

> "It is not intended to say that these words [commerce . . . among the several States] comprehend that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, *and which does not extend to or affect other States.*"

The very basis of the asserted power in the present instance is found in the fact that the exerted power of the State *does* extend to and affect other States and the truth of this assertion will more fully appear hereafter when consideration is given to the controversy presented in the Shreveport Case.

The Minnesota Rate Case and the Shreveport Case disclose, therefore, no departure whatsoever, from the fundamental principles asserted in *Gibbons* v. *Ogden* and succeeding decisions. Their real significance is found in the growing perception and recognition on the part of the Supreme Court of the interrelation of intrastate and interstate rates, and the profound commercial disturbance certain to result from any improper adjustments between them. Herein lies the explanation of the changing attitude of the Court upon the question of the State's right to regulate rates. In the earliest cases, it had been held that the State might regulate even interstate rates.[5] Then this rule was

[4] 9 Wheaton, 1 (1824).

[5] See 28 HARVARD LAW REVIEW, p. 51 ff., Chicago, B. & Q. R. R. Co. v. Iowa, 94 U. S. 155 (1876); Peik v. Chicago & N. W. Ry., 94 U. S. 164 (1876); Winona & St. Peter R. R. v. Blake, 94 U. S. 180 (1876).

repudiated and the interstate rate was held to be beyond the State's right of regulation.[6] Later comes the Eubank case, in which the Court disallows the right of the State to require intrastate rates to be adjusted with reference to interstate rates.[7] In this case there begins to appear more definitely the close interrelation between interstate and intrastate rates, an interrelation which finally evolves the decisions under discussion. These decisions, while maintaining the State's regulatory power over intrastate rates, hold that Congress may control intrastate rates when this is necessary and proper to the effective and complete regulation of interstate rates. To this proposition must be appended the necessary corollary, that in such case and to such extent the State regulation becomes inoperative.

It seems manifest from a review of the cases that the principles enunciated from time to time by the Court continue unaltered, and that the difference in the decisions arises not from a divergence from established precedent, but results from (a) a change in commercial conditions, which, in consequence of the increasing competitive interrelation of the different localities of the country, has brought about a closer interdependence between intrastate and interstate rates than existed formerly; and (b) a growing perception of this fact on the part of the Court.

Perhaps no clearer illustration of this interrelation of localities, and interdependence of rates, could be desired than the Shreveport Case itself. For its full understanding reference should be made to the decision of the Commission,[8] but, without reviewing in detail the facts there stated, it is sufficient to call attention to the following sentence from the opinion of Mr. Commissioner Lane (page 36):

> "Quotations need not be multiplied to demonstrate that Texas has a policy of her own with respect to the protection of home industry which has been made effective by consistent and vigorous action on the part of her commission."

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[6] See 28 HARVARD LAW REVIEW, p. 54 ff., Wabash, St. L. & P. Ry. Co. v. Illinois, 118 U. S. 557 (1886). *Cf.* Hanley v. Kansas City, *etc.*, Ry., 187 U. S. 617 (1903).

[7] Louisville & Nashville R. R. Co. v. Eubank, 184 U. S. 27 (1902).

[8] R. R. Commission of Louisiana v. St. L. S. W. Ry. Co., 23 I. C. C. 31 (1912).

In fact the particular rates under consideration in this case clearly tended to preclude traffic between Shreveport and Texas points and to divert the business to Texas distributing centers, the avowed purpose being to build up the commercial interests of the State at the expense of interstate traffic. Obviously, if the rates from Houston and Dallas to some Texas village are substantially lower than the rates from points outside Texas, traffic from such outside points will be most effectively interfered with, if not altogether destroyed. In practical operation, such a rate structure is quite as effective for the purpose contemplated as a protective tariff, and there is no substantial difference, so far as commercial intercourse is concerned, between such a differential rate structure, and a State tax on the importation (to use the word loosely) of articles brought from another State.[9]

Of course, it has long since been settled that a State may not lay such a tax, a rule announced by Chief Justice Marshall as far back as *Brown* v. *Maryland;*[10] and while to-day it doubtless rests on grounds other than those there suggested, the underlying principle that no State should be permitted to impede the free flow of interstate commerce is believed to be essentially the same as that maintained in *Brown* v. *Maryland.* In this connection, a few quotations from this decision will amply suffice. Thus Chief Justice Marshall says, at page 440:

> "Conceding to the full extent which is required, that every State would, in its legislation on this subject, provide judiciously for its own interests, it cannot be conceded that each would respect the interests of others. A duty on imports is a tax on the article which is paid by the consumer. The great importing states would thus levy a tax on the non-importing States, which would not be less a tax because their interest would afford ample security against its ever being so heavy as to expel commerce from their ports. This would necessarily produce countervailing measures on the part of those States whose situation was less favorable to importation."

And again on page 449:

> "If the States may tax all persons and property found on their territory, what shall restrain them from taxing goods in

[9] In this connection see Robbins v. Shelby County Taxing District, 120 U. S. 489 (1887), and the many cases that have followed it.

[10] 12 Wheaton, 419 (1827).

> their transit through the State from one port to another, for the purpose of re-exportation? The laws of trade authorize this operation, and general convenience requires it. Or what should restrain a State from taxing any article passing through it from one State to another, for the purpose of traffic? or from taxing the transportation of articles passing from the State itself to another State, for commercial purposes? These cases are all within the sovereign power of taxation, but would obviously derange the measures of Congress to regulate commerce, and affect materially the purpose for which that power was given."

While these passages refer primarily to the State's power to tax imports, they explain clearly the principles which underlie the grant to Congress of the commercial power. That is to say, that State measures may operate injuriously to the general interest although attempted to be carried out strictly within the confines of the State, and that to permit the enforcement of such laws would, in the matter of commerce, bring about the same commercial warfare that existed prior to the adoption of the Constitution and constituted an important factor in securing its acceptance by the people.

If the Texas policy of rate-making should have been permitted, sooner or later there would have been retaliation on the part of the States bordering on her territory, and there can be no possible doubt that a policy of protective rate structures would soon have extended itself over the whole country. The similarity between the conditions which would have resulted and the conditions existing prior to the adoption of the Constitution is too apparent to require elaboration. What is presented is *only a different phase of the same commercial rivalry* which was designed to be kept within bounds by the powers granted to the Federal Government. That Government alone could deal with the situation,[11] and yet Mr. Coleman would seem to deny it the constitutional authority to do so, and thus leave the Government

[11] As Mr. Justice Hughes says: "The power to deal with the relation between the two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority." Houston East & West Texas Ry. Co. v. United States, 234 U. S. 352, at p.

helpless to remedy the very kind of situation which was intended to be guarded against when the Nation was created.

An excellent illustration of such retaliatory action occurred during the current year when the railroads of the country attempted to comply with the first decision of the Interstate Commerce Commission in the Industrial Railways Case.[12] Proceedings were promptly instituted before the various State Commissions with a view to preventing the adoption of the new system in connection with intrastate shipments. Illinois was the first State to act in response to the complaint of the shippers and its action in this regard constituted an important factor in determining the action taken by the Public Service Commission of Pennsylvania. This latter tribunal, fearing that the interests of the Pennsylvania shippers might be prejudiced in competitive markets by the action of the Illinois Commission if the Pennsylvania Commission should decline to act in similar fashion, promptly followed the lead of the Illinois Commission. It is not fair, perhaps, to describe this action as retaliatory, but it illustrates forcibly the inter-relation between intrastate and interstate commerce which is assumed to exist by those best qualified to judge, and the incident suggests the prejudice and disadvantage which may be sustained by persons outside the boundaries of a State because of action taken by it with reference to rates wholly within its borders.

If this situation exists—and that it does is incontrovertible—how can it be argued that the power of Congress to preserve the proper equilibrium and harmony between interstate and intrastate rates is not fortified by the same principles which have always justified the exercise of implied powers where these are necessary to the full and effective exertion of the powers expressly granted? The evil which is sought to be remedied is older than the Constitution and one of the very evils which that instrument was designed to destroy. It is only the phase in which it is presented that is new.[13]

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[12] 29 I. C. C. 212 (1914).

[13] See Mr. Justice Catron's opinion in the Passenger Cases, 7 Howard, 283 (1849), at page 445: "Before the Constitution existed, the States taxed the commerce and intercourse of each other. This was the leading cause of abandoning the Confederation and forming the Constitution,—more than

It results from what has been said that the present dissent from Mr. Coleman's views involves the contention that the constitutional power of Congress asserted in the Minnesota Rate Case and in the Shreveport Case discloses no new principle, but results from the application of principles which have been recognized since the foundation of the Government; and it is believed that his hypothesis overlooks the fact that the regulation of intrastate rates which is justified by the Court is a regulation necessary to the complete and effective enforcement of the power over interstate commerce; that it is, therefore, an exertion of the so-called implied powers of the Federal Government, and that the State's regulatory measures when they come into collision with this properly exerted power of Congress necessarily become inoperative.

Here it is that there is found a complete answer to the implication contained in the concluding paragraph of his article, that the Interstate Commerce Commission is left to determine the constitutionality of a legislative act of a State. It is submitted that this is not at all what is determined. The State act regulating rates is within its acknowledged powers but necessarily becomes inoperative when in collision with the Act of Congress. All that the Commission determines is whether, as a matter of fact in the particular case, such collision has occurred.[14]

It is not intended to include in this discussion any comment upon the Shreveport Case so far as it involves a mere question of statutory construction. It may be noted, however, that the essential difference between this case and the earlier decision of the Supreme Court in *East Tennessee, Virginia and Georgia Railway Company* v. *Interstate Commerce Commission*,[15] with which Mr. Coleman compares it,[16] resides in the fact that the decision of the Commission in the latter case *could not* operate to relieve the car-

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all other causes it led to the result." Citations to the same effect could readily be multiplied.

[14] The situation is precisely the same in principle as that disclosed in Lake Shore & Michigan Southern Ry. Co. v. Ohio, 165 U. S. 365 (1897), in which the Supreme Court sustains the authority conferred by Act of Congress upon the Secretary of War to prevent bridges erected by States from interfering with interstate commerce.

[15] 181 U. S. 1 (1901).

[16] 28 HARVARD LAW REVIEW, 78.

rier from the effect of the competitive situation which caused the reduction of the lower rate alleged to create discrimination, whereas in the Shreveport Case, the effect of the Commission's order is, under the present decision, amply sufficient to dissipate the influence of the conditions regarded by Mr. Coleman as comparable with those disclosed in the East Tennessee Case.

But while it seems unnecessary to dwell on the interpretation of the Act of Congress, which is believed to be fully justified by the Court's opinion, it may not be amiss to point out briefly some of the admirable features of the system which is developed as a result of the Shreveport decision.

It must be manifest from a review of the facts in the Shreveport Case, and, indeed, from the most casual consideration of the subject, that there should be some tribunal vested with the necessary authority to prevent the disturbance of interstate commerce by the action of State commissions consciously or unconsciously biased in favor of local interests. Furthermore, our system of government makes it desirable that State control should *not* be interfered with except when it is necessary to preserve interstate commerce from embarrassing restrictions and interference. Finally, to the satisfactory accomplishment of both these ends, the solution of the questions involved—which are inherently questions of fact—should be devolved upon some tribunal possessed of expert knowledge in the premises, so that it may decide with accuracy and with a view to the conditions prevailing generally throughout the country, whether the State action complained of causes a real collision with the exerted Federal authority.

These three purposes are all accomplished by the decisions in question. The State's control of intrastate rates is, in the first instance, left unimpaired. Only when the Interstate Commerce Commission, enlightened by long experience and familiarity with the questions involved, finds a real disturbance of the harmony and equilibrium which should prevail between the interstate rate and the intrastate rate, is there a determination that a collision has taken place between the State authority and the Federal authority. This Commission can then, by an order duly entered in the premises, establish the proper relationship between the

rates; but the result is an interference with the State action so far, and so far only, as is necessary to safeguard the interests of the Nation.

This is, of course, strictly in accord with the genius of our institutions, but the element in the situation which seems especially admirable is the machinery which is developed for the review of questions of fact which require for their determination a special knowledge and experience. No court could hope to deal effectively with these questions, and if a court should attempt to do so, it would undoubtedly find itself in conflict with other courts. But one of two solutions would be possible, either to hold that the State rates should prevail in all cases, as contended by counsel for Minnesota in the Minnesota Rate Case, or that the State was without power in the premises. It is obvious that the first rule would permit the continuance of evils which should be eliminated while the latter solution would cripple State power to an extent far in excess of what is necessary to maintain the supremacy of the Nation.

But the decisions of the Supreme Court preserve the State power to the full extent consistent with the interests of all the people and at the same time provide a tribunal competent to deal intelligently and effectively with the situation so as to avoid interference with interstate commerce. In many respects, the system thus evolved finds an analogy in the appellate jurisdiction of the United States Supreme Court in its relation to the State courts, since the subject matter of review is confined to the phase of the case involving a Federal controversy.

Furthermore, it is believed that the existing law adequately safeguards the situation so as to furnish means of avoiding even the temporary disturbance resulting from improper State action. By virtue of the power of suspending rates conferred upon the Interstate Commerce Commission by the provisions of Section Fifteen of the Interstate Commerce Act, it is believed that this Commission could suspend, prior to its effective date, any tariff filed in compliance with an order of a State commission which might be regarded as creating the possibility of undue discrimination under Section Three of the Act. The power of suspen-

sion is not limited to tariffs containing rate advances, but applies to any tariff, and has been invoked by the Commission to stay reductions and to avoid discriminations, so that, upon the *prima facie* showing of possible discrimination, it would seem appropriate that the Interstate Commerce Commission should suspend a tariff issued in compliance with the order of a State commission. If such power may lawfully be exercised, it is manifest that the Interstate Commerce Commission is now possessed of a power very similar to one of the usual incidents of appellate jurisdiction, since, by suspending the tariff in question it may prevent its taking effect and proceed with an investigation wherein it can ultimately determine whether the action of the State tribunal disturbs the proper relation between the intrastate and the interstate rates, the State rate remaining in abeyance until the investigation is concluded. This gives all the essential advantages of a *supersedeas.*

It is not impossible that an assertion by the Interstate Commerce Commission of the power to suspend intrastate rates prescribed by a State commission would be regarded as a radical innovation, but it is difficult to perceive why the existence of such power is not supported by the same considerations which justify the power of the Interstate Commerce Commission to condemn as discriminatory, after due hearing, intrastate rates which have been put in effect in obedience to the orders of the State tribunal. Since Congress has deemed it necessary to confer upon the Interstate Commerce Commission the power of suspension in order to secure the adequate enforcement of the requirements of the Interstate Commerce Act with respect to the reasonableness and the non-discriminatory character of rates, it is difficult to discover any distinction between the exertion of this power in one case which comes within the scope of the Act and in another case equally within the purview of its terms; and since the Shreveport Case settles once and for all the proposition, that discrimination under the Act may be predicated upon an improper relation between an intrastate rate and an interstate rate, it would seem to follow necessarily that the power of suspension extends to this case as well as to any other arising under the Act.

Furthermore, if the effective regulation of interstate commerce justifies the implied power to condemn intrastate rates which disturb the proper relationship between interstate and intrastate rates, the importance of exempting interstate commerce from the temporary disturbance which would undoubtedly result from improper decisions on the part of a State tribunal would seem to justify fully the power of suspension in such cases as a power necessary and proper to the complete and effective regulation of interstate commerce.

There seems to be no more reason to deny the Interstate Commerce Commission the right to extend the power of suspension to a case of this character than there is to deny the Supreme Court of the United States the right to allow a *supersedeas* in connection with a case coming up from a State court for decision on a Federal question. There is a possibility that the decision of the State tribunal is correct and involves no disregard of any Federal right; but here, just as in the case of intrastate rates established by a State commission, there would be a very definite impairment of the full maintenance of Federal authority unless temporarily State action be restrained until the Federal tribunal can determine for itself the Federal question presented.

The importance of such a power of supervision not only to the railroads, but to the shippers, is manifest. For if such power does not exist, it results that the rates established by State commissions will take effect, and that the real redress available to shippers and the carriers will be a formal complaint to the Interstate Commerce Commission, which can hardly be brought to a final conclusion within a year from the time of its filing. It is submitted, however, that the power of suspension is amply adequate to suspend the rates in question, and if so, there now exists under the Shreveport Case a practical and effective means of maintaining the supremacy of the federal power free from an unwarranted State interference, without, however, interfering with proper State regulation.

It is quite possible, moreover, that powers may be conferred upon the Interstate Commerce Commission with respect to mat-

ters of operation, similar to powers already existing with respect to so-called traffic matters, and, in this event, it is manifest that a supervisory control of State action could be established which, while leaving the States free to deal with matters of local concern, would still enable the federal authority to secure the freedom of interstate commerce from burdensome interference on the part of the State. The decisions of the Supreme Court with reference to State statutes requiring the stoppage of interstate trains [17] admirably illustrate the advantage of confiding questions of this nature to an administrative tribunal, under whose authority the line between the permitted and the prohibited State action can be drawn with greater nicety and to more advantage than is possible under the system now in vogue.

Briefly, therefore, the Minnesota Rate Case and the Shreveport Case together furnish the solution of the serious problem presented by divergent rulings on the part of State and Federal authority over railroad rates, and this solution, preserving as it does, the fullest State power consistent with the general welfare of the Nation, is believed to disclose one of the finest examples of the practical working out of our dual system of government. It is fully in accord with all the best precedents and an admirable illustration of the genius of our institutions happily described by Mr. Justice Hughes in the Minnesota Rate Case:

> "Our system of government is a practical adjustment by which the national authority as conferred by the Constitution, is maintained in its full scope without unnecessary loss of local efficiency."

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[17] See Illinois R. R. Co. v. Illinois, 163 U. S. 142 (1896); Gladson v. Minn., 166 U. S. 427 (1897); Cleveland Ry. v. Illinois, 177 U. S. 514 (1900); Atlantic Coast Line v. Wharton, 207 U. S. 328 (1907), *etc.*