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## Book Review

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## BOOK REVIEW

**TRAVELLERS AND TONNAGE: THE VANISHING MIXED TRAIN.** By Professor William E. Thoms, Professor of Law, University of North Dakota; published and distributed by Upper Great Plains Transportation Institute, North Dakota State University, Fargo, North Dakota (1975).

The railroad is the key to the industrialization drive of the underdeveloped countries. The future of countries like India<sup>1</sup> and Turkey<sup>2</sup> depends on the railroad. Theirs is not the economy of super-highways over-crowded with diesel trucks, and mammoth airports ferrying passengers and air freight. Our economy also depends upon the railroads to move the basic raw materials to market, but railroad tonnage has been steadily dropping as a percentage of total tonnage transported in this country.<sup>3</sup> Where time is of the essence, especially in trips of under 500 miles, the trucker carries the traffic.

Except for the bankruptcy problems headlined by the Penn Central's collapse, the railroad has generally dropped out of the folk consciousness of this country. The most popular railroading song of recent years has been Arlo Guthrie's *City of New Orleans*, in which he laments "This train's got the disappearing railroad blues."<sup>4</sup> A relatively unknown, but classic song is Bob Segar's nostalgic *Railroad Days*.<sup>5</sup> Of the same genre is Gordon Lightfoot's *Canadian Railroad Trilogy*,<sup>6</sup> but Lightfoot then presents us with *Early Morning Rain*,<sup>7</sup> wherein he notes "you can't jump a jet plane like you can a freight train." The only best selling book on the railroad industry in recent years is *The Wreck of the Penn Central*.<sup>8</sup>

Replacing Casey Jones, The Orange Blossom Special and the Wabash Cannonball<sup>9</sup> in the "folk" of this country is the truck driver, whose glories are no longer limited to the country-western stations.

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1. Shaw, *Guess Who Operates the Largest Railroad System in the Free World? India*, *TRAINS* 21 (March 1968).

2. Middleton, *The Trains of Turkey*, *TRAINS* 20 (March 1970).

3. Intercity tonnage by rail transport has dropped from 62.3% of the total intercity freight in 1939 to 37.7% in 1970 and an estimated 36.8% in 1975. The corresponding figures for trucks are 9.7% in 1939, 21.3% in 1970 and 21.3% in 1975. *TRANSP. ASS'N OF AMERICA, FACTS AND TRENDS* 8 (12th ed. 1975).

4. S. Goodman, *City of New Orleans* (Kanna Ripppa Music/Turnpike Tom-ASCAP) (performed by Arlo Guthrie).

5. B. Segar, *Railroad Days* (Gear Publishing-ASCAP).

6. G. Lightfoot, *Canadian Railroad Trilogy* (Witmark-ASCAP).

7. G. Lightfoot, *Early Morning Rain* (Witmark-ASCAP).

8. J. DAUGHEN & P. BINZEN, *THE WRECK OF THE PENN CENTRAL* (1971).

Indeed, the truck driver song, complete with CB radio, has now moved into the Top 40 mass market.<sup>10</sup>

The legal profession has also given relatively little attention in recent years to railroad problems. Most of the literature appears in the *I.C.C. Practitioner's Journal*, which as its title would indicate, is generally practitioners writing to each other. There has been little independent academic input into the problems of the railroads. What there has been has generally been faddish. Going back a decade we saw numerous articles dealing with the labor problems of the railroads.<sup>11</sup> Featherbedding is still a major economic problem of the railroads, but you wouldn't know it today by reading the legal literature. Then came the disappearance of the passenger train,<sup>12</sup> followed by a series of merger articles,<sup>13</sup> which, perhaps only coincidentally, were followed by the bankruptcy articles, which is where we are today.<sup>14</sup>

Several significant reports have been issued in recent years, which in an industry such as computers or securities, may have occasioned law review articles.<sup>15</sup> For example, Congress issued a blue report studying the effects of government regulation on the railroad industry<sup>16</sup> and nothing happened. In March 1976, the Transportation Association of America issued a White Paper on Transportation.<sup>17</sup> The result was a dull thud. Apparently neither the Wall Street Journal nor the New York Times picked up on it. Three years ago a major report was issued on improving railroad productivity.<sup>18</sup> None of these significant studies has triggered a law review article.<sup>19</sup>

True enough, the Interstate Commerce Commission has received scathing attacks in recent years, and is probably the worst of the regulatory agencies. Most of us are familiar with the Yak Fat Caper which illustrates the depth of the bureaucratic morass at the ICC.<sup>20</sup> But aside from a Ralph Nader study,<sup>21</sup> which was never

9. The Wabash Cannonball, like the City of New Orleans, was one of the trains that vanished on April 30, 1971, with the advent of Amtrak.

10. See, e.g., C. W. McCall, *Convoy* (American Gramophone/SSESAC 1975).

11. See, e.g., Note, "Great Train Robbery"—*Railroad Full Crew Laws*, 37 GEO. WASH. L. REV. 153 (1968).

12. See, e.g., Bard, *Challenge of Rail Passenger Service: Free Enterprise, Regulation and Subsidy*, 34 U. CHI. L. REV. 301 (1967).

13. See, e.g., Helmetag, *Railroad Mergers: The Accommodation of the Interstate Commerce Act and Antitrust Policies*, 54 VA. L. REV. 1493 (1968).

14. See, e.g., Note, *Takings and the Public Interest in Railroad Reorganization*, 82 YALE L.J. 1004 (1973).

15. See, e.g., *Symposium: Electronic Funds Transfer Article*, 35 MD. L. REV. 1 (1975).

16. SUBCOMM. ON TRANSP. & COMMERCE, HOUSE COMM. ON INT'L & FOR. COMMERCE, 94TH CONG., 1ST SESS., MATERIALS CONCERNING THE EFFECTS OF GOVERNMENT REGULATION ON RAILROADS AND AN ECONOMIC PROFILE OF RAILROADS IN THE UNITED STATES (Comm. Print No. 17).

17. TRANSP. ASS'N OF AMERICA, TRANSPORTATION—A CALL FOR ACTION: A WHITE PAPER ON THE U.S. TRANSPORTATION INDUSTRY (1976).

18. FINAL REPORT OF THE TASK FORCE ON RAILROAD PRODUCTIVITY, IMPROVING RAILROAD PRODUCTIVITY (1973).

19. This writer frankly admits that he would much rather read voluminous NEPA statements for an obscure fact than study the "boring" aspects of rate and service regulation.

20. See L. KOHLMEIER, JR., *THE REGULATORS* 94-97 (1969). See also *United States v.*

followed up, the attacks on the ICC have appeared in the popular press.

This may be an unconventional book review, but then Professor Thoms' *Travellers and Tonnage: The Vanishing Mixed Train* is an unconventional book. Professor Thoms is one of the few academicians who has toiled in the depths of the legal problems of the railroad industry, but *Travellers and Tonnage* is not a legal tome. Although this book does not address itself to the major problems of the industry, Professor Thoms has done so elsewhere.<sup>22</sup> We will allow him to indulge himself in this instance.

Nor is it a conventional railroad book. Even though it is a book written by a railroad buff about a nostalgic aspect of railroad life, and contains a section of pictures, it will not end up in the discount bins of bookstores and in the catalogues of Marlboro Books at half price. The book has too much class to suffer that fate, and is not destined for the mass market.

Instead, the book is an attempt to survey the current dispersion and genealogy of mixed trains in North America. The mixed train represents an ingenious effort by railroad management to offer otherwise unprofitable passenger service. For various reasons, generally legal, management could not drop passenger service outright. Passenger train service, including commuter service, has long been uneconomic in this country.

A very rough, frequently inaccurate scenario, would show the following. The first reaction to economic reverses on passenger service is to downgrade the service. The use of self-propelled rail cars, or "doodlebugs," instead of long passenger trains, has postponed or ameliorated the economic realities. But even these cars were frequently a major loser. Frequently, the railroad would then resort to mixed trains to provide the necessary passenger service. In general, passenger cars and freight cars would be coupled together in one train. The freight would cover the costs of providing passenger service. Sometimes not even separate passenger cars would be used. The traveller would have to travel in the caboose or engine.

The mixed train became the vital circulatory system for rural America for several decades. The Automobile Age doomed the mixed

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Western Pac. R.R. Co., 352 U.S. 59 (1956), where the Supreme Court ruled that the ICC had primary jurisdiction because of its expertise to determine the proper tariff for bomb casings filled with napalm. *Id.* at 63-70. On remand, the ICC, in its divine wisdom used the "judicial" reasoning of the lower court and concluded that traditionally a tariff covering an article by its usual name applies even though shipped without all its parts. *United States v. Western Pac. R.R. Co.*, 309 I.C.C. 249, 254-56 (1959).

21. R. FELLMETH, THE INTERSTATE COMMERCE COMMISSION (1970).

22. The *Index to Legal Periodicals* lists seven articles by Professor Thoms dealing with the railroad industry. The reader is especially directed to Thoms, *Transportation Legislation and Fuel Shortages*, 51 N.D.L. REV. 771 (1975); *AMTRAK: Rail Renaissance or Requiem?* 49 CHI-KENT L. REV. 29 (1972); *Vanishing Fireman—A Case Study in Compulsory Arbitration*, 14 LOYOLA L. REV. 125 (1967).

train, and most passenger service, but some mixed trains still exist in the country. There are the popular tourist roads, such as the Strasburg Railroad in Pennsylvania, and the popular, commercial Auto Train, as well as several lesser known roads, all of which appear in Professor Thoms' book. The mixed train is still of vital importance to much of Canada, where the harshness of the winters and the geography provide no viable alternatives. So too are mixed trains important in Mexico, because of its developing economy.

*Travellers and Tonnage* could only have been written by a rail buff who has ridden the rails as much as Professor Thoms, and has lived variously in New England, Georgia, and North Dakota, all of which have witnessed the age of the mixed train. At times the author becomes a tour guide of local sights,<sup>23</sup> and has a tendency to wax poetic in describing the sylvan grace and charm of southern campuses.<sup>24</sup>

I cannot guarantee that a reader of this book would win a Trivia Bowl contest on railroad lore, but it will be a good place for the neophyte to become acquainted with railroading.<sup>25</sup> For the student of railroad lore, it is an indispensable, unique study of a still current area of railroad life. I do suggest though that any reader of the book equip himself with a copy of a railroad atlas.<sup>26</sup>

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23. For example, a common-type passage is:

Its headquarters and main terminal are located in the French-speaking city of St. Boniface, across the Red River from Winnipeg, and the westernmost limit of French-Canadian culture. Unlike the Quebecois, the St. Boniface citizen is totally bilingual, but still takes pride in his culture which antedates the English-speaking settlement of Winnipeg. The ruins of the old Basilica at St. Boniface stand as mute testimony to the once great strength of French Catholic culture and traditions in this area that is now fast becoming a northern Louisiana.

W. THOMS, *Travellers and Tonnage* 47 (1975).

24. For example, we read that "Athens is the site of the University of Georgia, all white columns and magnolias and one of the most delightful locations for a college campus in the country." *Id.* at 10.

25. One simple example will suffice: "The *Piedmont* rambles on through Virginia and the region which gave it its name, through Monroe, Lynchburg and Danville, where the famous Wreck of Old 97 took place. . . ." *Id.* at 14.

26. The recommended work is RAND McNALLY & Co., *Handy Railroad Atlas of the United States* (1973).

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