

A Response to Chicago Railway: Minnesota Farmers'
Fight for Lower Railroad Rates in the 1890s

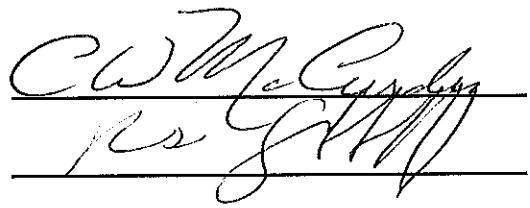
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Abstract:

In March of 1890, the U.S. Supreme Court ruled in *Chicago Railway* that the reasonableness of a railroad rate set by the Minnesota Railroad and Warehouse Commission (RWC) was “eminently a question for judicial investigation, requiring due process of law for its determination.” Courts around the country now had the authority and duty to overturn rates if they unreasonably deprived railroads of profits from their property.

This Article decenters the Supreme Court and is a constitutional history from below. It contends that the conflict between Minnesota farmers and railroads continued in full force after 1890 and that farmers actually achieved significant victories by passing legislation that gave the state more control over the railroad industry. It also argues that, because the Court only put an imprecise limitation on rate setting in *Chicago Railway*, farmers and their allies effectively secured lower railroad rates by bringing complaints to the RWC and winning at the state supreme court. This Article shows the extent of the farmers’ success by describing the key developments in Minnesota between 1890 and 1898, when the Supreme Court again weighed in on the question of reasonable rates.

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Introduction

On June 22, 1887 farmers from the boards of trade of four small Minnesota towns just south of Minneapolis and St. Paul brought a complaint to the newly created Minnesota Railroad and Warehouse Commission (RWC). They asked the RWC to order the Chicago, Milwaukee, and St. Paul Railway to decrease the rates it charged to transport milk.¹ The complaint claimed that the costs set by the railroad were discriminatory, “exorbitant[,] and so unreasonable as to make it unprofitable for farmers to produce and ship milk to the Twin Cities.”² The railroad vigorously resisted the RWC’s order to lower rates by litigating the decision all the way to the U.S. Supreme Court. The highest court in Minnesota affirmed the RWC’s decision, ruling that the RWC had final authority to set railroad rates.³ In March of 1890, the U.S. Supreme Court reversed, holding in *Chicago Railway* that the reasonableness of a railroad rate set by the RWC was “eminently a question for judicial investigation, requiring due process of law for its determination.”⁴ Courts around the country now had the authority and duty to overturn rates if they unreasonably deprived railroads of profits from their property.

Often, *Chicago Railway* is cited as part of the beginning of the Court’s adoption of a substantive component of due process under the 14th Amendment, through which it

¹ RICHARD C. CORTNER, *THE IRON HORSE AND THE CONSTITUTION: THE RAILROADS AND THE TRANSFORMATION OF THE FOURTEENTH AMENDMENT* 37 (1993).

² *Id.* Milk-producing farmers testified before the RWC that they could not survive under the current charges, noting that it cost about one-third of the value of the milk to get it twenty-five miles. *Id.* at 38.

³ *Id.* at 48.

⁴ *Chicago, Milwaukee & St. Paul Ry. Co. v. Minn. ex rel. R.R. & Warehouse Comm’n*, 134 U.S. 418, 458 (1890).

ostensibly protected property rights.⁵ This Article does not intend to enter the debates about the origins of *Lochner* and substantive due process, but rather is a legal history from below.⁶ The intention is to come down from Congress and the hallowed chambers of the Supreme Court and focus primarily on state actors in Minnesota. Historian Richard C. Cortner took some steps toward decentering the Supreme Court in his investigation of the events and personalities in Minnesota leading up to the Court's decision in *Chicago Railway*.⁷ His book contributes to a fuller understanding of the *Chicago Railway* case by placing it in its local context. But he only goes part of the way. He emphasizes the role of Minnesota politicians and delineates the legal claims of the railroad owners, thereby neglecting to delve into the activities and opinions of Minnesota farmers.⁸ Additionally, Cortner fails to adequately address the ramifications of this case. He prematurely and inaccurately declares victory for the railroads in *Chicago Railway*.⁹ He interprets the waning influence of the Populist Party in Minnesota in 1892 as evidence that "the battle that had produced the Supreme Court decision[] . . . of 1890 had come to an end."¹⁰

⁵ CORTNER, *supra* note 1, at xii; see also Michael G. Collins, *Before Lochner-Diversity Jurisdiction and the Development of General Constitutional Law*, 74 TUL. L. REV. 1263, 1293 (2000) (The Court "addressed the substantive limits on such rate making, declaring that no state could [set] 'a tariff of rates . . . which is so unreasonable as to practically destroy the value of property' of the carriers."); Charles W. McCurdy, *Justice Field and the Jurisprudence of Government-Business Relations: Some Parameters of Laissez-Faire Constitutionalism, 1863-1897*, in AMERICAN LAW AND THE CONSTITUTIONAL ORDER: HISTORICAL PERSPECTIVES 246, 247-248, 264 (Lawrence M. Friedman & Harry N. Scheiber, eds., 1978).

⁶ Cf. Kyle T. Murray, *Looking for Lochner in All the Wrong Places: The Iowa Supreme Court and Substantive Due Process Review*, 84 IOWA L. REV. 1141 (1999). In his Note, Murray focuses on state supreme court cases in Iowa but, unlike this Article, he is primarily concerned with shedding light on the beginnings of substantive due process: "The decision [*Chicago Railway*], a marked departure from earlier precedent and a precursor of the Supreme Court's disposition in *Allgeyer* and *Lochner*, indicated a new-found reluctance to defer to the legislature's assessment of reasonableness." *Id.* at 1165.

⁷ See CORTNER, *supra* note 1.

⁸ *Id.*

⁹ *Id.* at 129.

¹⁰ *Id.*

This Article shifts the lens from a vertical view of the development of law to a horizontal one. A Supreme Court decision is always only one moment in an ongoing process of law creation. And in this case, the Supreme Court “law” left much in play for other actors. This Article’s new perspective moves the focus away from the Court and instead inquires into what happened on the ground after *Chicago Railway*. Based on investigation of new sources, it shows that a constitutional history centered on the Supreme Court tells only part of the story. Delving into the ways that *Chicago Railway* constituted political and legal actors illuminates how Minnesotans worked within and around the decision to further their own interests.

This Article contends that the conflict between the farmers and the railroads continued in full force after 1890 and that farmers actually achieved significant victories by passing legislation that gave the state more control over the railroad industry. It also argues that, because the Court only put an imprecise, interpretable limitation on rate-setting in *Chicago Railway*, farmers and their allies effectively secured lower railroad rates by bringing complaints to the RWC and winning at the state supreme court. This Article shows the extent of the farmers’ success by describing the key developments in Minnesota between 1890 and 1898, when the Supreme Court again weighed in on the question of reasonable rates in *Smyth v. Ames*.¹¹ Finally, it provides a context that reorients our understanding of *Chicago Railway* and *Smyth*.

Part I asserts that *Chicago Railway* and continued frustrations with the economy led Minnesota farmers to become more active in politics, take extreme policy positions,

¹¹ *Smyth v. Ames*, 169 U.S. 466 (1898).

and lobby for interventionist legislation. Part II describes the gains made by farmers in bringing complaints to the RWC. Moving to legal theory, Part III shows that some of these farmers and their allies, in the context of *Chicago Railway*, advanced radical positions concerning legal and constitutional doctrine.¹² But Part IV notes that most mainstream legal players with the ability to affect judicial decisions in Minnesota took advantage of the malleable reasonableness standard in *Chicago Railway* by promoting or adopting an interpretation that would implement their policy goals.¹³ The Minnesota Supreme Court chose a reasonableness inquiry that favored the state regulation desired by farmers and local shippers and ruled on their behalf in *Steenerson v. Great Northern Railway*.¹⁴

I. Farmers Respond with Political Action

The financial difficulties farmers confronted in the 1890s and the ruling in *Chicago Railway* contributed to their rising political participation. Activist farmers and their allies formed third parties and advocated systemic change that was not adopted or implemented by mainstream politicians. Farmers and other populists widened the spectrum of political discourse, but their third parties had only limited success. However, Minnesota farmers achieved some of their goals by working with the Republicans and Democrats (the major parties). Due to pressure from farmers, the Minnesota legislature

¹² I define as radical or extreme commentators who pushed for policies like government ownership of railroads, the end of judicial review, or drastic cuts in railroad rates.

¹³ I define as mainstream those judges, lawyers, and bureaucrats who, in working to address the problem of burdensome railroad rates, accepted the existing legal framework and respected the Supreme Court's authority.

¹⁴ *Steenerson v. Great Northern Ry. Co.*, 72 N.W. 713 (Minn. 1897).

passed various advantageous laws in the 1890s that gave the state more power to regulate the railroads.

A. Farmers' Financial Predicaments

In the early 1890s, farmers in Minnesota had a sharp negative reaction to the Supreme Court's decision in *Chicago Railway* because of frustration with low crop prices and perceived economic injustices. The price at which farmers sold their wheat "was an essential element in determining the net income" of most farmers in Minnesota, so the fall in wheat prices in the 1890s posed a fundamental problem.¹⁵ The price of wheat had risen in the 1870s, but steadily declined through 1889, see-sawed until 1891, and then decreased significantly through 1896.¹⁶ The specifics are telling. In Crookston, a city in northwestern Minnesota where many local farmers sold their wheat, the price was 87 cents per bushel in October of 1890. In 1891, the price fell to 79 cents, it decreased to 62 cents in 1892, and in October of the recession year 1893, farmers only received 49 cents per bushel.¹⁷ Farmers' grievances went beyond the inadequate money they received for their crops. They faced rising prices for machines, fuel, and materials to build their homes and barns.¹⁸ They faced discriminatory classification of the grade of their wheat and had no choice but to pay the high prices businesses charged to store the grain in warehouses and ship it to larger markets.¹⁹ Finally, the farmers did not see good weather and bumper crops every year. In sum, monopolistic activities by businesses and the

¹⁵ HENRIETTA M. LARSEN, *THE WHEAT MARKET AND THE FARMER IN MINNESOTA: 1858–1900* 166 (1926).

¹⁶ *Id.*

¹⁷ *Id.* at 201.

¹⁸ See John D. Hicks, *The People's Party in Minnesota*, 5 MINN. HIST. BULL. 531, 532–33 (1924).

¹⁹ *Id.*

evolving grain market made it challenging for producers to achieve financial stability and success.

The exasperation of farmers is exemplified by this complaint: “Our land is very rich and for six years we have had good crops in the Red River Valley, but somehow we don’t get along though we economize every way we can and work hard.”²⁰ This man went on to acknowledge that almost all the farmers in the area had mortgaged all of their land even though “Uncle Sam” had given them the property in the first place.²¹ Another farmer, trying his hand at shipping wheat, harangued that “the farmer’s wives and daughters w[ill] still have to wear garments made of flour sacks ornamented with the four X brand,” which he claimed was not uncommon in his agricultural district.²² By claiming that hard-working farmers could not make enough of a profit to buy fabric for clothes for their wives, he attempted to appeal to people’s emotions and spur political change. Opponents argued that the standard of living for farmers had risen by the 1890s.²³ In response, one man, after accounting for the cost of producing his crops, concluded that he had made a profit of \$117.75 for the year. This amount of money would not sufficiently cover the cost of clothes, groceries, books, newspapers, interests on debts, and school items for the seven people in his family.²⁴ Although most Minnesota grain growers did survive from year to year, they were saddled with debt and did not feel that the income they earned rewarded them in proportion to their labors.

²⁰ LARSEN, *supra* note 15, at 167 (quoting 3 FARM, STOCK, AND HOME, Sept. 1887, at 307). This farmer was reacting to the fall of prices in the 1880s, but accurately reflects the frustration of farmers as prices dropped in the early 1890s.

²¹ *Id.*

²² R.R. & Warehouse Comm’n of Minn., Ann. Rep., 60 (1892).

²³ LARSEN, *supra* note 15, at 167.

²⁴ LARSEN, *supra* note 15, at 167 (quoting GREAT WEST, Mar. 1892, at 1).

Deeply frustrated, many farmers looked for places to assign blame. Although farmers could not alter the overall market, they did believe they could attack the costs imposed by middlemen like the terminal grain elevators and the railroads. The problem, they argued, was that these corporations skimmed off significant profits, which accounted for the “leak [of the value of the wheat] between the producer and consumer.”²⁵ Farmers felt entitled to a higher percentage of the final price parties paid for the grain.

In 1890 and 1891, the *Great West*, a newspaper supporting reforms to benefit producers, claimed that the fifty-four cent difference in wheat prices in Crookston, Minnesota and Liverpool, England could not be accounted for solely by the cost to transport the wheat. They asserted that middlemen, the millers and wheat merchants, stole thirty to forty cents from the value of the wheat.²⁶ They had credible complaints: for over six years the largest terminal elevator in Minneapolis made an average of thirty percent on a capital investment of \$825,000.²⁷ Likely exaggerating, the radical Populist Ignatius Donnelly claimed that a billion dollars had been stolen from Minnesota and Dakota farmers in twenty years.²⁸ Contradicting Donnelly, historian Henrietta Larsen analyzed the disparity in wheat prices between production and consumption and concluded that it could actually be explained mostly by transportation costs.²⁹ But what is important is that producers truly felt and believed that they were being unjustly deprived

²⁵ LARSEN, *supra* note 15, at 171, 198–99.

²⁶ *Id.* at 198–99.

²⁷ *Id.* at 203.

²⁸ LARSEN, *supra* note 15, at 199 (quoting the ST. PAUL PIONEER PRESS, Sept. 19, 1892, at 4). Ignatius Donnelly was active in politics for much of the latter half of the 19th Century. He often advocated radical policy changes and influenced the development of the Farmers’ Alliance in Minnesota and the Populist Party at the state and national levels. See JOHN D. HICKS, THE POPULIST REVOLT 205–237 (1959); see also MARTIN RIDGE, IGNATIUS DONNELLY: PORTRAIT OF A POLITICIAN (1962).

²⁹ LARSEN, *supra* note 15, at 202.

of the profits on their wheat, and that this perception caused them to take action.

Additionally, Larsen acknowledges that specific complaints about high rates charged by railroads in Minnesota did have some merit,³⁰ which is the focus of much of this Article.

There is reason to believe that some farmers were fatalistic and myopic, which may have impeded progress.³¹ Critics pointed out that farmers should not have been so dependent on one crop, whose market price continued to fall. Instead, they should have diversified by engaging in dairy farming and raising hogs.³² Additionally, farmers exhibited self-interest in their excitement over a potential rate war in 1895: those who had diversified by planting potatoes saw “potatoes by the billion” that year.³³ They hoped that one railroad would lower rates in order to attract shippers, precipitating a rate war resulting in much lower rates across the board.³⁴ Farmers were excited by the prospect of large profits. This anecdote is only to suggest that, though farmers were the underdogs, they were self-seeking actors like the railroad owners. And, the more extreme among them did not consider that, in order to sell their crops, they needed the railroads, grain elevators, and millers to be economically stable. With tunnel vision in the 1890s, farmers and other allies effectively lobbied and advocated for their interests.

B. Minnesota Passes Moderate Laws

³⁰ *Id.*; see also, John D. Hicks, *The People's Party in Minnesota*, 5 MINN. HIST. BULL. 531, 532 (1924).

³¹ LARSEN, *supra* note 15, at 170–71.

³² LARSEN, *supra* note 15, at 168; see also *Childs on Values*, ST. PAUL DAILY GLOBE, July 6, 1895 (describing how, during oral argument, Judge Kerr, who overturned the RWC's decision to lower rates in the *Steenerson* case, pointed out that farmers in southern Minnesota had diversified and become prosperous).

³³ *Murphies Galore*, ST. PAUL DAILY GLOBE, Sept. 5, 1895.

³⁴ *Id.*

Before delving into the specifics of the fight over the rates charged by railroads after *Chicago Railway*, it is necessary to discuss how the growing political activity of farmers and their allies led to legislative victories in the 1890s. Political mobilization had existed before *Chicago Railway*, but the case fomented even greater participation and organization.

In the 1880s, individual farmers in states such as Illinois, Wisconsin, Iowa, Nebraska, the Dakotas, and Minnesota formed groups collectively called the National Farmers' Alliance.³⁵ The Minnesota Farmers' Alliance initially denied any desire to enter politics as a third party. Instead, it attempted to "secure legislation through the older parties [Republicans and Democrats] . . . for the benefit of the rural classes."³⁶ Groups of farmers coordinated to elect to the state legislature farmers and "friends of the farmers." Their efforts led to tangible results. The legislature passed a law creating the state Railroad and Warehouse Commission in 1885, and gave it increased regulatory powers in 1887.³⁷ Specifically, the legislature gave the RWC "plenary power" to set the rates charged by railroads, a level of control exceeding that of the federal Interstate Commerce Commission.³⁸ The railroads also had many representatives in the legislature and campaigned to defeat Alliance candidates in 1889.³⁹ In that year, many Alliance members were not re-elected, and the remaining men "fell to fighting among themselves, and were unable so much as to select a candidate for speaker whom they could all support."⁴⁰

³⁵ HICKS, *POPULIST REVOLT*, *supra* note 28, at 96–100.

³⁶ Hicks, *People's Party*, *supra* note 18, at 535.

³⁷ *Id.* at 535.

³⁸ CORTNER, *supra* note 1, at 26.

³⁹ Hicks, *People's Party*, *supra* note 18, at 535–36.

⁴⁰ *Id.* at 536.

Because the disunity thwarted efforts to secure “further remedial legislation,” a “ground swell” of discontented farmers pushed for the creation of a more unified political party.⁴¹

John D. Hicks, a historian who wrote extensively on populist movements, points to the failure of the Alliance legislators in 1889 as the source of Minnesota’s strong third-party political movement in the 1890s.⁴² However, the outrage over the holding in *Chicago Railway* was a more central reason for unified political action by rural interests. The Supreme Court announced its decision on March 24, 1890, and on April 1st, the Minnesota Farmers’ Alliance met to discuss the decision.⁴³ The St. Paul Daily Globe wrote that the decision “fanned the indignation and dissatisfaction of the farmers of Minnesota into a white heat.” The Alliance, led by Ignatius Donnelly, decided to work with labor organizations and adopted a resolution that called for “independent political action,” the nomination of a state and Congressional ticket, and concerted effort with Alliance organizations in neighboring states.⁴⁴ The rapid response by the Alliance and its acerbic language angrily condemning the Court’s decision to favor the railroad corporations over rural producers are evidence that *Chicago Railway* was a major impetus for widespread radical political activity in Minnesota.

Prompted by local chapters, the state Alliance held a convention in St. Paul on July 16, 1890, where it nominated a full field of candidates committed to furthering

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Judges Denounced*, ST. PAUL DAILY GLOBE, Apr. 2, 1890, at 1.

⁴⁴ *Id.*

policies in the interest of farmers.⁴⁵ Sidney M. Owen, the editor of a well-known Minneapolis farm journal, beat Ignatius Donnelly in the nomination for governor. That fall, the Alliance party had its first and best political showing. Republican William R. Merriam won the race for governor with 88,111, the Democrat, Thomas Wilson, received 85,844 votes, and Owen garnered 58,513 votes for the Alliance.⁴⁶ The Alliance did better in the Congressional and state elections, winning two of the five district seats, and about a fourth of the seats in the state house and senate.⁴⁷

As a newly formed third party with unprecedented success in seeing its candidates elected, the Alliance had high hopes for the future. But, the farmers quickly found that, despite the common goals they shared with a few Republicans and many Democrats, they struggled to pass any truly effective legislation. They failed in an attempt to make grain elevators and warehouses public and to give the state “the right to fix the rates of storage.”⁴⁸ Another law that did not garner support by a majority would have provided that “any railroad company collecting or receiving more than a fair and reasonable rate for passengers of freight shall be deemed guilty of extortion” and fined up to \$5,000.⁴⁹ Finally, a major piece of legislation specifically addressed the limitations imposed by the Supreme Court in *Chicago Railway*. The Donnelly-Currier bill would have set “a uniform rate per pound for mile on all rail shipments,” and made the rates imposed by the

⁴⁵ Hicks, *People’s Party*, *supra* note 18, at 537. Larsen noted that farmers believed in the importance of political power because coercive legislation by the state could affect “the distribution of the value of a product.” LARSEN, *supra* note 15, at 171.

⁴⁶ Hicks, *People’s Party*, *supra* note 18, at 539.

⁴⁷ *Id.*; LARSEN, *supra* note 15, at 207.

⁴⁸ Hicks, *People’s Party*, *supra* note 18, at 540.

⁴⁹ *Judges Denounced*, *supra* note 41.

Commission “*prima facie* reasonable” and “in effect until invalidated by courts.”⁵⁰ The senate rejected the bill, and it was defeated in the house by a close vote of 56 to 48.⁵¹

However, the legislature did pass a law implementing the latter two parts of the original bill.⁵² These laws proposed by the Farmers’ Alliance aimed to circumvent the *Chicago Railway* decision would have led to sweeping power over the railroads. The policy goals expressed by this legislation shows that a sizeable minority of Minnesotans were hostile to the railroads and desired drastic measures. The farmers did not willingly accept the Supreme Court’s message that the Constitution viewed railroad property interests as sacred.

The political climate in Minnesota evolved rapidly as agitators nationwide formed the Populist Party in Cincinnati in May of 1891. Donnelly, an active participant at the convention, came back to Minnesota and convinced most of the members of the Farmers’ Alliance to join this new national party.⁵³ Despite some resistance and concern that national issues would take precedence over state goals, the Populists in Minnesota won the day. They nominated Donnelly for governor in July of 1892 and announced a platform that echoed the one that had just been adopted by Donnelly and others at the party’s convention in Omaha.⁵⁴ The Minnesota Populists, though, emphasized state issues, demanding state control of corporations and transportation companies, and

⁵⁰ CORTNER, *supra* note 1, at 119.

⁵¹ *Id.* at 120.

⁵² 1887 Minn. Gen. Laws 179.

⁵³ Hicks, *People’s Party*, *supra* note 18, at 542. Donnelly was known for being abrasive, hostile, and radical. His fiery passion was both a boon and an obstacle throughout his political career. His involvement with the national Populist Party caused some of his detractors in the Alliance party to resist joining the new populist movement. *Id.* at 542–43.

⁵⁴ *Id.* 543.

erection by the state of terminal elevators at Minneapolis, St. Paul, and Duluth.⁵⁵ Even as the Republicans, led by Scandinavian Knute Nelson, attempted to draw in disgruntled Alliance members, the Populists truly expected to win. But, evincing the challenges faced by third parties in the U.S. political system, the Minnesota Populists fared poorly in 1892. Losing the gubernatorial race to Nelson, Donnelly received 18,000 fewer votes than Owen had in his bid for governor just two years earlier.⁵⁶ The Populists won only one out of seven Congressional district seats, and only put two dozen candidates in the state legislature (compared with the forty-five Alliance members who won in 1890).⁵⁷

Even though the Populist Party did not secure the election of most of its candidates, all was not lost for farmers. Governor Nelson had appealed to the farmers (and received votes from many of them) and promised to push for moderate legislation increasing state control of the railroads.⁵⁸ Cortner's claim that the battle which had "produced the Supreme Court's momentous decision[] . . . had come to an end" with the Populist Party's losses in 1892 is simply not true.⁵⁹ His conclusion is belied by the laws passed by the Minnesota state legislature in 1893.⁶⁰ Although Populist candidates did not

⁵⁵ *Id.* at 543–44.

⁵⁶ *Id.* at 546.

⁵⁷ *Id.* at 545–46. Hicks suggests that this loss was due in part to the division among reformers themselves concerning the abandonment of the local Alliance party. He also explains that 1892 was a presidential year, so voters were less willing to stray from the two major political parties and risk voting for Populists with little chance of winning.

⁵⁸ *Id.* at 547.

⁵⁹ CORTNER, *supra* note 1, at 121.

⁶⁰ Cortner's position is also contradicted by the fact that Minnesota producers continued to fight for lower rates throughout the 1890s. As described in detail in Part II, Section A, the RWC sometimes vindicated their complaints and required railroads to charge less for transporting grain and goods.

fare well, candidates from the two major parties implemented some of the less extreme planks of the Populist platform.⁶¹

In 1893, the Minnesota legislature passed a law increasing the punishment for individuals convicted of creating pools and trusts.⁶² Another law provided for condemnatory proceedings when sites for elevators were refused, breaking “the legal position of the railroads in maintaining that they had complete control over the granting of sites.”⁶³ A law that provided for the erection by the state of an elevator at Duluth, to be managed and operated by the RWC, “was precisely what the Populists had demanded in their platform.”⁶⁴ And, the most important piece of legislation for farmers had the strong support of Governor Nelson himself. It gave the RWC the power to inspect and supervise the grain elevators and warehouses.⁶⁵ Finally the state had put in place “an impartial arbitrator between farmers and wheat buyers.”⁶⁶ Minnesota farmers and Populists saw considerable victories in the legislation passed this term. But the absence of laws addressing the rates charged by railroads is noteworthy. The primary reason, one further addressed in Part II, is that farmers were already securing lower rates in some cases by bringing complaints to the RWC. A secondary reason is that *Chicago Railway* had made

⁶¹ Hicks points out that one of the ways third parties can have influence on legislation is by compelling the older parties to “take up and make effective the radical plans they oppose.” Hicks, *People’s Party*, *supra* note 18, at 547.

⁶² *Id.* at 547.

⁶³ LARSEN, *supra* note 15, at 210.

⁶⁴ Hicks, *People’s Party*, *supra* note 18, at 547–48. The elevator was never built because the state attorney general rejected the project and the state supreme court agreed, declaring the law unconstitutional and void. The point, though, is that populist interests in Minnesota did have sufficient democratic support to pass this major legislation on behalf of farmers.

⁶⁵ LARSEN, *supra* note 15, at 212–13.

⁶⁶ *Id.*

railroad rates a contentious and murky issue. In some ways, it was easier to pass other laws that served producers' interests and alleviated their other burdens.

As the years passed, Republicans and Democrats continued to support some of the policies advanced by Populists and farmers. So, even though fewer Populist candidates were elected in Minnesota as the 1890s unfolded, farmers had the ear of moderate politicians. In its 1894 platform, the Republican Party asserted that "farmers and all other producing classes [were] entitled to cheap and suitable facilities for storing, shipping and marketing their products" and favored the enactment of laws compelling railroads to "render efficient and approved service at fair and reasonable rates without favor of discrimination to persons or places."⁶⁷ While not as radical as the Populists, which advocated government ownership of the railroads and reclamation of excessive railroad land grants among other things,⁶⁸ the Republicans maintained a position of some state intervention. This was enough to attract moderate voters.

Battles continued in ensuing years. Populists still proposed some radical legislation concerning the railroads and grain warehouses. In 1897, farmers again introduced a bill that would fix the rates on transporting grain and hard coal across the board.⁶⁹ They attempted to circumvent the tedious process of going through the RWC to get lower rates. One representative claimed farmers and producers were "burdened beyond endurance" and begged his peers to make the railroads "cease their extortion."⁷⁰

⁶⁷ *The Platform*, ST. PAUL DAILY GLOBE, July 12, 1894.

⁶⁸ Hicks, *People's Party*, *supra* note 18, at 550.

⁶⁹ *Dealt a Knock Out*, ST. PAUL DAILY GLOBE, Feb. 27, 1897, at 1.

⁷⁰ *Id.* As an interesting side note, some of the opponents of the bill argued that lowering rates would just hurt wage earners who worked for the railroad. From this perspective the passage of the bill pitted the interests of one group of struggling laborers against another.

Although the bill failed, producers later convinced enough members of the legislature to make a less drastic change. A law was passed which gave the RWC the power to “investigate rates and recommend changes on [its] own initiative without requiring any complaint.”⁷¹ In the 1898 session, three more pieces of legislation offered protection for the farmer. One law provided for the licensing of merchants by the RWC. Another created a board in the inspection department of the Commission to hear appeals from the decision of the chief inspector regarding the grading of grain. Finally, the legislature made the RWC more democratically accountable by enacting a law providing for the popular election of its three members.⁷²

By the close of the 19th Century, Minnesota farmers and producers had successfully lobbied for laws limiting the power of railroads and grain elevators. In spite of the challenges created by *Chicago Railway*, producers were able to further their policy goals. They passed legislation that affected the many parts of the market not foreclosed by the Court’s holding. Farmers also organized politically and shaped the development of the Populist Party and the evolution of the Republican party. Although third party candidates with more extreme ideas did not win many elections, the popular support for some of their ideas shines forth in the laws enacted in the 1890s. The mainstream politicians had to take the radical actors seriously because the latter had substantial backing. And, although the political influence of the railroads effectively stopped the boldest measures, farmers and their allies harnessed their outrage over *Chicago Railway* in order to enact pro-producer legislation in the 1890s.

⁷¹ LARSEN, *supra* note 15, at 251.

⁷² *Id.* at 250.

II. Lower Rates with the Assistance of the RWC

Farmers were not discouraged by the *Chicago Railway* decision. The ruling both enraged and motivated them. In conjunction with the push for broad policy enactments to protect their interests, producers took advantage of the structure of the Railroad and Warehouse Commission. Knowing full well the possibility that the courts could overturn a decision that set “unreasonably” low rates, groups representing farmers and shippers still went to the RWC to ask for reduced rates. Sometimes they made demands that were quite extreme. They pushed the boundaries within which the RWC was willing to act. Overall, they saw positive results for their efforts as the RWC often showed sympathy to their complaints. As for the RWC, it took a moderate approach. Despite the Supreme Court’s basic message in *Chicago Railway* that railroad property should be protected, the RWC worked for modest rate decreases for the benefit of farmers. Finally, it would be difficult to see the strategies and successes of these actors if just looking down from the Supreme Court. The constitutional history is enriched by viewing the horizontal activities of the farmers, bureaucrats, and politicians.

A. Minnesota Producers Successfully Seek Rate Reductions

Before looking at the extent of the farmers’ achievements before the RWC, it is necessary to briefly explain how it functioned with respect to railroad rates. The RWC could only investigate the reasonableness of rates (or tariffs) after an individual, firm, or organization submitted a complaint laying out specific grievances. Upon receipt of the complaint, it “acquired supervision” over the railroads and could begin investigation of

“any evil incident to the question of tariffs.”⁷³ Before altering rates, the RWC had to give proper notice and conduct a hearing at which both parties had the opportunity to present evidence and call witnesses.⁷⁴ If the RWC concluded that the rates charged by railroads were discriminatory, unreasonable or unequal, it could order the railroad to reduce them. In 1891, after the failure of the Donnelly-Currier bill that would have set rates for every line of road in the state, the Minnesota legislature responded to the *Chicago Railway* decision by amending the 1887 Act. The amendment provided for judicial review of the RWC’s decisions.⁷⁵ However, the legislature did two things to limit the impact of the Court’s holding. First, it commanded that courts treat the RWC’s ruling as *prima facie* evidence that the rate “so made is equal and reasonable.”⁷⁶ Second, those rates would be “in full force and effect during the pendency of any appeal.”⁷⁷ This system ensured that the rates set by the RWC would take effect immediately, and that it would not be easy for railroads to convince courts to strike them down.

Farmers and other producers were able to secure lower rates by submitting complaints to the RWC, but the trajectory of their cases unfolded in a variety of ways. In a case from 1891, simply bringing a complaint caused the targeted railroad to acquiesce and lower rates without a command by the RWC. The farmers alleged that the railroad discriminated in its grain rates in favor of a station on a parallel line of its road. When brought to the attention of the railroad’s officers, they remedied the situation by reducing rates for shipments from four small towns in central Minnesota to Duluth, Minneapolis,

⁷³ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 23 (1893).

⁷⁴ *Id.*

⁷⁵ 1887 Minn. Gen. Laws 179.

⁷⁶ *Id.*

⁷⁷ *Id.*

and St. Paul.⁷⁸ The discrimination in rates must have been obvious and making the change must not have been a major detriment to the railroad because it did not even contest the accusations. Most cases were not resolved this easily.

In another instance, a threat by the RWC provided the impetus for railroad action. Here, the aggrieved party submitted proof that the Great Northern and Eastern Railways demanded a higher rate from an intermediate station to Duluth than from St. Paul to Duluth.⁷⁹ Those who shipped from stations on the way from St. Paul to Duluth thought it unfair that they had to pay more to send their goods a shorter distance. The RWC agreed, concluding that the practice violated state and interstate railroad law.⁸⁰ When the railroads claimed that the RWC of Minnesota did not have jurisdiction because the railroad line at issue stretched into neighboring Wisconsin, the RWC threatened to take the case to the ICC, which could take action. Finally, the railroads submitted, lowering their rates between twenty-five and forty percent.⁸¹ The RWC happily reported that the issue was resolved without litigation or unnecessary expense or delay.⁸²

Negotiation between the complainant and the railroad was another method of resolution. In 1892, a local Alliance group representing farmers from the area around Mankato, Minnesota asserted that rates charged for shipping flaxseed, wheat, and flour from their community were “unequal and discriminating.”⁸³ The railroads denied the

⁷⁸ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 22–23 (1892).

⁷⁹ *Id.* at 33–35.

⁸⁰ *Id.* at 35.

⁸¹ *Id.*

⁸² *Id.* at 35–36.

⁸³ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 14 (1893). The attorneys representing the Alliance included farmers who had advocated for pro-producer laws as members of the legislature such as E.M. Pope and F.M. Currier. CORTNER, *supra* note 1, at 25–26, 119–120.

allegations, claiming that the revenue they received for shipping the grain did not even “pay the actual expense of operation.”⁸⁴ The parties went back and forth, but, four months after the Alliance filed the initial complaint, they eventually came to a compromise when the railroads agreed to reduce the tariffs.⁸⁵ In this encouraging incident, realistic people on both sides produced a solution advantageous for all: the railroads avoided the expense of arguing their case before the RWC and the courts while the farmers saw a reduction in what they had to pay to ship what they produced.

The final set of circumstances in which farmers got what they wanted was through a ruling by the RWC after a hearing on the merits of the complaint. In 1893, Elias Steenerson, a farmer and politician from northwestern Minnesota, brought a case requesting an end to rate discrimination against farmers in his part of the state. After three days of hearings in February of 1894, the RWC ruled on behalf of Steenerson and issued a detailed rate schedule which established the price per bushel in five mile increments.⁸⁶ The railroads fought a hard battle, and continued to resist by appealing the ruling to the district court.⁸⁷ Another example in which the RWC issued a decision after the presentation of evidence by both sides occurred in 1898. The complainant argued that two railroads were discriminating against the village of Lake Benton in favor of Canby and Porter, other stations on the same line of road. The RWC rejected the railroads’

⁸⁴ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 18 (1893).

⁸⁵ *Id.* at 20. E.M. Pope also convinced a railroad to lower rates in 1895. He submitted a complaint to the RWC accusing the Omaha Railway of setting unreasonable rates on the shipment of coal. Again, the RWC did not have to mandate a lower tariff because the railroad agreed to decrease rates and Pope withdrew his complaint. R.R. & Warehouse Comm’n of Minn., Ann. Rep., 24–28 (1896).

⁸⁶ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 9–10 (1895).

⁸⁷ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 36 (1896). The railroad won at the district court but then lost at the supreme court. *Steenerson v. Great Northern Ry. Co.*, 72 N.W. 713 (Minn. 1897). The reasoning in these decisions is analyzed in detail in Part IV of this Paper.

defenses and ordered a rate reduction from sixteen to fourteen cents per hundred pounds of grain.⁸⁸ As seen in these two cases, the RWC did not quit if the filing of a complaint or negotiations did not cause the railroads to reduce rates on their own. If necessary, the RWC did not hesitate to pursue valid complaints, conduct investigations, and order a decrease in rates.

Overall, producers had success forcing railroads to lower rates by working with the RWC. The tenor of the commissioners generally favored the farmers. *Chicago Railway* did not do much to stop rates from being lowered in Minnesota in the 1890s. However, farmers did not always win. E.M. Pope, who had success before the RWC on multiple occasions, failed in one case because he did not follow the procedures mandated by law. His complaint stated generally that rates were “excessive, unequal, and discriminatory.” In the railroad’s response, it noted that the relevant statute required the party bringing the case to specify particular rates, “particular articles and kinds of freight,” and the particular points on the line of road for which rates were unreasonable.⁸⁹ The RWC agreed with the railroad and demanded further clarity. Pope responded by withdrawing the complaint.⁹⁰

The RWC thwarted the request for fair rates more directly when it carefully considered a case and ruled in favor of the defendant railroad. In 1894, the Commission determined whether the railroads imposed excessive rates for the shipment of hard and soft coal and wood 213 miles from Duluth to Moorhead, Minnesota. It held that charging \$2.25 per ton of coal was acceptable and that no evidence suggested the rates for

⁸⁸ *Victory for Lake Benton*, ST. PAUL GLOBE, Apr. 23, 1898, at 8.

⁸⁹ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 38–39 (1894).

⁹⁰ *Id.* at 40.

transporting wood were unfair.⁹¹ The RWC responded to a slightly different concern in 1895. Addressing a complainant's frustration over passenger rates, it determined that the tariff was "equal, fair, reasonable, and just."⁹² Interestingly, the RWC did not deal with the price of transporting grain in either of these examples.

Overall, the RWC employed its powers to lower farmers' shipping costs. Yes, it is likely that the RWC determined that some complaints asking for lower tariffs on grain shipment were not worthy of investigation. And yes, the RWC (or the railroads, if the parties negotiated a deal) did not always lower rates to the extent the farmers desired.⁹³ But, in no major case did the RWC hold hearings and then deny a request to reduce the price for shipping grain. The RWC, an arm of the democratically elected legislature, sided overwhelmingly with farmers in the 1890s.

B. The RWC Expands its Authority as it Helps Farmers

The RWC also made requests for policy changes in the absence of specific complaints by farmers. It acted first and foremost to protect people from discriminatory and excessive rates, but also desired to obtain power as a bureaucratic agency. Existing in an era before the development of the administrative state, the RWC needed resources sufficient to carry out its statutory mandate. A major concern involved money to defend its decisions in court. The holding in *Chicago Railway* meant that the RWC had to employ lawyers, investigators, experts, and administrative staff when railroads or other

⁹¹ R.R. & Warehouse Comm'n of Minn., Ann. Rep., 12 (1895). However, the RWC ordered one defendant, which charged \$3 per ton, to lower its rate.

⁹² R.R. & Warehouse Comm'n of Minn., Ann. Rep., 32 (1896).

⁹³ In the Steenerson case, Elias Steenerson asked the RWC to reduce rates by thirty-three percent. The RWC ruled on his behalf, but gave a cut of almost fifteen percent. *Farmers Victorious*, ST. PAUL DAILY GLOBE, Sept. 11, 1894, at 1.

parties challenged its decisions. In 1895, the commissioners wrote to the Senate of Minnesota asking for funding for litigation.⁹⁴ They delineated the reasons why such litigation was expensive, noted that the legislature had not appropriated money for this purpose, and claimed that this problem was the “most serious limitation of [the RWC’s] power in the way of regulating and controlling rates.”⁹⁵ For the RWC to act effectively in implementing its rulings on behalf of producers, the power of the purse was indispensable.

Additionally, for efficiency and legitimacy reasons, the RWC wanted courts to respect its role as trier of fact. On appeal, it would be inappropriate and inefficient to have the district court hear all the testimony already offered at the hearing before the RWC and to allow defendants to produce new evidence. The RWC convincingly argued that it would be unfair to overturn its decision to set lower rates based on information it did not have the opportunity to consider before issuing the order.⁹⁶ Here, the RWC did not dispute the legality of judicial review. But it did assert that a reviewing court “should pass upon . . . whether the order made [was] reasonable” after considering only the record from the extensive hearings conducted by the RWC itself.⁹⁷ In framing this as the proper procedure, the RWC interpreted its authority broadly and rejected giving railroad defendants a second bite at the apple with respect to the introduction of evidence.

Finally, the RWC expanded its reach and exposed its bias by assuring interested parties that it would assist in investigating interstate claims even though it did not have

⁹⁴ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 9, 12 (1896).

⁹⁵ *Id.* at 11–12.

⁹⁶ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 9 (1897).

⁹⁷ *Id.* at 10.

power to set rates for interstate lines of road. Responding to a complaint by the Farmers' Alliance, Secretary Teisberg of the RWC concluded that the farmers were concerned with exorbitant interstate rates. Instead of ignoring their case or rejecting it without advice, he promised to forward any interstate complaint buttressed by relevant facts to the ICC and to assist with the investigation of the merits of the claim.⁹⁸ The Minnesota RWC was more than willing to cooperate with the ICC in order to realize the common goal of setting fair and reasonable rates to alleviate the financial burdens on farmers. In advocating for itself, it advocated for the producer. Still, some farmers wanted more.

C. Farmers' Other Strategies

In spite of the fact that the RWC favored the farmers over corporations, oftentimes groups representing farmers remained unsatisfied. They wanted more assistance and deeper cuts in rates. This brief section describes other unique ways that farmers tried to solve their problems.

Besides working to pass legislation or submitting complaints to the RWC, farmers engaged in secondary activities. Impatient with the limited action by the RWC, in January 1892, a group of Alliance members visited the capitol of Minnesota and communicated the Alliance's feeling that the RWC was failing "to do its duty."⁹⁹ They met with Commissioner George Becker, who articulated that the RWC was going as far as the law authorized it. The RWC could only prosecute charges brought by injured parties, would do so "to the fullest extent of its powers[,] and [would] endeavor to secure

⁹⁸ R.R. & Warehouse Comm'n of Minn., Ann. Rep., 27–28 (1893).

⁹⁹ *Becker Budgets Not*, ST. PAUL DAILY GLOBE, Jan. 9, 1892.

justice for all parties.” The St. Paul Daily Globe concluded that the farmers were at least partially satisfied with Becker’s explanation.¹⁰⁰

The farmers’ serious intentions to do whatever possible to remove the burdens foisted on them by the railroads also comes forth in an 1893 letter to Governor Nelson. Farmers from Polk County in northwestern Minnesota demanded a fifty percent reduction of rates on lumber and a thirty-five percent reduction of rates on grain. They implored the Governor to command the Commissioners to lower the rates, and insisted that he remove them from office if they refused to listen.¹⁰¹ Needless to say, the centrist Governor Nelson did not engage in this blackmailing of government employees. The farmers wanted rapid changes, which were impossible considering the limitations placed on the RWC by law. The emotional and radical outpouring of desperation by the farmers evinces their belief that the state was not doing enough. So, although the RWC arguably did its best, some farmers continued to plead for greater action.

In fact, one farmer from North Dakota, D.W. Hines, decided to build 200 miles of a “farmers’ railroad” from the middle of North Dakota to a line that connected to Duluth, MN.¹⁰² His vision was a road built exclusively by farmers, who would also be the stockholders and managers. He wanted to “break down the monopoly of railroads” and create a more direct route to transport grain.¹⁰³ Understandably, many critics mocked Hines’ plan as quixotic. But, for a period of time, it seemed that the farmers might actually prevail. Hines accumulated \$100,000 in stock subscriptions, farmers did some of

¹⁰⁰ *Id.*

¹⁰¹ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 50 (1894).

¹⁰² *Farmers Hines’ Railroad*, MINNEAPOLIS TRIBUNE, Mar. 25, 1896, at 4.

¹⁰³ *A Railroad Farming Farmer*, ST. PAUL DAILY GLOBE, Dec. 7, 1895.

the grading work, and railroad contractors considered bidding upon the laying of the track.¹⁰⁴ But, alas, the dream proved too good to be true. Hines never completed the railroad. In fact, his unconventional views on railroads and religious issues got him in trouble. Minnesota newspapers noted that the state committed him to an insane asylum for his religious mania.¹⁰⁵ Although Hines' fellow citizens had concerns with his religious views, his ability to organize farmers throughout North Dakota and Minnesota illuminates the plight and innovation of these farmers. They were willing to fund and build a portion of a railroad themselves. They went to great lengths in an attempt to get their wheat to market more cheaply in order to retain a larger percentage of the profits.

Farmers attacked unreasonably high rates in myriad ways. They turned legislative victories into real results through the RWC. Farmers presented complaints to the RWC, negotiated with specific railroads, and pushed the RWC to order shipping charges to be reduced. Additionally, teams of farmers lobbied commissioners and politicians. The RWC, although unwilling to take too much from the railroads, did its part by petitioning the state legislature to pass laws that would allow it to do work on behalf of farmers. The Supreme Court could not prevent this activity with a ruling as vague and subject to circumvention as *Chicago Railway*; a few federal judges' concern with constitutional protection of property rights did not significantly restrain populist mobilization by farmers in Minnesota. However, farmers and their allies did not see all of their goals come to fruition. They did not get a drastic decrease in rate cuts across the board, but

¹⁰⁴ *Ready to Lake Track: "Farmer Hines" Railroad Project is Progressing Finely*, MINNEAPOLIS TRIBUNE, June 10, 1896; *Farmers in Earnest: The Hines Road is Certain to be Built*, ST. PAUL DAILY GLOBE, Apr. 2, 1896.

¹⁰⁵ *Farmers Hines Insane*, MINNEAPOLIS TRIBUNE, July 25, 1897.

rather had to pressure railroads by proceeding on a case-by-case basis. Conservative and moderate forces in the state realized that because railroads were necessary to transport grain and goods to market, the state could not completely undermine their ability to make money. Still, the farmers effectively worked with the RWC to lower unreasonable and discriminatory rates. They assiduously worked for change and their passionate political activity produced meaningful results.

III. Legal Theories and *Chicago Railway*

Farmers' wins at the RWC were not always the end of the story. *Chicago Railway* gave railroad corporations the opportunity to contest the "reasonableness" of any decision by the RWC that mandated lower rates. To maintain their victories, farmers and their supporters not only had to be able to win at the legislature and the RWC. They had to be prepared to engage in legal battles. This Part shows how populist legal ideas framed an outer edge of the doctrinal debates. It also describes the initial reactions and legal interpretations of *Chicago Railway* by parties hostile to the Court's ruling. The doctrine was in flux, and lawyers, politicians, and intellectuals offered various legal justifications for state control over railroads. This Part also provides the background and foundation necessary for Part IV, which delves into the more narrow doctrinal debate in Minnesota about reasonable rates.

A. Minnesota Populists Attack the Status of Railroads in the Economy

Some Minnesota Populists advocated fairly radical treatment of railroads. They employed legal and constitutional claims that, despite being rejected by courts and mainstream thinkers, were based on plausible arguments. Using robust language of

justice and good government, their arguments starkly contrasted those of federal judges obsessed with private property. Populists pushed the theoretical discussion away from traditional views on property rights. Specifically, they attacked corporate power as a threat to constitutional and republican values and pushed for government ownership of the entire railroad industry. Their extreme ideas created room for more centrist approaches, which were adopted by political and legal leaders in Minnesota.

A major concern for Populists throughout the country was the growth of monopolies and corporate power. The problem was that monopolistic practices had “altered the character of American law, removed basic safeguards to personal and political liberty, and denied the autonomous existence of the state as the custodian of individual security and the nation’s welfare.”¹⁰⁶ Many Populists thought corporations ought to be “subsumed within the jurisdiction of the government” and subject to the rule of law.¹⁰⁷ Minnesota farmers expounded on their idea of the true meaning of democracy as they attacked business conglomerations. One editorial in the Minnesota publication of *Farm, Stock and Home* assailed the “high-handed monopolies” in the United States, characterizing them as “a menace to the democratic quality of our institutions”¹⁰⁸ Another writer argued that two options existed. He believed that the United States must either nationalize labor and capital “in the interests of all the people” or accept “the other alternative, an American Monarchy[.]”¹⁰⁹ Ignatius Donnelly’s influential voice was not silent either. He called for laws to “limit and circumscribe the growth and power of those

¹⁰⁶ NORMAN POLLACK, *THE JUST POLITY: POPULISM, LAW, AND HUMAN WELFARE* 5 (1987).

¹⁰⁷ *Id.*

¹⁰⁸ *Monopolies and Trusts*, *FARM, STOCK AND HOME*, March 1, 1888.

¹⁰⁹ *FARM, STOCK AND HOME*, Nov. 1, 1889.

unnatural and irresponsible beings and provide for their ultimate extinction, and thus make this indeed a government of the people, by the people and for the people, and not a government of money, by money, and for money.”¹¹⁰ Referencing the preamble of the Constitution and the Gettysburg Address, he unabashedly proclaimed his vision that democratic and constitutional principles favored the common masses over aggregated wealth.

In *Great West*, another Minnesota periodical aimed at farmers and Populists, an editor commented extensively on how the language and spirit of the Declaration of Independence and the Constitution envisioned governmental restrictions on property and capital. First, the author noted that people are “‘endowed by their Creator (not by the State) with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.’”¹¹¹ He pointed out that the founders “did not regard property or its accumulations, now universally termed ‘capital,’ as a creature to be viewed as a partner, and co-equal with ‘liberty’ or the ‘pursuit of happiness.’ . . . Nor did the Constitution of the Union recognize capital as a factor of civilization.”¹¹² Capital had this status, the editor argued: “its creation, its tenure, its value, its use, possession and enjoyment is ever to be subject to the law—while the law is to have its base only in the ‘consent of the governed.’”¹¹³ He forcefully concluded by declaring that the right residing in the people “to control capital by legislation . . . is an absolute right.”¹¹⁴ The reasoning in this article challenged the legal theories of lawyers and judges concerned with protecting property

¹¹⁰ Donnelly, Ignatius, ST. PAUL REPRESENTATIVE, June 7, 1893.

¹¹¹ GREAT WEST, July 25, 1890.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

rights from state intervention. Minnesota farmers and Populists did not hesitate to share their own convictions about the implications of the ideas in America's founding documents.

Angry with the Court's decision to interfere with the state's attempt to lower railroad rates, Minnesota Populists applied their general legal and political principles to a specific issue: government ownership of railroads. Many farmers thought that constitutional and political theories provided the intellectual basis for the notion that the state should own and operate railways. An editorial in *Farm, Stock and Home* demanded that government "own and control the railways of the nation, and operate them in the interest of the people" in order to preserve "government of the people, as [the] founders intended it should be."¹¹⁵ Addressing the skeptics within Minnesota's Farmers' Alliance, proponent William M. Gamble asserted that government railroads would be an "extension of the functions of the state," the theory being "that the state is a co-operative institution possessing the power of coercion."¹¹⁶ Combatting cries that government ownership was a form of unwanted paternalism, he creatively argued that paternalism cannot exist in a republic: "[a] republic is a government of the people, and in it the people are supposed, through their political organizations, to do certain things for themselves, and in no sense do they do these things as a father does something for his children."¹¹⁷ Frustration with the *Chicago Railway* holding motivated Minnesota farmers to call for government operation of railroads and to frame this appeal as consistent with constitutional and republican principles.

¹¹⁵ *Government by Railroads*, FARM, STOCK AND HOME, Sept. 15, 1890, at 351.

¹¹⁶ Gamble, William M., FARM, STOCK AND HOME, Dec. 15, 1891.

¹¹⁷ *Id.*

The reasoning of Minnesota farmers and Populists increased the credibility of their policy positions with respect to monopolies, railroads, and concentrated capital. But, their arguments were not perfect. First, their reliance on an ostensibly republican interpretation of the Constitution ignored the fact that many of the founders desired a Constitution that safeguarded private property. Also, claiming that monopolies acted against the will of the people was undermined by the people's true desires as seen through the political process: a majority of the citizenry had voted for only limited intervention in the railroad industry. Finally, these Minnesota theorists had to face the reality that, despite their reading of the Constitution, many of the people in power, those in the federal judiciary, ardently believed that the Constitution protected private interests.¹¹⁸ Notwithstanding the flaws, Minnesotans promulgated imaginative and innovative theories that gave voice to a constitutionalism in accordance with their goals.

B. Farmers' and Bureaucrats' Legal Reactions to *Chicago Railway*

While some Minnesotans waged broad legal attacks on the economic power of railroads, others concerned with railroad rates commented directly on the legal meaning of *Chicago Railway* and attacked the judiciary as an institution. The reaction of the Farmers' Alliance to the decision was one of pure outrage. These farmers believed that the decision destroyed the *Granger Cases* and eviscerated the power of Minnesota's RWC by subjecting every rate it set to endless litigation.¹¹⁹ The Alliance called this a "second *Dred Scott* decision," whose holding depended on mere technicalities.¹²⁰

¹¹⁸ See, e.g., *Chicago, Milwaukee & St. Paul Ry. Co. v. Minn. ex rel. R.R. & Warehouse Comm'n*, 134 U.S. 418, 453 (1890); *Ames v. Union Pac. Ry. Co.*, 64 F. 165, 189 (1894).

¹¹⁹ *Judges Denounced*, ST. PAUL DAILY GLOBE, Apr. 2, 1890, at 1.

¹²⁰ *Id.*

Immediately gravitating toward the surest way to strip the Court of its power, the farmers called for a constitutional amendment to “abolish this new slavery” and stop the corporate domination of the people.¹²¹ In an interesting analogy, the Alliance compared the constitutional structure of government of the United States to that of England. It claimed that, in England, a group of judges would never be allowed to “nullify an act of parliament” because there the people are “properly omnipotent.”¹²²

In fact, initial indignation prompted the executive committee of the Minnesota Farmers’ Alliance to pass a resolution in favor of “exterminating the supreme court.”¹²³ However, tempers cooled a little and the Alliance abandoned this proposition, instead condemning the Court’s power of judicial review because “there is not warrant for it in the constitution [*sic*] of the United States.”¹²⁴ The Alliance leader Ignatius Donnelly explained. He argued that nothing in the text of the Constitution gave the Supreme Court the power to “override the will of the whole people expressed through congress.”¹²⁵ Donnelly also claimed that Art. III, Sec. 2 gave Congress the power to regulate the appellate jurisdiction of the Court.¹²⁶ But, in *Chicago Railway*, the Court had overturned part of a state law rather than an act of Congress. Donnelly detested this version of judicial review as well. He decried the “steady encroachment of the judiciary upon the legislative and executive branches of the state government” and praised the “grand doctrine that all power must ultimately rest with the inhabitants of the land making laws

¹²¹ *Id.*

¹²² *Id.*

¹²³ GREAT WEST, May 16, 1890.

¹²⁴ GREAT WEST, May 30, 1890.

¹²⁵ *Watch the Courts*, ST. PAUL REPRESENTATIVE, June 21, 1893, at 1.

¹²⁶ *Id.*

through their duly chosen representatives.”¹²⁷ Overall, Donnelly and the Farmers’ Alliance railed against all courts that abrogated the will of the people as set forth by legislative enactments.

Despite the threat of future judicial review, individual farmers felt they had the authority to challenge and emasculate the Court’s decision. In 1892, a farmer sent a letter to the RWC begging the commissioners to reduce rates. He acknowledged that the Court might “nullify their action,” but said that the people would respond as they did to *Dred Scott*, by reversing the decision through a political revolution at the ballot box.¹²⁸ The Farmers’ Alliance and other individual farmers did not bow deferentially to the Supreme Court. They did not believe that a palpably wrong decision had to be respected as good law. Instead, they strategically compared it to *Dred Scott*, a past case they thought to be a clearly erroneous application of judicial review and equally offensive to the rights of man. Although many of them were not trained in law, they knew enough to express their legal opinions and demand justice with great conviction.

Railroad commissioners involved with the rate issue on the state and national level also grappled with the *Chicago Railway* decision. In April of 1892, a national convention of railroad commissioners was held at the office of the (ICC) in Washington, D.C. Bureaucrats from all over the country met to discuss railroad policy issues. Two Minnesotans were in attendance: Secretary A.K. Teisberg and Commissioner George L. Becker.¹²⁹ These men served on the Minnesota RWC for much of the 1890s and made many of the important decisions concerning rates, which were detailed in Part II. At the

¹²⁷ Donnelly, Ignatius, ST. PAUL REPRESENTATIVE, June 7, 1893.

¹²⁸ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 49 (1893).

¹²⁹ Proceedings of a Nat’l Convention of R.R. Cmm’rs, at 7 (1892).

convention, they considered the Report from the Subcommittee on Reasonable Rates, which was made up of other state commissioners. The Report addressed the *Chicago Railway* decision and made legal and policy arguments for legislative rate setting.

Unlike the farmers in Minnesota, who correctly realized that the Supreme Court had paved the way for judicial intervention in rate setting, the Subcommittee interpreted the holding of *Chicago Railway* more narrowly. Speaking equivocally at first, the Report argued that legislative bodies had the power to fix maximum rates, which were binding “unless some fundamental principle of justice [was] clearly violated.”¹³⁰ This would seem to permit courts to overturn rates that egregiously interfered with railroads’ property interests. But the Report then claimed that, in *Chicago Railway*, the Supreme Court did not overturn the doctrine of legislative control of rates. The only due process problem with the Minnesota statute was the failure to require an opportunity for the railroads to present their case at a hearing before commissioners set new rates.¹³¹ The Report argued that this view of *Chicago Railway* was also sustained by the 1892 case of *Budd v. New York*, which upheld the regulation of grain elevators and said that rates set directly by a legislature were not subject to judicial review.¹³² The Subcommittee on Reasonable Rates attempted to construe the Court’s recent rulings as consistent with the *Granger Cases*, which sanctioned broad state power to set rates. Although this interpretation of *Chicago Railway* was not shared by most Minnesota judges and lawyers (as will be described in Part IV), or by the Supreme Court itself in later cases, the Subcommittee’s Report shows

¹³⁰ Report of Subcommittee on Reasonable Rates, Proceedings of a Nat’l Convention of R.R. Cmm’rs, at 31 (1892).

¹³¹ *Id.* at 31–32.

¹³² CORTNER, *supra* note 1, at 129 (citing *Budd v. New York*, 143 U.S. 517, 528, 538–47 (1892)).

that the law was still unstable in the early 1890s. Because of this, activists, politicians, and railroad commissioners were comfortable with promoting a particular interpretation that they believed was based on sound legal claims and would allow for the implementation of their idea of just policies.

Minnesotans who attended the Convention or read the Report also came across more general reasons for substantial governmental control of railroad rates. Maintaining that the “right and duty of public control” of the railroad industry was no longer a disputable question, the Report said that the general welfare requires that railroads “submit to public control for the common good” because they are a “business affected with the public interest.”¹³³ Like radical Minnesota farmers, the commissioners professed concern for the common people; in contrast to the farmers, though, they demanded the imposition of reasonable rates, not wholesale governmental ownership. The authors of this Report also grounded their legislative aim in the sacred idea of “equality before the law.”¹³⁴ They decried rate discrimination as “evil.” The Report attacked the favoritism shown by railroads to certain individuals, businesses, and localities as an unacceptable violation of the fundamental principle of equal treatment.¹³⁵ Lastly, the Report cited facts and figures. It noted that, in the fourteen years before 1890, in the eleven central farming states, railroad earnings had gone up 175% and the value of wheat and corn had only increased 57%.¹³⁶ This disparity meant that railroads were reaping an even greater

¹³³ Report on Reasonable Rates, at 34.

¹³⁴ *Id.* at 39.

¹³⁵ *Id.*

¹³⁶ *Id.*

percentage of the earnings from farm work than they had in the past.¹³⁷ After being exposed to these ideas in defense of government regulation of rates, Secretary Teisberg and Commissioner Becker returned to Minnesota with further ammunition to use against those who resisted intervention by the RWC.

Theorists, farmers, politicians, and bureaucrats had a range of justifications for denouncing the economic influence of railroads and condemning the Court's *Chicago Railway* decision. Populist intellectuals and certain groups of farmers came to the most extreme conclusions. Ignatius Donnelly and the editors of *Great West* and *Farm, Stock and Home* cleverly worked within the set of prevailing legal doctrines to advocate for government ownership of the railroads and a Supreme Court with no power to favor corporate interests over those of the producing class. They massaged and manipulated ideas like justice, government by consent, republicanism, and slavery in order to support conclusions that differed significantly from theorists who ardently defended private property rights. The bureaucratic railroad commissioners rejected the more radical positions at their national Convention. But, they also engaged in creative interpretation of legal doctrine and agreed with Populists and farmers in that the law supported meaningful government control of railroad rights.

IV. The (Nearly) Impossible Question: How Should Courts Determine Whether Rates Are Reasonable?

The convictions of Populist theorists and farmers made them less willing to work within the framework established by *Chicago Railway*. These personalities based their push for state control of railroads on innovative legal commentary, but their views did not

¹³⁷ See Part I.A.

capture the sensibilities of the majority of citizens or Supreme Court justices. Some farmers and their allies realized that, after *Chicago Railway*, victory for farmers depended in part on the ability to win when railroads attacked the RWC's lower rates in the courts. Key figures in Minnesota acquiesced to the general reasonableness inquiry announced by the Supreme Court. Some strategically framed the reasonableness question in favor of railroads, while others argued for a highly deferential reasonableness standard that would endorse most state intervention. The vacuous nature of the Court's decision in *Chicago Railway* caused Minnesotans to press for definitions of reasonable rates that would lead to results in harmony with their normative agendas. In *Steenerson*, the Minnesota Supreme Court chose a doctrinal test that led to the conclusion that the decrease in rates mandated by the RWC was reasonable and did not unjustly deprive railroads of their property.¹³⁸

A. Commissioner Becker for Farmers, Judge Brewer for Railroads and Investors

Mainstream legal actors who accepted the authority of the Supreme Court did agree that courts could overturn rates that unreasonably interfered with railroads' property interests. From this starting point, though, the issue was wide open. George Becker gave voice to one side of the spectrum as he thought it essential to inquire into the needs of farmers when considering the reasonableness of rates charged by the railroads. Becker, the lone Democrat on the three-man board of the RWC during the early 1890s,

¹³⁸ *Steenerson v. Great Northern Ry. Co.*, 72 N.W. 713 (Minn. 1897).

often found himself in the minority.¹³⁹ He rejected the notion that politicians and lawyers should only be worried about what a decrease in rates would do to railroads.

In *Chicago Railway*, the Court suggested that when lower courts reviewed shipment rates set by state bodies, they should focus on the railroad. The Court felt that the Due Process Clause of the 14th Amendment required judges to intervene to protect the property of citizens and corporations.¹⁴⁰ Interpreting this general ruling, railroads argued that they were entitled to “earn a reasonable return on the capital invested” based on what it originally cost to construct the road.¹⁴¹ Becker asserted that other issues were more pertinent. For him, a “fundamental” principle was that “money invested in railroads [was] no more sacred than money invested in any other branch of business” and so was not entitled to special protection. He did not care about the building costs or the road’s obligations to stock and bondholders.¹⁴² Becker justified his position by hearkening back to the complaint by many farmers that the railroads issued watered stocks.¹⁴³ He claimed that, when raising capital, railroad owners often sold bonds at a discount, and “each dollar of bonds carrie[d] with it, as a gratuity, a dollar of common or preferred stock, or both.”¹⁴⁴ Therefore, he concluded, a reasonable rate did not have to ensure dividends for stockholders or a fair rate of interest on the railroads’ bonds.¹⁴⁵

¹³⁹ *Becker on Freight Rates*, ST. PAUL DAILY GLOBE, Sept. 24, 1894, at 4.

¹⁴⁰ *Chicago, Milwaukee & St. Paul Ry. Co. v. Minn. ex rel. R.R. & Warehouse Comm’n*, 134 U.S. 418, 458 (1890).

¹⁴¹ *Becker on Freight Rates*, ST. PAUL DAILY GLOBE, Sept. 24, 1894, at 4.

¹⁴² *Id.*

¹⁴³ Watered stock is most simply defined as stock issued at some discount so that it has less value than what is represented on its face. The purported value of the stock is often greater than the value of the company’s assets. ALFRED WILLIAM BAYES, *THE LAW OF PARTNERSHIPS* 77 (2nd ed. 1921).

¹⁴⁴ “*Reasonable Rates*,” ST. PAUL DAILY GLOBE, Feb. 27, 1894.

¹⁴⁵ *Id.*

To be sure, Becker did not approve of rates so low that they would threaten railroads' ability to function in Minnesota. Instead, he wanted to reverse the focus. He thought it was just to look at the question of reasonable rates "from the standpoint of a man who pays the freight."¹⁴⁶ He resisted establishing rates that would "crush the farmers," demolish "the industries of the country," or "render[]" "every farmer . . . a pauper."¹⁴⁷ Becker and others who agreed with him portrayed the situation in terms reminiscent of Populism, pitting the general citizenry against railroad owners and capitalist investors. Becker and his allies believed that "the shipper is really everybody because he handles the produce which everybody buys or sells."¹⁴⁸ They noted that consumers purchased railroad transportation whenever they bought food, clothes, or other items. Also, farmers were just as entitled to a profit as railroads.¹⁴⁹ By shifting the locus of analysis to the needs of farmers, Becker could and did maintain that rates which cut deeply into the revenue of the railroads were in fact reasonable. To him, the Supreme Court's preoccupation with railroad property improperly ignored the financial distresses that producers confronted. Becker set forth a unique reasonableness analysis that he hoped would prompt courts to uphold the RWC's decisions to decrease freight rates.

When Minnesota state judges considered appeals from the RWC, they could look to an alternative perspective that diverged considerably from Becker's. Minnesota newspapers summarized and analyzed the 1894 decision by Justice Brewer in the federal

¹⁴⁶ *Becker on Freight Rates*, ST. PAUL DAILY GLOBE, Sept. 24, 1894, at 4.

¹⁴⁷ *Id.*

¹⁴⁸ "Reasonable Rates," ST. PAUL DAILY GLOBE, Feb. 27, 1894.

¹⁴⁹ *Id.*

circuit court in Nebraska.¹⁵⁰ In *Ames v. Union Pac. Ry. Co.*, Brewer found that the maximum rates of freight set by the Nebraska legislature unconstitutionally deprived the railroads and their investors of their property.¹⁵¹ Before engaging the question, Judge Brewer admitted that the test to determine the reasonableness of rates was “not fully settled” and doubted whether a single rule, “applicable to all cases,” could be laid down.¹⁵² Still, he pushed forward and picked a standard that showed his sympathy to railroad investors.

Brewer acknowledged that if the proceeding at issue was one to condemn property for public use, the railroad would receive remuneration for the present value of the property. He also admitted that the current value of the railroads, the cost of reproducing them, was less than the value of its outstanding stocks and bonds.¹⁵³ But, he concluded that the actual investment, “as expressed . . . by the stocks and bonds, [was] not to be ignored,” and that “justice demand[ed] that everyone should receive some compensation for the use of his money or property.”¹⁵⁴ After crunching the numbers, Brewer held that the tariff fixed by the state of Nebraska was unreasonable because it deprived the property owners (the holders of stocks and bonds) “of all chances to make profit” and compelled them “to pay out of their pockets all the losses.”¹⁵⁵

By ensuring that a rate schedule could not jeopardize shareholder property, the court in *Ames* protected those wealthy enough to make the risky decision to purchase

¹⁵⁰ See, e.g., *We Have Read It*, ST. PAUL DAILY GLOBE, Dec. 17, 1894, at 4.

¹⁵¹ *Ames v. Union Pac. Ry. Co.*, 64 F. 165, 189 (1894).

¹⁵² *Id.* at 177.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 177–178.

¹⁵⁵ *Id.* at 189.

watered stock rather than the average producer who labored every year in the hopes that he would be able to feed and clothe his family. In fact, the opinion did not once mention producers. In contrast to Becker's call to consider the farmers, it never referenced them or their fellow citizens who convinced the legislature to set maximum rates. The court gave a legitimate, reasonable legal answer to the question of whether a rate is reasonable. In doing so, it opted to come down clearly on the side of railroad investors, and rejected other possible doctrinal interpretations. When Minnesota courts heard an appeal from a reduction in rates commanded by the RWC, they faced competing and conflicting visions of *Chicago Railway*.

B. Back and Forth in the *Steenerson* Case

A major ramification of the Supreme Court's decision to base *Chicago Railway* on the vague requirement that rates to transport goods be reasonable was that Minnesota legal actors could persuasively set forth disparate standards for reasonableness. The lack of clarity created by the Court persisted in Minnesota throughout the 1890s. As laid out above, the complex and unresolved nature of the legal doctrine allowed Minnesota farmers to achieve many of their goals through legislation and the RWC. However, Minnesota courts were eventually forced to take a stance. They had to decide how to answer the reasonableness question and thereby choose whether to cabin the victories realized by the farmers and their supporters. The variations in the rulings that culminated in the Minnesota Supreme Court decision of *Steenerson v. Great Northern Ry. Co.* illuminate the contingencies that existed.

It is sometimes easy to forget that real people bring their complaints to court.

Students of history must not overlook the individuals that stand to gain or lose from a high court's decision. These actors have the power to shape the law. As referenced briefly in Part II, Elias Steenerson from Polk County in northwestern Minnesota filed a complaint with the RWC late in 1893. This call for action came after years of falling wheat prices in which farmers struggled to avoid going deeper in debt.¹⁵⁶ Additionally, the complaint claimed that railroad rates had remained the same during the past four years despite a twenty to forty percent decrease in operating costs.¹⁵⁷ These facts prompted Steenerson to argue that the freight rates charged to ship grain from East Grand Forks, Fisher, and Crookston, Minnesota to Duluth and Minneapolis were excessive and unreasonable. The RWC conducted a hearing and agreed to reduce rates and end discrimination against these and other points on the line.¹⁵⁸ Steenerson had demanded a decrease of thirty-three percent. The RWC, with George Becker as one of its three Commissioners, compromised and ordered a reduction of almost fifteen percent.¹⁵⁹ Becker was able to convince his peers that the farmers needed relief, but the Great Northern Railway quickly appealed the decision.

With no binding precedent, the district court in Ramsey County, Minnesota had to figure out whether the Commission had set unreasonably low rates. In this incredibly complicated case, Judge Kerr first stated that the court would have to figure out the present value of the railroad because “the law could not deprive the owner of property of

¹⁵⁶ See *supra* Part I.A at note 17.

¹⁵⁷ *Farmers Victorious*, ST. PAUL DAILY GLOBE, Sept. 11, 1894 at 1.

¹⁵⁸ R.R. & Warehouse Comm'n of Minn., Ann. Rep., 36 (1896).

¹⁵⁹ *Farmers Victorious*, ST. PAUL DAILY GLOBE, Sept. 11, 1894 at 1.

a fair return of profit upon the value thereof.”¹⁶⁰ Both parties agreed that the best way to deduce the present value was to determine the current cost to reproduce the railroad. This was a fair way to determine value in this case because the court concluded that the stocks and bonds of Great Northern were not watered—they did not exceed the “actual cost of constructing and equipping the railway.”¹⁶¹

The “most difficult problem” and dispositive question was how to apportion the railroad’s past earnings from interstate traffic in a way that fairly captured the amount earned within the state of Minnesota.¹⁶² The court needed this information to determine if the rates set by the RWC would be confiscatory. The road’s total revenue from shipping in Minnesota in 1894 would be compared to the projected revenue after implementation of RWC’s order to decrease rates. The court felt that its obligation under the law was to make sure the railroad would be able to cover its costs after the reduction in rates. It was simple enough to find out how much the railroad made by transporting goods from one part of Minnesota to another. It was more difficult for the court to figure out what percent of the money earned from carrying goods across state lines should count as profits in Minnesota. The state and Great Northern both offered a way to determine how to apportion interstate earnings. The RWC argued that gross earnings on interstate traffic should be counted as in-state revenue based on the proportion of the miles traveled in the state to the miles traveled outside the state.¹⁶³ For example, if Great Northern made \$100,000 from interstate transport and twenty percent of its mileage was in Minnesota,

¹⁶⁰ R.R. & Warehouse Comm’n of Minn., Ann. Rep., 38 (1896).

¹⁶¹ *Id.* at 39–40.

¹⁶² *Id.* at 40.

¹⁶³ *Id.* at 41.

then \$20,000 would be the portion of in-state earnings. In contrast, Great Northern wanted to take into account various costs and apportion based on net earnings.¹⁶⁴

Considering these factors when doing the calculations would lead to a lower value for the road's in-state revenue.

Unsurprisingly, the application of these two methods of calculating total earnings would lead to opposite conclusions. If the court accepted the state's procedure, which the RWC had applied and judged as fair, the court would find that the rates set "were not . . . unreasonably low."¹⁶⁵ On the other hand, Great Northern's method would prompt the court to overturn the RWC's ruling.¹⁶⁶ Judge Kerr knew full well what the outcome would be for each of his options. He chose to accept Great Northern's arguments, used their way of determining the apportionment of earnings on interstate traffic, and overturned the RWC's decision to decrease rates.¹⁶⁷ To be fair, Judge Kerr truly believed he made the right decision and that Great Northern's claims had more merit. He genuinely thought that ruling the other way would unjustly ruin Great Northern and other railroads.¹⁶⁸ However, the fight was not over. The Minnesota Supreme Court would weigh in next.

The highest court in Minnesota came out the other way, further proving that the outcome of these cases depended on which side the court favored when it picked the tests and factors for determining if rates were reasonable. At each step of the way, the supreme court applied a reasonableness standard that helped the farmer's case against the railroad.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 42.

¹⁶⁷ *Id.* at 42, 44, and 47.

¹⁶⁸ *Id.* at 47.

First, in a point of agreement with the district court, Judge Canty of Minnesota's Supreme Court ruled that Great Northern was only entitled to make income based on what it would currently cost to reproduce the railroad.¹⁶⁹ Going further than the lower court, the supreme court said that it was "perfectly immaterial" whether the railroad was mortgaged for two or three times what it would currently cost to reproduce it due to the fact that construction costs had gone down.¹⁷⁰ Showing less sympathy than Judge Brewer in Nebraska or Judge Kerr in the district court, Judge Canty wrote that money invested in railroads should be "subject to [the same] vicissitudes as capital invested in other enterprises."¹⁷¹

In addition to treating the financial interests of stockholders and railroads with indifference, Canty empowered the RWC by holding that courts should only base their reasonableness analysis on the evidentiary findings of the RWC. It interpreted the statute in question in a way that restricted district courts from trying "the facts in controversy de novo," pointing to the doctrinal understanding that "the fixing of rates is a legislative or administrative act, not a judicial one."¹⁷² In contrast to the U.S. Supreme Court in *Chicago Railway*, which carved out a major role for courts by creating judicial review of rates set by state commissions, the high court in Minnesota felt it appropriate to, if at all possible, show deference to the legislature and its administrative bodies.¹⁷³

¹⁶⁹ *Steenerson v. Great Northern Ry. Co.*, 72 N.W. 713, 715 (Minn. 1897).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at 716.

¹⁷³ *Chicago, Milwaukee & St. Paul Ry. Co. v. Minn. ex rel. R.R. & Warehouse Comm'n*, 134 U.S. 418, 458 (1890).

Canty's opinion for the court also chose to favor the RWC by construing the relevant statute to place the burden of proof on the railroad for many key issues. First, Canty again refused to pity the railroads when he demanded that feeder or extensions of a line be self-supporting. He noted that some portions of the railroad west of Minnesota in Dakota were "unbusinesslike ventures and speculations" and were encumbrances on the rest of the line because they did not turn a profit.¹⁷⁴ Minnesota patrons should not be forced to pay higher rates to make up for the losses on these unprofitable portions, reasoned Canty. And, the railroad had the burden to prove that each part of the line for which it charged rates to make a reasonable income was self-supporting.¹⁷⁵

Great Northern also had the burden to show that the rates fixed by the commission were confiscatory. Specifically, Canty required the railroad to demonstrate that the RWC's apportionment of the gross interstate earnings on the mileage basis was "unfair and inequitable."¹⁷⁶ He then listed all of the facts the railroad had to prove to make out its case.¹⁷⁷ The district court should not have simply applied a different standard for apportioning interstate earnings. Instead, Great Northern had full responsibility to affirmatively prove the rates would destroy its ability to turn a profit. In *Steenerson*, the supreme court saddled the railroad with obligations to submit lots of evidence, make numerous calculations, and point out every flaw of the RWC's reasoning if it wanted to overturn the RWC's rates.

¹⁷⁴ *Steenerson*, 72 N.W. at 715.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 725.

¹⁷⁷ *Id.*

The court continued to move against the railroad. Applying a holistic and realistic assessment of Great Northern's finances, Canty found various reasons to conclude that the RWC's imposition of lower rates would not unreasonably hinder the road's ability to make a profit. To begin with, Canty held that rates did not have to assure railroads as great an income on the value of its terminals.¹⁷⁸ He thought that the reasonable income a railroad should make on this property was less than the reasonable income it was entitled to for other portions of the road because terminals were in urban and suburban areas where the market price of property was growing rapidly.¹⁷⁹ Because of increasing property values, the railroad received some return on its terminals irrespective of what it charged its patrons to use the road. This was not an insignificant gloss on what level of income rates should afford railroads in order for them to be deemed reasonable. Instead of deciding that Great Northern should be able to make a five percent income on all of its property, Canty held that it was entitled to a five percent return on the \$30,000,000 value of its normal roads, but only earnings of two-and-a-half percent on the value of its terminals, which was \$14,000,000.¹⁸⁰ Because it guaranteed less income for Great Northern, this approach made it more likely that a court would find RWC's rates reasonable.

Finally, the court chided Great Northern for engaging in creative, but deceptive, accounting. Judge Canty found it problematic that, in complaining that the RWC's rate schedule would be confiscatory and unduly onerous, Great Northern "presented to the court only a part of its entire railway system" while ignoring other parts that might have

¹⁷⁸ *Id.* at 714.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 724.

been more profitable and therefore able to make money even if lower prices were charged.¹⁸¹ Canty also noted that Great Northern “absolutely controlled” a steamship company and a coal company, whose profits depended “almost wholly” on its dealings with Great Northern.¹⁸² Most importantly, the officers of Great Northern had the ability to divide the joint profits “as they [saw] fit.”¹⁸³ Canty held that, with this conglomeration of railroads and other corporations, Great Northern was responsible for showing that the division of profits between itself and these other corporations was “fair and reasonable.”¹⁸⁴ Based on Canty’s lengthy speculations in the opinion,¹⁸⁵ he clearly believed Great Northern engaged in devious, unethical bookkeeping in an attempt to convince the RWC and the district court that the rates set by the RWC would not produce enough income for the railroad to stay afloat.

With two concurrences and no dissent, the Minnesota supreme court unanimously ruled to reverse the district court.¹⁸⁶ The court defended the authority of the RWC and affirmed the decision giving relief to farmers. According to the populist-leaning St. Paul Globe, the decision in *Steenerson* saved farmers \$2,000,000 that year.¹⁸⁷ The court had the ability to do this doctrinally because the Supreme Court had left the door wide open. By requiring courts to determine when railroad rates were unreasonable, but abstaining from promulgating a clear rule, legal minds could disagree about the appropriate way to

¹⁸¹ *Id.* at 727.

¹⁸² *Id.* at 727–728.

¹⁸³ *Id.* at 728.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 727–728.

¹⁸⁶ *Id.* at 729.

¹⁸⁷ *On the Supreme Bench*, ST. PAUL GLOBE, Nov. 6, 1898.

answer the reasonableness question without blatantly opposing the authoritative Supreme Court. And that is exactly what happened in Minnesota and other states in the 1890s.

Commissioner Becker, working for the best possible outcome for farmers, had wanted a judicial inquiry that gave great weight to their interests. Other Minnesotans were compelled by Judge Brewer's concern for investors' property and his method of weighing the factors relevant to railroad profits. Judge Kerr, who considered factors that would have led to a ruling for Steenerson and the farmers, ultimately decided that Great Northern and its property needed protection. Finally, the Minnesota Supreme Court commented on a litany of issues, holding that Great Northern had not met its burden of proof. In determining to what extent rates could be lowered without unconstitutionally depriving railroads of their property, the court overtly opted for a standard with minimal protection for railroads. It gave lip service to the duty imposed on it by the Supreme Court in *Chicago Railway*, but created a doctrinal framework that allowed the RWC to reduce railroad rates for Minnesota farmers.

Conclusion

The Minnesota Supreme Court's holding in *Steenerson* was both a legal and political victory for farmers. In 1894, Democrats and Populists had struck a bargain and campaigned to elect Judges Daniel Buck and Thomas Canty to the Minnesota Supreme Court.¹⁸⁸ Farmers saw the positive result of this coordination in Judge Canty's majority opinion in *Steenerson*.¹⁸⁹ Eight years after *Chicago Railway*, farmers and their supporters had done much to shift the balance of economic power away from railroads. This Article

¹⁸⁸ Hicks, *People's Party*, *supra* note 18, at 545, n. 29.

¹⁸⁹ *Steenerson v. Great Northern Ry. Co.*, 72 N.W. 713 (Minn. 1897).

has shown that farmers, who faced financial trouble, responded with action to the Supreme Court's decision to protect railroads in *Chicago Railway*. Though disadvantageous, the Court's ruling left the farmers many options moving forward. Farmers organized political parties, used political clout to force moderates to compromise, and passed legislation that gave the state authority to intervene for their benefit. They also utilized the structure of the RWC to achieve lower rates.

The Court's nebulous command to consider reasonableness when reviewing rates also allowed for divergent interpretations of doctrinal issues. Some commentators theorized outside mainstream legal thought, but farmers ultimately needed allies at the RWC and on the bench when railroads appealed a RWC order to lower rates. Minnesota courts had a variety of frameworks to choose from when conducting a reasonableness inquiry. In *Steenerson*, the Minnesota Supreme Court decided to expound upon the general standard pronounced in *Chicago Railway* in a way that favored farmers over railroads.

But, the struggle did not end with *Steenerson* or the legislative victories of the 1890s. The Supreme Court weighed in a year later when it ruled on the *Aymes* case.¹⁹⁰ It upheld Judge Brewer's decision in the circuit court and set forth factors for lower courts to consider when determining whether rates unconstitutionally deprived railroads profits from their property.¹⁹¹ State legislatures, Congress, administrative agencies, politicians,

¹⁹⁰ *Smyth v. Ames*, 169 U.S. 466 (1898).

¹⁹¹ *Id.* at 546–547 (When determining the fair value of the property of the railroad, the “original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration.”).

and citizens continued to grapple with the perpetually evolving legal doctrine as they attempted to set rates that would satisfy constituents but also not be overturned by the courts.¹⁹² Not until 1944 did the Supreme Court abdicate, deciding that it would no longer review railroad rates.¹⁹³ Finally, democratically elected governing bodies could freely set any rate to ensure that railroad patrons were not burdened with excessive costs. That is the policy Minnesota farmers wanted from the beginning.

¹⁹² See BARBARA FRIED, *THE PROGRESSIVE ASSAULT ON LAISSEZ FAIRE: ROBERT HALE AND THE FIRST LAW AND ECONOMICS MOVEMENT* 186–189 (1998).

¹⁹³ *Id.* at 189 (citing *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 601–602 (1944)).