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Brandeis and the New Haven-Boston & Maine Merger Battle Revisited*

¶ *Despite Louis Brandeis' well-publicized opposition to the New Haven-Boston & Maine railroad merger of 1907-1909, a large number of public-spirited men, including many progressive reform leaders whom Brandeis had worked with and admired, favored the combination. They saw the merger not as a conspiracy against the public interest, but a necessary response in the public interest to a commercial crisis in Massachusetts. This examination of their reasoning and action tempers Brandeis' widely accepted assessment of the controversy.*

INTRODUCTION

"When the New Haven reduces its dividends and Mellen resigns," Louis Brandeis wrote privately in 1911, "The 'Decline of New Haven and Fall of Mellen' will make a dramatic story of human interest with a moral—or two—including the evils of private monopoly. . . . Anticipating the future a little, I suggest the following as an epitaph or obituary notice: 'Mellen was a masterful man, resourceful, courageous. . . . He fired the imagination of New England; but, being oblique of vision, merely distorted its judgment and silenced its conscience'."¹

Charles Sanger Mellen had been selected by J. P. Morgan to head the New York, New Haven & Hartford Railroad Company in August, 1903. As president of the Northern Pacific Railroad—also part of Morgan's empire—Mellen had won the respect of responsible public leaders throughout the country; no less a person than President Theodore Roosevelt had consulted with him on important political decisions.² ("Mellen is a first class fellow," the President wrote to

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¹ Brandeis to Norman Hapgood, 1911, cited by Hapgood in his Foreword to Louis D. Brandeis, *Other People's Money and How the Bankers Use It* (New York, 1914).

² In 1903, Roosevelt sought Mellen's advice before he decided to challenge Mark Hanna to declare openly if he was going to oppose him for the presidency in 1904. Roosevelt to Henry Cabot Lodge, May 27, 1903, Elting E. Morison (ed.), *The Letters of Theodore Roosevelt* (8 vols., Cambridge, 1951-1954), vol. II, pp. 19-20.

his Attorney General in 1905, "and what he asks is almost always right.")³ Within six years of his appointment to the New Haven, Mellen supervised its consolidation with all the important inter-urban street railways in southern New England, the region's inter-coastal steamship lines, and finally the great Boston & Maine Railroad — which in turn owned a majority of the stock of the Maine Central. These activities stirred up a storm of opposition: the Massachusetts Supreme Court found the New Haven's activities contrary to state law on the grounds that it had not obtained legislative permission for its consolidations; Louis Brandeis and others evoked the specter of monopoly; and the United States Justice Department began antitrust proceedings against the combination. But Mellen succeeded in subduing both legalistic and anti-monopoly sensibilities. ("Paternalism," he told a group of demurring businessmen, "must be exercised by those who have power, and I think we have that power.")⁴ In 1907 he secured assurances from President Roosevelt that his Administration would not attempt to force the New Haven to relinquish its steamship acquisitions.⁵ He proceeded with the Boston & Maine merger a few months later similarly assured.⁶ In 1909 he persuaded the Massachusetts government to ratify his avowed objective of consolidating New England's transportation system under a single management.

But the New Haven's ascendancy was short-lived. In 1913, an Interstate Commerce Commission inquiry into complaints about railroad service led to suspicions that the New Haven's books had been deliberately disordered so as to conceal the company's insolvency. The company's position was further weakened by a succession of rail disasters which suggested that the directors had been sacrificing maintenance for continued dividends. That July, three months after the death of J. P. Morgan, a rebellious group of stockholders forced Mellen's resignation.⁷ The following year a full-scale

³ Roosevelt to W. H. Moody, Nov. 20, 1905, Roosevelt Memorial Association Collection (Widener Library, Harvard University).

⁴ Boston *Herald*, March 7, 1907.

⁵ Mellen had an appointment to see President Roosevelt on this matter on May 1, 1907. Mellen to [Presidential Secretary] William Loeb, Jr., April 19, 1907, and Loeb to Mellen, April 20, 1907, Charles Sanger Mellen Collection (New Hampshire Historical Society); Mellen's testimony before ICC, in *New York Times*, Nov. 11, 1915. Roosevelt later regretted his assent. Roosevelt to Lodge, May 28, 1908, Morison (ed.), *Letters of Theodore Roosevelt*, vol. VI, p. 1040.

⁶ Mellen to H. M. Whitney, May 22, 1907, cited in Henry L. Staples and Alpheus T. Mason, *The Fall of a Railroad Empire: Brandeis and the New Haven Merger Battle* (Syracuse, 1947), pp. 172-73.

⁷ J. P. Morgan, Jr., informed Mellen on April 25, 1913, that the directors had voted his ouster. Mellen resigned his presidency of the B. & M. effective July 16, 1913, and submitted his resignation from the New Haven July 17, 1913, effective Sept. 1. Mellen to A. E. Clark, July 17, 1913; to E. J. Chamberlin, Aug. 26, 1913; to J. W. H. Crum, Oct. 14, 1913, Mellen Collection.

ICC investigation into company affairs disclosed "loose, extravagant, and improvident"⁸ — to say nothing of illicit — practices, as Louis Brandeis had perceived earlier. At the year's end, the company by-passed its dividend for the first time in its history, and six months later went into receivership. The debacle fulfilled Brandeis' prophecies, and heavy judgment fell upon the New Haven's efforts at consolidation.

The "anti-merger" side of the story has been told in full many times;⁹ indeed, since Brandeis proved such a good prophet, no one has ventured to challenge the Brandeisian presentation of the ostensible perils that underlay the Boston & Maine merger, in particular, or New England rail consolidation in general. As Brandeis saw it, disaster followed inevitably from inherent inadequacies and evils of monopoly. The efficiencies which consolidation might conceivably have produced had been nullified by too large a consolidation. Management of the railroad properties by banking interests further compromised their efficient direction; banker-management, Brandeis argued, tended to sacrifice operating profits (and user advantage) when opportunities arose to obtain profits from financial undertakings. Finally, the Mellen-Morgan interests, like all large aggregations of economic power, had jeopardized democratic processes in the course of building the New Haven railroad empire. The New Haven-Boston & Maine merger in particular had contained from the beginning the promise of Massachusetts' economic strangulation, as well as the state's political subservience to monopoly power.

Some of the ICC's revelations bore out much of the Brandeis thesis. The New Haven had absorbed too many unprofitable railroads, and had paid far too much even for many of the profitable ones. It had also paid exorbitant sums to the investment bankers — specifically, J. P. Morgan & Company — for underwriting the stock issues upon each successive step in the building of the New Haven "empire." The management in addition had at times deliberately misled the public in its statements of intentions as well as in its

⁸ "Evidence taken before the Interstate Commerce Commission relative to the financial transactions of the New York, New Haven & Hartford Railroad Company, together with a report of the Commission thereon," *Senate Documents*, 63 Cong., 2 Sess., No. 543, p. 2. (Hereafter cited as "ICC Hearings.")

⁹ Brandeis summarized his own story in *Business — A Profession* (2nd ed., Boston, 1933), pp. 262-312, and in *Other People's Money*, pp. 189-201. Alpheus T. Mason has re-told the story with some embellishment in *Brandeis: A Free Man's Life* (New York, 1946), pp. 177-213, and again, in slightly greater detail, with Henry L. Staples in *Fall of a Railroad Empire*, though in neither book apparently do the authors use any manuscript sources but those of Brandeis himself. They evidently left untouched the many available manuscript collections of New England business and political leaders, including the Mellen collection itself. Nevertheless, many historians seem to refer to the Staples and Mason works as "definitive." See, for example, Arthur S. Link, *Wilson: The New Freedom* (Princeton, 1956), pp. 421-23.

bookkeeping. Finally, the large sums of money which the corporation had doled out in newspaper advertisements and in some cases to news reporters — in order to “popularize” its cause, New Haven spokesmen asserted — lent great weight to the view that the New Haven’s merger scheme was simply another case where overbearing financial interests had sullied a commonwealth’s great traditions against the public will — or at least against the public’s better judgment.

Without overlooking or justifying the egregious arrogance, the abominable business judgment, and the simple dishonesty of the New Haven Railroad’s management, and while applauding Brandeis’ genuine service in assailing them all, it is nevertheless possible to reject the Brandeis view as an inadequate assessment of the issues. Although the New Haven management’s disregard for public sensibilities and its defiance of state law inevitably transformed the issues into a controversy over whether — regardless of the merits of transportation consolidations — the state should let the New Haven corporation and its directors get away with their transgressions, some elements in Massachusetts strove to decide the issues on their merits. It is noteworthy that neither Brandeis nor his exponents ever attempted to explain how a large and impressive group of public-spirited men, including leaders in the cause of progressive reform whom Brandeis himself had earlier worked with and admired, turned up in opposition to Brandeis and in favor of the New Haven-Boston & Maine merger.

What especially impressed these men was the evident commercial crisis which Massachusetts faced at the time, and the aid which they believed a consolidated railroad system in New England might render in that crisis. For the broad economic transformation of the country during the latter decades of the nineteenth century had seriously undermined Massachusetts businessmen’s bargaining power with the great trunk-line railroad system they depended on to reach interior market centers and bring them raw materials and goods for export at competitive rates. In addition, it was evident to many disinterested observers that the New England railroads faced very real difficulties with (1) high and rising costs of operating and improving systems which dated to the earliest years of railroading; (2) the grid-like structure of track across New England which required high maintenance costs for junctions and terminals; and (3) the streamlined competition of interurban street railways.¹⁰

¹⁰ See William Z. Ripley, *Railroads: Finance & Organization* (New York, 1915), pp. 462-70.

Thus, in the eyes of many civic-minded leaders, the New Haven merger appeared, not a conspiracy *against* the "public interest," but a necessary response *in* the "public interest" to the growing financial difficulties of the local railroads, as well as to competitive advantages won by rival economic interests elsewhere in the country. As one group hopefully put it, the merger might serve to make Massachusetts "count for more in the railroad scheme of the country."¹¹ It was due as much to such considerations, as to the overbearing and corrupting financial power of the "special interests," that the New Haven initially won its struggle with state authority. These substantial problems, long obscured by the acrimony of the merger battle, are of equal if not greater interest to historians of business enterprise.

I

Railroad consolidation was not new to Massachusetts. As late as 1890, eight independent railroads had supplied the state with nearly all its steam rail transportation. By the end of the decade there were only two.¹² The state had formally approved each merger, and businessmen and economists generally favored the developments. The Massachusetts Board of Railroad Commissioners, for example, noted that between 1872 and 1898, the process of consolidation had been accompanied "by a voluntary reduction" of rates so that the average revenue per passenger-mile decreased from 2.43 to 1.78 cents and the average revenue per ton-mile decreased from 2.81 to 1.22. Moreover, there had been "in the meantime a marked improvement in the quality of the railroad service rendered."¹³ In other words, the commissioners suggested (at the least) that there was no necessary connection between consolidations and user disadvantage. In an earlier report, the Board had found that the extension of the New Haven system into Boston had provided "the benefits of continuous transportation at through rates," and the added advantages of the New Haven's connections with trunk lines to the West.¹⁴ The consolidation of street railway companies, too, had produced "lower fares and larger transfer privileges" and had "brought to more than

¹¹ Charles Francis Adams, Jr., *et al*, *Report of the Commission on Commerce and Industry* (Boston, March, 1908), p. 21.

¹² The eight were: the New York, Providence & Boston, the Old Colony, the New York & New England, the Fitchburg, the Connecticut River, the Boston & Albany, the Boston & Maine, and the New Haven. The New Haven later absorbed the first three; the B. & M. consolidated with the next two; and the New York Central leased the B. & A. See George P. Baker, *The Formation of the New England Railroad Systems* (Cambridge, 1937); Edward C. Kirkland, *Men, Cities, and Transportation: A Study in New England History, 1820-1900* (2 vols., Cambridge, 1948), vol. II.

¹³ Massachusetts Board of Railroad Commissioners, *30th Annual Report* (Boston, 1899), p. 15. (Hereafter cited as Mass. Bd. RR. Commrs. . . .)

¹⁴ *Ibid.*, *27th Annual Report* (Boston, 1895), pp. 31-32.

one weak system the advantages of financial strength and able management.”¹⁵ The commissioners did have some misgivings. “There can be no question,” they warned, “that there is also a limit beyond which consolidation ought not to go.” But they made no effort to define the limit.¹⁶

After the turn of the century, the commissioners began to urge consolidation of the scores of interurban street railway companies with the major steam railroads. “The laws of neighboring states,” they noted, “encourage this evolution in transportation enterprise.” Remarking on the exuberance of electric railway promotion which followed the conversion from horse-drawn railways in the 1890’s, the commissioners pointed out how too many companies had inflated expectations of financial returns, and had failed to allow adequately for depreciation and for the costly safety devices which the public inevitably came to demand. By 1904, only 10 out of 74 trolley companies operating showed 5 per cent earnings on capital for the previous five years; dividends had dropped sharply and net indebtedness had climbed. More experienced steam-railroad management, the Board contended, would bring stability to New England transportation through greater financial strength and sounder business practices. In any event, the commissioners concluded, “the competition between the steam railroad and the street railway must eventually end.”¹⁷

State legislation, nevertheless, continued to favor street railways over steam railroads. Special laws granted railways choice routes, the right to carry freight, and permission to maintain grade crossings even while steam roads were compelled to eliminate theirs.¹⁸ The growth of the interurban network presented increasingly serious competition for the steam railroads. Trolley lines extended right to the back-doors of factories, thus depriving steam roads of considerable commuter business, as well as much of the highly profitable less-than-carload freight. The railroads it seemed might soon be left with the prospect of handling only low-grade bulk shipments.¹⁹

¹⁵ *Ibid.*, 33rd Annual Report (Boston, 1902), p. 55. Cf. Edward S. Mason, *The Street Railway in Massachusetts: The Rise and Decline of an Industry* (Cambridge, 1932), pp. 12-14. Mason points out that consolidation of street railways produced the effects desired by the Railroad Commission, but ultimately (after 1910) overburdened the stronger companies with too many “weak sisters” and led to their collapse. (I am obliged to Professor Albert Fishlow for calling the Mason book to my attention.)

¹⁶ Mass. Bd. RR. Commrs., 30th Annual Report (Boston, 1899), p. 15.

¹⁷ *Ibid.*, 34th Annual Report (Boston, 1903), p. 52; and 36th Annual Report (Boston, 1905), p. xxxvi.

¹⁸ See Walter S. Allen, “Street Railway Franchises in Massachusetts,” *Annals of the American Academy of Political and Social Science*, XXVII (Jan., 1906), pp. 91-110, esp. p. 108.

¹⁹ See Ripley, *Railroads: Finance & Organization*, pp. 465-66; Mason, *Street Railway in Massachusetts*, pp. 9-10, 64.

Consequently, beginning in 1902, railroad interests petitioned the General Court each year for permission to enter the electric railway business.²⁰ ("The railroads know well," wrote one interurban railway promoter, "that the crucial moment has arrived in maintaining their monopoly. The prospect of interurban roads which has been fully demonstrated in the West has now reached Massachusetts, and if these roads are allowed to be built they give the prospect of developing into a new set of trunk lines for high speed passenger service, and this, of course, will make the railroad monopoly much less valuable.")²¹ In Massachusetts, unlike smaller states like New Hampshire, or newer states like California, the multiplicity of rail and financial interests presented formidable obstacles to any single railroad before the legislature. In addition to the time, money, and energy necessary to overcome the opposition of diverse economic interests and to persuade the legislators favorably, railroad managements had to surmount, after 1900, the widespread suspicion of large-scale corporate enterprise which the muckrakers and reformers had aroused. But, of course, this was the route which republican institutions required.

Charles Mellen chose a different route. In 1905, without consulting the Massachusetts government, and under the cloak of the Consolidated Railroad Company, a holding company chartered by Connecticut, the New Haven Railroad began extending its purchases of interurbans into the western part of the state. ("But I don't want to deceive anybody," President Mellen told a legislative committee the next year. "I am president of the [New Haven] Railroad Company. I am president of the Consolidated company. I am president of the boards of trustees. I am president of your street railway companies.")²² The Boston & Maine Railroad countered with an urgent request for legislative permission to make similar purchases, and the Railroad Commission itself drafted the bill presented in the General Court.²³ Joseph Walker, a Republican from Brookline, introduced a different bill which served the same purpose but strengthened Commission control over such mergers. Both moves met with the vehement opposition of Representative Robert

²⁰ See Mass. Bd. RR. Commrs., *41st Annual Report* (Boston, 1910), p. 112.

²¹ H. C. Forbes to A. E. Adler, Aug. 26, 1905, Joseph B. Eastman Collection (Amherst College). Forbes headed a company which sought a charter to construct a railway from Boston to Providence and eventually to New York; he ran into opposition from the New Haven Railroad with which the projected railway would have directly competed. He and his associates received some "unofficial" advice from Joseph B. Eastman, Secretary of the Public Franchise League, on how to beat the big financiers behind the railroads. See Eastman to David Whitcomb, Nov. 19, 1906, and Dec. 7, 1906, in Eastman Collection.

²² *Boston Herald*, June 27, 1906.

²³ *Boston Herald*, March 9, 1905.

Luce, another Republican from Somerville. Citing the law which forbade a railway corporation from selling its stock to any other corporation, foreign or domestic, without explicit permission from the General Court, Luce asserted that the solution to the Boston & Maine's problem lay not in legalizing the New Haven's usurpations, but in enforcing the law as it stood.²⁴ Caught in the cross-fire between reformers like Luce who saw only the New Haven's violation of the law, and the New Haven interests which sought to keep the Boston & Maine out of the market for Massachusetts railways, neither bill passed the General Court that year.

Public discussion meanwhile centered on the economic and political, rather than the strictly legal issues which Luce had raised. The Massachusetts Board of Trade voted in the spring, after lengthy discussions, in favor of postponement of legislation pending further exposition of the issues.²⁵ In the fall, Secretary Joseph B. Eastman of the Public Franchise League (which Louis Brandeis had helped to organize five years earlier as a private "watch-dog committee" for the state's utilities) reported that after several debates the members of the League were "unable to agree as yet whether . . . to favor a bill allowing such consolidations subject to the approval of the Railroad Commissioners in all respects."²⁶ The consensus appeared to be that if consolidations were desirable, the legislature could change the law if necessary.

If debate had continued to center on the economic and political merits of railroad ownership of interurban street railways, and later, of the Boston & Maine merger, the controversy might have contributed to the solution of a major problem of the American private enterprise system. But neither side permitted that. The New Haven's directors persisted in behaving as if the state were maliciously meddling with their manifest destiny to bring the millenium to Massachusetts' economy. Partly in response to that attitude, the opposition concentrated its attack on "corporate truculence."

II

In June, 1906, Governor Curtis Guild entered the contest. In a special message to the legislature, Guild declared that a railroad corporation (the New Haven), "controlled by men who are not

²⁴ *Boston Herald*, April 15, May 4, 1905.

²⁵ *Boston Globe*, April 19, 1905.

²⁶ J. B. Eastman to G. B. Upham, Oct. 20, 1905, Eastman Collection. As late as 1907, Eastman reported, the League was uncertain as to whether the merger of the Berkshire Trolley system with the New Haven would be in the public interest, and recommended only that the legislature postpone action on enabling legislation for another year. See Eastman's Annual Report for 1907, in Louis D. Brandeis Collection (Law Library, University of Louisville).

citizens of Massachusetts," had "throttled" healthy competition in western Massachusetts. "Slowly, surely," he continued, "the control of our railroads, the control of the passage to market of every Massachusetts product, the control of the transportation to and from his work of every Massachusetts citizen, is passing from our hands to those of aliens." He demanded that the legislature do something to correct "this grave injustice," and insure that transportation within the state "be controlled by the people of Massachusetts, and not by men beyond the reach of her law and the inspiration of her ideals."²⁷

Despite Guild's message, Mellen persuaded the General Court to postpone action against his company, promising, in a letter to Representative Walker, that he would purchase no more railway lines until the courts could pass upon the legality issue.²⁸ But the New Haven's president evidently made this promise in bad faith. That summer he set up the New England Security & Investment Company, a voluntary association which lay beyond the state laws regulating corporations,²⁹ and transferred to it the New Haven's interurban railway stock.³⁰ All of the new company's directors, including Mellen, were also New Haven directors. The association soon began buying up stock in four other interurban companies, and in the face of mounting protests, the New Haven's president blandly denied that there was any relationship at all between the railroad and the investment company.³¹ This was one of Mellen's many subterfuges which exasperated his opponents and embarrassed his friends.

Public agitation arising from corporate abuses in general still caused Mellen many uneasy moments, especially in view of his long-range plans. In February, 1907, he wrote to William Rockefeller, a New Haven director:

The general condition is rather unsatisfactory The agitation against corporations and railroads in particular at Washington is making itself more or less manifest in local legislatures, and causing us considerable trouble.

²⁷ *Boston Globe*, June 23, 1906.

²⁸ *Boston Herald*, June 29, 30, 1906; *Boston Post*, June 29, 1906. The letter, which was signed by Charles F. Choate, Jr., the New Haven's attorney, was reprinted in full in the *Boston Herald*, June 13, 1907. The General Court did re-enact the earlier state law which prohibited direct or indirect acquisition of a railway company by a railroad corporation, and called for a test case to decide whether this applied to the New Haven and its affiliated holding company, the Consolidated. The Railroad Commission in 1909 observed that this amounted to "a declaration of the common law, and, as such, a statement of the policy of the Commonwealth itself." Mass. Bd. RR. Commrs., *41st Annual Report* (Boston, 1910), p. 111.

²⁹ "ICC Hearings," pp. 24-25.

³⁰ *Boston Post*, Aug. 17, 1906.

³¹ *Boston Herald*, Jan. 11, 1907.

He expressed confidence, however, that he could control Rhode Island and Connecticut, and he believed that attention in the Massachusetts legislature was "directed more toward other corporations than our own this year, and we are looking to escape . . . any serious trouble."³² Shortly afterward, Mellen made his first trip to the capital to secure assurances from "our great and good friend in Washington."³³

In March, Mellen entered negotiations for a controlling block of Boston & Maine securities, a move which quickly became the focus of the controversy over the New Haven's activities in Massachusetts. Once again Mellen was less than candid with the public. He bluntly denied considering the purchase of Boston & Maine stock, even while he engaged in negotiations for it and consulted with President Roosevelt about whether such an acquisition would bring a federal antitrust suit against the New Haven.³⁴ By the middle of May, he concluded arrangements for the transfer of 109,948 shares of Boston & Maine stock to the New England Navigation Company, another New Haven subsidiary. Still no comment came from the New Haven's office, though rumors of the transfer were now widespread. Henry Whitney, a director of the Boston & Maine who favored the merger, wrote to Mellen urging him to set the issue squarely before the public. "I think it meets approval among our businessmen as a whole," he said, "but there is still a large problem to be reckoned with, and a few words now outlining in general your policy . . . would go far to allay excitement and hostile criticism, and might save you considerable annoyance later on."³⁵ But Mellen rejoined that the principal directors had come to the decision to let the public have "as little information . . . as is absolutely necessary."³⁶

Apparently the New Haven strategists were counting on slipping the affair past a drowsy public and an inattentive legislature. It was symbolic of their condescending regard for both. But the new-style businessmen did not quite count on the old-fashioned pride of family ownership still strong in the Puritan Commonwealth. Samuel and William Lawrence, whose family had long held a large share of Boston & Maine stock, refused to surrender their influence

³² Mellen to Rockefeller, Feb. 4, 1907, *New York Times*, Nov. 12, 1915. (State Democratic and Independence League political leaders at the time were attacking Standard Oil and the United Shoe Machinery Corporations.)

³³ *Ibid.*

³⁴ Mellen to William Loeb, April 19, 1907, Loeb to Mellen, April 20, 1907, Mellen Collection.

³⁵ Whitney to Mellen, May 21, 1907, quoted in Staples and Mason, *Fall of a Railroad Empire*, p. 172.

³⁶ Mellen to Whitney, May 22, 1907, *ibid.*

in company affairs without a fight. Their retention of Brandeis to resist the New Haven marked the opening of the battle. They found tenacious allies in Republican Representatives Robert Luce, Robert M. Washburn, a conservative from Worcester, and Norman White, an eccentric from Brookline.

III

Brandeis' opposition at this stage of the merger issue was based primarily, in his own words, "on the general idea of a merger being opposed to the public good."²⁷ A profound traditionalist in economic matters, Brandeis disliked not so much the development of large-scale business corporations as their formation by the financial manipulations of investment bankers. He felt the bankers did no constructive work themselves, took no risks, and appropriated for themselves the fruits of the labor of truly adventurous, imaginative, honorable individualists — a dying breed in America.²⁸ It was only subsequently that Brandeis undertook a private investigation of the New Haven's financial condition and found added material for his campaign. The railroad, he discovered, had not earned the dividend it paid in 1907; this suggested to Brandeis that the Boston & Maine stockholders who had "scrambled for the chance of exchanging their B. & M. stock for New Haven will find that they have been served a gold brick."²⁹

²⁷ Interview in the *Boston Journal*, Jan. 8, 1908.

²⁸ In *Other People's Money*, Brandeis presents an account of the Boston merchant and railroad magnate, John Murray Forbes, which reveals more about Brandeis — his traditionalism as well as his Bostonian "patriotism" (some would say provincialism) — than it does about Forbes: "He was a builder; not a combiner, or banker, or wizard of finance. He was a simple, hardworking business man. . . . He had the imagination of the great merchant; the patience and perseverance of a great manufacturer; the courage of the seafarer; and the broad view of the statesman. Bold, but never reckless; scrupulously careful of other people's money, he was ready, after due weighing of chances, to risk his own in enterprises promising success." Thus equipped, Forbes built the Chicago, Burlington & Quincy. "Under his wise management, and that of the men whom he trained, the little Burlington became a great system. It was 'built on honor,' and managed honorably." By 1901, however, J. P. Morgan had swallowed up this great enterprise. Similarly, "one by one these western and southern railroads passed out of Boston control; the greater part of them into the control of the Morgan allies. . . . Now nothing is left of Boston's railroad dominion in the West and South . . . and her control of the railroads of Massachusetts is limited to . . . [thirty-two] miles of line. . . ." From Chapter 8, "A Curse of Bigness."

²⁹ Louis Brandeis to Alfred Brandeis, Oct. 19, 1907, Brandeis Collection; also quoted in Staples and Mason, *Fall of a Railroad Empire*, p. 26. Of course, part of Brandeis' inference about the "gold brick" was based on his stated belief that the B. & M.'s financial condition was considerably better than the New Haven's, and was indeed steadily improving. Staples and Mason, *Fall of a Railroad Empire*, p. 34. This was not quite true. See Francis B. C. Bradlee, *The Boston & Maine Railroad: A History of the Main Road with Its Tributary Lines* (Salem, 1921), p. 73 and Robert L. Masson, *New Shares for Old: The Boston & Maine Stock Modification* (Boston, 1958), pp. 28-29. According to Masson, the New Haven's management of the B. & M. only "completed the disorganization of the railroad's finances" that had begun with "the shortsighted policies of the preceding management," p. 30. Much the same story was true of the street railway companies which the New Haven absorbed. See Mason, *Street Railway in Massachusetts*, pp. 39-40.

Most state leaders, meanwhile, were deeply disturbed by the possibility that the Boston & Maine stock would land in the hands of a railroad system with terminals at other ports, thus making the New England railroads mere adjuncts of greater trunk lines. The effects of the previous decade's great railroad and shipping consolidations had not gone unnoticed; because the great combines tended to divert traffic to communities more essential to their own special interests, their absorption of the smaller local rail and shipping companies, which had once maintained close identity with the communities they served, had turned many commercial centers into way-stations.⁴⁰ Boston was already tasting of that fate.

In 1900, the New York Central gained control of the Boston & Albany Railroad, one of Massachusetts' principal rail outlets to the West, and almost immediately Boston merchants had begun registering bitter complaints about service on that road. In 1902, Boston port activity suffered a precipitous decline,⁴¹ and between 1902 and 1907, six large cargo ships ceased docking at Boston and a major shipping line was threatening to leave, all because of failure to fill their holds. During this period the New York Central had diverted grain and other shipments to merchants in New York City because, it claimed, demand was heavy and it had to satisfy merchants nearer to the sources of supply first.⁴² In addition, in 1902, the organization of the International Mercantile Marine Corporation by J. P. Morgan had, by consolidating all the major lines which operated out of Boston, deprived the port of virtually all the independent services that had actively sought to attract business there. Moreover, the I. M. M. had fixed uniform rates for its lines at all ports for both east- and westbound traffic across the Atlantic. While shippers could send goods from any of the five major Atlantic ports to Liverpool at exactly the same cost, Philadelphia, Baltimore, and Norfolk enjoyed railroad rate differentials which made shipping goods from any point in the American interior to those ports less expensive than to New York or Boston. The differentials, arranged by the railroads in the late 1870's to end rate wars, had served ostensibly to equalize the cost of through traffic from the American interior to Liverpool.

⁴⁰ William Z. Ripley, *Railroads: Rates & Regulation* (New York, 1912), pp. 487-88.

⁴¹ From \$130,000,000 in exports in 1901, Boston handled only \$86,000,000 in 1902, the lowest since 1894. The loss, which persisted for several years, dropped Boston behind New Orleans to third place in total port activity for the first time in generations. Boston Chamber of Commerce, *18th Annual Report* (Boston, 1904), pp. 21, 181. See also *ibid.*, *16th Annual Report* (Boston, 1902), p. 159; *19th Annual Report* (Boston, 1905), p. 45; and Edwin J. Clapp, *The Port of Boston* (New Haven, 1916), pp. 93-94.

⁴² *Boston Herald*, Jan. 31, 1907. One crisis in grain shipments occurred in January, 1907, when (Boston merchants complained) the Central imposed a "grain embargo" on Boston, and only partially lifted it thereafter. *Boston Herald*, Feb. 3, 1907.

By eliminating the cost advantages which Boston had enjoyed on transatlantic voyages, Morgan's I. M. M. dealt Boston's export business a crippling blow.

These developments reveal only part of the contemporary challenge to the longstanding ascendancy of Massachusetts business interests. For more than two decades, entrepreneurs in sections of the country nearer the domestic markets and sources of supply had succeeded in making great inroads on the Bay State's industrial preeminence. For example, Massachusetts' share of the total cotton-goods market among United States producers had dropped from 38 per cent in 1880 to 33 per cent in 1900, while southern competitors had taken over the major share of coarse cotton yarns and had made tremendous advances in the finer cottons. By 1909, Fall River, the leading cotton-textile city in the country, had already gone into eclipse.⁴³ As late as the 1880's Massachusetts had led the leather-goods industry, but by 1900 it had fallen far down the list, producing only 11 per cent of the national product, or half of its share of twenty years earlier. It also had fallen from the lead in the paper and wood-pulp industries. Massachusetts shoe manufacturers, who had thoroughly dominated the industry in North America for more than a century, meanwhile watched nervously as Ohio, Illinois, Wisconsin, and Missouri captured increasing shares of the American shoe market; from 6.6 per cent of the national output in 1879, those states were producing almost 17 per cent by 1900.⁴⁴

Meanwhile, the ominous rumblings from western insurgents for increased federal regulation of railroad rates threatened the existence of the special low rates which Massachusetts manufacturers had long depended on to reach their western markets. When the rate structure took form, in the late nineteenth century, it reflected Massachusetts' strong economic and political position in the nation; the state's interests at that time could exact favorable bargains from railroad managers, who, in turn, quite naturally wished to maintain the heavy flow of traffic to and from the established industrial centers.⁴⁵ At least part of the demand for government rate-making derived from the effort of western leaders to use political power to

⁴³ Thomas R. Smith, *The Cotton Textile Industry of Fall River, Massachusetts* (New York, 1944), pp. 120-21.

⁴⁴ Figures derived from Frederick S. Hall, "The Localization of Industry," *Twelfth Census*, vol. VII, *Manufactures*, part 1 (Washington, 1902), pp. cxc-ccxiv. See also, Thomas L. Norton, *Trade-Union Policies in the Massachusetts Shoe Industry, 1919-1929* (New York, 1932), p. 29, and Seymour L. Wolfbein, *The Decline of a Cotton Textile City: A Study of New Bedford* (New York, 1944), p. 61.

⁴⁵ See Richard M. Abrams, "A Paradox of Progressivism," *Political Science Quarterly*, LXXV (September, 1960), pp. 396-97.

end "discriminatory" rate practices which had enabled distant eastern manufacturing and processing interests to compete successfully with westerners in their own market areas.⁴⁶

Understandably, then, news of the New Haven-Boston & Maine merger touched sore defensive sensibilities in the Bay State. "I cannot think," Senator Henry Cabot Lodge wrote privately, "that it would be good for New England, for Massachusetts, and above all, for the City of Boston, to have the entire railroad system put under the control of a Connecticut corporation which is owned in New York. I know that the element in the Boston and Maine which is favoring it is the New York ownership."⁴⁷ That June, Governor Guild sent a special message to the legislature urging it to reaffirm the state's determination "to control the operation of railroads within her border." The same day, Senator Lodge issued a press release more specifically warning Boston's commercial leaders that they faced disaster if the Boston & Maine should become another satellite of New York financial interests like the Boston & Albany; and he suggested that the General Court act "to prevent the diversion from Boston of grain and other through freight which constitute the exports of the port."⁴⁸ Both Louis Brandeis and the state attorney general presented bills to the legislature which forbade the New Haven to obtain direct or indirect control of the Boston & Maine, required the New Haven to dispose of the stock it already held by April 1, 1908, and provided criminal penalties for defiance. The New Haven countered with a request that the General Court validate its acquisitions. And the battle was on.

The first round ended in compromise. The Republican party leadership in 1907 was more determined to play for time than to settle the issue at once. Aside from the practical difficulties of obtaining agreement quickly on any decisive proposal, the New Haven had strong bipartisan support throughout the state, and the Democratic candidate for governor that year, railway financier Henry M. Whitney, was a leading advocate of the merger. Republican leaders did not care to fight Whitney on the merger issue and risk antagonizing the railroad magnates, on whom the party customarily counted for support. Consequently, Senator Lodge worked out a compromise bill with Governor Guild and Republican legislative

⁴⁶ See Ripley, *Railroads: Rates & Regulation*, pp. 161-63.

⁴⁷ Lodge to Robert Lincoln O'Brien, May 16, 1907, in Henry Cabot Lodge Collection (Massachusetts Historical Society). See also Lodge to O'Brien, May 20, 1907. Contrary to the statement by Elting E. Morison that Lodge was "the persistent advocate of the New Haven" (*Letters of Theodore Roosevelt*, vol. VI, p. 1040n), Lodge opposed the B. & M. merger until at least the end of 1908, and he never gave up his opposition to New Haven consolidation with electric railways.

⁴⁸ *Boston Evening Transcript*, June 6, 1907.

leaders, which deferred decisive action while it deprived the New Haven of power to vote its Boston & Maine stock for a year. Although Brandeis and other New Haven opponents protested that the bill implicitly recognized the New Haven's acquisition as an accomplished fact and would give it the state's sanction upon the expiration of the bill in June, 1908, the Republicans had achieved their purpose of taking the issue out of politics for the year.⁴⁹

In a state like Massachusetts, where a large number of business and political leaders continued to define as fraud such increasingly common financial practices as stock dividends, capitalization of anticipated earnings, and the pyramiding of corporate stocks through holding company devices,⁵⁰ it behooved Mellen to exercise keen diplomacy. He might have made the envelopment of the state in the web of modern capitalism less painful if he had not been so thoroughly convinced of his right to "exercise paternalism." But with an arrogance which may have passed for cleverness in other parts of the country where innovative business techniques did not run up against a strong, traditionalist business community, Mellen continued to do everything he could to chafe the opened wounds. He reacted to legislative interference with his plans with ill-concealed contempt, a reflection of his supreme confidence that all "right-headed men" were with him. He parodied Bostonians' concern that the merger would expunge the name of "Boston" from all railroads serving the city by promising to paint the word on the top, bottom, and each end of all railroad cars. He ridiculed the state attorney general's proposed bill and he insulted the leading Democrat in the state Senate.⁵¹ His tactics even got under Lodge's skin, though the Senator usually had a high tolerance for the duplicity of men of Mellen's caste, and a high regard for Mellen personally. "They took great pains," Lodge wrote to the *Transcript's* editor Robert Lincoln O'Brien, "to let me know, from various quarters, that there is danger of selling the stock to the New York Central or Canadian Pacific . . . I think there is a desire to force our hands under the threat,

⁴⁹ See *Boston Globe*, June 17, June 18, and especially June 19, 1907; Mason, *A Free Man's Life*, p. 181. Shortly afterward, Roosevelt wrote to his friend Lodge, "You did excellent work about that merger," noting that Whitney "would be pretty well knocked out as a candidate." Roosevelt to Lodge, July 4, 1907, in Henry Cabot Lodge (ed.), *Selections from the Correspondence of Theodore Roosevelt and Henry Cabot Lodge, 1884-1918* (New York, 1925), vol. II, p. 274. See also Lodge to W. E. Chandler, Oct. 19, 1907, in Lodge Collection.

⁵⁰ See Charles J. Bullock, "Control of the Capitalization of Public Service Corporations in Massachusetts," *American Economic Association Quarterly*, X (April, 1909), pp. 384-414; Grosvenor Calkins, "The Massachusetts Business Corporation Law," *Quarterly Journal of Economics*, XVIII (Feb., 1904), pp. 269-80; Abrams, "A Paradox of Progressivism," pp. 383-87, 391-94.

⁵¹ *Boston Herald*, June 12, 1907.

and I hope the Legislature will be very careful in anything it does.”⁵²

The threat of selling the stock to one of the large trunk-line railroads continually served the New Haven well with the state's sensitive merchants; just as ultimately it helped to persuade Lodge to support most of the New Haven's objectives. But Mellen's power-play tactics tended, as the *Springfield Republican* complained, to “derogate from the dignity of the Commonwealth.” The *Republican* — which supported the merger — regretted that Mellen had come before the legislature in 1907 only after he had achieved consolidation with the Boston & Maine. “He would like the State's sanction,” the paper observed; “it will be for our advantage to give it,” it continued; “but the merger has been made a fact, whether or no — in other words, what are we going to do about it?”⁵³ Similarly, while rejecting Brandeis' attack on the company's financial condition in 1908,⁵⁴ the *Republican* blamed the company for incurring such criticism by hiding the facts; the New Haven had thus “aroused a hostile public sentiment which would not otherwise have existed.” Finally, with typical understatement, the *Republican* observed that the New Haven's maneuvers constituted “something like an obstacle to confidence.”⁵⁵

On May 8, 1908, the Massachusetts Supreme Court upset Mellen's legal position. It found that the New Haven had acquired its inter-urban railway properties illegally, and that the holding company or “voluntary association” device it had employed was too transparent an effort to evade the law. The ruling also applied clearly to the railroad's Boston & Maine holdings.⁵⁶ Yet Mellen's confidence in his objectives remained unbowed. Earlier, when Attorney General Malone reported to the legislature that the street railway companies which had sold out to the New Haven should have their charters revoked, Mellen commented: “I certainly am not disturbed by the opinion of the attorney general.”⁵⁷ Now, with President Lucius Tuttle of the Boston & Maine, Mellen worked to thwart all legislative

⁵² Lodge to O'Brien, Dec. 18, 1907, in Lodge Collection. Lodge probably was referring to a letter to him dated Dec. 11, 1907, from Gardiner M. Lane of Lee, Higginson & Company, reputedly the man who personally managed the sale of the B. & M. holdings to the New Haven. See “ICC Hearings,” p. 16. The letter may be found in the George von Lengerke Meyer Papers (Massachusetts Historical Society) together with a clipping of an interview in the *Boston News Bureau*, also dated Dec. 11, in which Mellen announced that he might sell.

⁵³ *Springfield Republican*, June 5, 1907. Cf. *Boston Evening Transcript*, June 6, 1907.

⁵⁴ See “The Financial Condition of the New York, New Haven & Hartford Railroad and the Boston and Maine,” pamphlet in the Brandeis Collection [c. Jan., 1908], summarized in Mason, *A Free Man's Life*, pp. 184-85, and in Staples and Mason, *Fall of a Railroad Empire*, pp. 29-34.

⁵⁵ *Springfield Republican*, Jan. 8, 1908. Cf. *Boston Journal*, Jan. 8, 1908.

⁵⁶ Mass. Bd. RR. Commrs., *41st Annual Report* (Boston, 1910), p. 115; “I.C.C. Hearings,” pp. 24-25. Cf. *Boston Herald*, May 11, 1908.

⁵⁷ *Boston Herald*, Jan. 21, 1908.

action while he produced the *appearance* of having divested the New Haven of its Boston & Maine holdings. "Of course," Tuttle wrote,⁵⁸

you understand that under those circumstances you will, under the decision of the Supreme Court, be holding the B & M stock unlawfully, and probably it will be necessary for you to find some way of disposing of it, but it seems to me that need not be a matter of difficult arrangement, so that you may still indirectly hold your interest in it and accomplish your purposes later at some time when this wave of railroad persecution has passed away.

The following month, Mellen announced the "sale" of the New Haven's 109,948 shares of Boston & Maine to one John A. Billard.

The move fooled no one; but it served Mellen's purposes well enough.⁵⁹ About the same time, Mellen also transferred the New Haven's holdings of interurban railway properties to a dummy corporation. In a letter to a fellow New Haven director, he justified the high costs of this maneuver with a complete sense of righteousness:⁶⁰

While this seems a large sum, it is not . . . an unreasonable compensation for the service performed . . . for it thus leaves in friendly hands the control of the trolley system . . . in . . . Massachusetts, until such time as will eventually arrive when good sense will prevail and the policy of the Commonwealth be changed so far as railroads controlling railways is concerned.

Mellen's type of "good sense" arrived with the election of Eben S. Draper as Governor Guild's successor in 1909. The New Haven interests now found a man in the State House who fully concurred in the modern business spirit which had largely motivated the consolidation program. The Boston Railroad Holding Company, or Draper, Act of 1909 consummated the New Haven-Boston & Maine merger. For many, the inclusion of the word "Boston" in the title served only to highlight the cynicism of the measure. On the pretext of affirming the law which prohibited railroad mergers without

⁵⁸ Tuttle to Mellen, June 3, 1908, Mellen Collection.

⁵⁹ No one, that is, except perhaps the aged abolitionist and banker Henry Leo Higginson: "Brandeis and [Representative Norman] White . . . do not believe that Mellen sold the Boston & Maine shares, which to my mind shows that they probably are themselves in the habit of lying." Higginson to Lodge, May 25, 1909, in Lodge Collection. Higginson was in a position to have known better; his reaction suggests the "hear no evil, see no evil" propensities of many members of Massachusetts' "Establishment" when one of their "kind" was charged with improprieties. In 1909, after the General Court had in effect legalized the merger, Mellen explained to the New Haven board of directors about the \$2,000,000 which dummy Billard had received from the company: "For his services in securing to the New Haven Company immunity from attack by the Massachusetts authorities because of the holding by the New Haven of Boston & Maine stock . . . Mr. Billard's compensation was modest and moderate, and he might well exclaim, as did Warren Hastings at his celebrated trial, 'My God, when I consider my opportunities, I wonder at my moderation'." "ICC Hearings," p. 30.

⁶⁰ Mellen to B. W. Warren, July 28, 1908, quoted in "ICC Hearings," p. 25.

legislative consent, the act set up a new company to purchase and hold the Boston & Maine shares which Billard still possessed. Although the New Haven was forbidden to own Boston & Maine stock, it could — and would — control the holding company. Draper jammed the bill through the legislature, with the active assistance now of both Senators Lodge and Murray Crane,⁶¹ declaring that the state was in peril of losing control of the railroads within its borders. Representative Washburn protested vehemently that the bill was “poor business, poor law, poor politics, poor ethics;” and he and others waxed hotly over the state’s surrender to corporate arrogance in the name of economic expediency. It was all in vain. Governor Draper and his allies in the legislature bluntly refused to consider any amendments, and the New Haven interests pretended that they would not accept the bill except as introduced. The major battle was essentially over.

IV

Despite the high-handed manner in which the Republican leadership forced it through, the Draper Act seems to have expressed the judgment of a majority of the interested leaders of the commonwealth that railroad consolidation might bolster the state’s economic position against the challenges from without. The Boston Railroad Holding Company had the virtue at least of keeping the Boston & Maine stock under the restraints of state law, and of barring sale of the stock to interests more alien to the state than the New Haven. By 1909 that seemed to have become the best of the alternatives which most men in Massachusetts allowed themselves. Several Democratic leaders and the state federation of labor from time to time had come out in favor of state ownership of the stock, but the idea had never received a hearing either with the Republicans or with Brandeis and the anti-merger trade associations. Nothing in the election returns during any of the years of the controversy can be used to indicate that the electorate had any serious objection to the Draper administration’s handling of the railroad problem. As the New Haven began to run into financial difficulties in 1910 and 1911, moreover, the state followed up its commitment to the enterprise with further aid — for example, by making the Holding Company’s stock legal investments for savings banks, and by permitting the Boston & Maine to issue preferred stock.⁶²

⁶¹ See Lodge to H. L. Higginson, April 28, 1909, and May 19, 1909, in Lodge Collection.

⁶² For a more detailed account of the financial developments, see Masson, *New Shares for Old*, Chapter 2.

Even among those who deplored Mellen's transgressions, the merger had strong support. Many advocates had often participated in leading reform causes. They included: Charles Sumner Bird, a Walpole paper manufacturer, and an old-line Democrat who became the leader of the state's Progressive party in 1912; Joseph Walker, a reform leader in the General Court who quit the Republican for the Progressive party in 1913; Eugene N. Foss, an anti-Lodge insurgent Republican who in 1911, as a Democrat, was elected governor and promoted considerable progressive legislation during his three-year administration; Samuel Bowles, publisher of the *Springfield Republican*, long a supporter of good government causes and frequently Louis Brandeis' co-worker in reform; and Edward Albert Filene, the department store magnate, philanthropist, financier of the Massachusetts Public Franchise League and the Good Government Association, and social dreamer extraordinary.

The *Springfield Republican*, which usually spoke out against the consolidating tendencies in private enterprise, found the Brandeisian position against railroad monopoly contrary to the established, traditional state policy on railroads. "This policy," it contended, "rests broadly upon the proposition that the steam roads are essentially monopolies to be regulated by the state and not by competition, which can play only a small part as a regulative force." What Brandeis and his allies appeared to be attacking was not simply consolidation but the idea that regulation could be effective. But the alternative was either public ownership — which until 1912 Brandeis explicitly rejected — or a "return" to competition which, the *Republican* asserted, "never has had and never can have an adequate existence in railroading."⁶³

There were many other weaknesses in the anti-merger case. In the first place, it attempted to uphold a "status quo" for the Boston & Maine that did not exist even before the New Haven had gained control in the spring of 1907. A large segment of the block of securities which the New Haven had picked up had not for a long time been controlled by "Massachusetts interests;" the American Express Company, a New York corporation, had owned it.⁶⁴ This was well known, but no one had ever questioned the propriety of an express company owning a major interest in a railroad with which it had large contracts. Apparently, the express company had moved on its own to get out of the Boston & Maine, possibly for more profitable

⁶³ *Springfield Republican*, Feb. 15, 1908. Cf. *Brockton Enterprise*, Feb. 17, 1908.

⁶⁴ See Bradlee, *Boston & Maine*, pp. 70-71.

investments, and had engaged Lee, Higginson & Company as its broker.⁶⁵

Second, although Brandeis might honestly have believed that the Boston & Maine had been in good financial condition and had not needed assistance from the New Haven, it was also true that the former had needed money for improvements which it could not raise. Its failure to sell \$6,000,000 worth of new stock in 1906 persuaded the state the next year to liberalize the laws governing the issuance of stock by public service corporations,⁶⁶ a change which had the approval of the Public Franchise League.⁶⁷ By that time the American Express Company interests had already pulled out. While opposing the New Haven's possession of the disposed stock, Brandeis and his supporters failed to present an alternative purchaser. If the anti-merger forces had wished to be taken seriously, that was something they should have considered. They rejected government ownership of the stock, and it never appears to have occurred to anyone that the government might force the express company to take it back — if that in fact was desirable.

Finally, the anti-merger forces failed to present an alternative course of action to meet the external threats to Massachusetts' business interests. Governor Guild's chauvinistic attack on the New Haven interests, in the tradition of the ancient New York-Boston rivalry, did not begin to grapple with the wide scope of the problem. Given the interstate character of modern business enterprise — a fact which Guild himself had apparently accepted in his own long-standing advocacy of national incorporation and child labor laws — his pleas in effect for an insulated state economy seemed completely to miss the point. One can understand his agitation. The Mellen-Morgan "invaders" had employed techniques, such as the foreign-chartered holding company, that challenged the traditional business structure within which the conservative part of the Massachusetts

⁶⁵ See *Springfield Republican*, Jan. 20, 1908. The ICC hearings confirmed these facts, "ICC Hearings," pp. 16-17.

⁶⁶ See Grosvenor Calkins, "The Massachusetts Anti-Stock-Watering Law," *Quarterly Journal of Economics*, XXII (Aug., 1908), pp. 640-45; James C. Bonbright, *Railroad Capitalization: A Study of the Principles of Regulation of Railroad Securities* (New York, 1920), pp. 138-39.

⁶⁷ Secretary J. B. Eastman's Annual Report for 1907, in Brandeis Collection. The P. F. L. appeared before the General Court to argue that the charges against the old law had been exaggerated, but, Eastman reported, "the League did not oppose a change in the law which would make it more flexible and somewhat less stringent In this way the law was relaxed without abandoning public supervision." The old law had required public service corporations to sell new stock issues to stockholders at market price; the new law permitted offering new issues to stockholders at less than market price, though at no less than par.

business community had long felt comfortable.⁶⁸ In addition, they threatened the state with "monopoly." Finally, by ignoring the state government, they threw in its face the mounting evidence of its superfluity in the large economic matters of modern times. Like President Roosevelt, whom he profoundly admired, Curtis Guild felt keenly the sting of condescension from members of the business community. But though it is easy to understand Guild's reaction, it is not at all easy to accept its adequacy. It fell far short of providing security for the state's business interests either against the New Haven or against the broader threats to their prosperity.

As already indicated, one of the threats lay in the movement for increased federal control over railroad rates. Although it was not until 1910 that Congress gave the Interstate Commerce Commission substantial "rate-making" powers, for many years Massachusetts leaders had been apprehensive about the effect of such a grant. Several times already, as an arbitrator in trunk-line-differentials disputes among railroads serving the Atlantic seaports, the ICC had made decisions distinctly unfavorable to the interests of Boston's merchants.⁶⁹ What would happen if the ICC had broader powers over rates? "The Commission," declared Representative Samuel W. McCall of Cambridge during the debate over the Hepburn bill, "may by an order destroy the prosperity of a section of the country. . . . With the Government fixing rates, constituencies would inevitably carry their grievances into politics." Noting that New England's political power had dwindled with the westward growth of the country, McCall concluded: ⁷⁰

As representing some of the people of New England upon this floor, I say to you that I believe they do not care to offer up supplications to any statutory deity at Washington for the right to continue to exist, but that they will bravely take their chances with those economic forces which . . . have hitherto ruled. . . . New England can more safely reckon with the constant or slowly changing economic forces than to have her domestic commerce subject to the 'theories of progress' of a commission, possibly of martinets and almost certainly of politicians.

⁶⁸ For an idea of how unfamiliar many Massachusetts leaders were with the holding company device, see Joseph Eastman's letter to Charles L. Underhill, Majority Leader of the House, June 2, 1909, in which he undertook to explain the technique. Cf. Underhill to Eastman, May 31, 1909, and Eastman to Samuel Bowles, June 14, 1909, in Eastman Collection.

⁶⁹ See Clapp, *Port of Boston*, pp. 93-100; Boston Chamber of Commerce, *19th Annual Report* (Boston, 1905), p. 18. In 1909, in defiance of the ICC and in deference to Boston shippers, the New Haven and other New England railroads lowered their rates on imports bound westward. A rate war ensued, culminating in an ICC arbitration decision in 1912 which compelled New England railroads to raise their rates to a point higher than they had been in a decade. Clapp, *Port of Boston*, pp. 98-100. The decision could not have helped the already weak financial condition of the New Haven and B. & M.

⁷⁰ *Congressional Record*, 59th Cong., 1st Sess. (Feb. 2, 1906), pp. 1972-73.

New England could not, like some of the more populous regions of the country, depend on a political solution for its economic problems; it had to rely, as it had done in the past, upon economic negotiations. Yet, one major flaw in Representative McCall's argument was that "those economic forces which had previously ruled" no longer ruled; the westward shift of production and market centers and the great railroad consolidations elsewhere in the country had sharply altered the conditions which had once given New England its decisive negotiating strength.⁷¹ Massachusetts interests needed, as one shipper testified in 1908 before the state's Commission on Commerce and Industry, a new "club with which to trade and get favorable rates to our western markets."⁷² Considering these developments, the Commission, headed by Charles Francis Adams, the venerable pioneer in railroad regulation, argued that railroad consolidation in New England might provide the answer to (1) the railroad traffic snarls that had been plaguing New England industry in recent years; (2) the rate-differentials problem; and (3) the periodic "boycotts" of New England distribution centers by the continental trunk lines and their eastern connections when eastern demand for western products grew heavy. "New England," the report concluded, "needs to count for more in the railroad scheme of the country, and the way to accomplish this is to add to her importance by unifying her interests."⁷³

V

In sum, to many — perhaps most — responsible leaders of Massachusetts, the New Haven-Boston & Maine merger appeared a necessary response to broad economic developments in the nation. In many respects, the merger's proponents regarded themselves as progressives and the anti-merger elements as the defenders of procrustean orthodoxy. Certainly, Louis Brandeis and other opponents of the merger offered no adequate alternative to consolidation; adherence to traditional business procedure in accordance with traditional government-business relations, while perhaps more satisfactory morally, offered no answer to the competitive economic advantages which untraditional methods had produced elsewhere.

Unhappily, the anxiety in the Massachusetts business community over its apparently increasing isolation did more than just induce its leaders to trust in unorthodox, advanced business methods; it

⁷¹ See Ripley, *Railroads: Rates & Regulation*, pp. 487-88.

⁷² Transcript of testimony taken Dec. 17, 1908, in Brandeis Collection.

⁷³ Adams, Jr., et al, *Report of Commission on Commerce and Industry*, p. 21, et passim.

persuaded them also to surrender their business judgment altogether and to close their eyes to plain dishonesty. The view of the independent *Boston Post* was typical. After a series of articles on the financial condition of the New Haven in 1909, which in effect bore out Brandeis' contention that the New Haven was insolvent, the *Post's* financial editor concluded: "This is the essence of the whole situation; the present capitalization is certainly too big for any earning power so far shown; but when men like Mellen and Morgan believe in the future of the road under the present policy the stockholders should rest easy."⁷⁴ Stockholders, and also business and political leaders, did rest easy; though not for long. From the whirl of irresponsible truculence emerged a bankrupt enterprise. In the end, Louis Brandeis looked good — though perhaps it was mainly because his antagonists were so abominably bad.

⁷⁴ *Boston Post*, Nov. 3, 1909. Cf. William E. Soule [Boston *Post* financial editor] to Mellen, Oct. 29, 1913, in Mellen Collection.