

Railroads and American Law. *By James W. Ely Jr.* Lawrence: University of Kansas Press, 2001. ix + 365 pp. Notes, bibliography, illustrations, index. Cloth, \$39.95. ISBN 0-700-61144-4.

Reviewed by John Majewski

The impact of the railroad on American society and institutions was remarkable. Railroads not only dramatically lowered transportation costs; they also contributed to the development of capital markets, accelerated the settlement of the West, helped the Union win the Civil War, influenced the outcome of both local and national elections, fostered the growth of consumerism, and mobilized men and resources to fight two world wars. James W. Ely Jr., who is the Milton R. Underwood Professor of Law and professor of history at Vanderbilt University, convincingly demonstrates the impact of the railroad on another key element of American life: the law. Ely's remarkably thorough survey shows how judges struggled to balance their desire to protect and foster a new industry with the claims of competing interests. True to its synthetic character, *Railroads and American Law* goes far beyond the courtroom to show the complex interaction between law, politics, and business practices. The result is a volume that is sure to be of great interest for almost all historians of American business.

In his prologue, Ely modestly writes, "I am reluctant to impose a thesis on the intricate and sometimes contradictory legal history of railroading" (p. viii). And no wonder—Ely examines almost every conceivable aspect of railroading and the law. He uses a number of government reports, legal treatises, and court cases—not to mention a large number of secondary sources—to examine topics ranging from shipping rates to sabbatarian controversies to bankruptcy proceedings to workers' compensation laws. Ely examines laws and regulations at both the state and federal level, which entails making careful regional distinctions while tracking the complicated relation between state and federal regulation. The chronological scope is just as comprehensive as the topical and geographic range; Ely begins his analysis in the antebellum period and concludes the book with several chapters on the late twentieth century.

While it is a remarkable accomplishment to synthesize so much material in a highly readable book, the comprehensiveness of *Railroads and American Law* comes at a price, which is principally paid in terms of the book's organization. Ely begins and concludes his book in a broad chronological format: his first chapter covers "The Emergence of Railroads" and his last four chapters take the story from the Progressive Period to the end of the twentieth century. A large middle section, however, is organized topically, which makes it difficult for Ely to establish strong narrative coherence. The section on racial segregation (included in a grab-bag chapter entitled "Railroads and Social Conflict") is thus divorced from Ely's fine analysis of the Progressive Period, making it difficult to see the interconnections between Jim Crow legislation and the general regulatory environment of the early twentieth century.

If *Railroads and American Law* sometimes lacks chronological coherence, it nevertheless conveys several important themes that help tie together Ely's diverse array of topics and material. Morton Horwitz and other historians who claim that nineteenth-century judges single-mindedly sought to promote economic growth, Ely convincingly argues, have missed the degree to which judges attempted to balance economic development with competing interests. Courts, for example, tried carefully to assess the needs of both steamboats and railroads when determining if railroad bridges impeded navigation along major rivers. Similarly, courts often upheld sizable awards when railroads took property through eminent domain proceedings, and they forced railroads to implement both national and state safety regulations. "Railroad law," Ely concludes, "was clearly not just a vehicle to aid the carriers. Instead, judges and legislators early recognized the dangers of railroads and sought to impose a degree of public control over the conduct of the railroad business" (p. 134).

In less explicit fashion, Ely's study has another important theme: the failure of state and federal governments to understand the economics of an industry they sought so hard to regulate. While judges tried to balance competing interests, populist and progressive legislators often regarded railroads with overt hostility. Historians as a group tend to valorize populist and progressive efforts to regulate railroads, but Ely is refreshingly candid in his assessment of regulatory failure. Government policymakers sometimes regarded railroads as something akin to regulated utilities whose prices had to

be carefully monitored by government commissions; at other times policymakers thought that railroads should compete against each other, and they actively sought to prevent consolidation. Regardless of whether governments tried to regulate rates or apply antitrust legislation, their efforts were generally counterproductive. The Hepburn Act of 1906 and the Manns-Elkins Act of 1910, for example, gave the Interstate Commerce Commission broad discretionary power to determine “reasonable” shipping rates. Such legislation, according to Ely, “put railroads in a regulatory straightjacket. . . . control of rate making was given to an agency solicitous to shipper interests and under political power to block any rate increases” (p. 227). Ironically, supposedly conservative southern legislators were often the most vigorous proponents of railroad regulation because eastern capitalists controlled most of the railroads in their region.

*Railroads and American Law* thus works well on two levels. It is an almost encyclopedic examination of all facets of railroad law that will be a useful reference for anyone teaching or writing about legal or business history, yet it also sustains important historiographic arguments that scholars should carefully consider. Written in a clear and straightforward manner, it should find a wide audience among business historians and legal scholars alike.

*John Majewski is associate professor in the history department at the University of California, Santa Barbara. He is the author of A House Dividing: Economic Development in Pennsylvania and Virginia Before the Civil War (2000).*