

NEW LIGHT ON THE NEW HAVEN -
BOSTON & MAINE MERGER BATTLE, 1907-1909*

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Two essentially different versions of the New Haven - Boston & Maine merger battle have been available for some years but both are quite inadequate. Louis D. Brandeis, one of the participants, published his account within a few years of the episode. His biographers, Alpheus T. Mason and Henry L. Staples, repeated the same version. Richard M. Abrams reopened the subject with his article in the 1962 Business History Review, reassessing Brandeis' opposition to the merger.¹

A very important oversight is the failure to recognize the role of William B. Lawrence, clerk of the Boston & Maine Railroad, and, with his father, the second largest stockholder. In bringing to your attention this so-called new light, I will repeat briefly some of the story but deliberately emphasize aspects that reveal why I think the interpretation of the events should be different. The major source of my new information is a copy of the hearings conducted by committees of the Massachusetts legislature which, together with a small amount of other material, has been deposited in Baker Library of Harvard University since the 1930s.²

THE TROLLEY LINE EPISODE: A PRELUDE TO THE
NEW HAVEN - BOSTON & MAINE CONTEST

The careers of Charles Sanger Mellen, president of the New Haven, and Lucius Tuttle, president of both the Boston & Maine and Maine Central, were more or less parallel.³ Both men were superintendents on the Boston & Lowell during 1885 and 1886; both were vice presidents of the New Haven in 1892-93; and since the nineties both were railroad presidents--Tuttle on the Boston & Maine since 1893 and Mellen on the Northern Pacific from 1896 to 1903 when he assumed the presidency of the New Haven after Tuttle had rejected the offer.⁴

*This paper is condensed from a portion of a chapter in the author's forthcoming study of the Boston & Maine Railroad. Since the reading time was limited to 30 minutes, additional material is included in the footnotes.

One of Mellen's first major policies on the New Haven was the acquisition of interurban electric trolley lines. It led to an encroachment upon Boston & Maine territory and was settled only by an important court decision. In 1904, with practically all of the trolley lines in Rhode Island and Connecticut under its control, the New Haven began to buy trolley lines in western Massachusetts. To circumvent a Massachusetts law of 1874, which forbade a domestically incorporated steam railroad from owning the stock of a street or interurban railway in Massachusetts, the New Haven purchases were made through a subsidiary corporation chartered only in Connecticut--the Consolidated Railway Company. This appeared expedient to Mellen and his attorneys because, although the New Haven for years had recognized only the Connecticut statutes, it was incorporated in both Connecticut and Massachusetts.⁵ The next year, (1905) the Massachusetts attorney general drafted a bill that would require the New Haven's Connecticut subsidiary to forfeit the charters of its interurbans within Massachusetts. This was too drastic for most legislators, however, and they merely authorized further inquiry.⁶

In the next legislative session (1906) the anti-New Havenites, supported by Governor Curtis Guild, tried to obtain legislation that would specifically require the New Haven to follow the same Massachusetts rules which applied to the Boston & Maine. The House was agreeable, but Mellen persuaded the Senate that first there should be a test case in the courts. Consequently, the attorney general was authorized to begin proceedings.⁷

William Lawrence was laughed at when he predicted that the court unanimously would rule against the New Haven. Mellen and his attorneys, however, thought they had better reinforce New Haven's position. Therefore, they set up the New England Security & Investment Company as a Massachusetts voluntary association, and to it they transferred the Massachusetts trolley-line stock owned by New Haven's Connecticut subsidiary, the Consolidated Railway Company. Now feeling quite secure, Mellen had the new Massachusetts subsidiary acquire even more trolley lines.⁸

PURCHASE OF BOSTON & MAINE STOCK

Another major policy of Mellen's administration was to extend the New Haven's control over steamship lines which operated along the New England coast.

Then, as the public's attention was focused upon the railroad's expansion in that field, Mellen quietly launched plans to extend his steam rail network. It was rumored that he wanted control of the Delaware & Hudson, but he was persuaded by the Vanderbilt interests to take the Boston & Maine instead.⁹

Proposals to buy a large block of Boston & Maine stock were nothing new. During the preceding seven years William Lawrence and

his father had declined at least three offers at \$210 a share, and a fourth offer from E. H. Harriman could have been obtained. But the Lawrences were not "economic men". For one thing, they had a sentimental attachment to the road which they felt was a good investment if only the Massachusetts statutes and the state Board of Railroad Commissioners would be a little more lenient. As William Lawrence said repeatedly, the Boston & Maine was "a bona fide road run straight and honest, and with full value".¹⁰ Also, the Lawrences strenuously opposed any proposition that would put the Boston & Maine into the hands of outside interests who could be expected to use the road for their own selfish purposes. Not only did the Boston & Maine and the Maine Central (of which the Boston & Maine owned 51 percent) serve an important territory, but Tuttle's management of both roads was recognized by other railroad leaders as among the best in the country. Financially, the Boston & Maine was strong except for one weakness--its large number of leased lines, and those leases had perpetuated only because the Massachusetts legislature would not permit the Boston & Maine to pay a price sufficiently attractive that the owners of the leased lines would sell. In fact, Harriman reportedly said of the Boston & Maine that he did not know there was "any such good thing lying around loose that had not been annexed before".¹¹

J. Pierpont Morgan, Charles Mellen, and their associates also knew what "a good thing" the Boston & Maine was. In fact, if they could control it, some of the B&M freight traffic could be diverted to the New Haven to help that road pay for some exceptionally costly construction in the vicinity of New York City. (Indeed, that was one of the first things Mellen tried to do when, several years later, he finally got control of the Boston & Maine.) Of course, in public addresses Mellen spoke differently. He would illustrate the reasonableness of the New Haven expansion by holding up his hand and saying, "The palm is New England, and my fingers are the trunk lines that go out toward the West." Thus, he argued, one large New England railroad could influence the roads west of the Hudson and obtain better service for New Englanders. Furthermore, Mellen undoubtedly was cognizant of the superior financial strength of the Boston & Maine in contrast to the New Haven. The Maine Central was in an even better financial position. The combined Boston & Maine and Maine Central, incidentally, constituted the fourteenth largest single-management railroad operation in the United States.¹²

In February or March 1907, Mellen quietly began to negotiate for the common stock of the Boston & Maine, purchasing it in the name of the New England Navigation Company, incorporated in Massachusetts, as a wholly-owned subsidiary of the New Haven. Lee, Higginson & Company was the broker. The partners of the investment firm were convinced that a union of the two major roads would be "good for the state, good for

New England, good for Boston". And, added Henry L. Higginson, whose firm crossed the shares involved, "it was a good piece of business for everyone concerned".¹³

About the same time, the Connecticut legislature authorized the New Haven to be merged into the Consolidated Railway Company, the subsidiary trolley-line company of the New Haven, but the "New York, New Haven & Hartford Railroad" was retained as the corporate title. As a new corporation it was chartered in Connecticut, not Massachusetts, and it had all of the original privileges previously held by both the old New Haven and the Consolidated.¹⁴ The new charter, lamented Lawrence, "was the broadest, probably, that was ever granted on the face of the earth."¹⁵ Thus, the new New Haven acquired the ability to issue virtually unlimited amounts of stock and bonds for its subsidiary, the New England Navigation Company (a Massachusetts corporation), to be used for the purchase of the Boston & Maine.

On May 15, 1907, New Haven officials exchanged New Haven stock share for share for the Boston & Maine stock held by the American Express Company, Lewis Cass Ledyard, and Charles M. Pratt. (Ledyard and Pratt were B&M directors residing in New York.) The next day the offer was extended to the other Boston & Maine directors, all of whom sold except General Samuel C. Lawrence (father of William Lawrence) and two others. Apparently, most of the directors failed to realize the financial weakness of the New Haven and the manner in which it was operated. The reputation of J. Pierpont Morgan was so strong that few men questioned the soundness of a company for which he was a director.¹⁶

INITIAL OPPOSITION TO THE NEW HAVEN

A number of Massachusetts legislators were aroused by the news that the New Haven was "gobbling up" more than one-third of the Boston & Maine stock. William Lawrence warned them that the New Haven already had watered its stock extensively and now wanted "the Boston & Maine to furnish the substance for the soup." He denounced the whole "scheme" as "worthy of Jay Gould in the balmy days of his railroad operations".¹⁷ A bill was introduced in the legislature to prevent a merger.

William Lawrence held a few shares of Boston & Maine stock in trust for a charitable corporation. Because he was so emphatically opposed to a complete monopoly of all modes of transportation throughout New England by a corporation operating under a Connecticut charter, he felt his private interest might conflict with his public interest. Hence, he asked Louis Brandeis to act as his personal counsel before the railroad committee of the legislature. Brandeis, however, felt the matter was of such public interest that he declined any fees, but he did charge Lawrence for stenographic services.¹⁸ Brandeis thus entered the contest without being obliged to represent Lawrence's particular views.

Governor Guild, Senator Henry Cabot Lodge, and others rallied to the support of Lawrence and Brandeis. A compromise bill was passed June 28, 1907. It was a limited victory, but a victory, in that for one year the New Haven was prohibited from acquiring additional Boston & Maine stock and could not vote that which it already owned.¹⁹ Mellen retaliated with a publicity campaign which broadcast the theme that the public would be more adequately served if the Boston & Maine were operated by the New Haven. In August, Governor Guild surprised the public by changing sides and supporting the merger.²⁰

Massachusetts needed a legislature that would make a frank appraisal of (1) the economic needs of the state, (2) the statutes regulating all aspects of industrial life, (3) the regulatory agencies, and (4) the relation of the state government to the federal government. Instead, during the next three years much emotion was substituted for a calm consideration of the pertinent facts. The lawmakers' attention was diverted by Brandeis' evangelistic zeal to curb the money trust and big corporations and by Mellen's dramatic and egotistical personal appearances and public statements. The newspapers likewise apparently were captivated by Brandeis and Mellen. They almost completely ignored Lawrence, even though his testimony in a series of committee hearings was impressive and sometimes loaded with information not being told to the public. Lawrence did not go along with Brandeis' main thesis that disaster would inevitably follow from the inherent inadequacies and evils of monopoly. Lawrence merely insisted that any railroad, regardless of size, should be operated "straight and honest and with full value," and that any railroad operating another railroad should avoid any conflict of interest.²¹

Lawrence, formerly a member of both the House and the Senate, and Tuttle, as president of the Boston & Maine, consistently had sought reasonable legislation. While they had favored the legislation of 1894 designed to prevent the capitalization of earnings, they pointed out that these so-called anti-stock-watering laws, as interpreted by the state Board of Railroad Commissioners, required the railroad when offering new stock to its shareholders to accept no less than the market price. For the Boston & Maine, it required selling some of its new stock at nearly double the par value. Thus, the many small investors began to turn away, because the high-priced Boston & Maine stock was yielding only 4 percent, and that rate could be obtained from savings and loan banks, which in Massachusetts were considered almost as safe as federal bonds. Most legislators had not been indifferent or stubborn. They had listened to certain businessmen, who, while making a 35 or 40 percent net return in their own businesses, advised the legislators to adopt statutes which, as interpreted by the Board of Railroad Commissioners, had the effect not only of restricting the Boston & Maine to 4 percent dividends but prevented it from using any appreciable amount of bonds for improvements and additions. (Bonds could not exceed the outstanding stock.) Tuttle and Lawrence

also had pled in vain for legislation to change an 1898 statute so that the Boston & Maine could make sufficiently attractive offers to purchase its leased lines. Local mergers then could take place and thereby reduced the fixed charges of the Boston & Maine. If that could have been accomplished, the resulting expansion of the Boston & Maine stock would have discouraged outside interests from trying to capture control. In general, the legislature had chosen to regulate the railroads by "straight-jacket" legislation and had ignored the fact that the New Haven was incorporated in Massachusetts but not operating under its laws. Furthermore, the Board of Railroad Commissioners, with an inadequate budget, failed to interpret adequately to the legislature what was really happening.²²

Also, in August 1907, President Theodore Roosevelt entered the situation, as the Lawrences had predicted he would. Upon Roosevelt's instructions, the Department of Justice assigned a district attorney to investigate whether the New Haven had violated the antitrust law.²³

THE CONTEST DURING 1908

During 1908, Brandeis worked more or less independently, although he and Lawrence appear to have exchanged ideas and information. Lawrence already had commenced his own definitive study of New Haven's financial condition and methods, making a careful analysis of the conflicting information of that company's public reports. The first result of Brandeis' efforts was a 77-page booklet which was hailed as a "bombshell" by the anti-mergerites because he argued that New Haven, itself, needed the financial resources of the Boston & Maine.²⁴ Actually, the booklet was rendered largely ineffective because of a report issued by Governor Guild's Commission on Commerce and Industry nine weeks later.²⁵ The Commission had used closed hearings because of the current business panic. Unexplainable, however, was the work of their accountant. Neither he nor his staff actually inspected the books of the New Haven or its subsidiaries. He used only the information supplied to him by New Haven officials in response to his questions. Furthermore, he did not compare conflicting sworn statements of New Haven officials in various reports. Thus, the accountant's figures presented the New Haven as being in sound financial condition, and the majority of the commission accepted that conclusion.²⁶

It is true, as Abrams says, that Brandeis' booklet and speeches did not contain any positive proposals. But it should be recognized that Lawrence criticized the New Haven with more thoroughness, and several times he stated positively what could be done in a practical manner. Lawrence insisted that the Boston & Maine could be strong and serve the public adequately if the following things were done.

- (1) Change the 1898 statute concerning the merging of leased lines.
- (2) Change the 1894 statute to permit a slightly larger bonded debt.

- (3) Get the Board of Railroad Commissioners to adopt a more liberal attitude in setting the price of new issues of stock.
- (4) Have someone in position to buy the large block of Boston & Maine stock owned by the New Haven.²⁷

The first three things could be accomplished only by the state government. As to buying out New Haven's share of the Boston & Maine, Lawrence arranged with an acquaintance to obtain ample funds, but Mellen refused repeatedly throughout 1907, 1908, and 1909 to sell to Lawrence at any price.²⁸

Basically, the argument between the opposing sides of the merger question, except for Brandeis and a few men of his persuasion, was a question of means, not the end. It was merely a clever technique of the New Haven strategists that made the merger appear "as a necessary response in the public interest to a commercial crisis in Massachusetts."²⁹

"Why was it that so many businessmen differed from him and favored the merger," Lawrence was asked at a hearing. He replied that there were three reasons. For one thing, businessmen relied upon the inaccurate report of the Commission on Commerce and Industry and the newspapers which were "full of nothing but the wonders of the New Haven road." Secondly, since several investment bankers had recommended the merger, businessmen generally accepted their recommendations. Finally, not even bankers and trustees had carefully read and investigated the New Haven reports, since that road operated through some 70 different corporations and several voluntary associations, each with its report.³⁰

The anti-merger forces faced an exceedingly difficult task. The New Haven would not sell; its lobby was well financed, powerful, and even stooped to the trick of making Tuttle a scapegoat by suggesting he was so old-fashioned he should be replaced by a man like Mellen who wasn't afraid to spend freely. Actually, Tuttle had not spent much for two reasons. There were the unusual restrictions imposed by the Massachusetts laws and officials. Mellen, himself, could not have disobeyed the state laws if he had been in Tuttle's shoes. Also, about 1905 the Boston & Maine executive committee had refused Tuttle's request to spend about \$5,000,000 for improvements, using short term loans which were the only possible sources of finance. The refusal had come from the New York interests on the executive committee, but now Tuttle was criticized for having been too sluggish in spending for improvements.³¹ (Incidentally, such differences between the New York interests and Tuttle had been very rare.)

Many persons were impressed with four promises made in the New Haven publicity.

- (1) When in control, the New Haven would connect the North Station and the South Station in Boston with a tunnel.

- (2) There would be electric-powered locomotives immediately in Greater Boston and soon thereafter throughout the system.
- (3) The export differentials so unfavorable to Boston would be abrogated.
- (4) In general, the Boston & Maine would be rehabilitated.

Such statements were largely misleading. A subway between the two Boston passenger stations could be used to facilitate the diversion of freight to the New Haven, which, as events later proved, the New Haven would try to do at every major gateway between the two roads. The electric locomotives, already in use by the New Haven in New York City, were still experimental; and it would be more than 20 years before anything other than steam would be considered more satisfactory and economical. The abrogation of port differentials was a day dream, as had been indicated by a decision of the Interstate Commerce Commission only a few years earlier. And finally, of course, the Boston & Maine did need rehabilitation, but Tuttle within the limited means allowed him had made an excellent record. Since the New Haven for the present intended only to control the Boston & Maine, not to merge it legally, any funds spent on the Boston & Maine would have to be from stock issued by or debts incurred by the Boston & Maine, itself. That was the law. To rehabilitate the road, Mellen and the new directors on the Boston & Maine would need to use excessive and expensive short term debt or else get the legislature and the Board of Railroad Commissioners to change their laws and rules.³²

Thus the debate continued until May 8, 1908, when the state Supreme Court issued its decision on the New Haven Trolley Case. To the great surprise of Mellen and his attorneys, the Court unanimously held, as William Lawrence had forecast, that the New Haven had acquired possession of trolley lines in Massachusetts illegally and must dispose of them. Although the decision did not mention the Boston & Maine stock, the implication was so very clear that New Haven officials immediately announced they would recognize that the same principle applied to the holding of the Boston & Maine stock, unless the legislature decided otherwise.³³ No legislation was passed.

It was Tuttle who suggested to Mellen that some one person be found to hold the stock "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."³⁴

John L. Billard, a coal dealer in Meriden, Connecticut, who had no background in railroading, became the ostensible purchaser. He used funds which the New Haven borrowed for him and became the owner of 36 percent of the outstanding shares. Kidder, Peabody & Company bought an additional 6 1/2 percent for Mellen's personal account, which Mellen then offered to the New Haven directors. They refused to accept it because of the "very pronounced opposition" of J. Pierpont Morgan.

Thereupon, Mellen turned his whole account to Billard, with the purchase being financed by arrangements made by two directors of the New Haven. According to Lawrence, most of the purchases comprising the 6 1/2 per cent of the total stock came from many small stockholders, with the New Haven using "wash sales" to drive down the price. More astute stockholders held out and obtained a better price, being paid share for share in American Telephone stock.³⁵

The New Haven management, acting through the votes of Billard's name selected a majority of the Boston & Maine directors at the annual meeting in October (1908). Mellen was more concerned, however, with the possibility of obtaining satisfactory state legislation for his plans. Since Governor Guild did not agree with the fulfillment of Mellen's ambitions, Lieutenant Governor Eben S. Draper was supported and elected.³⁶

THE BOSTON RAILROAD HOLDING COMPANY

After his inauguration in January 1909, Draper held some two dozen meetings with either Mellen or his representative. Meanwhile, the legislature's railroad committee held hearings upon bills that would penalize a railroad for taking securities in other corporations, for the making of false reports to the Board of Railroad Commissioners, and for a railroad voting on stock of other railroads not leased by it. Each of these bills reflected recent activities by the New Haven management which Lawrence wanted to be prohibited. Also, he petitioned for several bills designed to give Boston & Maine stockholders the option of receiving cash for their shares, the price to be determined by the courts, in case the new board should contract the Boston & Maine property to the New Haven or should begin the construction of a tunnel across downtown Boston. Similar protection to other stockholders had been provided by the state when the Boston & Maine had leased large portions of its network.³⁷

Governor Draper, as a result of his many meetings with Mellen or his representative and at least one meeting with Lawrence, Brandeis, and other anti-mergerites, recommended to the legislature that a holding company be established to control the Boston & Maine, giving any railroad incorporated in Massachusetts (obviously including the New Haven) the power to finance the holding company. The bill, when drawn up, required that the majority of the holding company directors be residents of Massachusetts, but, of course, that provision would not prohibit New Haven control. The bill also provided that the state could use its right of eminent domain and take the stock. The latter provision was no protection, however, because, with New Haven's technique of easy financing under Connecticut laws, a holding company would be able to acquire not only the Boston & Maine but nearly all of its leased lines, and the total stocks and bonds thus acquired would be definitely too much for the state to purchase. To pressure legislators to vote favorably, the New Haven forces spread the word that there was imminent

danger of Billard's Boston & Maine stock falling into the hands of unfriendly interests, such as Edward H. Harriman, and therefore a holding company should be used to bring back the stock of the Boston & Maine into the hands of Massachusetts residents or incorporations.³⁸ Lawrence's reply was that such talk appeared "a little bit like kicking up the dust to disconcert people and to distract attention from the issue," because more than 65,000 shares had not been in Massachusetts since the early nineties when Frank Jones sold them to New Yorkers.³⁹ At that time, with the total outstanding stock being smaller, the 65,000 shares had constituted nearly 30 percent of the total. Thus, the limitation that the directors be residents of Massachusetts would be ineffective because the active control could be in New York. "If you go into holding companies," warned Lawrence, "you abandon the Massachusetts idea and take up the New York idea of finance."⁴⁰ Lawrence's counter proposal was that the Commonwealth of Massachusetts should buy the stock being held in the name of Billard and then sell it to "bonafide citizens" of the state.⁴¹

Although Lawrence, Brandeis, and other opponents brought up many weaknesses of the proposed holding company and many legislators did not like the bill, tremendous political pressure was applied by the state Republican machine to authorize the organization of a holding company. Approval was thus gained to incorporate the Boston Railroad Holding Company.⁴²

A week later, June 26, 1909, the New United States attorney-general (President Taft had been in office only three and one-half months) announced that the United States was discontinuing its anti-trust suit against the New Haven. His reasons really was unsatisfactory. The brief remarks by Staples and Mason (pp. 80-84) on this part of the episode are worth reading but too lengthy to repeat here. The discontinuance of the anti-trust suit was a great disappointment to William Lawrence. Not only had he supported Roosevelt but he had helped to organize the first Taft-for-President club in Massachusetts. And now Taft's attorney general removed the last real hope of preventing the New Haven from acquiring the Boston & Maine and the Maine Central and using them for its own purposes.⁴³

Mellen immediately made the preliminary steps to take over the Boston & Maine and the Maine Central. F. C. Dumaine was elected president of the Boston Railroad Holding Company. Billard sold his Boston & Maine stock to the holding company, personally making a profit of \$2,750,000 on an investment financed almost entirely by the New Haven! Additional stock was purchased by the holding company until it held a mere majority of the Boston & Maine stock, using bonds rather than stock of the holding company to make the bulk of the purchase.⁴⁴ Another step was to "retire" Tuttle as president of the Boston & Maine. According to one newspaper, Governor Draper intercepted, and Tuttle was re-elected for another year so that the holding company plan

"Brandeis and the New Haven-Boston & Maine Merger Battle Revisited," Business History Review, XXXVI (1962), 408-30, and Conservatism in a Progressive Era: Massachusetts Politics, 1900-1912 (Cambridge, Mass.: Harvard University Press, 1964).

²The papers of William B. Lawrence were deposited in 1931 in Baker Library of Harvard University. They are listed under the title "Boston & Maine Railroad, 1907-1915". We shall refer to them as the Lawrence Papers. At the time of the merger battle, the Lawrence family was recognized as the largest individual or private stockholder. The family held between 12,000 and 14,000 shares. Since the 1890's, as many as 65,000 shares had been held by investors in New York, for the most part by the American Express Company. As William Lawrence explained it in 1914, and it was confirmed by Ledyard (one of the New York investors), the Boston & Maine directors before May 1907 composed "a harmonious board up to the time the New Haven butted in, and the stock was held, you might say, under a gentlemen's agreement." --Statement of William B. Lawrence in 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, Sen. Doc. no. 543, 63 Cong., 2nd Sess. (s.n. 6586), pp. 678-690. Hereafter this volume will be cited as Evidence before ICC (s.n. 6586).

³The corporate title of the New Haven was The New York, New Haven and Hartford Railroad Company. The corporate title of the Boston & Maine was the Boston and Maine Railroad. The corporate title of the Maine Central was the Maine Central Railroad Company. A majority of the Maine Central was owned by the Boston & Maine but the two roads were operated separately, with Tuttle and his top associates being the top management of both roads.

⁴The Biographical Directory of the Railway Officials of America (1913 ed.: New York: Simons-Boardman, c. 1913), pp. 372, 553; C. S. Mellen to R. H. Keller, no date, in Charles Sanger Mellen Collection (New Hampshire Historical Society); Barron's interview with Lucius Tuttle, March 5, 1905, in Arthur Pond and Samuel Taylor Moore (eds.), More They Told Barron: Conversations of an American Pepys in Wall Street (New York: Harper & Brothers, 1931), p. 150.

⁵The New Haven owned about six miles of line within Massachusetts to the city of Springfield, built and operated by a company chartered in both Massachusetts and Connecticut and then in 1872 consolidated with a Connecticut company to form The New York, New Haven and Hartford Railroad Company, which was incorporated in both Connecticut and Massachusetts. Although the New Haven filed returns with the Massachusetts Board of Railroad Commissioners annually, and they were published along with the returns of other railroads in Massachusetts, the New Haven had very little to do with

the government of Massachusetts. Mellen said he would "concede to Massachusetts the jurisdiction over any issues of securities, the proceeds of which are to be used within Massachusetts for any legal purpose . . . and only that." -- Mellen's statement before Massachusetts General Court Special Commission on Chapter 144, Resolves of 1909, "Relative to the New York, New Haven and Hartford Railroad Company, Oct. 18 and Nov. 9, 1909," vol. II, p. 57 (Typescript copy in Lawrence Papers. Hereafter cited as "Hearings on Chap. 144, Resolves of 1909"). The railroads in Massachusetts leased to the New Haven, such as the Boston & Providence, constituted a different situation. The best source we have found so far of the essential features of the corporate history of the New Haven and its affiliates is a three volume report with a different title for each volume. The first volume is entitled Corporate and Operating History of the Lines Owned by the New York, New Haven and Hartford Railroad Company, June 30, 1915. These three volumes are deposited in the National Archives building at Suitland, Maryland, and are based upon the original edition of a "Corporate History" prepared in accordance with the requirements of Valuation Order number 20 of the Interstate Commerce Commission, 1915. I am collecting and photographing the replies by each railroad to Valuation Order number 20, substituting for missing reports of the New Haven the above three volumes. My collection, presently about one-third complete, is entitled Railroad Corporate Histories of the United States and Canada. It is on negative microfilm at the Research Center Libraries at Chicago. The film is used only to reproduce other microfilm or 8 1/2 x 11 xerox copies. The three New Haven volumes and material of a few other roads constitute reel 6. The Interstate Commerce Commission had published the replies to Valuation Order number 20 but all that the I.C.C. now has on hand is the incomplete file of about one-third of the roads in the National Archives at Suitland. The "corporate history" in the valuation docket files is a different publication and less detailed.

⁶Statement of William B. Lawrence in Massachusetts General Court Committee on Railroads, "Ownership of Railroad Securities, Feb. 9 - March 30, 1909," pp. 219-220 (Typescript copy in Lawrence Papers).

⁷Boston Post, January 23, 1906, Boston Herald, June 27, 1906, in Brandeis Scrapbooks, I, 48-77 (Louis D. Brandeis Collection, Law Library, University of Louisville); Lawrence in "Ownership of Railroad Securities, 1909," pp. 219-220.

⁸Statement of William B. Lawrence in Massachusetts General Court Committee on Railroads, "Hearing on the Message of the Governor in Relation to the Issuance of Preferred Stock by the Boston Railroad Holding Company, May 11, 1910," p. 43 (Typescript copy in Lawrence Papers); Boston Post, June 27, 1906 (Brandeis Scrapbooks, I, 53); Statement by William H. Coolidge in Massachusetts General Court Committee on Railroads, "Punishment of Officers for Violation

of law, Reports of Subsidiary Companies, April 3, 1911," p. 40 (Typescript copy in Lawrence Papers); Evidence before I.C.C. (s.n. 6586), pp. 77-96; Brandeis, Business--A Profession, pp. 266-68.

⁹New York Daily Tribune, June 7, 1907 (Brandeis Scrapbooks, I, 130). The interview with a "high official" of the New Haven in Boston Herald, June 5, 1907 (clipping in Boston Herald Library) is similar to information released by the Boston News Bureau, June 12, 1907.

¹⁰Statement of William Lawrence in Massachusetts General Court Committee on Railroads, "Investigation of New York, New Haven and Hartford Railroad Company, February 10, 1910," p. 12. (Typescript copy in Lawrence papers). Samuel Lawrence was a practical business man. He arranged for the Eastern Railroad to avoid bankruptcy in 1875. He could have been president of both the Boston & Maine and the Sante Fe Railroad. He was one of the strong supporters of the Eastern Railroad taking over the Boston & Maine (but the Boston & Maine technically leased and then merged the Eastern). The most accurate account is Charles J. Kennedy, "The Eastern Railroad Company, 1855-1884," Business History Review, XXXI (1957), 202-208. Samuel and William Lawrence were typical of a number of businessmen in their area who insisted upon "honest" management, as they identified their ethical standards. Frank Jones and such men were different; they were not dishonest but they went to extremes in railroad financing which the Lawrences deplored. Tuttle became and remained president of the Boston & Maine because he met standards upheld by the Lawrences. In our unpublished management appraisal, we concluded that Tuttle's administration should be rated excellent.

¹¹Lawrence in "Investigation of New Haven, 1910," p. 13. The anti-New Havenites got a number of big shippers and two Boston Chamber of Commerce officials to testify that the Boston & Maine provided satisfactory service with the implication that a merger would not improve the service. See the statements by Thomas G. Plant, William M. Bullivant, Elwyn G. Preston, and Franklin P. Shumay in Massachusetts General Court Committee on Railroads, "Control of the Boston & Maine Stock by the N.Y., N.H. & H. R.R. Co., March 19, 1908," pp. 49, 53-54, 234, 438 and 453-54. (Typescript copy in Lawrence Papers).

¹²Statement of Bently W. Warren in Massachusetts General Court Committee on Transportation, "Petition of Henry L. Shattuck for Legislation To Dissolve the Boston Railroad Holding Company," vol. 1 (April 16, 1945), p. 130. (Typescript copy in Boston & Maine Records Depository, Executive file 1946-49); Statement by John L. Hall in Massachusetts General Court Committee on Transportation, "House Bill no. 507, Petition to Dissolve Boston Railroad Holding Company, 1946," p. 309 of March 25 (Typescript copy in Boston &

Maine Records Depository, Executive File 3.2.5, 1946-49); Statement of William H. Lincoln (retired manager of large steamship line) in Massachusetts General Court Committee on Railroads, "Control of Boston & Maine Stock, March 19 - May 19, 1908," pp. 428-30 (Typescript copy in Lawrence Papers); Lawrence in *ibid.*, p. 843, 942. Concerning the financial strength of the Boston & Maine, Abrams (p. 418, n39) is in error. He cites only Francis B. C. Bradlee, The Boston & Maine Railroad: A History of the Main Road with Its Tributary Lines (Salem, Mass.: Essex Institute, 1913), and Robert L. Masson, New Shares for Old: The Boston and Maine Stock Modification (Boston: Harvard Graduate School of Business Administration, 1958), pp. 28-29. Actually, Bradlee is no authority at all on the financial history of the B & M. Professor Masson was an expert on the B & M's difficulties following World War II, but the statement on p. 29 of his book about what the B & M should have done between the 1890's and 1907 is based on inadequate knowledge and actually is too unrealistic considering the nature of Massachusetts laws and their administration. Incidentally, he asked me for an accurate interpretation but I had not proceeded far enough to furnish any help before he published his book.

¹³Statement of Henry L. Higginson, "Control of B & M Stock, 1908," pp. 554-55; Evidence before I.C.C. (s.n. 6586), pp. 758-59.

¹⁴Statement of William B. Lawrence Massachusetts General Court on Railroads, "Investments by Savings Banks in New Haven Railroad Securities, April 16, 23, 1908," pp. 5-10, in which Lawrence quotes from the New Haven application to the New York Stock Exchange, dated June 1, 1907 (Typescript copy in Lawrence Papers).

¹⁵Lawrence in "hearings on Chap. 144, Resolves of 1909," p. 6.

¹⁶Lawrence in "Ownership of Railroad Securities, 1909," p. 552-53; Evidence before I.C.C. (s.n. 6586), p. 681.

¹⁷Boston Post, June 5, 1907 and Boston Globe, May 18, June 6, 1907 in Brandeis Scrapbooks, I, 80, 102, 113.

¹⁸Lawrence in "Investments by Savings Banks, 1908," p. 3; Staples and Mason, Fall of a Railroad Empire, p. 18.

¹⁹Boston Post, June 22, 24, 1907 in Brandeis Scrapbooks, I, p. 270, 289; Statements by Louis Brandeis, J. H. Benton, Jr., and W. H. Coolidge, in Massachusetts General Court Committee on Railroads, "Hearings in Bills Relative to Railway Merger, June 20, 1907," 21 pp. (Typescript copy in Lawrence Papers); Statement of William Lawrence on Massachusetts General Court Committee on Railroads, "Hearings on Senate Bill 384 to Validate the Securities of the New York, New Haven and Hartford Railroad Company, May 10, 1910," p. 35 (Typescript copy in Lawrence Papers).

²⁰Boston American, August 6, 1907, in Brandeis Scrapbooks, II, 74.

²¹Statement of William Lawrence in Massachusetts, "Control of B & M Stock, 1908," pp. 838-39.

²²The "Anti-stock-watering" acts are Chapters 350, 472, 476, 502, and 506 of Massachusetts Acts of 1894. In the Lawrence Papers see Charles F. Choate, Jr., in Massachusetts, "Ownership of Railroad Securities, 1909," p. 530-33; Statement of John F. Fitzgerald in Massachusetts General Court Committee on Railroads, "Formation of a Holding Company, April 27, 1909," p. 41 (Typescript copy in Lawrence Papers); Lawrence in "Investigation of Attorney General's Report, 1909," p. 27; Statement of William B. Lawrence in Massachusetts General Court Committees on Railroads and Banks and Banking, "Hearings on So Much of the Governor's Address as Relates to the Boston Holding Company, March 17-22, 1910," pp. 189-190. (Typescript copy in Lawrence Papers). The 1898 statute is Chapter 194, Acts of 1898 and is quoted in Evidence before I.C.C. (s.n. 6586), p. 1113. For reasons for it not being used, see statements by W. H. Coolidge in Massachusetts General Court Committee on Railroads, "Issue of Stock and Bonds by Railroad Corporations, March 26, 1908," p. 26 (Typescript copy in Lawrence Papers).

My previous position, that prior to 1900 there was no noticeable influence of government regulation on the management decisions of the 45 New England railroads which became part of the Boston & Maine operation, should be revised to apply only to the mid-1890s. (See my article, "The Influence of Government Regulation on the Management Decisions of Forty-Five New England Railroads, 1830-1900," The Railway and Locomotive Historical Society Bulletin, No. 105 (October, 1961), pp. 6-22. Since Tuttle and William Lawrence favored the anti-stock-watering laws of 1894 at the time of their passage, one could assume that they did not at the time expect them to affect their decision making. Only when they found that the Board of Railroad Commissioners applied a very conservative interpretation to the 1894 Acts did Tuttle, Lawrence, and their associates realize the serious limitation. By 1897 the Boston & Maine management wanted to purchase most of its leased lines, and in that year they tried very hard but failed until 1898 to get enabling legislation. Immediately, the 1898 statute was recognized to be of no assistance to the Boston & Maine or any other railroad.

²³Boston Post, June 13, August 24, 1907, in Brandeis Scrapbooks, I, 200 and II, 136.

²⁴Louis D. Brandeis, Financial Condition of the New York, New Haven and Hartford Railroad and of the Boston and Maine Railroad (Boston, 1907).

²⁵Charles Francis Adams, Jr., et. al., Report of the Commission on Commerce and Industry (Boston, March 1908). Only three of the five members agreed to the report.

²⁶Joseph B. Warner in "Control of B & M Stock, 1908," pp. 1061-1119; Statement of William B. Lawrence in Massachusetts General Court Committee on Railroads, "The Governor's Address on Transportation, March 4, 1908," pp. 1-45 (Typescript copy in Lawrence Papers); Lawrence in "Ownership of Railroad Securities, 1909," pp. 554-79.

²⁷Abrams, "Brandeis," p. 429; Brandeis, Business, pp. 262-85 (his best known address, first delivered February 11, 1908); Statement of William B. Lawrence in Massachusetts General Court Committee on Railroads, "Formation of a Holding Company, May 19, 1909," pp. 123-24, 142.

²⁸Ibid.

²⁹Abrams' position (pp. 408 and 429 of his article) that to many, if not most, "responsible leaders of Massachusetts the merger appeared as a necessary response" does not represent much because it was also true that to a number of businessmen, including William Lawrence, the nullification of New Haven's control seemed a "necessary response in the public interest to a commercial crisis in Massachusetts." Abrams considers the views of all anti-mergerites to be expressed by Brandeis. Abrams ignores the very important group of businessmen led by William Lawrence who expressed somewhat different views against the merger.

³⁰Lawrence in "Ownership of Railroad Securities, 1909," pp. 577-78.

³¹Ibid., p. 588.

³²Statements of Elwyn G. Preston; Timothy E. Byrnes, and William B. Lawrence in "Control of B & M Stock, 1908," pp. 438-47, 965 respectively.

³³The Trolley Case decision is Attorney General vs. New York, New Haven & Hartford Railroad Company, 198 Mass. Reports 413. Also see Statement of Timothy E. Byrnes' official statement from the New Haven concerning the Trolley Case decision in Massachusetts, "Control of B & M Stock, 1908," p. 683.

Because of the Trolley Line decision, the New Haven no longer dared to issue debentures, plain bonds or long-term bonds to refund its short term debt beyond an amount equal to its outstanding capital stock as required by Massachusetts laws. The Massachusetts government did not require government approval of notes maturing in one year or less. See Ledyard in Evidence before I.C.C. (s.n. 6586), p. 1087.

³⁴Tuttle to Charles S. Mellen, June 3, 1908 (Mellen Collection).

³⁵Press release of opening statement by the government in U.S. vs. William Rockefeller et. al., October 1915 (Copy in Edgar J. Rich Correspondence in Boston & Maine Depository); Evidence before I.C.C. (s.n. 6586), pp. 499-500; Boston Journal, October 6, 1908, in Brandeis Scrapbooks, VIII, 172; Lawrence in "Investments for Savings Banks, 1910," p. 192; Memorandum by Charles S. Mellen dated December 29, 1914, especially items listed as July 30, 1908, and October 4, 1909 (Mellen Collection).

³⁶Statement of William B. Lawrence in Massachusetts General Court Committee on Railroads and Metropolitan Affairs, "Hearings on House Bill 423 Relative to the New York, New Haven & Hartford and other Corporations, April 20, 1911," p. 14.

³⁷Brandeis in "Formation of Holding Company, May 19, 1909," p. 63; Boston Herald, April 22, 1909, in Boston Herald Library; General Court Committee on Railroads, "Ownership of Railroad Securities, February 9 - March 30, 1909," pp. 1-594; Massachusetts General Court Committees on Railroads and Street Railways, "Control of Stock of Railroads and Street Railways, March 24, 1909," pp. 1-82.

³⁸Brandeis in "Formation of Holding Company, May 19, 1909," p. 63; Boston Herald, April 22, 1909, in Boston Herald Library. Statement of ex-Representative Dean of Wakefield in "Ownership of Railroad Securities, March 23, 1909," p. 422.

³⁹Lawrence in "Formation of a Holding Company, May 19, 1909," p. 116.

⁴⁰Ibid., p. 122.

⁴¹Ibid., p. 126. Cf. ibid., p. 137-39.

⁴²Boston Traveler, June 14, 1909 in Brandeis Scrapbooks IX, 243, Abrams', "Brandies," p. 425, citing Lodge to H. L. Higginson, April 28 and May 19, 1909, in Henry Cabot Lodge Collection (Massachusetts Historical Society). The charter of the Boston Railroad Company is ch. 519, Acts of 1909.

⁴³Boston Herald, June 25, 1909, in Brandeis Scrapbooks, IX, 271; Lawrence in "Hearing on House Bill 423, April 20, 1911," pp. 9-10.

⁴⁴Evidence Before I.C.C. (s.n. 6586), pp. 1100-1104, 1147-55.

⁴⁵Boston Transcript, December 2, 1909 in Brandeis Scrapbooks, IX, 323; Minutes of the Boston and Maine Railroad, November 1909 - March 1913 (Boston and Maine headquarters).

⁴⁶Abrams, "Brandeis," pp. 426-28, in discussing weaknesses in "the anti-merger case," makes statements I cannot accept for the following reasons. (1) He is mistaken about the influence of the Boston and Maine stockholders residing in New York before 1907. See Lawrence's statement in note 2 above. The stock held in New York was not used to disturb a harmonious board. The directors acted according to the preferences of the Tuttle management (and Lawrence) with only one exception that I have found so far, which I identify in the paragraph of the text that concludes with footnote number 31. (2) Abrams' complaint about the anti-mergerites not recognizing the financial weakness of the Boston and Maine overlooks completely that the weakness was due to Massachusetts legislation of 1894 and 1898 and the interpretation of the Massachusetts Board of Railroad Commissioners. (3) It is not true that the anti-mergerites had no alternatives to the threat of the New Haven or other outside interests. See the paragraph in the text concluding with footnote number 27. One should remember that the New Haven could not have fulfilled its promises to operate the Boston and Maine in a better manner without new legislation which Massachusetts had been denying the Boston and Maine. (4) I find the evidence is too indefinite for Abrams to say that "to many--perhaps not--responsible leaders of Massachusetts, the New Haven - Boston and Maine merger appeared a necessary response to broad economic developments in the nation." (p. 429) Of course, the New Haven lobby tried to give it that appearance.