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The N.Y. Central Elevates Its Tracks Under Municipal Pressure

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Here is an episode in the relations between a nineteenth century American city and a railroad monopoly that dominated its economy. The setting is Rochester, New York, in the late 1870s. The railroad, which carried the bulk of Rochester's freight and passengers, and on whose service the businessmen and merchants of the city depended, was the New York Central & Hudson River Railroad. The New York Central consolidation, under the near-autocratic rule of William H. Vanderbilt, was then the country's greatest railroad empire and one of its largest corporate giants. At the time of Cornelius (Commodore) Vanderbilt's death in 1877, the Central already enjoyed a virtual monopoly over transportation in New York State; under the control of his son, William, the railroad's monopoly position was further strengthened as its trackage increased throughout the north-eastern United States. Only the Central and the small New Haven Railroad provided rail transportation directly to New York City, and the Central dominated its primary rival, the Pennsylvania Railroad, as a carrier over the vital routes between Chicago and the East. Rochester was typical of many other eastern cities in its dependence on the New York Central. The

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conflict between Rochester's municipal interests and the railroad's interests in the late '70s illustrates the contests between cities and railroads taking place throughout the country in the period before the limits of monopoly power had been well defined and before the operations of railroads had been extensively regulated.

During the years 1874-1882 the problem of railroad grade crossings in the center of Rochester's business district overshadowed relations between the city and Vanderbilt's railroad. In addition to the safety hazard posed by grade crossings, the blocking of streets by passing trains caused immense traffic problems in nineteenth century cities. When a city experienced a period of growth in population and commerce, as did Rochester in the 1870s, the increased delays in city traffic caused by grade crossing tie-ups were particularly noticeable and annoying. In the 1870s, the New York Central's tracks crossed Rochester's streets at more than 40 places; contemporary newspaper accounts indicate that traffic delays of over an hour were common. William N. Sage, one of the city's outspoken opponents of the grade crossings, estimated that trains blocked the city's streets 4,348 times a day.¹

It is small wonder, then, that the conflict between the city's desire to see the grade crossings removed, and the railroad's desire to save itself the expense, became a leading issue. Several factors combined to produce a confrontation over the problem in the late 1870s. First was the geometric expansion of rail traffic and the commercial growth of Rochester during its recovery from the 1873 business depression. This meant a sheer increase in the traffic problems caused by the grade crossings. Second was the continued number of train accidents in the city—not always directly related to the grade crossings themselves, but nevertheless given a great deal of newspaper attention. Growing public sentiment demanded safety reforms by the railroad; the

removal of the grade crossings became a focus of attention as the most obvious reform needed. A third major factor, which triggered the confrontation in the 1870s, was a decision by the railroad to double the number of its main lines through the city from two to four. The proposed doubling of trackage threatened to compound the grade crossing problem and at the same time afforded an opportunity for the city to force the railroad's hand, by denying permission for the construction.

Rochester won the ultimate victory in the ensuing contest. After a protracted period of negotiation and maneuvering on both sides, the railroad agreed, in 1881, to build a massive elevation across the city. The four main line tracks were carried on steel bridges across the principal streets, and on earth and masonry embankments between them. As one of the most impressive railroad engineering feats of the time, the Rochester project proved to be one of the most expensive. The cost, estimated as high as two million dollars, was borne entirely by the railroad.

Rochester's victory over the railroad on this issue contradicts commonly held notions about the power arrangements between nineteenth century business and municipalities. Indeed, the impression of municipal subserviance to business interests is well backed by thousands of instances (in Rochester and elsewhere) of unfair streetcar and street lighting franchises, manipulated zoning laws, cooperation in tax assessments, and so on. But the dominance of nineteenth century captains of industry over the welfare of cities was apparently not universal. Rochester's extraordinarily complete victory in forcing the New York Central to remove its grade crossings is an intriguing example of the potential that city government had to reverse the customary power arrangement, when municipal powers were vigorously exercised. The story that follows reveals some of the reasons why Rochester triumphed on this issue.

The origins of the grade crossing problem lay in the history

of the first railroad development in Rochester. The location of the New York Central tracks near the center of the city was determined not by the needs of the 1870s, but by the requirements of pioneer railroad lines built before the Civil War. These small railroads, which later became part of the Central consolidation, were modest enterprises conceived as links between Rochester and neighboring cities, rather than as part of a regional or national transportation system. The location of their tracks did not anticipate the city's future growth or the vast amount of traffic that would be carried in a later period.

Four successful railroads were built towards the east and west from Rochester in the 1830s and 1840s. To the east were the Rochester & Syracuse and the Auburn & Rochester Railroads. The Rochester, Lockport, & Niagara Falls and the Tonawanda Railroads connected the growing city to its western neighbors. Together, these four rail lines became the mainstem of the New York Central through Rochester when they were later absorbed by the larger railroad. The New York Central consolidations in the Rochester section were complete by 1853.²

The New York Central's tracks in time became another geographical barrier in the center of a city already divided by water barriers. Rochester had begun as a milling center on the Genesee River and had grown up on both sides of it. Its commercial development, which was immeasurably stimulated by the construction of the Erie Canal in the early 1820s, became centered in the area of the river's and canal's intersection. These water barriers in the commercial center could be bridged with relative ease. The railroad barrier, however, posed special problems. More than 40 street level crossings had been constructed by legal agreement between the city and the early railroad builders. It was impractical to bridge them or tunnel under them; their removal would necessitate changing the grade of the railroad tracks. Although they were the legal responsibility of the New

York Central, which inherited them, the railroad showed no initiative towards removing them.

A really serious accident in 1875 dramatized the dangers of railroad operations in the downtown streets. A heavily loaded eastbound freight, approaching the city over the long grade of the "Buffalo Hill" on the west side, broke a coupling near the rear of the train. Several cars and the caboose rolled backward, carrying the unwilling conductor and brakeman with them. The engineer continued into the city, unaware that he was now crewless. Without brakes, the train gathered speed uncontrollably, derailed, and smashed into the waiting room of the Mill Street depot. Miraculously, only two men were killed.³

The large number of grade crossings, unprotected by automatic gates or signals, and used by a vast and growing quantity of rail traffic, became a constant menace in the 1870s. Mishaps were sometimes a daily occurrence. A newspaper account of February 5, 1877, described a typical near-fatality at one of the crossings. A man was driving a wagon over the crossing when one of the wagon wheels became stuck in the tracks. Instead of leaving the wagon, he tried to move the stalled vehicle; a passing constable saved him only in the nick of time from an approaching train. On the same page of the newspaper another story relates the death of a man killed by a train in the nearby town of Canandaigua.⁴

The next morning's newspaper contains the story of "A young man by the name of Thomas McAuslin . . . [who] . . . had a most wonderful escape from an instant and horrible death last evening." He was knocked down by a locomotive at a grade crossing and dragged for some distance between the rails. McAuslin's accident illustrates one of the special hazards that accompanied large volumes of traffic at the grade crossings; he was struck by the locomotive while being distracted by the approach of a train on another track.⁵ The Rochester pedestrian

of the 1870s crossing the New York Central tracks not only had to contend with an occasional train passing over a single line, but often had to run a gauntlet of trains passing in opposite directions and locomotives engaged in switching operations.

As the grade crossing problem increased, so did the attention given to railroad accidents by the local press. While not all of them were directly related to the grade crossings, a substantial number of accidents and near misses focused public attention on the hazards of train operation in the city. In 1875, a cattle train was derailed while crossing the bridge over the river; a car containing seventeen animals plunged into the river. The crowd of 15,000 who gathered to watch the abortive rescue attempts indicates the interest generated by railroad accidents. The event was also significant because, had the Sunday afternoon derailment occurred a few hours earlier, a number of the spectators would have been victims instead; the railroad bridge was frequently used by citizens walking to church.⁶

The public opposition to the grade crossings which developed in Rochester during the 1870s began as a reaction to the New York Central's decision, early in 1873, to double its trackage through the city. Cornelius Vanderbilt, now at the peak of his career as the great consolidator of railroads and autocrat of the New York Central Company, had determined to increase the number of tracks all along the railroad's main line from two to four. The two new tracks would be used as freight lines, leaving the two older ones to be used exclusively for passenger traffic. A vastly expensive capital improvement, the New York Central's four-tracking was seen as both the ultimate device for speeding service and as a powerful weapon against potential competitors. Two weeks after Rochesterians learned of the railroad's decision,⁷ they received the first indication of how the railroad planned to carry the new tracks through their city. Rather than laying the new tracks next to the existing ones and creating new

nightmares at the grade crossings, the railroad proposed constructing a long wooden trestle for the new tracks over the old ones. The railroad hoped that with this proposal it could mollify the feelings of Rochester's citizens, some of whom were beginning to resent *any* train traffic through the center of the city, let alone the idea of doubling the number of tracks. More importantly, the railroad hoped that the trestle idea would prove acceptable to the city's Department of Public Works, which at this time held the power to deny expansion of the railroad's franchise privileges to include the new construction. It seems, however, that the company's proposal to elevate the two new tracks proved to be its undoing. Unwittingly, the company had given rise to the idea of elevating *all* of its tracks through the city.

A column in one of the Rochester dailies which reported the trestle proposal gives some indication of the developing public mood. After admitting that having the additional tracks raised would be better than having them laid on the ground, the reporter adds:

. . . such a work will seriously affect the value of property adjacent to it, and in fact all of the property north of it. . . .

Under the proposed plan we will not only have tracks to the right of us, tracks to the left of us, but tracks over and under us.

The desire seems general, however, that the Railroad Company shall elevate all its tracks, both passenger and freight.

In an added note, the newspaper's editor chooses to state the case even more strongly:

. . . the universal sentiment of the community is that the Central Railroad Company now occupies all the street room and street privileges it should be permitted to enjoy, and that whatever change is made must be made with an eye to the relief and not to the further injury of our citizens.⁸

Meanwhile, a group of "citizens, taxpayers, and others interested" met to oppose the trestle plan and unanimously resolved

to advise the Department of Public Works against permitting the railroad to go through with it. The resolution to oppose the railroad's construction plan not only reflected broad public sentiment, but apparently carried sufficient political influence as well: the railroad was legally blocked by the city from constructing its trestle. The resulting bottleneck at Rochester prevented the railroad from fully enjoying the benefits of its state-wide four-track system during the next eight years. When negotiations between the city and the railroad over grade crossing removal began, the railroad's desire to complete its four-track line through Rochester became an important reinforcement of the city's bargaining position.

The city's refusal to allow trestle construction was not the only setback in relations between the city and the New York Central in 1874. As part of its capital improvement program, the company had determined to construct a new freight yard for Rochester, just outside the eastern boundary of the city. It is unclear whether or not a prime reason for the railroad's choice of the new site was to escape the city's real estate taxes; it is equally uncertain to what degree the city's response, annexation of the area which included the new freight yard, was motivated by a desire to keep the Central's facilities on the tax rolls. In any case, Vanderbilt interpreted the annexation as an act of piracy; he retaliated by permanently removing his railroad's repair shops from the city and eliminating Rochester's status as a terminus for round trips.⁹

With their refusal to allow construction of the new tracks, the city's leaders had not finished venting their animosity toward the grade crossings—and they had not yet exhausted their stock of legal weapons. From 1874 until 1877, however, there was an apparent lull in the controversy. There is no public record of any talks between representatives of the city and the railroad during this period. Commodore Vanderbilt, apparently

incensed over Rochester's lack of cooperation with the railroad's construction plans, refused to reopen the question of new tracks through the city. Finally, in 1877, two developments opened a new round of discussions. One was the death of Commodore Vanderbilt, and his son's succession to the presidency of the New York Central. William H. Vanderbilt now took personal direction of his railroad's negotiations with Rochester, and became, during the next few years, the city principal adversary in the argument over grade crossings and track elevation. The other development was new legislation by the city council designed to reduce the hazards at the grade crossings.

In December, 1877, the Rochester Common Council voted several amendments to the municipal ordinances relating to railroad operation. One new provision required the installation, at all grade crossings, of gates which were to be closed two minutes before the approach of any train and kept closed for two minutes after the train's passage. Another provision limited train speed in the city limits to eight miles an hour. The ostensible purpose of these laws, and the purpose which no doubt largely motivated them, was to decrease the hazards at the grade crossings. But it is no doubt also true that some members of the Common Council knew that the inconvenience and expense of the new laws might pressure the railroad's new president into reconsidering his company's street level operations in Rochester. The practicality of the new laws was questionable. The crossing gate provision would require a large increase in the railroad's labor force, since the gates would have to be manually operated. The eight mile-an-hour speed limit could not be closely observed, since the Central's heavy freight trains had to build up greater speeds to climb the grades at either side of the city. According to one local newspaper editorial, the gate closing provision was impractical, given the volume of railroad traffic, because the gates would be perpetually closed in the daylight

hours and would completely stop movement on the city's streets.¹⁰ The Council's action would help protect citizens who were forced to cross the Central's tracks at the grade crossings, but it was also the first step in the city's campaign to force the company to remove the grade crossings by using its broad powers over the regulation of railroads.

In its regulations of 1877, as in its denial of permission to construct new tracks in 1874, Rochester demonstrated considerable legal power over the conduct of railroads within its limits. The city's regulatory rights were extensive, a fact which proved important in its contest with the railroad company, and which finally may have been decisive. The power of municipalities to set railroad speed limits, to require the erection of gates at grade crossings, and to modify in other ways the franchise privileges of railroad companies was becoming a well-established principle in case law during the nineteenth century.¹¹ In using their police powers to enforce safety regulations (and, as we shall see later, extending the enforcement of the railroad laws in a more clearly punitive manner), Rochester's legislators followed judicial precedents set years before. According to John F. Dillon, the nineteenth century authority on municipal law, the granting of a franchise to operate railways through city streets "... does not impair reasonable exercise of police powers and regulation. . . ."¹² Dillon's statement summarizes the results of several court actions between cities and railroads in the 1860s and 1870s, several of which upheld municipal powers of the same type that Rochester used against the New York Central. Thus, in *Toledo, W. & W. R. Co. vs Jacksonville*, 67 *Illinois*, 37 (1875), the court held that it was reasonable to require a railroad company to place flagmen at places where "in the judgment of prudent persons" there was danger to the public safety. Even earlier, in *Illinois Central R. Co. vs Galena*, 40 *Illinois*, 344 (1868), the court established the power of municipalities to forbid the block-

ing of streets by a railroad company with its cars. The municipal powers over railroads upheld in these and several other state court proceedings were reconfirmed by the U.S. Supreme Court in *Richmond, F. & P. R. Co. vs Richmond*, 96 *U.S. Reports*, 521 (1878). The Supreme Court held that municipalities could regulate train speed, and could even prohibit the use of steam power. The trend of court decisions in cases where railroads argued against municipal regulations was decidedly in favor of the cities during the 1870s. This was a crucial factor in Rochester's victory over the New York Central.

In the same year that William H. Vanderbilt assumed presidency of the New York Central, 1877, Rochester elected Cornelius Parsons to his first term as mayor. Elected at age thirty-five, to the first of seven two-year terms, he became one of Rochester's youngest and longest-lasting mayors. Mayor Parsons was, according to one local historian, unusually scrupulous and dedicated to the public service.¹⁸ He was to play a prominent role in the subsequent negotiations with Vanderbilt. In 1878, Parsons contacted Vanderbilt to arrange for discussions between representatives of the city and the railroad about the grade crossing problem and the possibility of elevating the tracks. It was agreed that the Mayor would appoint a special committee of interested citizens, who, along with the three-man Railroad Committee of the Common Council, would present the city's case to the Chief Engineer of the New York Central, Charles H. Fisher. Vanderbilt's chief motive in agreeing to the talks at this time was his desire to see the construction of the new freight tracks accomplished: during the past four years the gap in the Central's four track system had doubtless become a greater and greater irritant. Vanderbilt may also have been aware of the impending difficulties his company faced if the city should begin rigid enforcement of its safety regulations. So far, the new laws had lain dormant, but further recalcitrance on the part of

the railroad might push the city into an enforcement program, to the mutual inconvenience of both the city and the railroad.

Meetings between Fisher and the city's representatives took place during the winter of 1878-79. Although no records are available of what transpired during these meetings, one can imagine the railroad's lone representative being somewhat overwhelmed by the sheer size of the Rochester delegation. In the minds of the Rochesterians, the plan to bring additional tracks through the city had become inextricably bound up with the idea of wholesale elevation of *all* the tracks, thus eliminating the grade crossing problem. The physical details of such a project were agreed upon in their meetings with Fisher, and it was announced on January 23, 1879, that all parties had agreed unanimously to the proposal.¹⁴ Fisher told the newspapers that he would submit the plan to Vanderbilt for final approval. Apparently, no one had yet raised the question of paying for the project.

The decision was now in the hands of Vanderbilt. What sort of man was this who commanded one of the century's largest economic empires? William H. Vanderbilt is recognized as one of the more competent business executives among the nineteenth century "robber barons." During his brief reign over the New York Central (in which he personally held 87% of the stock), the Vanderbilt fortune was doubled in value from \$100,000,000 to \$200,000,000. From the time of his father's death in 1877, until his own demise in 1885, this man very personally guided the policies of the New York Central.

For much of his life, William Vanderbilt's competence was not recognized. His father thought so little of him, particularly after a marriage at the age of nineteen which his father disapproved of, that he refused to bring his son into the family business until he was nearly forty-three. According to one biographer, the contemptuous suppression of his talents in the

early part of his life instilled in his personality not only a dedication to work, but also a bitter cynicism.¹⁵ It was William Vanderbilt, and not his more famous father, who immortalized the family name with the phrase, "The public be damned." While it is true that Vanderbilt's infamous remark is usually taken out of context (he was being provoked by reporters), the fact remains that his dedication to the interests of "his stockholders" was as single-minded as that of any other business tycoon of the nineteenth century.

In the present dealings with Rochester, Vanderbilt would face sustained pressure from the city to force his railroad to remove the grade crossings. Was his personality equal to the task of resisting the city's efforts? According to Matthew Josephson, the twentieth century historian of the "robber baron" capitalists, there was another side of William Vanderbilt which contradicted the image of the unyielding, ruthless capitalist:

In the midst of a whirl of giant affairs he always found time to complain of petty impositions. In an age of terrific struggle, such as his father would have revelled in, including contests with new adventurers of industry, with the Standard Oil party, or with labor unions, William Vanderbilt was easily frightened and prone to compromise rather than fight to the bitter end.¹⁶

Despite his dedication to increasing the profits of his company and safeguarding the family fortune entrusted to him, Vanderbilt was capable of timidity. This fact may have been important in Rochester's eventual victory over the railroad king.

At first, however, there was nothing soft about Vanderbilt's position on the newly formed elevation plan. Soon after receiving the proposal from Chief Engineer Fisher, Vanderbilt stopped briefly at Rochester on one of his statewide inspection tours. When asked his opinion of the plan, he sympathized with the dangers and inconvenience of the numerous grade crossings in the city, but added that, at best, it would be some time before

any elevation project could be undertaken. Since the Central had just made an enormous financial commitment to pay for the statewide four-tracking, local projects would have to wait.¹⁷ This was in January, 1879; nothing more was heard from Vanderbilt until late the following month.

On February 24, Mayor Parsons received a terse letter from the railroad president. For the first time, the city learned that Vanderbilt expected more than simple cooperation from the city to launch the elevation project:

The undertaking, if carried out properly, will involve a very large expenditure of money, and in addition to this, the loss to the Company of the use of the real estate [?], the increased cost of doing its local business, etc. [?]; and, while we are willing to bear our share of such an expenditure, we think that an equal share should be born by your city.

If, after due consideration, you agree with me in such a conclusion, and will manifest it to me, orders will at once be given to proceed with the work.¹⁸

Parsons lost no time in replying, pointing out that Vanderbilt's agent at no time during the negotiations had mentioned ". . . that we were expected to defray any portion of the outlay. . . ."¹⁹ Vanderbilt was unaffected by this argument. As far as the Company was concerned, he said, the elevation project had been Rochester's idea; its major benefit would be to the city's property owners. Therefore it was only reasonable to expect the city taxpayers to share the cost.²⁰

Another part of Vanderbilt's argument that the city should share the cost of elevation used an analogy to New York City's situation a few years before. Under somewhat similar circumstances, the railroad had undertaken an expensive track removal project to protect pedestrian life along Fourth Avenue. Trouble had begun in 1871 when the late Commodore Vanderbilt completed the first Grand Central Depot on Manhattan's east side. The new depot was universally, and deservedly, acclaimed for

its magnificence; no expense had been spared in its construction. Unfortunately, however, Vanderbilt had not provided any special track approaches. Trains entered and left the new station along the surface of Fourth (later Park) Avenue between Forty-second and Sixty-eighth streets. After the station had been in operation a little while, rumors spread through the city of mass carnage among pedestrians attempting to cross the street occupied by the tracks; editorialists inveighed against the New York Central's indifference toward human life. Finally, the company was forced to undertake a five-year project of excavating Fourth Avenue and rerouting its tracks below ground. Involving as it did the removal of vast amounts of Manhattan rock with hand drills and dynamite, the project was one of the greatest—and most expensive—engineering feats of the day.²¹ New York City bore half the cost.

Since New York City had paid half the cost of its Fourth Avenue project, why shouldn't Rochester receive similar treatment? Vanderbilt's comparison of the two situations was not perfect. Actually, New Yorkers were still wondering how their city had been taken for such a ride on the New York Central. In that city, the public had demanded expensive changes *after* the railroad had already completed its new terminal; the Rochesterians were demanding, in effect, that proper arrangements should be made *before* the railroad brought its new tracks through the city. Despite the inadequacy of his analogy, however, Vanderbilt would repeatedly use the example of New York to justify his demands that Rochester share the cost of its elevation project.

While Parsons and Vanderbilt corresponded, support for the elevation project within Rochester grew. In February, citizens sent an "immense petition" to the Common Council urging the passage of legislation necessary to permit the track elevation. Among other things, the petition demanded that:

the number of freight trains crossing State and other streets west thereof and east of the Erie Canal should be decreased, if not wholly discontinued. . . .

Further, the petition demanded removal of the grade crossings:

. . . as the difficulties, dangers, and delays of said crossings are increased proportionately as the business of said [New York] Central road the population of Rochester increases.

According to the newspaper, a “. . . very large number of names were attached to the petition, representing many of the leading businessmen of the city.”²²

In March, the correspondence between Parsons and Vanderbilt began to dry up. Mayor Parsons, upset over the railroad president’s abrupt suggestion that the city shoulder half the cost of the railroad’s improvements, sent a terse message on March 13:

In view of these facts, are we to understand now, and for the first time, that we must comply with your suggestions in order that the work should go forward?²³

Vanderbilt sent no reply; another letter from the Mayor, dated April 7, repeated the same question and was also ignored. Vanderbilt had apparently decided to play a waiting game.

The city, for its part, lost little time in finding a new way to apply pressure. The Common Council, feeling that the railroad had delayed long enough, ordered the Mayor to begin strict enforcement of the railroad operating ordinances within the city the week of April 13. On April 14, the Mayor received the railroad’s regional superintendent, George H. Burrows, in his office and personally handed him a copy of the ordinances. Under the new enforcement program, Parsons promised he would arrest train crews for each and every violation of the law. The penalty for each violation was a fifty dollar fine. In reply, Burrows said that he would make every effort to see that the company complied with the laws, but that in some cases this

would be impossible. The eight mile-an-hour speed limit could be observed by passenger trains, but not by freight trains; switching operations that blocked city streets, although illegal, would have to continue as before. "Exceedingly lively times may be expected," said one newspaper, "pending the arrests of conductors and engineers, which are almost sure to follow."²⁴

Public reaction against the company's intended selective compliance with the laws was strong. At a well-attended Council meeting later in the week, citizens rose to denounce the railroad. Some spoke of the tragic deaths of children and young fathers on the city streets as a result of the railroad's operations. A Civil War veteran, described in newspaper accounts as "the popular General Martindale," called for action:

Enforce the law! No committee is required. The best committee is one with the mayor and police officers back of it to enforce ordinances. What is this railroad corporation—Whence its powers? It is a creation of the state. Whence has come the vast sum of money that has been received to extend this road and enrich the stockholders? It has come by loans from the franchises of the people. The people have enabled them to foster and water the stock from \$7,000,000 to \$140,000,000. In what relation do they stand to us?

. . . It is not for us that the compromise is to be made. He [Vanderbilt] has the impudence to say that if we do not give him money he will take the road from the city. . . .

. . . The light will go out from Rochester to all the country round. I shall rejoice when the insolvent corporation is brought to terms and compelled to admit its relationship to us, its masters.²⁵

General Martindale's assertion that the people were the masters of the railroad corporation was tested by the new legal confrontation between the city and the railroad. Following his warning to the regional superintendent, Mayor Parsons immediately made good the threat to enforce the railroad operating laws. On his orders, city constables boarded the New York Central trains and arrested train crews to face charges in the

local police court. By April 29, there were between 30 and 40 prosecutions in progress.²⁶ While Parsons' lawmen were making their arrests, the Common Council considered action to further toughen the operating laws. On April 22, one Alderman introduced a list of amendments which would raise the penalties for violations to a \$150 fine or 10 days in jail. In addition, the proposed new "penal ordinances relating to railroads" would prohibit unnecessary whistling or releasing of steam, obstruction of any street for more than five minutes, or loading and unloading of cars in the streets.²⁷ Two days later, the railroad's depot master was convicted by jury of blocking the streets with a postal car and was fined \$50. The company attorney who provided legal counsel for the depot master used two arguments in his defense. One was an argument on principle: that "an ordinance could not prevent a corporation doing its legitimate business any more than it could prevent the driving of a delivery wagon on the streets." His second argument also challenged the validity of the ordinance, but was based on a technicality: that the Mayor had not signed the law in sufficient time for it to become effective.²⁸ In its appeal to the State Supreme Court on a *writ of certiorari*, however, the railroad dropped the attempt to challenge the ordinance as unjust regulation of business, and instead concentrated on another technicality, the question of whether or not the Rochester Police Justice had the power to conduct a jury trial.²⁹ Apparently the New York Central was reluctant to test the constitutionality of the type of municipal regulation which, as we have seen, had already been well established by judicial precedent.

Faced with a legal situation in which court action could only help him to gain time, Vanderbilt had to act. The city's threat to virtually shut down railroad operations, combined with a desire to salvage what he could of good will in Rochester, induced Vanderbilt to make one more attempt to arrange for the

elevation project on his own initiative. On May 9, he arrived in Rochester on his special train with full entourage, including the principal officers of the Central and his two sons and heirs, Cornelius II and William K. Vanderbilt. The Vanderbilt party proceeded to the best hotel, attracting crowds along the way, and after dinner waited to receive the deputation from the city. We must grant Vanderbilt some measure of audacity and diplomatic skill in arranging for the Mayor and Aldermen to come to him in their own city; the psychological advantage was all his.

The confrontation at the hotel began with a member of the citizens' committee, William N. Sage, reading a long letter critical of the railroad's conduct and delay in putting through the elevation project. According to two newspaper accounts, Vanderbilt sat quietly through the reading before making his reply. He resented the critical message from the committee, and characterized it as an "arraignment." The reason for the delay, he said, was that the project would cost \$1,000,000 and that the city had refused to pay half.

Some people think that I have got a good deal of money [!], and that is one of the reasons why I am pitched into like the devil every day.

Vanderbilt did not neglect to remind the Rochesterians of their city's dependent relationship with the railroad: ". . . the railroads made Rochester what it is today, and without them it would dry up."⁸⁰ Many interpreted this last remark as a thinly veiled threat to route the new freight lines south of the city.

Vanderbilt then returned to New York and drafted a formal reply to the Rochesterians' demands that he begin the elevation project. In a long letter to the citizens' committee, he outlined his position on the city's and railroad's mutual responsibility for grade crossing removal, and proposed a new method for financing the proposed elevation:

The municipal taxes of the company in your city amount to about

\$33,000 a year. I am advised that it is competent for the legislature to authorize an exemption from these taxes, and that if asked for by the city authorities and your senator and members of assembly there is yet time to pass such a bill through the legislature. Work will be begun immediately and pushed forward as rapidly as possible and the New York Central will advance all the money, provided you will exempt the property of the company in your city for ten years. . . .

And what of the recent amendment to the State Constitution prohibiting municipal financing of railroad projects?³¹ Vanderbilt referred to it indirectly:

This cannot be called in any sense an appropriation in aid of a railroad company, but is an easy method for the city to raise money for the improvement of certain of its streets and avenues.³²

The city leaders, however, were not moving from their original position. An unnamed spokesman from the Common Council Railroad Committee, expressing his opposition to Vanderbilt's latest proposal, told a newspaper reporter that the Central's tax contributions were closer to \$35,000 a year; in any case, the proposed tax exemption was "unthinkably unconstitutional." He added that the Council and the public would "never stand for it."³³ The citizens' committee drafted its reply to Vanderbilt:

Our committee have carefully considered your communication, and are decidedly of the opinion that the proposition you have submitted would not meet the approval of our citizens and tax payers, or receive the sanction of the common council. We are favorable to the plan of elevated tracks as the most feasible one . . . , but your proposition to remit the tax on the property of your road, passing through this city, we are advised, by eminent legal counsel, would be in direct violation of the constitution, and the legislature has no power to give us such a law as you suggest, which under the provision of the constitution referred to, would be utterly nugatory.³⁴

In the face of determined opposition, Vanderbilt abruptly gave up his demand that the city share the cost of elevation.

Early in August, the citizens' committee received a new proposal. Under its terms, the railroad would construct the elevation at its own expense in exchange for a contract from the city giving it free hand to determine certain details of the construction.³⁵

At last, on January 27, 1881, a contract was signed formalizing an agreement between the city and the railroad to begin construction of the track elevation. Under the terms of the contract, the railroad was required to pay all the costs of the project, while the city was obliged only to cooperate with the details of construction, such as the temporary closing of streets. When Rochester's elevation was completed, in 1882, it was hailed as one of the most ambitious railroad construction projects in the country, second only to New York's Fourth Avenue project. According to Vanderbilt, it cost the New York Central close to \$2,000,000. It was soundly constructed, and built for the future; it carries the bulk of Rochester's rail traffic today. Although it was not quite the end of the city's problems with grade crossings—many New York Central grade crossings had been left in the outlying districts, and other crossings would yet be built by the Central's hapless rivals in the city—the menace of grade crossings in the heart of the city had been removed.

In the late 1870s, the issue of grade crossing removal had served to focus the conflicting goals and powers of the city and railroad. Contrary to the outcome that one might expect in a contest of this type, the city won a suprisingly complete victory and forced the railroad to elevate its tracks at its own expense. Four of the reasons for this victory are summarized below.

First among these was the basic economic relationship between the railroad and the city. While it was partly true, as Vanderbilt said, that “. . . the railroads made Rochester what it is today, and without them it would dry up,” it was at least as true that the railroad depended on Rochester and the other major cities along its line to generate its business. Vanderbilt's

draconian threats to reroute the railroad around Rochester were empty gestures. The tactic might have worked for some railroads against smaller towns, but it would not work against a city as important as Rochester was to the New York Central's own well-being. Mayor Parsons and the citizens on the negotiating committee must have been aware that the economic dependence between the city and the railroad was mutual; they certainly did not panic at the suggestion that Rochester would be cut off from its transportation lifeline. Vanderbilt was not a reckless man, and would not carry out his threat. The fact that the railroad could not reasonably remove itself from Rochester bore a direct relationship to the city's successful campaign of enforcing the railroad operating laws.

The city's use of its general police powers to interfere with the railroad's operations was vital to the achievement of its goal. The city's ability to threaten the corporation with regulatory ordinances, which at first glance seems extraordinary, was nothing more than the use of a legal capability which at the time was becoming firmly established in case law and which was within the reach of other nineteenth century municipalities. Although there was a certain flavor of blackmail in the city's enforcement of laws which it knew the railroad could not obey, there was also a certain justice in the use of safety regulations to coerce the removal of the grade crossings—one of the greatest threats to public safety.

A third factor accounting for Rochester's success was the manner in which William H. Vanderbilt conducted negotiations with the city. Apparently, the robber baron style of personal business management did not always insure the victory of monopoly over public interests. Unlike a modern bureaucratic corporation, a nineteenth century business empire like the New York Central was subject to reverses caused by failures in the personal diplomacy of its autocratic ruler. In this instance, the man's

personality, along with his impatience to see the company's four-track improvement program go forward, contributed to the final outcome.

Finally, a principle reason for Rochester's success was its solidarity and persistence in fighting the monopoly. For years the city's politicians and its business community stood united in their desire to see the tracks elevated. Their effort was reinforced by strong public sentiment against the continued presence of the grade crossings.

The overall lesson in Rochester's victory over the New York Central, however, was that nineteenth century municipal powers could prevail over monopoly interests when these powers were vigorously exercised in pursuit of a goal behind which the city stood united.

NOTES

- ¹Rochester *Democrat and Chronicle*, May 9, 1879.
- ²Edward Hungerford, *Men and Iron; The History of the New York Central* (New York, 1938), p. 88.
- ³*D & C*, October 9, 20, 1875.
- ⁴*Ibid.*, February 5, 1877.
- ⁵*Ibid.*, February 6, 1877.
- ⁶Unidentified newspaper clipping dated 1875, *Barton Scrapbook* (Rundel Memorial Library), Vol. III, p. 42.
- ⁷Rochester *Express*, January 15, 1873.
- ⁸Rochester *Union and Advertiser*, January 31, 1874.
- ⁹Blake McKelvey, *Rochester, The Flower City 1855-1890* (Cambridge, Mass., 1949), p. 206.
- ¹⁰*Express*, December 12, 1877.
- ¹¹For an extensive discussion of the powers of nineteenth century municipalities over railroad companies and the relevant case law, see John F. Dillon, *Commentaries on the Law of Municipal Corporations* (5th edition, Boston, 1911; earlier editions 1872, 1873, 1881, 1890, and 1900).
- ¹²Dillon, Vol. III, Section 1269.
- ¹³William F. Peck, *History of Rochester and Monroe County, New York* (New York, 1908), biographies.
- ¹⁴*D & C*, January 23, 1879.
- ¹⁵Allen Johnson and Dumas Malone, *Dictionary of American Biography* (New York, 1928-1937); also Hungerford, pp. 277-296.
- ¹⁶Matthew Josephson, *The Robber Barons; The Great American Capitalists 1861-1901* (New York, 1934), pp. 184-185.
- ¹⁷*D & C*, April 19, 1879.
- ¹⁸William H. Vanderbilt to Mayor Cornelius Parsons and the Common Council, February 24, 1879; this and subsequent letters published in *D & C*, April 12, 1879.
- ¹⁹Parsons to Vanderbilt, February 25, 1879.

- ²⁰Vanderbilt to Parsons, March 6, 1879.
- ²¹Hungerford, pp. 236-239.
- ²²*D & C*, February 7, 1879.
- ²³Parsons to Vanderbilt, March 13, 1879.
- ²⁴*D & C*, April 15, 1879.
- ²⁵*Ibid.*, April 19, 1879.
- ²⁶City Attorney A. G. Wheeler to Common Council, April 29, 1879,
Proceedings of the Common Council of the City of Rochester for 1879-1880,
same date.
- ²⁷*P.C.C.*, April 22, 1879.
- ²⁸*U & A*, April 24, 25, 1879.
- ²⁹A. G. Wheeler to Common Council, April 29, 1879, *P.C.C.* same date.
- ³⁰*U & A, D & C*, May 9, 1879.
- ³¹The amendment took effect in 1875; it was passed in response to widespread subsidies undertaken by municipalities in aid of railroads during the previous 40 years, which more often than not were financially disastrous to the cities concerned. Rochester's aid to the Rochester & State Line is an example.
- ³²Vanderbilt to George C. Buell, Chairman of the Citizens' Committee, May 10, 1879, unidentified newspaper clipping, *Barton Scrapbook*, Vol III, pp. 58-59;
D & C, May 13, 1879.
- ³³*D & C*, May 17, 1879.
- ³⁴George C. Buell to Vanderbilt, May 12, 1879, unidentified newspaper clipping,
Barton Scrapbook, loc. cit.
- ³⁵*U & A*, August 5, 1879.