

THE ROAD TO RUIN:
THE UNION PACIFIC AND THE GOVERNMENT, 1862-1878

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The construction of America's economic infrastructure in the nineteenth century entailed the cooperation of public and private sectors. Mixed enterprises, companies that combined private capital with public subsidies, built most of the large transportation facilities. Public aid most often meant the proceeds from the sale of government bonds. The management of these firms usually consisted of active private direction and passive government supervision. These internal improvements were usually carried out on the state level because of Andrew Jackson's Maysville Road veto. State projects followed a cycle of promotion, repudiation, and regulation. Promotion united all segments of society to support the initiation of the improvement. All could see the benefits of more efficient and cheaper transportation. But once the firm completed construction, interests diverged. Investors wanted to maximize profit, shippers wanted cheap rates, and the taxpayers began to see that the government's bond payments were straining the state treasury and would require higher taxes. The taxpayers voted to repudiate the bonds and thus relieve the treasury of burden and themselves of higher taxes.

The shippers' desire for cheaper rates led them to push for regulation in state legislatures.

The Union Pacific was exceptional because it was undertaken on the Federal level. It was a federally supported improvement because it was projected to cross territories rather than states. Congress granted the UP its corporate charter along with aid in the form of government bonds and a land grant. The government gave the UP bonds, which were backed by the government's credit. The UP sold the bonds to the public to raise capital. The road owed the government the principal and interest. The government would pay off the public debt but be reimbursed by the company. Congress granted the charter and the aid in two acts, one in 1862 and another in 1864. The UP and the Central Pacific formed America's first transcontinental line. The CP was a California corporation, but it received the same kind of aid from Congress as the UP. The transcontinental line enjoyed a decade long monopoly on rail business to the West Coast. But activity on the legislative front was not as profitable. The alleged bribery of the Credit Mobilier scandal turned the generous Congress into an exacting creditor.

In what paralleled repudiation on the state level, Congress altered the terms of bond repayment in the Thurman Act, passed in 1878. The original acts required

the company pay only half of government fares and five percent of net revenues. Congress changed this in the Thurman Act. In this Act Congress created a sinking fund in the Treasury and required the company pay 25 percent of net earnings into the Treasury. The company protested that this infringed their charter rights, but the Supreme Court rejected the company's argument and upheld the Thurman Act, which had created the sinking fund. Because the sinking fund paid interest much lower than the company could have gotten in the capital markets or by internal investment, the UP was in a losing situation and forced onto the road to ruin.

An analysis of the UP's story must present the road's history within two frameworks: legal and economic. The legal side includes the problem of mixed enterprise and what role the government took for itself through its directors and commissioners and through its creditor relationship with the UP. The legal framework intermeshes with the economic. Actions in the legal realm affect the economic and vice versa. On the economic side the overriding question was risk.

The motivation of the firm is to increase its value over time. The value of the firm at any moment equals the expected stream of discounted, future income accruing in the firm.¹ Risk alters the value of future income. If the firm's income varies more than most

firm's income, it has less value. To compensate, the riskier firm must pay a higher return to attract investors. The amount of difference is called a risk premium. If uncertainty exists in the future, the firm must try to adjust in the present or near future. It might pay out higher dividends and cut retained earnings because a risky future makes present dollars more valuable to stockholders than any future returns from firm growth. Owners only invest in projects whose return covers cost and the risk premium. If risk increases, the owners invest less. To keep and attract investors, the firm must pay out larger dividends and reduce retained earnings. Reduced retained earnings means little money is left for growth.

Risk theory has interesting implications for the Union Pacific. The government wanted the UP to connect with the CP to provide a transcontinental railroad and to promote the development of the land that it crossed. But the government's attitude after the scandal in 1873 frustrated the development goal because it increased the uncertainty facing the road. Congress saddled the railroad with a series of hostile bills and resolutions, which entailed difficult litigation. All of this meant greater risk for the railroad and lowered its value. Unscrupulous speculators and Congressional action or the threat of Congressional action to make

money by selling UP stock short.² The increased uncertainty confronting the UP meant the UP had to pay higher dividends in the present because the future carried increased risk. This meant reduced firm growth, fewer branch lines, and slower development of the countryside.

Transcontinental rail service and development of the West were two government goals in constructing the UP. An evaluation of how well the UP and the government achieved these goals must not neglect the difficult times that surrounded the initiation of the project. Justice David Davis declared that judicial determination of the contract relationship between the UP and the government had to take account of the environment in which Congress passed the Pacific Railroad Acts.³ The conditions of the country and the spirit of the times were far different in the late 1870s from what had prevailed in the 1860s. Society's attitudes and public policy reflected these changes. But the problem of risk for private investors was continuous throughout 1862-1878. The saga of the UPRR thus provides an excellent frame of reference for studying the legal and economic dimensions of government-business relations in a changing social setting.

THE PACIFIC RAILROAD ACTS

The Pacific Railroad Acts were part of the wartime program of the Lincoln Administration and the Republican Congress. Wartime necessity permeated all legislation. At the time Congress passed the railroad acts, McClellan was stalled on the Peninsula and the bloodbath of Shiloh was barely three months old. At such a critical juncture it is surprising that Congress would undertake such an expensive project as the Pacific railroad. Indeed many Congressmen expressed their reservations in debate.⁴

Despite these obstacles the bill passed rather easily.⁵ The bill's proponents declared that the road was a military necessity. It would enable the United States to reinforce the West Coast easily in case of foreign attack. It would facilitate pacification of the Indians.⁶ The bill's supporters also asserted that the road would increase America's trade with Asia to the point that the road would be a trade route to India and China.⁷ They also stressed two other features of the road that would later grow more important and realistic than pipe dreams of Asian trade.

First, the road would enable the government to benefit from lower transportation costs. Freight and personnel would no longer have to be carried by wagon across the continent or shipped around Cape Horn. The project's financial demands would be more than offset by the transportation savings. These savings were realized.⁸ The second feature was the development aspect. Congressmen cited other projects that had spawned development like the Erie Canal and Louis Napoleon's use of railroads to integrate France. The Pacific railroad would speed settlement of the West. It would also stimulate domestic industries outside the West like iron production.⁹ The road accomplished much of this.

Unfortunately these achievements were forgotten in the 1870s. The mood had changed. Crisis and civil war no longer infected the country. The great exertions were forgotten as well as the expenses and savings. Most congressmen neglected to include any consideration of transportation savings during the debates over funding the UP's debt. They forgot the exigencies that surrounded the passage of the act and how expensive transcontinental transportation had been. They overlooked the development that the UP had brought. They considered only the present or future and forgot the past. Instead of praise there was talk about betrayal

of a public trust. But the funding issue would come later. In 1862 Congress wanted to get the job done.

Necessity made the project irresistible, but government would have to step in to furnish aid. Pragmatic, private businessmen would not build the road in 1862. The uncertainty was too great, and the capital requirements were too high. The Union Pacific came before market forces produced enough profit compulsion for construction by the private sector. The government induced a "premature" birth for the UP.¹⁰

Government aid for development projects was not unusual in the nineteenth century. Proponents of the bill cited examples of government aid to such enterprises as the Cumberland Road, the Illinois Central, and the Erie Canal. Western congressmen wanted aid just like other states had had before.¹¹ In the earlier cases the federal government had granted tracts of land, which it owned, to the states. The states dispensed the land grants to the companies.¹² The transcontinental project was a little different. Congress had the federal government play a more direct part. The national government had to because the proposed route passed mostly through areas that were still territories in 1862.

Although Congress picked a more direct role for the national government, it was a passive part. The 1862 Act produced a mixed private and public enterprise

which was common for state development enterprises. These enterprises married public capital with private direction and management. The government might have voting powers, but usually it left managerial affairs to private capitalists. The general belief was that private leadership showed better financial results. There was also fear that public administration might be prone to corruption by private parties. Besides nineteenth-century government lacked the administrative prowess to deal with the operation of a large enterprise.¹³ Congress provided some means for government supervision such as a few directors on the UP's board, commissioners to certify thorough completion of the line, and congressional surveillance committees; but these proved to have little power. The initiative was left to private capitalists.

The Congressional debates on the Pacific railroad did not center on what role government should take but did center on what kind and how much aid government should grant. Congress would discuss complete government operation of the road in the debates over the amending bill in 1864 but would not adopt such a scheme.

An amending bill became necessary because the 1862 Act did not provide enough aid to draw in sufficient private investment. The first act required that investors subscribe stock at the par price of \$1,000, which

was far above the market price. Congress gave the road a grant of government bonds which the company could sell to acquire capital. Congress made these bonds a first mortgage, which hindered the company's ability to raise capital. It limited the company's ability to borrow since the company could only issue second mortgage bonds. The 1862 Act included a land grant, but the land was worthless. It was part of the Great American Desert. Finally, the government did not issue its bonds at once. Some bonds came to the company as it finished portions of the line, and some were reserved until final completion of the line. In short, the aid was too meager.¹⁴

Senator James A. McDougall of California said that the businessmen at the company's organizational meeting had disliked the bond reservation because they needed capital to start the project while the reserved bonds would not be available until the whole project was complete. This made them seem to be contractors and not partners. He thought the act had been intended as a uniting of private capital and the government's.¹⁵ A House member stated that subscriptions had been slow because the investors viewed the railroad as a poor investment.¹⁶ The Civil War had created many investment opportunities. The North boomed because of war contracts, European demand for grain, tariff protection,

and ingenuity. The railroad was not a good opportunity in a flood of opportunity.¹⁷

Representative John Pruyn made the suggestion for government assumption of construction and operation of the line. He felt that, because so little private capital was entering the project, the government might as well build the road.¹⁸ Senator John Sherman presented another bold solution. He proposed changing the government's loan to a donation. The government should just give money in place of bonds.¹⁹ Either one of these proposals would have profoundly altered the saga of the Union Pacific. But Congress did not make such drastic changes.

Congress changed the par value of the stock to \$100; lowered the government's lien to a second mortgage, which meant the company could issue its own first mortgage bonds; and did away with the reservation of government bonds. In the original act the government retained the full amount of charges by the road for transporting government freight or personnel. The government was to apply this toward payment of its bonds. The 1864 Act reduced this to one-half of all charges. The other 1862 provisions for payment of the bonds still held. After completion the road was to pay five percent of net earnings, and the whole amount was due in thirty years.²⁰ In total these two

acts granted the Union Pacific over \$27,000,000 in U.S. government bonds, a right-of-way 200 feet wide, and 6,400 acres of public land per mile of track.

Congress had designed the project as a mixed enterprise with public and private elements. This was a common framework for development projects in the nineteenth century. As was common the government provided aid but had a passive role in management. Private investors would provide the bulk of the initiative on that score. The government wanted the road to open new commercial routes; lower transportation costs; and, most importantly, settle the lands beyond the Missouri. This could be done by plowing back earnings from operations into further growth of the road and development of its markets. An active government management could have taken that course. A private management could have taken it also, but it did not have to. Private owners could try to reap its return from construction, pay out high dividends, and not develop the property. If risk is introduced, this latter policy becomes more attractive, more rational. The Pacific railroad was a risky project, too risky for private investment alone. The government's entrance was an effort to reduce risk. But the chief private promoter still considered it a risky business.

PROMOTERS AND THE GOVERNMENT, 1865-1872

During the debates on the 1864 Act, Representative Elihu Washburne voiced his suspicions of the capitalists already in the project. He pointed out that many prominent men had resigned from the railroad. In place of good men, a group of "Wall Street stock jobbers" had grabbed control. Senator Jacob Collamer also warned Congress of scoundrels in the scheme.²¹ There was an unsavory atmosphere around the first group of promoters. The chief promoter was Dr. Thomas C. Durant of New York.

Sydney Dillon, a later Union Pacific president, described Durant as a "fast man" who wanted to get the railroad built quickly.²² Durant wanted to make his money out of the construction and not the operation. He wanted to build the line and get out. He felt operation would be too risky.²³ Before the war Durant and Henry Farnam had solicited municipal aid for a railroad in Iowa. When the panic of 1857 struck, the scheme went bankrupt after only \$4,000 worth of grading, leaving \$296,000 of municipal aid unaccounted for.²⁴ Durant also smuggled cotton during the war.²⁵ After Congress passed the 1862 Act, Durant conducted a virtual "one-man campaign" to get the stock subscribed. He ended up paying three-quarters of the necessary down payment on the subscriptions. Durant, Cornelius Bushnell, and Henry

McComb lobbied hard in Congress to get the 1864 Act.²⁶

Henry McComb also had some murky war activities. He was a leather merchant and supposedly robbed the government and its soldiers in war contracts.²⁷ Hub Hoxie was another Durant partner in the early organization of the Union Pacific, and he also had an interesting career prior to his association in Credit Mobilier. Hoxie was Iowa State Republican Party Chairman in 1860. He used political pressure to get war contracts for provisioning western forts. He became U.S. marshall and utilized that office for political ends like arresting Democratic newspaper editors.²⁸ Thus Durant and his followers probably fit Washburne's characterization of "stock jobbers."

The federal government had little experience in promotion. The land grants it had given prior to the Pacific railroad had been through the states. State and municipal governments carried through the earlier development projects. These produced a mixed bag of results, but some general features are prominent. The mixed enterprise framework with a passive role for government has already been discussed. These projects were usually financial failures. The frequent pattern followed these stages. Promoters captured community enthusiasm and received generous grants from the local legislature. These grants normally included bond aid, government stock subscriptions, and a right-of-way. The developers finished the project,

but the community indebtedness proved too great for public resources. Often the projects did not produce the revenues that an eager public expected. This was especially true for canals, which lost heavily to rail competition. The public attitude changed, and government altered policy from promotion and aid to repudiation of the debt. The government sold any stock it held to private interests. This pattern followed the movement of the frontier across America. Pennsylvania experienced this in the eighteen thirties, forties and fifties; and Wisconsin in the fifties, sixties and seventies. The UP had some interesting parallels to this pattern.

Congress' intent was to have the railroad built with capital raised from stock subscriptions. This would have diverged from the state and municipal pattern, which had had most of the capital coming from bonds. Obviously, stock subscriptions would not run the risk of financial failure and overextended finance leading to repudiation. However, the state and municipal pattern had meant a shifting of risk. Since most of the capital came from bonds, the stockholders shifted the risk to the bondholders. But the shift went further. Mixed enterprise promotion meant a large amount of the bonds were government bonds. Therefore it was the government that bore the risk. The government's risk meant the taxpayer's risk. However, the taxpayers could opt for repudiation by resorting to the polls.

Congress wanted stockholders to invest capital and share the risk, but that was unrealistic. The risk prevented investment without government subsidy. Durant and his cronies wanted to build the road but only if government bore most of the risk. They found a devious method to accomplish this. They formed a construction company.

The construction company was a familiar device in large public works, especially in the West where many railroads were built using them.²⁹ McComb said that Durant adopted the construction company to relieve the railroad's directors and shareholders of individual liability in the building of the UP and that liability to another corporation because the UP's charter had no provision for shareholders' limited liability. The first construction contract was made with Hub Hoxie. He transferred it to the construction company, the Credit Mobilier.³⁰

The construction company scheme worked in the following manner. The UP passed a check for construction to the Credit Mobilier. The construction company returned the check to the UP to buy UP stock and bonds. This procedure served several purposes. The Credit Mobilier charter included limited liability so the investor received that protection. The UP charter required that all stock be bought at par and be paid for solely in cash. Eminent counsel advised that this transaction was within the road's charter. But these contract costs and checks that passed

between the UP and Credit Mobilier were based on the knowledge that the stock was not worth par. The contract overstated costs. The Hoxie contract and the later contracts were high enough to account for the par price and high enough to cover possible losses on security sales. The investors made profits on the construction contracts by selling the securities received for construction above the cost of construction.³¹ Because the profits on construction depended on the market for the securities, the scheme was still risky. Not all the risk was shifted to the government. It just received more of the risk than Congress had intended in the charter. The Wilson Committee, which later investigated the UP-CM relationship, erred in placing the investors' risk at zero. The Credit Mobilier contracts also accomplished one other purpose. They brought nearly all the stock into the hands of the partners in the scheme through construction contracts or the buying up of outside shares. Only two or three outsiders held out.³²

Although Credit Mobilier reduced risk, Dr. Durant felt that the railroad would face long-term financial weakness. He doubted that operation of the road would be profitable. Therefore he wanted to make all profits in construction and then sell out. This is rational behavior for an investor facing uncertainty. The investor should divert funds from those endeavors whose returns do not justify the risk to enterprises with more suitable degrees of risk and return.

But Durant's strategy ran counter to a developmental approach. The latter would have meant reinvestment of earnings, not the selling off of the property as the road moved toward completion.

Congress had not succeeded in reducing the risk enough to make a developmental strategy attractive. Voices in Congress pointed out the continuing doubts. Senator Henry Wilson prophesied that the road would not become a paying concern because most eastern railroads depended on local business for profits. This railroad would have no local business.³³ The existence of scattered bands of marauding Indians and the failure of the Pony Express did not improve the UP's prospects.³⁴ Despite the government inducements, the UP was a risky venture. Charles Francis Adams, Jr. concluded that the road had been put through at great risk and the promoters deserved big rewards.³⁵ The great risk involved was clearly evident in August 1865 when the road came to the brink of financial collapse.

The entrance of a new group of investors staved off disaster for Credit Mobilier. They brought in two and one-half million dollars in capital, which met the construction payroll. Construction had come close to a halt because the crews had not been paid. Besides additional funds, the group brought a new strategy.

Oakes and Oliver Ames headed this group, which included S. Hooper and Company, John B. Alley, and James

Grimes. Hooper, Alley and Oakes Ames were congressmen while Grimes was a senator. Oakes was also a member of the House's Committee on Pacific Railroads.³⁶ These men believed the UP was a sound long-term investment. While Durant sold off his securities, the Amesese held on to theirs.³⁷ They wanted to make money by operating the road. Durant thought Oakes Ames was a "damned fool" for thinking anything could be made out of operating the UP.³⁸

The Amesese had brought some influential government figures into the UP. Durant had some government connections of his own stemming from his days as lobbyist for the 1862 and 1864 Acts.³⁹ Those ties with people in government were important because the government occupied strategic positions vis à vis the UP. The government had its own directors on the UP's board. Government commissioners inspected the line and approved it before the Treasury released the subsidy bonds.⁴⁰ As the UP piled up this bond aid, it also piled up a debt with the government. This would mount to \$27,000,000. Therefore, the government was an important creditor. The government completion of the road and development of the area around the road. Since the Amesese believed in the long-term prospects of the UP and sought to reap their profits from operating the road, their design meshed with the government's. Durant's plans were not developmental. He wanted to capture the dividends from construction and then get out. The government's own attitude toward the road, on

the debt question in particular, would determine the relative sagacity of Durant's strategy versus that of the Ameses.

Although the UP had received much beneficial legislation from Congress, the UP had to fear adverse legislation such as rate regulation or more stringent requirements for debt repayment. Oakes Ames realized this.

We want more friends in this Congress,
& if a man will look into the law, (&
it is difficult to get them to do it
unless they have an interest to do so,)
he cannot help being convinced that we
should not be interfered with.⁴¹

This led Oakes to try to capture a constituency for the UP in Congress. He attempted to do this by spreading Credit Mobilier stock around Congress. This led to the scandal. Durant also tried to cultivate favorable influence in Congress. In October, 1866 he entertained several dignitaries aboard the UP's completed sections. These influential men included Senator Ben Wade, Senator J. W. Patterson, Governor Alvin Saunders of Nebraska, General Philip St. George Cooke, Robert Lincoln, and Rutherford B. Hayes.⁴²

Prior to completion of the line, the risk the UP faced consisted mainly of just finishing construction. On more than one occasion the UP faced financial crisis that threatened to terminate the project.⁴³ After the UP was finished the risk centered on unfavorable government interference. Before detailing this interference, the vicious

circle that brought the Thurman Act must be outlined.

Because the government began to act in an increasingly hostile manner after the Credit Mobilier scandal, the UP became a riskier enterprise. This increased risk altered the investors' expectations of the road's prospects. The risk made the future returns of the road insufficient to warrant more investment. So instead of reinvesting the road's earnings, the private managers of the line paid out high dividends. These high dividends made the UP a more attractive stock so that its price was bid up. This was just what an artful speculator, like Jay Gould, wanted. He could sell out at the higher price after buying at the low, scandal-ridden price. These dividends led Congress to conclude that the UP would be insolvent at the maturity of the U.S. subsidy bonds. So Congress intervened. It passed the Thurman Act. This capped the hostile actions of Congress with the most inimical legislation to the developmental goal of the road.

Hostile moves actually began in Congress before the Credit Mobilier scandal and fourteen years before the Thurman Act. During the debates over the 1864 Act, Elihu Washburne and Jacob Collamer had warned of and condemned soundrels and "Wall Street stock jobbers" inside the UP.⁴⁴ In March 1867 Senator John Conness charged that the UP had unreasonably halted work and operations and stranded passengers. The Senate rebuffed this charge and took no action

to investigate.⁴⁵

Washburne unleashed another barrage at the railroad in December 1867. Many congressmen allied themselves with Washburne as critics of the road because they claimed the rates were too high or corporate power might corrupt the government. But Washburne was a step beyond these complaints. A perusal of Washburne's actions in regard to telegraphs reveals his motivation toward emerging utility corporations. Washburne found government owned and operated telegraphs in Europe were more efficient and less expensive than their American counterparts, which were private. Competition in the American system produced duplicate lines and higher costs, and those costs remained high even after consolidation of competing companies. Washburne wanted the government to build a telegraph from New York to Washington, D.C. to force down rates. He sought eventual government operation of the telegraphs but had to stop short of that because the Treasury could not stand the strain. He found it difficult to find an acceptable means between private control and government operation.

For the UP Washburne sought regulation. Washburne tried to get an amendment tacked onto the UP charter that would prevent the UP from charging rates higher than double the rate from the Mississippi to the Atlantic. He claimed that government aid had built the road, but the government still paid freight charges. He wanted the people to have

a say on rates.⁴⁶ This move failed, but the agitation continued.

On January 20, 1868 Representative William Windom proposed a resolution to regulate rates on the Pacific railroads. According to this resolution Congress would form a board consisting of the Secretary of War, the Secretary of the Navy, and the Attorney General, to establish just and fair rates. These rates would not exceed twice the rate from the Mississippi to the Atlantic.⁴⁷

Cadwalader Colden Washburn, Elihu's brother, proposed a similar resolution on February 17, 1868. It included a board and the same directive on rates.⁴⁸

While proposing his resolution, C. C. Washburn leveled a broadside at the UP. He declared that the UP was a bad monopoly. It was aware of its monopoly position and was gouging the public with rates that were four times the necessary amount. He claimed the UP had inflated costs to divide profits through the construction scheme of the Credit Mobilier. He also charged that the railroad's promoters had descended on Congress like vultures to get the 1864 Act.⁴⁹

Elihu Washburne pointed out that during the debates on that Act many lobbyists had besieged Congress and packed the galleries. Private interest had swarmed about Congress. He further contended that the compromise amending bill came forth quickly. It was not printed before the debate on it. The speed with which it was pushed through Congress gagged

any debate. Congress had no chance to consider it.⁵⁰

Several Congressmen joined the call for rate regulation. The UP, they said, was bleeding the public. Representative Ingersoll pointed out that the national banks were closely regulated and controlled, and they had far less capital than the Pacific railroads. Representatives Alexander Bailey and Charles Van Wyck predicted that the railroads would control Congress unless Congress limited the railroads. Van Wyck pointed to the example of the New York Central controlling the New York legislature.⁵¹ Representatives William Higby and John Farnsworth were not satisfied with the idea of a board regulating rates. Higby proposed an investigation after which Congress would set rates. Farnsworth did not think Congress could delegate the power of rate regulation to a board of three. Congress had to assume that power. Representative Pruyn wanted to add two railroad experts to Windom-Washburn's board.

In defense of the railroad, Representative Ignatius Donnelly pointed out that attacking the transcontinentals was easy and politically popular, but Congress had to beware of infringing upon the railroads' vested rights. Representative Hiram Price added that when the entrepreneurs entered the project they had not believed Congress would regulate rates, at least not until the line was completed. Congress should lay off until completion; otherwise construction might stop because the corporation had not

accumulated sufficient capital. Representative Frederick Woodbridge developed Price's ideas further. Woodbridge said it was not clear that the railroads were profitable or ever would be. Rate regulation might strap the company too much. Donnelly hit on a crucial point regarding rate regulation. Rate regulation would limit the company's ability to pay off their debts to the government.⁵² This was due to two facts. First, the railroad repaid the interest on the subsidy bonds directly from one-half of the charges for government shipments.⁵³ Second, the railroad's ultimate financial health depended on its revenues, which came from its charges on passengers and freight.

The Windom resolution passed the House after all this debate. It went to the Senate where it stalled in the Senate's Pacific Railroad Committee. This committee contained James Harlan of Iowa, who had been Durant's main mouthpiece in 1862 and had received campaign funds from Durant; Conness and William Stewart, who appeared to be spokesmen for the other transcontinental railroad; and Henry Wilson, who would be implicated in the Credit Mobilier scandal. The resolution never reached the floor of the Senate; it died in committee.

Before that session ended Congress became concerned that the UP would not be finished. This concern had basis. The railroad could not pay off its construction contract with the Mormons. The road had contracted with the Mormons

for grading 54 miles from Echo Canyon to the Salt Lake Valley. The company could not draw its money out of Omaha and Cheyenne banks without these banks failing since money was tight.

Jacob Howard proposed to the Senate a resolution to ensure faithful completion of and any repairs to the line of the respective Pacific roads. The resolution called for a reservation of bonds. John Thayer defended the UP by saying that the company had already deposited three million dollars with the government to ensure completion. Representative Norman Judd brought a similar resolution before the House. According to this measure the President could demand bonds or securities to ensure completion of the roads.⁵⁴ In fact the Pacific railroads were almost complete.

When, in early spring 1869, the Central Pacific and the UP approached each other, Congress had to pick the meeting place. During this debate Senator Stewart castigated the UP. He claimed the UP was mismanaged. Because of Credit Mobilier the government and investors had poured \$150,000,000 of securities into construction, but construction had cost only \$40,000,000. At least \$50-60,000,000 must be lying around as profits. Stewart declared the profits of Credit Mobilier consisted of UP stock and bonds, and these equaled 752 percent of the original of Credit Mobilier. Stewart charged that this company bought in small

and pyramided capital so that eventually it acquired \$15,000,000 of stock; \$30,000,000 of government bonds; and \$30,000,000 of company bonds.

Stewart declared that he did not care how much profit Credit Mobilier made so long as the UP was a good line. But he feared the railroad was on the brink of insolvency. He wanted the government to take hold of the railroad and evaluate the solvency of the UP.⁵⁵ Stewart was a CP spokesman.⁵⁶ Clearly it was in the CP's interest to lambast the UP because that could lead to a settlement of the junction that favored the CP. This shows how competitors or speculators could use Congress against the UP for private gain.

Senators James Nye and Howard joined Stewart in denouncing the profits and shady dealings of Credit Mobilier. Senator Garrett Davis wondered how the UP could distribute dividends when its debt exceeded \$71,000,000, especially since the railroad was not complete. Davis wanted these dividends stopped.⁵⁷ Davis moved for an amendment to the resolution fixing the junction at Promontory Point. This amendment directed the Attorney General to investigate the UP for paying illegal dividends, which could cause forfeiture of the company's charter or criminal charges against any of the company's officers.⁵⁸ The Stewart and Davis moves failed as had the Washburne-Washburn-Windom resolutions in 1868. The Junction was set at Promontory without any

noxious provisions tacked on.

Before the scandal the UP weathered all these hostile moves in Congress. Congress even acted to protect the road from an attempt by the executive branch to retain all of the government fares for interest payment before maturity. This action began with Treasury Secretary George Boutwell's report of December 12, 1870.

This report included a letter from Attorney General Amos T. Ackerman. In this letter Ackerman gave the opinion that the government could retain the full amount of government fares for transportation instead of one-half since the 1864 Act only declared the one-half could be used to pay the interest on the government subsidy bonds but said nothing about the principle. Boutwell's report also included a letter from the UP's treasurer, John M. S. Williams, which asserted that the company did not consider itself obligated for the interest when it came due. The government paid the interest at that time. These two opinions pointed to the problem that one-half of the fares on government transportation was not enough to pay the interest on the subsidy bonds.⁵⁹

Ackerman argued that the interest would accumulate to three times the principle if only one-half the transportation fares and five percent of net earnings, the only charter stipulations for company payment before maturity, were applied to the interest. All the while the company

could pay dividends and let the debt go unattended until maturity. Ackerman asserted that the unclear language of the Pacific Railroad Acts should be construed for the government's benefit since it granted so much bounty. The unclear language was in section five of the 1862 and 1864 Acts taken together. The former Act called for government fares and the five percent of the net to be applied to the bonds and interest. The latter required only one-half of the transportation fares to be applied to the bonds with no mention of interest.

In Ackerman's opinion, all fares and the five percent of the net earnings should be applied to the interest until that was paid up and after that just one-half of the fares would be applied to the principle of the bonds. On the other hand, Ackerman declared, if the company's view, that one-half the fares and five percent of net were all the law bound the company to pay, was right, then even after maturity only one-half the fares and five percent of net profit could be required as payment for principle and interest.⁶⁰ This was a novel opinion.

The Senate Judiciary Committee reported a different opinion. It pointed out that registered bonds such as these were like coupon bonds. Coupon bonds did not mature with the coupon. Maturity was at the date the principle came due. Since this was customary, Congress should have written the statute to declare specifically that interest

was due before maturity if that was its intention. The 1864 Act was more liberal than its predecessor, and Congress meant it that way. The interest was not due before maturity. Although Boutwell retained all the amount due for government fares in late 1870, Congress adopted the Senate committee's stance and directed the secretary to release half the fares.⁶¹

Construction came to an end with the golden spike at Promontory Point. With the junction made, the promoters no longer had to fear the risks of not meeting a construction payroll. While they had eliminated the uncertainty associated with construction, there was still uncertainty on whether the road would prove profitable in operation. The Durant faction doubted this and sold off. Most of the line was still barren of settlements, which would generate traffic and revenues. But the specter of Congressional action clouded the UP's future more than the lack of development along the line.

The Washburne moves and the Stewart-Davis moves scared the UP's promoters. Rate regulation, as the former contemplated, threatened the UP's profitability and its ultimate ability to repay its debt. These had triggered Oakes Ames to pass Credit Mobilier stock around Congress. He passed the stock around to acquire influence. He was not interested in generating new legislation but in preventing harmful acts.⁶² But this action brought the scandal,

which transformed Congress from benevolent protector to malevolent creditor.

After the scandal, Congress, through threats of hostile action and actual passage of inimical acts, became a large cause of the risk hanging over the company. This made Durant appear as a prophet, or at least a shrewd investor, while the Amesese were left holding the bag. Nothing could be made from operating the road, unless one cared to speculate with Jay Gould and take out high dividends. But the Amesese wanted to operate and develop the road. This is why Oakes passed out that stock. He wanted to create a Congressional constituency that would block any hostile moves like rate regulation. His actions backfired and the road faced a serious crisis.

SCANDAL

Bribery was not as common as the legend of "The Great Barbecue" implies. David Rothman's work on the Senate points out that the Gilded Age Senate was not the acme of corruption. Rather the Senate experienced the beginnings of pressure group lobbying. Lobbyists felt bribery was too unreliable because a bought senator might not stay bought. Besides corrupt practices chased away Senators. Therefore, lobbies provided information rather than bribes.⁶³ Oakes Ames passed around stock to acquire influence, to create a constituency for the UP. His action was more the exception than the rule for this era. Even so, Oakes' case was only on the margin of bribery, as Congressional investigation concluded, because Oakes did not tell the bribed congressmen just what he wanted them to do.

Henry McComb precipitated the scandal by releasing some letters to the New York Sun. The Sun printed these letters on September 6, 1872. The letters implicated Oakes Ames as briber in an affair that allegedly included House Speaker James Blaine, Senator J. W. Patterson, Henry Wilson, Vice President Colfax, Representatives Dawes, William Kelley, James Garfield, and others.⁶⁴

At the first meeting of the third session of the

Forty-Second Congress, James Blaine yielded the Speaker's chair, since he was accused, and moved the House investigate the charges of bribery. This led to the formation of an investigating committee with Luke Poland as chairman. A month later, the House formed another committee to investigate the relationship between Credit Mobilier and the UP.⁶⁵ This latter committee was chaired by Jeremiah Wilson. Thus the Poland Committee investigated congressional bribery, and the Wilson Committee looked into the UP's relations with Credit Mobilier.

The Wilson Committee turned up a "suspense account," which Durant had set up for securing passage of the 1864 Act. Durant produced the account's records to the committee. This account defrayed expenses that had arisen in the efforts to obtain an amending bill. A lobbyist, Charles B. Stewart, admitted receiving \$30,000 for his efforts on behalf of the bill. He also admitted passing some bonds but did not pass any to members of Congress. John B. Alley claimed the railroad investigated this account, but the vouchers Durant produced were scanty. All the company could ascertain was that Durant had used this account in Washington. The Wilson Committee concluded that it, too, could not get a satisfactory explanation for how Durant had spent this sum of \$435,754.21.⁶⁶

The committees did not turn up any clear cases of Congressional bribery. The Poland Committee declared Oakes

Ames guilty of attempted bribery because none of those he allegedly bribed knew his intent. The bribes consisted of Credit Mobilier stock sold at a discount to members of Congress. The stock earned such amazing dividends that some congressmen never had to pay a cent because the dividends paid back the initial investment and more.⁶⁷

Among those receiving stock from Ames was James Garfield, the future President. Garfield never paid Ames the original investment, but dividends covered this and yielded \$329 more. Garfield claimed this amount did not represent a stock dividend but was a personal loan from Oakes Ames. Ames denied this and contended it was a dividend. The committee let this matter lie because the committee believed Garfield did not know Ames' intent and, therefore, Garfield was not bribed. Afterwards Garfield never commented on the scandal and his career continued.⁶⁸

The case of William Kelley was the same as Garfield's except Kelley also received a \$750 advance on dividends after the \$329. Kelley also claimed these amounts were personal loans, but Ames denied that.⁶⁹ Representative Speer declared Kelley and Garfield were guilty. They should have known what Credit Mobilier was, especially Kelley since he was a Pennsylvania lawyer and judge, and Credit Mobilier was a Pennsylvania corporation. Speer offered a resolution for the censure of Kelley, but Congress tabled this after consideration.⁷⁰ Congress accepted

the Poland Committee's conclusions on Kelley and Garfield and left them alone.

Vice President Colfax fell into another trap. In proving that he had not received a \$1,200 check from Ames, Colfax revealed he had received \$4,000 from George Nesbitt, who had a postal contract. The implications of Nesbitt's purchasing Colfax's favor ruined the letters career.⁷¹

Besides discussing the committee's findings, Congress had to debate what action to take. The Poland Committee recommended expulsion of Ames. This debate centered on power and precedent. Precedent was important in two respects. First, Congress had to deal harshly with corporate bribery. Second, Congress had to read lightly lest it give a Republican majority a new power to coerce the Democrats and bludgeon the reconstructing South. Congress rejected expulsion and censured Ames instead.⁷² The Senate had also investigated Ames' transactions and found J. W. Patterson delinquent. The Senate did not expel Patterson because he had only a day left to serve.⁷³

Although Ames' conduct had not warranted Congress to expel him, it had startled Congress. Ames' intention touched the heart of the legislative process. Ames had spread stock in Congress to acquire influence. He was not interested in new legislation for the road but in preventing unfavorable legislation. The "Washburn move" concerned him. This was the rate regulation resolution that had

reached Congress early in 1868. Congress did not pass rate regulation then, perhaps because of Ames' activity.⁷⁴ The Senate committee denounced the "use of large sums of money to influence either popular or legislative elections [since it] strikes at the fundamental principle of a republican government."⁷⁵ The Poland Committee declared that the threat of gigantic corporations had to be met. Congressmen had to take pains to avoid suspicion, or people would lose respect for laws once they had lost respect for lawmakers.⁷⁶

Besides investigating Congressional bribery, Congress looked into Credit Mobilier and the UP. The investigating body was the Wilson Committee. Credit Mobilier had contracted to build the UP. The Wilson Committee investigated the profits Credit Mobilier had made on this construction. The committee lamented that the pitiful condition of the companies' records made investigation very difficult. The companies kept their books in such a way as to disguise the true nature of many of the transactions. The committee endured other difficulties such as the failure of Grenville Dodge to testify. He had been the UP's chief construction engineer. Though Congress diligently sought him, he skillfully avoided the subpoenas. These problems made the committee's findings tentative. The committee found that Credit Mobilier made \$23,000,000 profit on \$50,720,958.94 of construction.⁷⁷ The committee pointed out that the railroad company's first mortgage

bonds and the government bonds covered the cost of construction. This left the company's income bonds, land grant bonds, and stock for profit.

The Wilson Committee drew four conclusions. First, the promoters obtained these huge profits without risk. Second, Credit Mobilier disguised an unlawful seizure of the UP. Third, the promoters had distributed the railroad's borrowings as Credit Mobilier dividends. Finally, the scheme had left the UP poor and weak, easy prey for the trunk lines to capture as a business outlet.⁷⁸

The Poland Committee concluded that, although Congress never intended the UP be encumbered with a first mortgage unless construction necessitated it, the promoters had forced it by outrageous contract prices. These promoters sought easy money and divided the first mortgage bonds or their proceeds as dividends.⁷⁹

John B. Alley denied that the promoters had divided bonds as dividends. He claimed the UP cost 68 or 69 million dollars and certainly not less than 54 or 55. The company only received 27 million dollars in government bonds so company bonds were not all paid out as dividends.⁸⁰ Horace Clark, president of the UP in 1872, asserted that western railroads were hazardous ventures. Those who risked their money in such ventures deserved large profits. One hundred percent was not inordinate. Clark defended the construction company scheme because it limited liability.⁸¹

This last was important because the charter had not limited investor liability. The Wilson Committee was wrong in asserting that the enterprise had been riskless. The profits depended on the market for the securities. The bonds often sold at a steep discount. Thus the builders did not receive the full amount on government or company bonds. The contractors had inflated prices but that was due to the weak market for the securities.⁸² Congress ignored these points.

The investigation into the affairs of the UP could not fail to touch the government's role in the management of the road. Government commissioners had to approve the constructed sections of the line before the Treasury released the government bond aid. Government directors sat on the UP's board and all policy-making committees so that the government would have a share in corporate strategy. This would not be an active share since the government directors were a distinct minority, and Congress had severely limited the government directors' interest in the road by forbidding them from holding stock. The passive role of the government directors was the usual case in mixed enterprise because popular opinion felt private direction and initiative was more efficient. Oakes Ames had realized that to get people interested in the road they had to have a proprietary share. They needed motivation. Unfortunately Oakes tried to interest Congressmen with a sort of bribe. Congress could not

have simply allowed the directors to hold stock because such directors might have joined Durant and tried to reap profits from construction, which was against the government's developmental goal.

The investigation also reached the government's own directors. Congress had added government directors to the UP's board during the debates over the 1862 Act. Representative White offered and Congress approved it with little opposition.⁸³ Other mixed enterprises had some public directors, but their function was usually just general supervision and little active policy-making.⁸⁴ The UP's government directors proved to be just as passive.

The directors had not protested the Credit Mobilier contracts. Charles T. Sherman was a government director. He claimed he let the Hoxie contract go because of high wartime prices. He also claimed he had little experience in railroad building. Another government director, Springer Harbaugh, actually signed the Oakes Ames contract.⁸⁵

The case of James Brooks revealed, not just neglect of duty, but flaunting the law. The UP charter forbade government directors to hold UP stock. Brooks had aided Durant in the subscription drive in 1864. In October 1867 Brooks became a government director. Using his acquaintance with Durant and the influence of his director's office, Brooks acquired 100 shares of UP stock and \$5,000 in UP bonds. Brooks realized he could not hold this so he had it transferred nominally to his son-in-law and continued

to draw the dividends. Representative Whitthorne denounced Brooks because Brooks had been a "sentinel" for the public interest and failed to report Credit Mobilier.⁸⁶

The record of the government commissioners was as bad as the directors. The Wilson Committee produced a clear act of blackmail and bribery in the case of Cornelius Wendell. He was a government commissioner who refused to approve a section of track unless the company paid him \$25,000. The company paid the amount, and Wendell approved the section.⁸⁷ The commissioners cost even more money because of the improvements they directed. These included cuts in the Laramie plains to make the line flat for smoother ride. The cuts filled with snow in winter and blocked the line. The company had to refill these cuts at \$600,000 expense. Other needless improvements were expensive machine shops at North Platte, Nebraska, which proved useless and a waste of \$300,000. The government commissioners were useless and expensive because they were political appointments. They were not railroad engineers at all. The same had been true for government directors, as Charles T. Sherman complained. The government hurt the railroad by appointing inexperienced or corrupt directors and commissioners instead of competent and experienced railroad men.⁸⁸

In considering the government directors and commissioners, Carter Goodrich points out that they were really

a mixed lot. They included corrupt James Brooks and independent, diligent Charles Francis Adams, Jr. Another director helped find the crucial pass through the Rockies. In June 1865 the government directors did protest the Credit Mobilier scheme, but they did not object to the principle of the construction. Their problems started from the fact that they had no real power and could not get any information on the company. However that was not the whole of the trouble. Most of these men knew nothing about railroading.⁸⁹ Congress had designed the UP to be a typical mixed enterprise with little emphasis placed on government's role.

This was the norm with mixed enterprises on the state and local levels. But too many of these ended with default or repudiation by the sponsoring government. There was a basic conflict of goals between public and private promoters. At first both would just want to finish the project. After construction the public wanted development and cheap rates, and the private capitalists wanted to make a profit. The Credit Mobilier scandal precipitated the change from public and private cooperation to conflict. This began with the Wilson Committee's call for government action to rectify the affairs of the UP.

The Wilson Committee did not advise a suit for forfeiture of the charter and all property of the UP because this was unfair to the new owners who had not been

involved in Credit Mobilier. After such action no new owners would have touched a new charter so the government would have had to run the road or conduct a forced sale. The committee advised a suit against any who held securities in bad faith and advised enactment of a statute to that effect, Congress tacked on such a law as part of an appropriations act.

Congress directed the Secretary of the Treasury to withhold all fares for government transportation so they could be applied to the bond interest. Congress also allowed any company, so affected, to seek recovery in the Court of Claims with appeal to the Supreme Court. Congress directed the Attorney General to institute a suit in equity against the UP and all persons who may have unlawfully acquired any property of the road or bonds, money, lands of the United States. The Attorney General could bring this suit in any circuit court.⁹⁰

Congress rushed this legislation through at the end of a session. It did not take time to consider alternatives nor was there much debate. Congress designed this legislation to punish the UP and its promoters for plundering the Treasury and circumventing the law. Congress felt the original act's intent had been for the capitalists to raise construction funds by stock subscription. Instead the promoters had built the road with debt capital and had diverted some of the funds from bond issues to private

pockets. The government and the public felt this dishonesty caused the railroad to be jerry-built. But the government shared a lot of blame for this because of its poor commissioners and directors.

Besides sidestepping their own share of guilt for the UP's misfortunes, government and public forgot the exigencies that had prompted the Pacific Railroad Acts. Congress had passed these in the midst of the Civil War.⁹¹ Congress and public decided the railroad was a necessary war measure, which would facilitate defense of the West Coast, aid Indian pacification, encourage western settlement and development, stimulate domestic industry, and save money. In 1873 the road was accomplishing those goals.

In particular the road was saving the government money. Quartermaster General Meigs estimated that the Pacific railroad save the War Department \$6,507,282.85 or 66 percent of what such transportation would have cost by old methods. The Postmaster General estimated transportation of mails would have cost \$1,799,718.28 without the railroad but actually cost \$1,156,138.73 with it. He also said the railroad saved time. Travel time was four and one-half days with the railroad compared to 16 or 24 days, depending on the season, without the road.⁹² The railroad was saving the government and would save the government enough to account for the entire debt without repayment.⁹³

These savings accrued early because the government had intervened. Without the government's aid, the railroad would not have been built until ten or fifteen years later.⁹⁴ After accepting the charter, the promoters sped the project to completion much earlier than Congress mandated. This increased the cost of construction, but Cornelius Bushnell pointed out that the earlier service meant savings that wiped out the increased cost.⁹⁵ Horace Clark concluded that, considering all the difficulties such as Indians and inflation, the railroad was built as cheaply as possible.⁹⁶

The government received a good bargain on the UP. The Wilson Committee overstated the government's aid to the project as a "vast endowment." The government actually gave worthless land and a loan of credit. Western land, granted and ungranted, would develop and appreciate with the construction and service of a railroad. By 1873 transportation savings were offsetting the loan before repayment. The railroad was fit and becoming profitable to society as a whole.⁹⁷

The government directors reported that the railroad's construction was good, and prospects were favorable for repayment of the debt. But directors also reported slow growth of local business. This foreboded ill because local traffic reaped most of the profits for successful railroads. The government directors advised management could move from the East to the scene of operations and concentrate on

developing local business.⁹⁸ Up to this point the UP depended on through business, Omaha to Ogden, which was the point of connection with the Central Pacific. The UP enjoyed a monopoly on this business, but the Senate Pacific Railroad Committee advised busting this monopoly with more Pacific roads. Cornelius Bushnell told the Wilson Committee that the approaching completion of the rival lines would damage the UP.⁹⁹ These rivals proved to be less of an immediate threat. Jay Cooke's Northern Pacific went down with him in the panic of 1873, and no rival line would be completed until the end of the seventies. But the UP had much to fear from the government.

The scandal proved to be a watershed in the saga of the Union Pacific. State level projects moved from the promotion stage to repudiation after the projects were complete and the debt aid began to strain the various state treasuries. The UP paralleled this process. Although the federal treasury was not strained, the Congress did not repudiate the debt, it did try to change the terms of repayment. It tried to alter the terms of repayment by the road. Congress withheld the full amount of government fares in legislation passed in the scandal's wake. Congress and the public had taken a harsher attitude toward the road. A hostile government, with noxious legislation, increased the risk facing the UP.

THE FUNDING QUESTION

The railroad lay helpless before the government because Congress could invoke the charter's reserve clause to enact any revision, short of a taking without compensation. President Horace Clark realized this in saying, "the government can destroy this railroad." The government's power over the road included the crucial question of interest on the debt. The government's business was important to the line, and the government retained one-half of these fares to pay the interest in accordance with the 1864 Act. The Treasury Secretary had attempted to use Attorney General Ackerman's opinion as basis to retain all government fares for interest payment because interest was fast exceeding repayment by one-half of fares. Congress had directed the secretary to release half the fares in 1870, but it reversed itself in 1873. The legislation that grew out of the Credit Mobilier scandal directed the Treasury to keep all fares for interest payment.

Clark demurred. He declared that such action by the government was nothing less than a raid on the UP's treasury and flaunted the intent of the 1864 Act. Clark felt this action would push the UP to bankruptcy. The UP needed funds to repair and renew its line. Clark predicted a bad winter in 1873 could ruin the road.¹⁰⁰ This question

remained for the Supreme Court to decide.

Before that court decision in 1875, the UP became a hotly contested property. Since it was part of the only outlet to the Pacific the eastern trunk lines fought to dominate it. The Ames family retired from the board in January 1871. Thomas Scott headed a group of Pennsylvania Railroad investors in grabbing control of the UP. But this was short-lived. Commodore Vanderbilt and his son-in-law, Horace Clark, wrested control away from the Pennsylvania in 1872. The panic of 1873 forced both groups to retrench, and they let the UP slip away. Jay Gould picked up control with the stock fallen to 35. The price continued to tumble, but Gould held on.

The scandal and hostile government action of retaining all of its fares added to the effect of the 1873 panic forced down the price of the UP. But Gould knew he could manipulate the management of the road to increase its price. Gould was in his predatory, speculative period during which he ruined company values to make stock profits.¹⁰¹ The UP was perfect for this purpose. It still held a monopoly so Gould could try to show a profit from operations, pay out high dividends, and get the stock price to rise. Gould ignored any consideration of the debt. He represented a speculative strategy like Durant's. He did not want to develop and operate the road.

The government's withholding of fares showed that

Gould's strategy was safer than trying to hang on and develop the road. Investors could not depend on the government's forbearance if the debt was not quickly managed. Such an immense problem did not lend itself to easy solution. Without some progress on this front, Congress was sure to pass more noxious legislation. Congress had already displayed its malevolent impatience.

Rate regulation bills again came before Congress after the scandal.¹⁰² Bills to regulate or limit the land grants also appeared.¹⁰³ Congress took steps to set the eastern terminus of the UP. President Lincoln had set the terminus at the western boundary of Iowa, across from Omaha. The UP received congressional approval to build a bridge across the Missouri River. However, after the bridge was completed in 1872, the UP still ran its operations with Omaha as the terminus and the bridge as a separate entity since moving to Iowa would have meant construction of new facilities.

A group of Iowa citizens sued the UP; and Congress passed the Wells Act, which criminalized any failure by the UP to operate the whole line for the public or government as one, continuous line. The suit went to the Iowa Circuit Court and the Supreme Court. Both directed the UP to follow Congress' instructions and make Council Bluffs, Iowa the eastern terminus. Congress also investigated the UP's financial relations with the Colorado Central, Utah Northern,

Utah Central, and Utah Southern Railroads. Congress considered the UP's rate discrimination against the Kansas Pacific. Congressional committees investigated and reported upon the problems surrounding the UP's connection with the Chicago, Burlington, and Quincy.¹⁰⁴

The KP and the Burlington pushed these actions by Congress. The KP paralleled the UP across Kansas and Colorado to Denver. It then connected with the UP at Cheyenne by way of a line from Denver to Cheyenne. The KP and UP were competitors on some business, but the KP also depended on the UP for connection to the Pacific coast. To divert transcontinental business from switching to the KP at Cheyenne, the UP discriminated against the KP. The Burlington was trying to capture some of the transcontinental traffic through its outlet, the Burlington and Missouri. That was why it joined the KP in the struggle against the UP.¹⁰⁵ They used the floors of Congress as much as the marketplace to attack the UP.

Congress had many sources of information on the UP. Congress received annual reports from the Secretary of the Treasury, from the government directors of the UP, and from the government commissioners. The road realized its movements were subject to Congressional surveillance and tacit approval. In fact, since Congress had directed some of the UP's major actions, such as placement of the termini, the railroad hesitated to institute action on the debt question.

Instead it only made suggestions.

The debt problem became increasingly important in the mid-1870s. The government lost the full amount of its fares for application to the interest in a Supreme Court case in 1875. The court declared that the interest was not due until maturity. This case arose out of a provision in the Credit Mobilier legislation that the company could sue to get a judicial determination of whether the Treasury could withhold all government fares as directed by the Credit Mobilier legislation.

Edwards Pierrepont argued the case for the government. He made three basic points: first, Congress had endowed the road with very generous aid; second, Congress had not foreseen that interest would outrace its payment by half the fares; and last, Congress had repealed the 1864 Act with the 1873 legislation. In Pierrepont's view, this generous aid compelled the court to accept Chief Justice Taney's notion that in doubtful cases the public should benefit over the rights of corporations. Pierrepont noted that, although Congress had voted down the road's obligation to pay interest as it came due, Congress had expected the fares to pay the interest. He added that the 1873 legislation meant the 1864 Act was corrected to mean the full amount of fares just as the 1862 Act had read.¹⁰⁶ The court rejected his contentions. Justice Davis delivered the Court's opinion.

The court declared that Congress did not intend to require interest payment before maturity. The court felt it had to look back to the tenor of the times surrounding the 1864 Act's passage. The wartime situation had prevented significant advancement of the road so Congress made a more liberal package of aid to induce construction. Part of this was changing the portion of the fares retained by the Treasury for interest repayment from 100 percent to 50 percent. This change would have been no benefit to the road if the government was able to recover all compensation through a suit. The court also found that, since Congress had authorized the company to sue in the 1873 legislation, Congress had not repealed the 1864 Act but had merely desired a judicial determination of the question.¹⁰⁷ This decision, combined with Gould's policy of high dividends, made many, in and out of Congress, doubt the UP's ultimate ability to repay the debt. Something had to be done.

The UP realized that the government debt needed attention, and the road made suggestions on how to deal with it. Sydney Dillon, then President of the UP, made offers for a resolution of the debt problem in letters of February 2, 1875 and January 24, 1876. Dillon offered payment by the UP of \$500,000 per year for ten years followed by \$750,000 per year until the debt was extinguished. These payments would be in lieu of the one-half fares and five percent of

net earnings. Collis Huntington of the Central Pacific made similar suggestions and added that the question should be settled to end all the wasteful agitation and litigation.¹⁰⁸

These propositions were taken up by the railroad committees in both houses of Congress. The railroad committees were sympathetic to the roads.¹⁰⁹ Therefore, they produced bills that followed the suggestions of Dillon and Huntington. One other suggestion was incorporated into the House version. It was to allow the UP to trade back its unsold lands west of the 104th meridian at \$2.00 per acre to reduce the debt. There were basically three railroad committee bills: The McCrary Bill in the House and the Gordon Bill in the Senate during the forty-fourth Congress and the Matthews Bill in the Senate during the forty-fifth Congress, none of these bills even passed one house.

These bills would not have taken effect until the companies accepted them. Their architects felt that the original charter and subsequent amending acts had been contracts, which required the assent of both parties. The government and the railroads had to consent to any amendments to the charter. The consent clauses would avoid litigation, which might deal another defeat to the government since it had already lost the interest battle. Finally, these bills contained no clause for future Congressional

amendment, meaning they were meant to be final settlements.¹¹⁰

Critics of the roads gathered around the Senate's Judiciary Committee alternate, the bill of Senator Allen G. Thurman of Ohio. The Thurman Bill did not require assent by the companies before it became law. The opponents of the Thurman Bill felt congressional amendments had to be done in the context of the charter as a contract. Both contracting parties had to agree to any changes. Thus, the railroad committees' bills had provisions for assent by the companies. The Thurman Bill's opponents believed it impaired contract because there was no provision for approval by the companies. The Thurman Bill unleashed a debate in Congress over Congress' power regarding the Pacific railroads. The debate rested on the interpretation of the amending clause in the charter.¹¹¹

This type of clause was common in state charters of incorporation since its first suggestion by Justice Story in the Dartmouth College case. Charters could be amended if the state legislatures reserved such power.¹¹² State power to amend charters was not unlimited but was checked by the Constitution's contract clause.¹¹³ But Congress had no such rein regarding contracts. Justice Field was in the process of making the Supreme Court accept the doctrine of substantive due process. This doctrine would serve as a check on Congress' power to impair contracts and charters through the Fifth Amendment's protection of property from

seizure without due process or just compensation.¹¹⁴ But Field had not yet succeeded.

The amending clause of the UP's charter had been proposed as a check on corporate power, as a means for congressional control.¹¹⁵ Opponents of the Thurman Bill declared that the amending power was not limitless. They argued along the lines of Justice Field's doctrine of substantive due process. Senator Matthews stated that the limitations concerned vested rights. Congress could not use the amending power to impair vested rights as the courts had declared in Fletcher v. Peck, Miller v. The State, and Holyoke Co. v. Lyman.¹¹⁶ Other members declared that, if there were no limit then the companies were at the mercy of the caprice of a majority of Congress. Congress could use the amending power to make the whole debt due before maturity or attempt rate regulation, which the charter prohibited until the road made more than a 10 percent profit. This unconditional power to amend "meant absolutism or communism."¹¹⁷

Senator Benjamin Hill put forth a unique interpretation of the charter as divided into two parts: franchise and contract. This interpretation, he said, rested on Justice Field's dissent in the Miller case. According to Hill, Field objected to the majority opinion because the amending power had been used to alter an agreement that was not part of the franchise. Hill declared that the UP's debt was a contract that was also separate from the UP's franchise.

The Pacific Railroad Acts had included the UP charter, but the charter was not part of the acts because the Central Pacific and the branch lines were included in the acts only in the portion containing the contract for debt. Hill concluded that the amending power extended only to the franchise and not to the contract for debt. The contract for debt could only be amended in case of fraud or mistake.¹¹⁸

Hill's circumlocutions reveal the extent to which congressmen went to anticipate the Supreme Court and to use the shadow of the court to support their positions. There was good reason for this since the government had lost the interest case. Congress did not want its legislation subject to a successful suit again. Opponents of the Thurman Bill pointed out that the court had declared that the government could expect only one-half of the fares and five percent of net earnings to pay off interest and principle before maturity. Many felt the Thurman Bill tried to bypass the court's decision, and thus the court would invalidate the bill.¹¹⁹

In defense of his bill, Senator Thurman pointed out that the court had only touched the Pacific Railroad Acts as they stood because Congress had not framed the 1873 legislation that followed the scandal as amendment to the railroad acts.¹²⁰ Senators Justin Morrill and Thomas Bayard agreed with Thurman that the court had not decided the extent of Congress' amending power.¹²¹

Supporters of the Thurman Bill declared that the amending power was part of the charter, and hence the contract's original terms. Senator David Davis, erstwhile justice who had written the opinion in the interest case, and others declared that the companies agreed to Congress' power to amend by accepting the Pacific Railroad Acts so there was no need to get their assent. Holyoke and Miller did not declare that the companies had to assent to legislation carried out under the amending clause.¹²²

The supporters of the Thurman Bill admitted that the amending power could not impair the roads' vested rights.¹²³ But Thurman; Senator Edmunds, chairman of the Senate Judiciary Committee; Senator Hoar; and others denied that the Thurman Bill was a taking of property or an impairment of rights. Rather, the bill only contemplated setting aside company earnings for a sinking fund, which would remain company property until payment of the debt. It made the company act in a certain fashion but neither confiscated property nor forced payment before maturity.¹²⁴

The Thurman Bill created this sinking fund by using the other half of fares and \$850,000 from the UP. This totaled about 25 percent of net earnings when the five percent of net earnings and the half of fares that went directly to interest payment were included. The act prohibited payment of any dividends unless the sinking fund payments were made. The Secretary of the Treasury would invest the sinking fund in United States bonds at five percent interest.¹²⁵

Supporters of the Thurman Bill criticized the railroad committees' substitutes as surrenders to the power of unscrupulous corporations. Memories of the Credit Mobilier scandal had a strong influence upon much of the debate. Congressmen charged that the railroad lobby was attempting to stall the Thurman Bill. Representative Holman declared that Congress' failure to pass such a bill would show that Congress was at the mercy of the venal and unscrupulous lobby.¹²⁶ The amending clause was an important means of controlling corporate power. It was an instrument for government regulation of corporations, but the railroad committees' bills did not include an amending clause. Supporters of the Thurman Bill cited this omission as a surrender to corporate power.¹²⁷

The railroad committees' bills had one other serious failing in the eyes of the Thurman Bill's supporters. The substitutes did away with the requirement that one-half of the fares and five percent of net profits go to current interest. As a result the government would lose the only source for the payment of interest before maturity. Congress could not allow any such leniency with these companies.¹²⁸

Late in the debates the supporters of the substitutes, the railroad committees' bills, realized their bills were doomed. They tried to salvage the clause that would have made the legislation a final settlement and end the threat of government interference through the amending clause.

This continuing threat of interference in the finances and operations of the line made the UP a riskier enterprise. This increased risk made Gould's policy of high dividends rational and prevented the company from adopting a strategy more oriented toward development through retained earnings.

Senator James G. Blaine offered the amendment for a final settlement. He stated that Congress' threats of action had been used by Wall Street speculators to damage the firm's stock. Blaine charged that, if Congress asserted its power to change any part of the charter, then there would be no end to the speculative manipulations. If the Thurman Bill was enough to secure the debt, then this should end all the agitation with a clause for final settlement.¹²⁹ Senators William Allison, Daniel Voorhees, and John Mitchell agreed with Blaine. Mitchell observed that the turmoil could last another twenty years.¹³⁰

Such a provision would mean the end of Congress' power to amend, and that power was an important method of controlling corporate power. Thurman would not tolerate such an amendment to his bill. He denounced it and said it was worse than losing all the money the government ever put into the Pacific railroads. It was "prussic acid" to his bill.¹³¹ Senator George Edmunds backed Thurman. Edmunds felt Blaine's amendment would tie Congress' hands. He warned that unforeseen contingencies could arise, or clever counsel could usurp the spirit of the bill.¹³² The Blaine

amendment failed, 35-23. Moments later, the Senate passed the Thurman Bill by a vote of 40-20. The bill passed the House by a 243-242 vote. President Hayes signed it into law on May 8, 1878.¹³³

Congress adopted the Thurman Act because it felt the UP's management was depleting its treasury by paying out the high dividends of the Gould regime to the point of ensuring bankruptcy. But these dividends were encouraged by Congress' hostile attitude after the Credit Mobilier scandal. Congress made the UP too risky for any return from retained earnings and further development of the line. Blaine tried to make the Thurman Act less threatening by offering an amendment to make the act a final settlement, but his effort failed. His amendment also might have stopped assaults on the UP in Congress by its rivals, like the KP and Burlington, and also the manipulation of the UP's stock price by speculators through actions on the floor of Congress. After all Gould had gotten control because of the scandal's depressing effect on the UP's price.

The passage of the Thurman Act forced Gould to pass the July 1878 dividend and thus knocked the stock price down. This in turn led to Gould's personal financial crisis in the fall of 1878. Although he had to sell a large block of his UP stock, he came back through a profitable merger between the UP and the KP.¹³⁴

The Thurman Act revealed Congress' determination to

use the amending clause to restructure the debt question to suit the government and the public. Congress asserted this power in a manner that suggested it could be used without limitation to suit government interests as long as the government did not take the property. Some had argued that the Thurman Act was a taking, but the act's supporters contended the sinking fund would remain company property until the debt's maturity. Congress' assertion of such power to change the debt lengthened the risk confronting the UP. The UP had to watch Congress and could not make any move it liked. Although Congress had acted, it remained for the Supreme Court to decide if Congress could pass such legislation. Although Congress was attempting the federal equivalent of repudiation on the state level, the court could negate this action as it had in the municipal bond cases decided in the early 1870s.

THE SINKING FUND CASES

The UP's part of The Sinking Fund Cases began with the Treasury withholding the full amount of government fares for July 1878. The UP had transported troops and charged \$10,451.73. The Treasury refused to turn any of it over to the company but applied half to interest payments and half to the credit of the sinking fund as mandated in the Thurman Act. The company petitioned the Court of Claims to get the one-half of the fares, but the court dismissed the petition. The UP appealed to the Supreme Court.¹³⁵

Attorney General Charles Devens and Assistant Attorney General Edwin B. Smith represented the government before the Supreme Court. They centered their argument on the amending clauses in the 1862 and 1864 charters. Four of their five major points involved Congress' right to alter these charters. They pointed out that Congress had no constitutional bar on impairing contracts. The Constitution's bar was directed at the states. The central government could make its own debts a priority. Second, they declared that the 1862 and 1864 Acts were not just charters. They were also statutes. Congress could modify statutes to any extent. Congress could alter the statute part of these acts as much as it liked. Third, they felt

that since the amending clause explicitly included the power to repeal the acts, Congress could terminate the corporate existence. Fourth, when the companies accepted the corporate charters, they accepted Congress' right to alter the charters. The companies agreed to both charters and both charters contained amending clauses.

The government's lawyers expanded this point to argue that although Congress had used its power to change the charters, it had not deprived the company of property. The Thurman Act did not take property but merely sought security to assure the ultimate repayment. The charters intended that the company repay the government bonds, and the Thurman Act attempted to carry out this intention. The act aimed to force the company to make provision for the debt. This assurance aspect brought the government attorneys close to their fifth point, the only one not involved with the amending power. They contended that the Thurman Act attempted to avoid the waste that bankruptcy would bring. The Thurman Act tried to make adequate provision for the debt before that time.¹³⁶

The UP's lawyers argued that the Thurman Act was a taking and an impairment of contract. Samuel Shellabarger and Jeremiah M. Wilson, who had chaired the Wilson Committee during the Credit Mobilier investigation, represented the road. They argued that Congress could not impair contract. This was an impairment of contract because the Thurman Act

violated the charter stipulation that the government would not require any further security before maturity besides the one-half of fares and five percent of net. They cited Fletcher v. Peck, which said that rights vested by law could not be impaired or revoked by later legislation. They contended that the Legal Tender Cases did not overturn Hepburn v. Griswold on the issue of Congress' power to directly impair contracts. They cited Federalist #44, which said that laws impairing contract were contrary to the spirit of the great social compact. The UP's lawyers argued that this act was a taking because the interest on the sinking fund was less than the interest due on the bonds. This was a substantive taking just the flooding caused by the dam in Pumpelly v. Green Bay. They declared that Congress could not use the reserved amending power to attack property rights already vested in the corporation. The government had two relationships with the UP: sovereign and creditor. Congress could not improve its creditor position under guise of sovereign power.¹³⁷

The Supreme Court rejected the UP's claims. Chief Justice Waite wrote the majority opinion. He noted that Congress could not deny due process nor expropriate property without just compensation. But Congress had not done that in the Thurman Act. Congress was simply requiring provision for repayment of the debt. The company had been paying huge dividends and had not been making any provision for the

debt. Congress had to consider the rights of the creditors as well as the road's owners. The dividends needed limitation so that the government would not be left with a bankrupt road at maturity. Waite went on to point out that the sinking fund was not a taking because it would belong to the company until time came to pay off the debt. He concluded that the funding act was a reasonable regulation that promoted both the company and public interests.¹³⁸

The court divided sharply on this case. There were three dissents. Justice William Strong declared that the Thurman Act had changed the contract. The charter required that the company only pay five percent of net earnings and one-half of government fares to the Treasury before the debt came due. The Thurman Act required a larger payment. Strong said that it was absurd to say the act was not a taking. It was a taking; it took the fruits of the franchise.¹³⁹ Justice Joseph Bradley agreed with Strong. The act was a taking. Bradley felt that the Thurman Act violated contract. A contract was the property of the company. If the legislature tried to change the contract by demanding payment before maturity, the company had the right to have an opportunity for judicial investigation of the issue. The company had the right to due process of law.¹⁴⁰

Justice Field concurred that the Thurman Act was a taking and denied the company due process. He declared that when the government made a contract, it was obligated to

that contract just like any citizen; and it could not use its sovereign power to alter the terms of the contract. The Thurman Act asserted the government's power to usurp the company's earnings by legislative decree without judicial inquiry. Field admitted that Congress could indirectly affect contract rights as in the case of bankruptcy laws, but it could not do so directly as it had in the case of the Thurman Act. Field's opinion flows from his growing concern that one set of private interests might attempt to use the legislative power to grab the rights and property of another private group. In this case Field saw the American taxpayers trying to take the earnings of the road to assure payment of the debt rather than admit their acceptance of the risk of bankruptcy that had taken on with the acts' original passage.¹⁴¹

The Supreme Court had upheld the Thurman Act and thus upheld Congressional "repudiation" of the debt. It had upheld Congress' power to amend and thus increased the uncertainty that faced the UP. The court's decision revealed a sharp cleavage on the court. It was a court in transition from accepting the free reign of legislatures as exemplified by the Munn decision to adoption of Justice Field's theory of substantive due process. This transition appeared in a number of regulation cases in the eighteen eighties and nineties. But for the UP this transition did not come soon enough. It lost the case because the older doctrine still held sway. It had to live with the malevolent Congress.

EPILOGUE

Although the Supreme Court upheld the Thurman Act in The Sinking Fund Cases, Gould resumed the policy of high dividends and ignored the Thurman Act. That was a rational, though illegal, course. It also strained the UP's treasury. When traffic fell off in 1883-1884, depressed years, the investing public doubted the UP's financial stability. The stock price fell from 80 to 60 in early 1884. These suspicions reached Washington, and Congress became anxious that the debt would not be paid. In particular Congress suspected that Gould was ignoring the Thurman Act. The government forced him out through threats of increasing the sinking fund contributions to 55 percent. Gould selected Charles Francis Adams, Jr. to go to Congress to fend off this action. Adams succeeded in this, but part of the compromise was the removal Gould's hand from the UP's tiller.¹⁴² Charles Francis Adams, Jr. became the UP's president. He would try to manage and develop the UP, not manipulate it. He would not be successful. His policy was not possible. He overextended the UP in credit markets to finance the expansion of branch lines. These did not pay off, and Adams fell from power with Gould assuming control for a short while before his death. The UP wound up bankrupt when the bonds came due

in 1893.

Gould and Adams represented two different managerial strategies just like Durant and the Ames brothers had before the scandal. Gould and Durant were speculative investors. Durant wanted to make profits out of construction and get out. He did not want to try to make money out of operating and developing the road. Likewise Gould did not seek profit from development and expansion of the road but manipulated the stock. He fiddled with the books. He paid out big dividends to make the road appear successful. The last thing he wanted to do was to finance further expansion through retained earnings.

The Ames brothers wanted to develop the road. While Durant scurried to sell off his stock to realize profits from construction, the Ames brothers held on. They wanted to reap gains from developing the road. Adams was also a developmental investor. He wanted to pursue a growth policy of adding branch lines. Eastern railroads made their money off of local traffic, branch line traffic, not through traffic. To build branches, Adams had to delve into credit markets because the government was taking 25 percent of net earnings as per the Thurman Act. But outside financing was more expensive and riskier.¹⁴³

Society's best interest, which means government's, would have been furthered more by a developmental policy. Congress in 1862-1864 would have strongly endorsed such a

policy, but by 1878 Congress and the public were anxious to see the debt repaid. The result was the Thurman Act, and this act forced Adams to the credit markets to finance expansion. Thus this act thwarted Congress' original intent for the UP. Congress allowed the government's role as creditor to outweigh its role as promoter. In the interest case the Supreme Court blocked Congress' first attempt at solving the debt issue, and in doing so, the court looked back to the times and environment surrounding the original act's passage. But in The Sinking Fund Cases the court accommodated the popular clamor for a resolution to the funding question. This ensured Adams' later failure.

The UP had proceeded from the stage of promotion to congressional "repudiation." Congress had changed the terms of debt repayment through the Thurman Act. The government had gotten what it wanted from the road in terms of rail service and development of the hinterland. The government wanted the debt repaid and desired the company begin to make provision for repayment at maturity. The company had overcome the risk involved with construction only to face the increasing uncertainty of having a creditor with the ability to alter the terms of repayment to suit the lender's purposes. The government could use its sovereign power to further its position as creditor. The UP was helpless. Not even the best services of Adams could save it. The UP

was headed toward bankruptcy.

Because the government showed its ultimate power over the UP, the UP faced great uncertainty and any project it wanted to undertake had to pay its investors a high return to justify the investment and account for the risk premium. This meant that the UP did not take a developmental strategy as often as it might have and restricted the pursuance of the public's developmental goal. The more active and interventionist nature of government resulted from the changed attitude brought by the Credit Mobilier scandal and the ability to take a more active role because the charter never defined nor limited its role. Congress could utilize the amending clause to demand greater provision for debt and thus dictate managerial policy. Congress could change the more benevolent intents and legislation of an earlier time to suit the purposes of "repudiation." This pushed the road onto the road to ruin.

NOTES

¹A present dollar and a dollar one year in the future do not have the same value. The future dollar's value must be lowered because it cannot be used for a year. The amount it is lowered is called the discount rate. To ascertain the present value of future income, the future income is multiplied by the appropriate discount rate.

²Selling short is a stock market tactic. The short seller borrows shares of stock and sells them at the present market price. He then has to buy some stock back to replace what he borrowed. If the stock price falls from the time he sells to the time he buys, he profits.

³United States v. Union Pacific Railroad Co., 91 U.S. 79-81 (1875).

⁴Many congressmen raised doubts about the priority of the Pacific Railroad. The session was getting close to an end, and some felt the tax bill was more urgent. Many wanted all efforts concentrated on the war. Others doubted that the road would be built even with the most generous aid. Congressional Globe, 37th Congress, 2nd Session, p. 2081 (May 13, 1862); *ibid.*, p. 2216 (May 20, 1862); *ibid.*, pp. 1706-9 (April 17, 1862); *ibid.*, p. 2835 (June 20, 1862); *ibid.*, pp. 1727-8 (April 18, 1862). Even before the Civil War, Senator John Sherman recognized the Pacific railroad as a great work, but he feared its allure might lead to premature measures. Letter of John Sherman to William T. Sherman, December 18, 1857, in The Sherman Letters, ed. Rachel Sherman Thorndike (1894 reprinted New York, 1869), p. 67.

⁵McDougall lamented that the bill was not taken up sooner. *Ibid.*, pp. 2216-7 (May 20, 1862), 2637-8 (June 10, 1862). McDougall's sponsorship of the measure was lackadaisical and more of a hindrance. John P. Davis, The Union Pacific Railway: A Study in Railway Politics, History, and Economics (Chicago, 1894), p. 102.

⁶Fessenden in Congressional Globe, 27th Congress, 2nd Session, pp. 1707-8 (April 17, 1862); Thaddeus Stevens in *ibid.*, p. 1949 (May 25, 1862); Senator Latham's remarks in *ibid.*, pp. 2677-8 (June 12, 1862); Campbell in *ibid.*,

(April 8, 1862); Phelps in *ibid.*, p. 1590 (April 9, 1862); Sargent in *ibid.*, pp. 1594-5 (April 9, 1862); Nelson Trottman, History of the Union Pacific: A Financial and Economic Survey (New York, 1923), p. 7. Sargent also cited the Russian example in the Crimean War of using and extending their railroads to drive out invaders. Congressional Globe, 37th Congress, 2nd Session, p. 1598 (April 9, 1862). In "The Pacific Railroad Act of 1862," Nebraska History 43 (1962), 141-4, Wallace D. Farnham argues that this railroad was not needed to secure California to the Union. The Thirty-seventh Congress' legislative achievements form an important part of Allan Nevins' notion of "War as Revolution." Harold Hyman points out that the Republicans had a clear majority in this Congress and could legislate national programs without being sidetracked by sectional factionalism. Harold Hyman, A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution (1973 reprinted Boston, 1975), p. 181.

⁷Stevens in Congressional Globe, 37th Congress, 2nd Session, p. 1949 (May 5, 1862); Latham in *ibid.*, p. 2677 (June 12, 1862); *ibid.*, pp. 1592-6 (April 9, 1862); *ibid.*, p. 1701 (April 17, 1862). Some felt the change in trade routes might even end Europe's role as center of world exchange. There was also the fear that America had to fear competition in world markets by Indian cotton and Russian train. The railroad would improve American export abilities.

⁸McDougall in *ibid.*, appendix, p. 307f; Campbell in *ibid.*, pp. 1578-9 (April 8, 1862); *ibid.*, p. 1710 (April 17, 1862). For figures on projected government savings see: United States House of Representatives, Letter from the Secretary of the Navy, 37th Congress, 2nd Session, House Executive Document No. 80. Congressional Globe, 37th Congress, 2nd Session, p. 1590 (April 9, 1862); Latham in *ibid.*, p. 2677 (June 12, 1862); Stevens in *ibid.*, p. 1949 (May 5, 1862). William T. Sherman felt early the cost would be small because California would build some railroads across the Sierras. Letter to John Sherman, March 20, 1856, in The Sherman Letters, ed. Thorndike, p. 56.

⁹United States Senate, Resolution of the Kansas Legislature, 37th Congress, 2nd Session, Senate Miscellaneous Document No. 64 (Serial 1124); Latham in Congressional Globe, 37th Congress, 2nd Session, p. 2677 (June 12, 1862); *ibid.*, pp. 1591-4 (April 9, 1862); *ibid.*, p. 1909 (May 1, 1862); *ibid.*, p. 1949 (May 5, 1862). Justin Morrill even charged that James Campbell, the bill's sponsor, was seeking to pass the bill to his constituency's iron interests. *Ibid.*, p. 1709 (April 17, 1862).

¹⁰Robert William Fogel, The Union Pacific Railroad:

A Case in Premature Enterprise (Baltimore, 1860), pp. 23, 39-44; Edwards in Congressional Globe, 37th Congress, 2nd Session, p. 1703 (April 17, 1862); Robert G. Athearn, Union Pacific Country (1971 reprinted Lincoln 1976), pp. 26-27; Trottman, History of the UP, p. 6.

¹¹Latham's remarks in Congressional Globe, 37th Congress, 2nd Session, pp. 2676-6 (June 12, 1862); Senator Samuel Pomeroy's remarks in *ibid.*, p. 2834 (June 20, 1862).

¹²Carter Goodrich, Government Promotion of American Canals and Railroads, 1800-1890 (1960 reprinted Westport, Conn.: 1974), pp. 169-71.

¹³*Ibid.*, pp. 284-91.

¹⁴Robert Edgar Riegel, The Story of the Western Railroads (New York, 1926), p. 73; James McCague, Moguls and Iron Men (New York, 1964), p. 72; Pacific Railroad Legislation, (New York, 1885), p. 5.

¹⁵Congressional Globe, 37th Congress, 3rd Session, pp. 1245-6 (February 24, 1863).

¹⁶*Ibid.*, 38th Congress, 1st Session, p. 3154 (June 21, 1864).

¹⁷Allan Nevins, The War for the Union, vol. 2: War Becomes Revolution (New York, 1960), pp. 484; 489-92; Riegel, Western Railroads, p. 72.

¹⁸Congressional Globe, 38th Congress, 1st Session, p. 3149 (June 21, 1864).

¹⁹*Ibid.*, 37th Congress, 3rd Session, p. 1278 (February 24, 1863); Davis, Union Pacific Railway, p. 112.

²⁰Congressional Globe, 37th Congress, 2nd Session, appendix, p. 382 Laws of the United States, Chapter CXX; *ibid.*, 38th Congress, 1st Session, appendix, pp. 250-1 Laws of the United States, Chapter CCXVI, sections 1, 5, 7, 10.

²¹*Ibid.*, 38th Congress, 1st Session, pp. 3150-1 (June 21, 1864); *ibid.*, 37th Congress, 3rd Session, p. 1246 (February 24, 1863).

²²United States House of Representatives, Report on the Affairs of the Union Pacific Railroad Company, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), p. 510.

²³See text at note 38.

²⁴Stanley P. Hirshson, Grenville M. Dodge (Bloomington, 1967), p. 27.

²⁵Ibid., p. 109.

²⁶Athearn, Union Pacific Country, pp. 30-1.

²⁷Alley's testimony in United States House of Representatives, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), pp. 93-4.

²⁸Hirshson, Dodge, pp. 34, 37-41, 44, 63.

²⁹Riegel, Western Railroads, pp. 79-80; Athearn, Union Pacific Country, pp. 33-4; McCague, Moguls and Iron Men, p. 73; Fogel, Union Pacific Railroad, pp. 57-62. Horace Clark said the only unusual feature of Credit Mobilier was that the owners of it were also the major owners of the railroad. U.S. House, Report of the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), pp. 3420-21.

³⁰U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), pp. I, 3. Copies of the Hoxie contract and transfer, the Ames contract, and Dodge's statement on costs are in *ibid.*, pp. 389-405.

³¹Testimony of Oliber Ames in U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), pp. 291-2; Bushnell in *ibid.*, pp. 554-6. The eminent counsel included Charles Tracy, Samuel Tilden, William F. Allen, Jerry Black, and William B. Bristol. *Ibid.*, pp. 275-7, 293. Riegel, Western Railroads, pp. 75-6; Trottman, History of the Union Pacific, pp. 23-4; Arthur M. Joynson and Barry E. Supple, Boston Capitalists and Western Railroads: A Study in the Nineteenth Century Railroad Investment Process (Cambridge, Mass.: 1967), pp. 201-2.

³²Fogel, UP Railroad, pp. 75-81; Athearn, UP Country, pp. 33-4. Horace Clark refused to partake in the scheme at this point because of the risk. Ham in the U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), p. 20. McCague, Moguls, pp. 90-2.

³³Congressional Globe, 37th Congress, 2nd Session, pp. 2757-8 (June 17, 1862) and p. 2817 (June 19, 1862).

³⁴Charles Edgar Ames, Pioneering the Union Pacific (New York, 1969), pp. 4-6; U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), pp. 403-5.

³⁵Charles Francis Adams, Jr., "Railroad Inflation," North American Review, January 1869, p. 145.

³⁶U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), pp. I-II, 19; Congressional Globe, 39th Congress, 1st Session, p. 21 (December 11, 1865); Athearn, UP Country, p. 36.

³⁷Durant's holdings drop precipitously on the lists of stockholders from February 26, 1870 to February 24, 1872. U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), pp. 599-610; Trottman, History of the UP, p. 33.

³⁸Alley in U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), p. 87.

³⁹Farnham, "Act of 1862," pp. 152-3; Athearn, UP Country, pp. 30-1.

⁴⁰Congressional Globe, 37th Congress, 2nd Session, appendix, Laws of the United States, Chapter CXX, pp. 381-2.

⁴¹Letter to McComb, February 22, 1868, U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), p. 7.

⁴²Athearn, UP Country, 53.

⁴³Ames' group entered with two and one-half million dollars to meet a payroll crisis in August 1865. Another crisis developed in the spring of 1867. U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), pp. I-II, 19; Alley in U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), p. 337; Athearn, UP Country, pp. 36, 90-7.

⁴⁴Congressional Globe, 38th Congress, 1st Session, pp. 3150-1 (June 21, 1864); *ibid.*, 37th Congress, 3rd Session, p. 1246 (February 24, 1863).

⁴⁵*Ibid.*, 40th Congress, 1st Session, pp. 343-5 (March 26, 1867).

⁴⁶Ibid., 40th Congress, 2nd Session, pp. 211-2 (December 16, 1867). Lester G. Linley, The Constitution Faces Technology: The Relationship of the National Government to the Telegraph, 1866-1884 (New York, 1975), pp. 90-3, 96-7, 138-9.

⁴⁷Congressional Globe, 40th Congress, 2nd Session, p. 638 (January 20, 1868).

⁴⁸Ibid., p. 1218 (February 17, 1868).

⁴⁹C. C. Washburn's speech in *ibid.*, appendix, pp. 295-300; Van Wyck also made these charges against the UP and Credit Mobilier. Ibid., pp. 2421-2 (May 12, 1868).

⁵⁰Ibid., pp. 2135-6 (March 26, 1868).

⁵¹Ibid., pp. 2422-3 (May 12, 1868).

⁵²Ibid., pp. 2423-7 (May 12, 1868).

⁵³Ibid., 38th Congress, 1st Session, appendix, Laws of the United States, Chapter CCXVI, p. 252.

⁵⁴Ibid., 40th Congress, 3rd Session, p. 520 (January 22, 1869), p. 1363 (February 18, 1869), pp. 1646-7 (February 27, 1869), p. 1742 (March 1, 1869), and pp. 2428-9 (May 12, 1868); U.S. Senate, Report on Credit Mobilier, 42nd Congress, 3rd Session, Senate Report No. 519 (Serial 1550); Athearn, UP Country, pp. 90-7.

⁵⁵Congressional Globe, 41st Congress, 1st Session, pp. 503-4 (April 5, 1869), and pp. 533-6 (April 6, 1869).

⁵⁶See text between notes 53 and 54.

⁵⁷Congressional Globe, 41st Congress, 1st Session, pp. 670-3 (April 9, 1869).

⁵⁸Ibid., p. 536 (April 6, 1869).

⁵⁹U.S. House of Representatives, Railroad and Telegraph from the Missouri River to the Pacific Ocean, 41st Congress, 3rd Session, House Executive Document No. 24 (Serial 1453). Representative van Trump had seen this problem before. Congressional Globe, 41st Congress, 2nd Session, p. 3151 (May 2, 1870).

⁶⁰U. S. House, RR and Telegraph, 41st Congress, 3rd Session, House Executive Document No. 24 document E (Serial 1453).

⁶¹U.S. Senate, Freights on the Pacific Railroads, 41st Congress, 3rd Session, Senate Report No. 375 (Serial 1443). U.S. Statutes at Large, 525 (Act of March 3, 1871); C. E. Ames, Pioneering, pp. 402-5.

⁶²See Oakes Ames' quote at note 41; U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577) p. IV; McComb in *ibid.*, pp. 276-7; Oakes Ames in *ibid.*, pp. 273-4, 301; Congressional Globe, 42nd Congress, 3rd Session, pp. 1462-3 (February 18, 1873) and pp. 1717-9 (February 25, 1873); Riegel, Western Railroads, 78; Trottman, History of the UP, pp. 83-4; Davis, UP Railway, p. 176.

⁶³Chapter 7, "The Business of Influence," Politics and Power, the United States Senate 1860-1901 (Cambridge, Mass.: 1966), pp. 191-220.

⁶⁴Trottman, History of the UP, pp. 72-5; Davis, UP Railway, pp. 176-7; Athearn, UP Country, pp. 125-6.

⁶⁵Congressional Globe, 42nd Congress, 3rd Session, pp. 11-2 (December 2, 1872) and p. 393 (January 7, 1873).

⁶⁶U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), pp. 380-2; Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), pp. 173-8; Alley in *ibid.*, pp. 310-2; *ibid.*, XVIII. Bushnell also had an account for "special legal expenses" regarding legislation of March 9, 1871. *Ibid.*, p. XVII.

⁶⁷U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577) pp. III-IX.

⁶⁸*Ibid.*, p. VII; Garfield's testimony in *ibid.*, pp. 128-31; Oakes Ames in *ibid.*, pp. 295-7; Trottman, History of the UP, pp. 79-80; W. Allan Wilbur, "The Credit Mobilier Scandal," in Congress Investigates, vol. III ed., Arthur M. Schlesinger, Jr. and Roger Bruns (New York, 1975), 1859-60.

⁶⁹U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), p. VII; Kelley in *ibid.*, pp. 197-201; Oakes Ames in *ibid.*, pp. 297-8.

⁷⁰Congressional Globe, 42nd Congress, 3rd Session, p. 1829 (February 26, 1873), and pp. 1835-43 (February 27, 1873); *ibid.*, appendix p. 141.

⁷¹U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), p. 279; Colfax in *ibid.*, pp. 288, 327, 510-6; Swain in *ibid.*, p. 341; Wilbur in Congress Investigates, pp. 1860-61.

⁷²Congressional Globe, 42nd Congress, 3rd Session, p. 1466 (February 18, 1873); pp. 1717, 1732-7 (February 25, 1873); pp. 1816-29 (February 26, 1873); pp. 1830-3, 1837 (February 27, 1873); *ibid.*, appendix, speeches of Farnsworth, pp. 130-1; Bingham pp. 136-40; Shellabarger pp. 160-3; Swan pp. 163-5; Kerr pp. 172-3; Young pp. 212-3.

⁷³U.S. Senate, Report on Credit Mobilier, 42nd Congress, 3rd Session, Senate Report No. 519 (Serial 1550); Congressional Globe, 42nd Congress, 3rd Session, pp. 2184-85 (March 3, 1873).

⁷⁴U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), p. IV; McComb in *ibid.*, pp. 276-7; Oakes Ames in *ibid.*, pp. 273-4, 301; Congressional Globe, 42nd Congress, 3rd Session, pp. 1462-3 (February 18, 1873), and pp. 1717-9 (February 25, 1873); Riegel, Western Railroads, p. 78; Trotter, History of the UP, pp. 83-4; Davis, Union Pacific Railway, p. 176.

⁷⁵U.S. Senate, Report on Credit Mobilier, 42nd Congress, 3rd Session, Senate Report No. 519 (Serial 1550), p. VI.

⁷⁶U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), p. X. Representative Holman noted the problem of Congressmen owning UP stock and voting on UP legislation in 1864. Congressional Globe, 38th Congress, 1st Session, pp. 3023-24 (June 16, 1864).

⁷⁷Fogel disputes this.

⁷⁸U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), pp. XIV-XXIII.

⁷⁹U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), p. IX.

⁸⁰Alley in *ibid.*, pp. 105-8.

⁸¹Clark in *ibid.*, pp. 433-4; and in U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session,

House Report No. 78 (Serial 1577), p. 436.

⁸²Fogel, UP Railroad.

⁸³Congressional Globe, 37th Congress, 2nd Session, pp. 1890-1 (April 30, 1862); *ibid.*, appendix, p. 381 Laws of the United States, Chapter CXX, Section 1.

⁸⁴Carter Goodrich, Government Promotion.

⁸⁵U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), p. 399; U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), pp. III-IV; Alley in *ibid.*, p. 307; C. T. Sherman in *ibid.*, pp. 652-659; Beck in Congressional Globe, 42nd Congress, 3rd Session, pp. 1817-9 (February 26, 1873).

⁸⁶*Ibid.*, p. 1821 (February 26, 1873); U.S. House Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), pp. X-XIV.

⁸⁷Oliver Ames in *ibid.*, pp. 287-90; Snyder in *ibid.*, pp. 467-9; Horace Clark in *ibid.*, p. 449; Trottman, History of the UP, p. 69.

⁸⁸*Ibid.*, p. 69; Clark in U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), p. 431.

⁸⁹Carter Goodrich, Government Promotion, pp. 192-3.

⁹⁰Congressional Globe, 42nd Congress, 3rd Session, appendix, pp. 266-7 Laws of the United States, Chapter CCXXVI, Sections 2 and 4; U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), pp. XXIII-XXVI.

⁹¹Pacific Railroad Legislation, pp. 2-5.

⁹²U.S. House of Representatives, Cost of Transportation of Mails on the Union Pacific Railroad, 42nd Congress, 3rd Session, House Executive Document No. 151 (Serial 1567). Earlier statements of the railroad's cost-saving are in U.S. Senate, Freights on the Pacific Railroads, 41st Congress, 3rd Session, Senate Report No. 374 (Serial 1443); U.S. Senate, Union Pacific Railroad, 40th Congress, 2nd Session, Senate Miscellaneous Document No. 102 (Serial 1319).

⁹³Pacific Railroad Legislation, pp. 12-5; Creed Haymond, The Government and the Pacific Railroads (San Francisco, 1888), pp. 153-9.

⁹⁴Riegel, Western Railroads, p. 43.

⁹⁵U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), pp. 47-50.

⁹⁶Ibid., pp. 403-5.

⁹⁷Ibid., pp. I-II, and Clark at 427-30; Pacific Railroad Legislation, pp. 7-8; Fogel, UP Railroad, pp. 101-2.

⁹⁸U.S. Senate, Union and Central Pacific Railroad Companies, Senate Executive Document No. 38 (Serial 1545). This also contains commentary critical of the Wardell contract.

⁹⁹U.S. Senate, Pacific Railroads, 40th Congress, 3rd Session, Senate Report No. 219 (Serial 1362); U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), p. 52.

¹⁰⁰U.S. House, Credit Mobilier Investigation, 42nd Congress, 3rd Session, House Report No. 77 (Serial 1577), pp. 436-8; U.S. House, Report on the Affairs of the UP, 42nd Congress, 3rd Session, House Report No. 78 (Serial 1577), pp. 396-9, 422-33, 449-51. Bushnell also doubted the railroad's ability to pay the interest as it fell due. He felt earnings would increase, and the railroads would eventually repay the government. Ibid., p. 46.

¹⁰¹Julius Grodinsky, Jay Gould: His Business Career, 1867-1892, (Philadelphia, 1957), pp. 114-8; Maury Klein, "In Search of Jay Gould," Business History Review, Summer 1978, pp. 166-99.

¹⁰²Congressional Record, 43rd Congress, 1st Session, p. 68 (December 4, 1873) and p. 571 (January 12, 1874).

¹⁰³Ibid., p. 487 (January 8, 1874); p. 588 (January 12, 1874); p. 995 (January 28, 1874).

¹⁰⁴Union Pacific Railroad Co. v. Hall et al., 91 U.S. 343 (1874); Congressional Record, 43rd Congress, 1st Session, pp. 3727-8 (June 13, 1874), pp. 4434-5 (June 1, 1874), pp. 5024-5 (June 16, 1874); ibid., 43rd Congress, 2nd Session, p. 16 (December 8, 1874); Congressional Globe, appendix, Laws of the United States, 41st Congress, 3rd Session, Chapter LXVII, p. 341; U.S. Senate, 42nd Congress, 2nd Session, Miscellaneous Document No. 70 (Serial 1482); U.S. Senate, 43rd Congress, 1st Session, Senate Miscellaneous

Document No. 54 (Serial 1584); U.S. Senate, 45th Congress, 2nd Session, Senate Miscellaneous Document No. 37 (Serial 1786); U.S. Senate, 45th Congress, 2nd Session, Executive Document No. 40 (Serial 1781); U.S. Senate 44th Congress, 2nd Session, Senate Report No. 705 (Serial 1732); U.S. House, 41st Congress, 2nd Session, House Miscellaneous Document No. 94 (Serial 1433); U.S. House, 43rd Congress, 1st Session, House Miscellaneous Document No. 130 (Serial 1619); U.S. House, 44th Congress, 1st Session, House Miscellaneous Document No. 184 (Serial 1706); U.S. House, 44th Congress, 1st Session, Report No. 809, and Report No. 440 (Serial 1709).

¹⁰⁵Grodinsky, Gould: His Business Career, p. 133.

¹⁰⁶91 U.S. 72 (1875) Transcript of the Record, Brief for the United States; Ohio Life and Trust v. Debolt, 16 Howard 435; Charles River Bridge v. Warren Bridge, 11 Peters 420 (1837).

¹⁰⁷91 U.S. 72 (1875), pp. 91-2.

¹⁰⁸U.S. House, 44th Congress, 1st Session, Report No. 440 (Serial 1709); U.S. Senate, 44th Congress, 1st Session, Senate Miscellaneous Document No. 85 (Serial 1665); U.S. Senate, 44th Congress, 1st Session, Executive Document No. 25 (Serial 1664); Congressional Record, 45th Congress, 2nd Session, p. 2298 (April 5, 1878) and p. 2788 (April 24, 1878); *ibid.*, 44th Congress, 1st Session, pp. 4454-5 (July 7, 1876).

¹⁰⁹*Ibid.*, pp. 4510-5 (July 12, 1876).

¹¹⁰*Ibid.*, 44th Congress, 2nd Session, pp. 1128-32 (January 31, 1877), pp. 1278-80 (February 6, 1877); *ibid.*, 45th Congress, 2nd Session, p. 1757 (March 14, 1878); p. 2030 (March 26, 1878); U.S. House, 44th Congress, 1st Session, House Report No. 440 (Serial 1709), note 54 pp. 36-9; U.S. Senate, 44th Congress, 1st Session, Report No. 341 (Serial 1668).

¹¹¹Congressional Record, 44th Congress, 1st Session, p. 4457 (July 7, 1876); *ibid.*, 44th Congress, 2nd Session, pp. 1310-1 (February 7, 1877), pp. 1382, 1386-7 (February 9, 1877), p. 1631 (February 16, 1877), appendix, pp. 107-10; *ibid.*, 45th Congress, 2nd Session, pp. 1758-60, 1896-1900 (March 20, 1878), pp. 1933-6, (March 21, 1878); pp. 2303-5 (April 5, 1878), pp. 2368-9 (April 9, 1878); Congressional Globe, appendix, 37th Congress, 2nd Session, Laws of the United States, Chapter CXX, Section 18, p. 384.

¹¹²Dartmouth College v. Woodward, 4 Wheaton 518 (1819).

¹¹³United States Constitution, Article I, Section 10.

¹¹⁴Charles W. McCurdy, "Justice Field and the Jurisprudence of Government-Business Relations: Some Parameters of Laissez-Faire Constitutionalism, 1863-1897," The Journal of American History, LXI (1975), pp. 970-1005.

¹¹⁵Congressional Globe, 37th Congress, 2nd Session, pp. 277-80 (June 18, 1862); *ibid.*, 38th Congress, 1st Session, pp. 2351-3.

¹¹⁶Congressional Record, 45th Congress, 2nd Session, p. 1761 (March 14, 1878); 6 Cranch 87 (1810); 15 Wallace 498 (1872); 15 Wallace 519 (1872).

¹¹⁷Congressional Record, 44th Congress, 2nd Session, pp. 1380-1 (February 9, 1877); *ibid.*, 45th Congress, 2nd Session, p. 1764 (March 14, 1878), p. 2200 (April 2, 1878), pp. 2259-61, 2270-1 (April 4, 1878), p. 2341 (April 8, 1878).

¹¹⁸*Ibid.*, pp. 2056-66 (March 27, 1878), p. 2274 (April 4, 1878), p. 2372 (April 9, 1878).

¹¹⁹*Ibid.*, 44th Congress, 1st Session, pp. 4453-4 (July 7, 1876); *ibid.*, 44th Congress, 2nd Session, p. 1312 (February 7, 1877), pp. 1627, 1637 (February 16, 1877), *ibid.*, 45th Congress, 2nd Session, pp. 2232, 2235 (April 3, 1878), pp. 2328-31 (April 8, 1878), p. 2370 (April 9, 1878), pp. 2784-5 (April 24, 1878).

¹²⁰*Ibid.*, p. 1763 (March 14, 1878), p. 2236 (April 1878); U.S. Senate, Senate Report No. 111, 45th Congress, 2nd Session.

¹²¹Congressional Record, 44th Congress, 2nd Session, p. 1635 (February 16, 1877); *ibid.*, 45th Congress, 2nd Session, pp. 2334-5 (April 8, 1878).

¹²²*Ibid.*, p. 1693 (March 12, 1878); pp. 2023-7 (March 26, 1878); pp. 2137-47 (April 1, 1878).

¹²³*Ibid.*, p. 1830 (March 18, 1878); *ibid.*, 44th Congress, 1st Session, p. 4455 (July 7, 1876); *ibid.*, 44th Congress, 2nd Session, pp. 1383-4 (February 9, 1877).

¹²⁴*Ibid.*, pp. 1101-2 (January 30, 1877), p. 1133 (January 31, 1877); *ibid.*, 45th Congress, 2nd Session, p. 1905 (March 20, 1878), p. 2234 (April 3, 1878), pp. 2271-2 (April 4, 1878), pp. 2301-3 (April 5, 1878), p. 2782 (April 24, 1878).

¹²⁵Ibid., p. 1689, 1692 (March 12, 1878); *ibid.*, 44th Congress, 1st Session, p. 3657 (June 7, 1876), p. 4433 (July 6, 1876), p. 4453 (July 7, 1876), p. 4514 (July 12, 1876); *ibid.*, 44th Congress, 2nd Session, p. 1137 (January 31, 1877); U.S. Senate, 44th Congress, 1st Session, Report No. 459; U.S. Senate 45th Congress, 2nd Session, Reports No. 111 and 125; U.S. House, 44th Congress, 1st Session, Report No. 440 (Serial 1709); U.S. House, 44th Congress, 1st Session, House Miscellaneous Document No. 132 (Serial 1702).

¹²⁶Congressional Record, 44th Congress, 1st Session, appendix, pp. 214-5; *ibid.*, p. 4454 (July 7, 1876); *ibid.*, 45th Congress, 2nd Session, pp. 2022-3 (March 26, 1878), p. 2782 (April 24, 1878).

¹²⁷*Ibid.*, p. 2224 (April 3, 1878), pp. 2338-40 (April 8, 1878), p. 2782 (April 24, 1878); *ibid.*, 44th Congress, 2nd Session, p. 1556 (February 14, 1877); Tomlinson v. Jessup, 15 Wallace 458 (1872).

¹²⁸Congressional Record, 44th Congress, 2nd Session, p. 1388 (February 9, 1877); *ibid.*, 45th Congress, 2nd Session, pp. 1966-9 (March 22, 1878), pp. 2102-4 (March 28, 1878).

¹²⁹*Ibid.*, pp. 2331-2 (April 8, 1878), p. 2382 (April 9, 1878).

¹³⁰*Ibid.*, pp. 2366, 2374, 2383 (April 9, 1878).

¹³¹*Ibid.*, pp. 2337, 2378 (April 8-9, 1878).

¹³²*Ibid.*, p. 2362 (April 9, 1878).

¹³³*Ibid.*, pp. 2383-4 (April 9, 1878), p. 2790 (April 24, 1878), p. 3257 (May 8, 1878).

¹³⁴Mergers were explicitly allowed by the UP's charter. Congressional Globe, 37th Congress, 2nd Session, appendix, Laws of the United States, Chapter CXX, Section 16, p. 384.

¹³⁵The Sinking Fund Cases were two cases: the UP's Union Pacific Railroad Co., v. United States and Central Pacific Railroad Co. v. Gallatin. Only the former is discussed here. 99 U.S. 700 (1878) Transcript of the Record, pp. 1-7.

¹³⁶*Ibid.*, Brief for the United States, 10-24.

¹³⁷*Ibid.*, Brief for the Union Pacific; Fletcher v.

Peck, 6 Cranch 87 (1810); Hepburn v. Griswold, 8 Wallace 603 (1870); Legal Tender Cases, 12 Wallace 457 (1871); Pumpelly v. Green Bay Co., 13 Wallace 166 (1872).

¹³⁸99 U.S. 700 (1878), 700-27.

¹³⁹*Ibid.*, pp. 732-43.

¹⁴⁰*Ibid.*, pp. 745-9.

¹⁴¹*Ibid.*, pp. 750-66; McCurdy, "Justice Field."

¹⁴²Grodinsky, Gould: His Business Career, pp. 158-61, 419-22; Klein, "Search," Edward Chase Kirkland, Charles Francis Adams, Jr., 1835-1915, (Cambridge, Mass.: 1965), pp. 89-91.

¹⁴³*Ibid.*, pp. 118-26.

BIBLIOGRAPHY

Primary Sources

Thorndike, Rachel Sherman, ed. The Sherman Letters.
1894 reprinted New York, 1969.

United States Government:

Congressional Record (Congressional Globe before
1874).

House Miscellaneous Documents

House Reports

Senate Executive Documents

Senate Miscellaneous Documents

Senate Reports

United States Reports

United States Supreme Court Transcript of Record

Secondary Sources

Adams, Charles Francis, Jr. "Railroad Inflation." North
American Review, 108 (January 1869), pp. 130-164.

Ames, Charles Edgar. Pioneering the Union Pacific. New
York, 1969.

Athearn, Robert G. Union Pacific Country. 1971 reprinted
Lincoln, 1976.

Davis, John P. The Union Pacific Railway: A Study in
Railway Politics, History, and Economics. Chicago,
1894.

Farnham, Wallace D. "The Pacific Railroad Act of 1862."
Nebraska History, 43 (1962), pp. 141-65.

----- . "The Weakened Spring of Government." The
American Historical Review, LXVII (April 1963), pp.
662-80.

----- . "Grenville Dodge and the Union Pacific:
A Study of Historical Legends." Journal of Ameri-
can History, 51 (1965), pp. 632-47.

Fogel, Robert William. The Union Pacific Railroad: A Case
in Premature Enterprise. Baltimore, 1960.

- Goodrich, Carter. Government Promotion of American Canals and Railroads, 1800-1890. 1960 reprinted Westport, Conn., 1974.
- Green, Fletcher M. "Origins of Credit Mobilier of America." Mississippi Valley Historical Review, XLVI (1959), pp. 238-51.
- Grodinsky, Julius. Jay Gould: His Business Career, 1867-1892. Philadelphia, 1957.
- . Transcontinental Railway Strategy, 1869-1893. Philadelphia, 1962.
- Hirshson, Stanley P. Grenville M. Dodge. Bloomington, 1967.
- Hyman, Harold. A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution. 1973 reprinted Boston, 1975.
- Johnson, Arthur M. and Supple, Barry E. Boston Capitalists and Western Railroads: A Study in the Nineteenth Century Investment Process. Cambridge, Mass., 1965.
- Kirkland, Edward C. Charles Francis Adams, Jr. Cambridge, Mass., 1965.
- Klein, Maury. "In Search of Jay Gould." Business History Review LII (Summer 1978), pp. 166-95.
- McCague, James. Moquls and Iron Men. New York, 1964.
- McCurdy, Charles W. "Justice Field and the Jurisprudence of Government-Business Relations: Some Parameters of Laissez-Faire Constitutionalism, 1863-1897." Journal of American History, LXI (March 1975), pp. 970-1003.
- Pacific Railroad Legislation. New York, 1885.
- Poor, Henry V. "The Pacific Railroad." North American Review, 128 (January 1879), pp. 664-80.
- Riegel, Robert Edgar. The Story of the Western Railroads. New York, 1926.
- Rothman, David J. Politics and Power: United States Senate, 1860-1901.
- Trottman, Nelson. History of the Union Pacific: A Financial and Economic Survey. New York, 1923.