

THE UNION PACIFIC RAILWAY.

I.

Though the powers and obligations of the Union Pacific Railway Company, and to some extent of the other railway companies owning or operating the several lines embraced in the "Pacific Railway," were defined in the Acts of 1862 and 1864 and subsequent acts, the nature and significance of the complicated questions that arose later out of their relations to the government and people of the United States can hardly be appreciated without a consideration of the historical facts that brought them into existence. Those facts were of three classes and concerned (*a*) the relation of the federal government to the Pacific Railway, (*b*) the geographical location of its lines and termini and (*c*) the legal medium through which it should be built, maintained and operated.

(*a*) From 1832, when it was first proposed to unite the Pacific Coast to the territory east of the Mississippi by railway, to 1862, when the first act was passed for that purpose, the public importance of the project was never questioned. The constitutional power of the federal government to build the railway or to grant aid for the purpose might be denied by strict constructionists, and the likelihood that the several states and territories or private capitalists would do the work on their own initiative might be asserted, but the importance of the railway to the United States as a factor in its national life was never denied. The need of closer communication between the eastern United States and eastern Asia was often urged. The Oregon question was an open one until 1846, and the United States might need to transport an army to the disputed territory more quickly than it could be done by water. The great expanse of public lands could hardly be sold to advantage by the government or settled by

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emigrants until railway lines had been built westward from the Mississippi. The hostile tribes of western Indians could be kept in subjection more satisfactorily, if the government had railways to hurry its troops and munitions of war across the plains. The "Mormon Rebellion" showed the same military need. When California had been acquired from Mexico and had rapidly attained a large population and statehood, railway communication with the East was almost imperatively demanded. If any doubt of the public necessity of the Pacific Railway remained, it vanished when the Civil War brought danger of national disruption and suspicion that England meditated seizure of California.

(*b*) When the territory of the United States on the Pacific Coast extended southward only to the southern boundary of Oregon, there was no question that the mouth of the Columbia River or some point on Puget Sound would be the proper western terminus of a Pacific railway, but when California had been acquired from Mexico and admitted to the Union, San Francisco was conceded to be the best point for the terminus. At the east the question was not so simple. The northern route (now used by the Northern Pacific and Great Northern) was the most practicable, but had little political influence in its favor. The central route (now used by the Union Pacific and Central Pacific) was less practicable, but had the most political strength. The southern route (now used by the Southern Pacific and Texas & Pacific) had the support of the central Southern States, but the strict construction tendencies of the South were against it. Before the Civil War, no system of lines that did not consult the particular interests of all sections and centres from Lake Michigan to the Gulf of Mexico could be decided on by Congress; on the other hand, any such system would be so elaborate that members from the Eastern States would not vote for it. With the outbreak of the war and the secession of the Southern States, the rivalry of the southern route was canceled, while part of the members in favor of the northern

route were satisfied with a branch line. As a result the central route was chosen, though there remained several localities to be satisfied.

(c) Although there had been propositions before 1850 for the building and operation of the Pacific Railway by the United States through its governmental machinery, its own experience in building public roads and promoting other internal improvements, and the experience of the several states in constructing and operating canals and railways and conducting banks had been so unfortunate, that this work was sure to be left in private hands. Moreover, the war was threatening to tax the strength of the government so severely, that statesmen were glad to be relieved of the additional burden of building and operating more than two thousand miles of railway. The use of a federal corporation for the purpose, however, was a comparatively late idea, hardly advanced before 1855. It had been expected that individuals or state or territorial corporations would do the work. Some parts of the railway would have to be in states, though most of it in territories. The constitutional power of Congress to create a corporation for building a railway within a state was doubted, and the jealousy of the states hardly conceded to the national government even the power to create a corporation to act in the territories. The Civil War had its effect on this question also; the increased activity of the federal government necessitated by it, united with the removal from Congress of its state rights and strict construction members, made many things possible, and among them doubtless the incorporation of the Union Pacific Railroad Company.

II.

Such were the conditions under which the Act of July 1, 1862, "to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal,

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military and other purposes,"* and the amendatory Act of July 2, 1864,† received the approval of President Lincoln. As little was actually accomplished under the first act save organization and preparation, the provisions of the two acts may be considered together.

They contemplated the construction of a main line from an initial point "on the one hundredth meridian of [west] longitude . . . between the south margin of the Valley of the Republican and the north margin of the Valley of the Platte River, in the Territory of Nebraska" to "the Pacific coast, at or near San Francisco, or the navigable waters of the Sacramento River."‡ From the initial point two branches were to extend to Omaha§ and Kansas City;|| a branch was to extend to Sioux City from the initial point or some point on the Omaha branch, "whenever there [should] be a line of railroad completed through Minnesota or Iowa to Sioux City;" from St. Joseph a sub-branch was to be constructed either by way of Atchison to a connection with the Kansas City branch, or northwesterly to a connection with the Omaha branch; a sub-branch was also to connect Leavenworth with the Kansas City branch. By the Act of 1864, a branch to connect the terminus of the Burlington and Missouri River Railroad near the mouth of the Platte River

* 12 Statutes, 489. All federal laws relating to the Pacific Railway may be conveniently found printed as appendices to the annual reports of the Commissioner of Railroads to the Secretary of the Interior.

† 13 Statutes, 356.

‡ It was provided by the Act of July 3, 1866 (14 Statutes, 79), however, "that the Union Pacific Railroad Company . . . are hereby authorized to locate, construct, and continue their road from Omaha. . . westward . . . without reference to the initial point on the one hundredth meridian of west longitude . . . until they shall meet and connect with the Central Pacific Railroad Company."

§ "A point on the western boundary of the State of Iowa, to be fixed by the President of the United States."—Act of July 1, 1862, Section XIV.

|| "At the mouth of the Kansas River, on the south side thereof, so as to connect with the Pacific Railroad of Missouri."—Act of July 1, 1862, Section LX. This branch was intended to afford a connection for St. Louis and the lower Mississippi valley, rather than for Kansas City, as the latter was of no importance at that time.

with some point on the Union Pacific line between Omaha and the initial point was provided for.

For the construction of the main line from the initial point westward to the Nevada-California boundary and of the Omaha branch, the Union Pacific Railroad Company was incorporated; though by the Act of 1862 required to construct the Sioux City branch, it was relieved by the Act of 1864, the duty being transferred to such company as at its own request should be approved by the President of the United States. The part of the main line in California was to be constructed by the Central Pacific Railroad Company (a California corporation); the Kansas City and Leavenworth branches, by the Leavenworth, Pawnee & Western Railroad Company (a Kansas corporation); * the St. Joseph (or Atchison) branch by the Hannibal & St. Joseph Railroad Company (a Missouri corporation); the Platte River branch, by the Burlington & Missouri River Railroad Company (an Iowa corporation). If either the Union Pacific Railroad Company, Central Pacific Railroad Company, or Leavenworth, Pawnee & Western Railroad Company should finish its lines before either of the others, it might proceed until the lines should meet, or until all the lines should be completed. All the lines were to be of uniform width and to be operated "as one connected, continuous line." Any two or more of the companies named in the act were permitted to consolidate themselves into one company. The Union Pacific Railroad Company was to have a capital stock of one hundred million dollars, which should not be increased beyond the actual cost of its lines; its board of directors was to consist of fifteen directors elected annually by the stockholders, and five government directors appointed by the President of the United States, at least one of whom was to be a member of each standing and special committee; the

* By the Act of 1864 the name of this company was changed to the Union Pacific Railway Company, Eastern Division. By a joint resolution of March 3, 1869 (15 Statutes, 348) it was permitted to again change its name to the "Kansas Pacific Railway Company."

officers were to be a president, vice-president, secretary and treasurer, elected by the board of directors. Annual reports to the Secretary of the Treasury (afterward to the Secretary of the Interior) were required of all the companies participating in the construction of the Pacific Railway.

As aid to the undertaking the United States granted to the several companies a right of way through the public lands four hundred feet wide, the right to take material for construction from adjacent public land, and twenty sections of public land for each mile of railway constructed, excepting coal and mineral lands and lands already pre-empted or otherwise disposed of.* Further, as rapidly as the lines should be completed in sections of twenty miles, the government should issue to the companies bonds of the United States to run thirty years with interest of 6 per cent to the extent of \$16,000 for each mile east of the eastern base of the Rocky Mountains and west of the western base of the Sierra Nevada, \$48,000 for each of the one hundred and fifty miles west of the eastern base of the Rocky Mountains and one hundred and fifty miles east of the western base of the Sierra Nevada, and \$32,000 for each mile intervening between the two mountain sections of one hundred and fifty miles, the total issue of bonds for the main line not to exceed \$50,000,000; no bonds were to be issued, however, in aid of the construction of the Leavenworth branch, or of the Platte River branch, and the St. Joseph (or Atchison) branch was to be subsidized only to the extent of one hundred miles of its line. As security for the repayment of the bonds at their maturity, the United States, according to the Act of 1862, retained a first lien on the subsidized lines; but by the Act of 1864 the lien was subordinated to a first mortgage for an equal amount. At least 5 per cent of the net earnings of each bond-aided company should be annually applied to the

*The grant of land had been only ten sections per mile in the Act of 1862: the grant was doubled in 1864. Compare Section III of Act of 1862 and Section IV of Act of 1864.

extinguishment of its debt to the United States and one-half (by the Act of 1862, all) the compensation for services rendered to the government should be likewise applied. The companies should at all times when required transmit dispatches and transport mails, troops, munitions of war and supplies for the government at a reasonable compensation; and the government should at all times be preferred to private persons in the rendition of such services.

III.

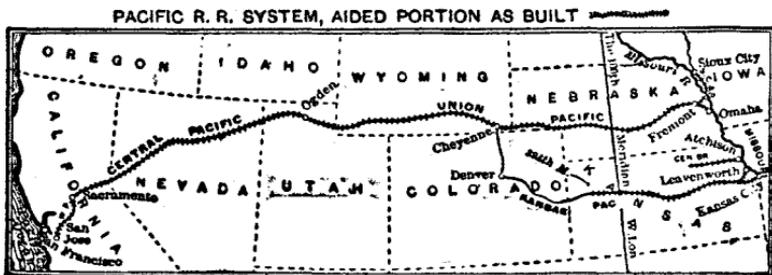
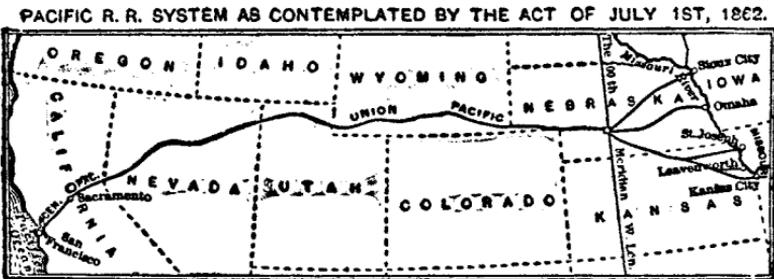
There is little of present interest in the actual construction of the Pacific Railway. In many respects it remains the greatest work of railway building that the history of railways affords. The completion of the main line in May, 1869, was appropriately celebrated as a national achievement in all the large cities in the country. The "Chinese question" is said to have had its origin in the release, on the completion of the work, of the ten thousand coolies imported for the express purpose of working on the Central Pacific Railway. But three phases of the work are of present importance: (*a*) the system of lines actually constructed, as compared with that originally designed by Congress; (*b*) the instrumentality through which the lines were constructed, of which the *Credit Mobilier* was the type; and (*c*) the excessive capitalization due to the conditions under which the work was done.

(*a*) The main line from Omaha to Sacramento was constructed substantially as designed, though it had been generally expected that it would pass south instead of north of Great Salt Lake, and though Omaha was made the eastern terminus in preference to the mouth of the Platte River, the natural terminus, because the promoters of the Union Pacific were interested in real estate in Omaha and its vicinity. From Sacramento westward on the way to San Francisco, the Western Pacific extended the main line as far as San José. The Kansas Pacific, instead of forming an eastern branch of the main line, was extended almost due

west from Kansas City to Denver, and only technically complied with the law by making a connection with the Union Pacific at Cheyenne by the Denver Pacific. The Sioux City branch was constructed by the Sioux City & Pacific Railroad Company, and made connection with the Union Pacific at Fremont. The Central Branch Union Pacific—the so-called Atchison branch—never reached either the Kansas Pacific or Union Pacific, though it extended far enough to get its subsidy for one hundred miles. The unsubsidized Leavenworth and Platte River branches were constructed as designed. In general, however, the Pacific Railway, when completed, was far from being the system of lines originally intended by Congress.*

(b) The Credit Mobilier was merely one of the "construction companies" with which students of railway questions

*The two following maps, taken from the Reports of the Pacific Railway Commission of 1887 (Senate Executive Documents, 50th Congress, 1st Session, No. 51), show the difference between the system as contemplated and as constructed.



are familiar. Undue importance has been attached to it, because its stock happened to serve as the basis of a political scandal. Instead of paying directly for the construction of the Union Pacific lines, the stockholders of the company formed a separate corporation for the purpose, and by employing it to perform the work, thus virtually hired themselves to construct their own railway. Quarrels between factions in the two corporations led to the delegation of all the powers of both to seven prominent stockholders as trustees. All the securities of the Union Pacific Railroad Company, government subsidy bonds, first mortgage bonds, land grant bonds, income bonds and stock, were then turned over to the seven trustees to pay for railway construction, and distributed, either directly or in the form of proceeds of their sale, to the stockholders. It was assumed that the profits of the venture must come from the bounty offered by the United States; the future success of the Union Pacific as a business enterprise was problematical; the profits of the enterprise had to come from the construction of the railway rather than from its future operation; the Credit Mobilier was the means adopted by those in control of the Union Pacific to ensure to themselves the profits of construction. Similar construction companies were used on nearly all parts of the Pacific Railway, and particularly by the Central Pacific Railroad Company; in fact, they were in general use in the promotion of railway enterprises in the United States until after 1880.

In the long session of the Fortieth Congress, in December, 1867, and January, 1868, when considerable hostility was manifested toward the Union Pacific Railroad Company, and adverse legislation was threatened, Oakes Ames, who was a member of Congress and the principal promoter of the interests of the Union Pacific Railroad Company and its *alter ego*, the Credit Mobilier, sought to strengthen their standing in Congress by selling Credit Mobilier stock to Congressmen and Senators. The stock was not actually transferred, but,

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being already held by Oakes Ames as trustee, remained in his hands, the dividends being paid over by him to the Congressmen and Senators for whom he held the stock. Though the dividends were very large, the stock was sold at par, and a few dividends sufficed to pay the par value of the stock and leave a clear balance for the stockholder,—which was paid over by Ames. Most of the stock was not paid for, except by accruing dividends. Through some litigation in Philadelphia, brought on by the disagreement of Oakes Ames and Henry S. McComb over some Credit Mobilier stock, the disposition of the stock in Washington was given publicity in September, 1872, and created probably the greatest political scandal in the history of the country. After a long investigation by the Poland Committee,* appointed early in the next session of Congress, and a report that hardly did justice to the subject, Oakes Ames and James Brooks were expelled from their seats in the House. It is a fair conclusion from all the facts that the extreme measure of expulsion was not justified. But Congress did not rest. Acting on the theory that the United States had been defrauded in the manipulation of Union Pacific property and the government subsidy through the Credit Mobilier mechanism,† it ordered an action in equity to be brought against numerous defendants,‡ stockholders in the Union Pacific and Credit Mobilier and others, for the recovery of property wrongfully gotten,—but the action was a dismal failure, and was dismissed.§

(c) Under the conditions existing at the time, the construction of the Union Pacific (as well as the other parts of the Pacific Railway) was extremely expensive. The race of the Union Pacific and Central Pacific to their place of meeting at Promontory Point was at a great cost. From

* See Report of Poland Committee on Credit Mobilier Investigation, House of Representatives Reports, 42d Congress, 3d Session, No. 77.

† See Report of Wilson Committee on Affairs of Union Pacific Railroad Company, House of Representatives Reports, 42d Congress, 3d Session, No. 78.

‡ Act of March 3, 1873, Section IV, 17 Statutes, 508.

§ The United States vs. The Union Pacific Railroad Company, 98 U. S. R. 569.

1864 to 1869 labor and material were extremely dear. The government bonds received by the companies and their own bonds had to be sold at a discount. The Union Pacific had no eastern railway connection until 1867, and its material and supplies had to be hauled overland from Des Moines or brought to Omaha on Missouri River boats. The Credit Mobilier made a profit of from \$6,000,000 to \$20,000,000 on an expenditure estimated at from \$50,000,000 to \$70,000,000. The management of the entire work was characterized by extreme waste and extravagance. When completed, the Union Pacific was liable for \$27,000,000 of first mortgage bonds, \$27,000,000 of government bonds, \$10,000,000 of income bonds, \$10,000,000 of land-grant bonds, and \$36,000,000 of stock—a total of \$110,000,000, easily four times what the construction of the line would cost now.

IV.

The main line from Omaha to Sacramento had hardly been put in operation over its entire length when the "interest question" arose. The interest on the government bonds was payable semi-annually, and the government claimed that its payments of current interest ought to be presently reimbursed by the companies. The 5 per cent of net earnings and half-compensation for government services reserved by the United States in the Act of 1864,* proved to be much less than the current interest, and the subsidy debt threatened to increase rapidly. It was finally decided by the Supreme Court † that the companies were under no obligation to presently reimburse the current interest, except to the extent of the 5 per cent of net earnings and half-compensation for government services. But what were the net earnings? The companies insisted on determining them by deducting from the gross earnings interest on bonded indebtedness, expenses of land grant, cost of improvements and new

* See page 52, *supra*.

† *United States vs. Union Pacific Railroad Company*, 91 U. S. R. 72.

equipment, and the government's half-compensation,—all items that the government insisted were part of the net earnings. The Supreme Court in due time decided that the net earnings should be determined by deducting from the gross earnings all the ordinary expenses of organization and operation, and expenditures made *bona fide* in improvements (and paid out of the earnings, not by issue of bonds or stock),—but not by deducting interest on bonds or the half-compensation of the government.*

The decision of the Supreme Court on the "interest question" and the attitude of the companies on the question of net earnings, together with the distribution of revenue in dividends, created such consternation that the Thurman Act was passed in 1878. It provided for a sinking fund for the Union Pacific and Central Pacific companies, into which should be paid each year the half-compensation for government services formerly payable to the companies, and such additional sum as, added to the whole compensation for government services and 5 per cent of the net earnings, would make them equal to 25 per cent of the net earnings, except that such additional sum should not exceed annually \$850,000 for the Union Pacific, and \$1,200,000 for the Central Pacific; the half-compensation originally reserved by the United States was still to be applied directly to the liquidation of current interest. The sinking fund was to be in charge of the Secretary of the Treasury, and by him invested in United States bonds, the semi-annual interest on which was to be likewise invested. The sinking fund was to be held for the benefit of all creditors of the two companies. The net earnings should be determined by deducting from the gross earnings the necessary expenses of operation and repairs, and interest on first-mortgage bonds, but not the interest on other indebtedness. All sums due to the United States or payable into the sinking fund should be a lien on all the property of the companies, and no dividends should

* *Union Pacific Railroad Company vs. United States*, 99 U. S. R. 402.

be paid as long as they and the interest on the first-mortgage bonds should remain unpaid.* The sinking fund feature of the act was sustained as constitutional by the Supreme Court in the fall of 1878.†

In operation, however, the Thurman Act has not had the results hoped for. The maximum payments into the sinking fund have not been attained, because of low net earnings due to competition, commercial depressions and other causes. Some of the fund had to be invested in bonds commanding a high premium, and much of it had to lie uninvested. Though afterward provided that it might be invested in the first mortgage bonds of the companies, the accumulation of unliquidated current interest has steadily increased since 1878.

V.

In 1880, the Union Pacific, Kansas Pacific and Denver Pacific Companies were consolidated under the name of the Union Pacific Railway Company. Then by reason of the competition of new lines of railway west of the Missouri River, the policy of building branch lines and absorbing other lines was followed until, in 1893, the Union Pacific system contained 8167 miles, of which only 1823 miles were owned directly by the Union Pacific Railway Company, the remaining 6344 miles being controlled through ownership of stock, leases, contracts and a variety of other relations. Since the lines were placed in the hands of receivers (in October, 1893), 3113 miles have been removed from the control of the Union Pacific, leaving 5054 ‡ miles in the system. Nearly all the branch mileage was constructed in the same general manner as the original lines; the proceeds from the sale of bonds nearly sufficed to build them, while their stock was held

* Act of May 7, 1878, 20 Statutes, 56. Compare the statutory definition of net earnings with that of the Supreme Court given above. The "net-earnings case" was decided in the October (1878) term of the Supreme Court.

† Sinking Fund Cases, *Union Pacific Railroad Company vs. United States*, and *Central Pacific Railroad Company vs. Gallatin*, 99 U.S. R. 72.

‡ Of this mileage, 476 miles are not operated by the Union Pacific, but are operated independently or by some other company.

largely for the purpose of controlling them. While they were very highly necessary to the main lines, they were usually constructed or acquired and operated on such terms as to impose financial burdens out of proportion to their importance. The Union Pacific has also been the prey of rings of unusual number and rapacity; as examples may be mentioned construction rings, town-site rings, land rings, smelting-works rings, stock-yards rings, coal rings, car rings and stock-speculating rings. For a few years prior to 1893 the company enjoyed a surplus of earnings as follows: 1889, \$2,492,440.57; 1890, \$1,886,692.22; 1891, \$1,910,390.34; 1892, \$2,649,518.07. The disastrous year 1893, however, resulted in a deficit of \$432,451.68. When default in interest obligations became inevitable, the property of the company was placed in the hands of receivers in October, 1893, on the application of holders of first mortgage bonds. Since that time several parts of the system, as the Kansas Pacific, the Union Pacific, Denver and Gulf, and the Oregon Railway and Navigation Lines, have been placed in the hands of separate receivers, some to be operated as a part of the system, but others separately. The deficit for the year ending June 30, 1894, was \$6,503,004.66; for the year following, \$1,907,054.82.

The Central Pacific assigned its right to build from Sacramento to San José to the Western Pacific; the latter having extended its line to San Francisco by absorbing another line thither from San José, was consolidated (along with other lines) with the Central Pacific under the name of the Central Pacific Railroad Company. In 1885, when many other lines had passed under its control, the whole system was divided into two parts, those north of Goshen (California) being given to the Central Pacific, and those south of Goshen to the Southern Pacific; then both systems were leased to the Southern Pacific Company, and have since so remained.

The Central Branch Union Pacific became a part of the Union Pacific system in the consolidation of 1880, but was

then leased by it to the Missouri Pacific, by which it has since been operated.

The Sioux City and Pacific line was leased in 1884 to the Chicago and Northwestern, of which it has since been hardly more than a local branch.

The lines other than those of the Union Pacific have been kept from bankruptcy largely by being parts of systems able to discharge interest payments as they have fallen due. The debts due to the United States, however, have steadily increased in every case; their amounts on February 1, 1896, are given in Table A, page 62.

Part of the subsidy bonds have already matured, and the balance will mature by January 1, 1899.*

VI.

Under such conditions Congress is called upon to decide what shall be done. How may a part or all of the debts of the Pacific railway companies to the United States be best collected without doing injustice to the companies or general public? Three plans have been proposed:—(1) The realization of as much as possible of the debts at once and the entire severance for the future of the peculiar relations of the

* The amounts of subsidy bonds maturing each year, for each company, are as follows:

	1895.	January 1, 1896.	January 1, 1897.	January 1, 1898.	January 1, 1899.	Total.
Union Pacific		\$4,320,000	\$3,840,000	\$15,919,512	\$3,157,000	\$27,236,512
Nov. 1.						
Kansas Pacific	\$640,000	1,440,000	2,800,000	1,423,000		6,303,000
Central Branch Union Pacific		640,000	640,000	320,000		1,600,000
Sioux City and Pacific				1,628,320		1,628,320
Jan. 16.						
Central Pacific	\$2,362,000	1,600,000	2,112,000	10,614,120	9,197,000	25,885,120
Western Pacific			320,000		1,650,560	1,970,560
Total	\$3,002,000	\$8,000,000	\$9,712,000	\$29,904,952	\$14,004,560	\$64,623,512

The amount that has already matured (\$11,002,000) has been paid by the United States.

TABLE A.

	Principal of United States Subsidy Bonds.	Interest on United States Bonds, Payable or Paid.	Interest Repaid by Companies.		Balance of Interest Payable or Paid by U. S.	Amount in Sinking Fund.	Balance of Principal and Interest Due from Companies.
			By Services.	By Cash, Five Per Cent of Net Earnings.			
Union Pacific	\$27,236,512.00	\$45,521,416.97	\$15,138,427.66	\$438,409.58	\$9,944,579.73	\$15,347,929.82	\$41,833,161.91
Kansas Pacific	6,303,000.00	10,871,438.44	4,433,673.40	. . . . .	6,437,765.04	. . . . .	12,740,765.04
Cent'l Br'ch Union Pacific	1,600,000.00	2,754,608.26	631,892.39	6,926.91	2,115,788.96	. . . . .	3,715,788.96
Central Pacific	25,885,120.00	42,840,115.24	7,506,065.29	658,283.26	34,675,766.69	6,262,102.16	54,298,784.53
Western Pacific	1,970,560.00	3,156,021.74	9,367.00	. . . . .	3,146,654.74	. . . . .	5,117,214.74
Sioux City and Pacific	1,628,320.00	2,693,679.09	238,793.95	. . . . .	2,454,885.14	. . . . .	4,083,205.14
Total	\$64,623,512.00	\$107,837,279.74	\$27,958,219.69	\$1,103,619.75	\$78,775,440.30	\$21,610,031.98	\$121,788,920.32

In the statement of the public debt, February 1, 1896, the amounts detailed in the official statement have been rearranged and condensed for the present purpose. It ought to be added in this connection that the Central Pacific Railroad Company maintains a sinking fund for the redemption of its first mortgage bonds superior to the lien of the United States bonds; and the Union Pacific Railway Company, a sinking fund for the redemption of Kansas Pacific first mortgage bonds; at the end of the year 1893, the former amounted to \$5,664,515.67; the latter to \$1,343,000.00.

government to the bond-aided Pacific railways; (2) the extension of the time for the payment of the companies' debts, and the virtual maintenance of the present relations of the government to them with the expectation of realizing in the future all or a larger percentage of its claims; (3) the assumption by the United States of the burden of owning and operating the railways.

1. In favor of the first plan it must be conceded that the relations of the debtor companies and creditor government have been unsatisfactory in the extreme. If by any reasonable means they may be terminated, it would be better for both sides. The matter of expense is in itself one of importance. The maintenance and use of the governmental machinery necessary for the control of the companies, have been very burdensome to the United States. Congress has spent months of valuable time in passing or attempting to pass Pacific Railway laws. Both the Senate and House of Representatives have maintained for forty years special or standing "Committees on Pacific Railroads," most of whose time and attention have been devoted to the bond-aided lines. The energies of the Attorney-General's Department have been taxed by the never-ending litigation with the companies. As an item in that connection, the Attorney-General asked in 1894 for the appropriation by Congress of \$30,000, to enable him, during the year 1895, "to represent and protect the interests of the United States in matters and suits affecting the Pacific railroads." From time to time expensive investigations have been made, such as those of the Credit Mobilier Committees and of the Pacific Railway Commission of 1887, the latter occupying nearly a year's time, and necessarily holding sessions in many of the large cities from New York to San Francisco. No small part of the work of the Commissioner of Railroads and his bureau, maintained at an annual expense of from \$12,000 to \$15,000, is occasioned by questions relating to the bond-aided lines. Even the expense of printing the mass of Pacific Railway

literature that the government has issued, must have been a formidable item. If there were trustworthy means of computing the expense to the government of maintaining, supervising and controlling its relations to the Pacific railway companies during the past thirty-five years, it would be found to amount to hundreds of thousands of dollars. Nor has the government alone found such relations expensive to maintain; the companies, too, have had to maintain an army of lawyers and lobbyists, even if sometimes employed for purposes other than that of legitimate self-protection. The unusual dangers of "hostile legislation" have imposed upon the companies the necessity of a more extensive use of questionable political influence than ordinary railway companies have needed.

But aside from the mere matter of expense, which ought not to be given too much weight, it is hardly possible that the dealings of the government and companies will ever be agreeable as long as their present relations continue. As long as a large debt is due from them to the United States, Congress will feel justified in interfering and investigating, and no comprehensive policy of management of the companies' business will be possible; the companies will retaliate by the undue use of political influence and by failure to perform their duties. The conflict of interests is so sharp that dispassionate discussion of Pacific Railway bills has become an impossibility in Congress. The debate on the Reilly Bill in the last Congress was acrimonious and bitter; the essential features of the questions involved were lost sight of, and the importance of punishing those who have plundered the Pacific railways in the past was unduly magnified. It is not surprising that such should be the case. It is difficult enough for the government to maintain just relations between railway corporations and the public; it is made more difficult if the existence of a very large debt keeps alive the suspicion that every act of the corporations is intended for the purpose of evading its payment.

Many are disposed to take what they call a "business view" of the matter. They admit that grave mistakes have been made by the government, that perhaps the legislation of 1862 and 1864 was imprudent in a few or many particulars, that the results have been highly unsatisfactory in most respects, but that it is all now past remedy; they conclude that there is involved only the simple business question of handling an insolvent debtor whose dealings have not been fully honorable. Obviously, the best way to treat such a case is by getting as much as possible from the debtor and resolving to have nothing more to do with him. If it be suggested that the question is not simply one of business, but rather a political question involving the just treatment of large classes of citizens by a corporation upon which extensive powers have been bestowed for the accomplishment of public purposes, the answer is that such questions must be treated separately through the Interstate Commerce Commission or some other such agency.

There is much force in the argument that the presence of corporations sustaining peculiar relations to the government, such as those of the Pacific Railway companies, interferes with the solution of the general problem of finding the right place for railway corporations in the "social organism" and keeping them in it. The general problem would certainly be simplified if the powers and duties of railway companies were more nearly alike. In Michigan the legislature is perplexed with the question of equality of taxation where some railway companies enjoy, by charter, exemption from taxation except to the extent of a fixed percentage of their income.

The Interstate Commerce Commission has found it difficult to define a just rate when competing lines are capitalized and bonded in widely different proportions to their actual value or cost of construction. So the untenable distinction seems to be often made that the Pacific railways must be maintained for a special national purpose, while their competitors may

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be safely entrusted to the ordinary desire of their promoters to invest capital profitably.*

The construction of the Pacific railways was demanded by what was considered a national exigency in 1862 and 1864, and under the circumstances the aid by the issuance of bonds was largely justified. No such exigency exists now and there is no reason why the government should make any distinction in its relations to the several transcontinental lines. If, when the Atchison, Topeka and Santa Fé system was in the hands of receivers, the Government of the United States was not called upon to "rehabilitate" it, why should it be called upon, under similar circumstances, to "rehabilitate" the Union Pacific system? The Pacific Railway companies are different from their competitors only in the fact that they owe the government certain sums of money, and that difference ought to be eliminated as soon as possible. When the bonds were advanced to the companies, they were expected to be rather a bonus than a loan; if the railways had proved financial failures, the government would have been justified in canceling the debt or by advancing more aid. The lines have actually decreased in value until the government is unable to realize its claim from them; it ought to be possible to determine a sum of money that, all things

*Thus in his letter to the House of Representatives (H. R. Executive Document, No. 203, 53d Congress, 2d session), Attorney-General Olney said: "It may not improperly be added that much more is involved than the exact per cent to be collected upon the government debt. Congress chartered the Union Pacific Railway Company to promote great public ends and to secure great public advantages, and granted it land and subsidies on the express condition that it 'shall at all times transmit dispatches over said telegraph line, and transport mails, troops and munitions of war, supplies, and public stores upon said railroad for the government whenever required to do so by any department thereof, and that the government shall, at all times, have the preference in the use of the same for all the purposes aforesaid at fair and reasonable rates of compensation, not to exceed the amounts paid to [by] private parties for the same kind of service.' Unless it can be said that the objects thus enumerated have ceased to be of public concern and value, or that a corporation like the Union Pacific Railway Company is not needed as an agency for their accomplishment, the rehabilitation of that company, or the substitution of another with like franchises and subject to the like duties, is imperatively demanded on the broad ground of the general welfare."

considered, would represent the difference between the reciprocal services of the United States and the companies; such sum, when paid, would leave the United States without ground for complaint, and would leave the Pacific railways on a level with the other transcontinental lines, just as they ought to be. There is absolutely no ground now for according to the Union Pacific Railway Company (or any other bond-aided company) an exceptional status among the railway companies of the country.

Such a line of reasoning has caused many former advocates of an extension of the time of payment of the companies' debts to the government to favor an absolute and final settlement of them on some fair basis, if any such can be determined. Most significantly, from the standpoint of practical politics, the corporations themselves (or the capitalists desirous of being their successors) though they have heretofore desired an extension of time, are beginning to favor the settlement of the debts on a cash basis; they regard the United States as a meddling and otherwise undesirable creditor, who insists on trying his cases in Congress, while private creditors have to be satisfied with the ordinary procedure of the courts; they remember, too, that bills and resolutions have often been proposed in Congress for the mere purpose of affecting the securities of the companies on the stock exchanges. The advocates of a present settlement, however, are not confined to "interested" parties. The sentiment is so strong among others, it is declared by a most competent authority, that if the Union Pacific Railway Company were to offer to pay in cash at once the principal of its debt (and release to the government the property in the sinking fund) in full settlement of it, Congress would accept the offer and submit to the loss of its claim for unreimbursed interest. As evidence of the change in public opinion, the difference in the annual reports of the government directors of the Union Pacific Railway Company for the years 1894 and 1895 is instructive. The earlier report

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contained an elaborate re-funding and re-organizing scheme by which the present securities, including the present government claim, were to be exchanged for new securities, aggregating \$231,000,000, among which were to be \$150,000,000 of three per cent hundred-year bonds. The later report advocated the foreclosure of the government lien on the Union Pacific and Central Pacific lines, the payment of the prior liens and the sale of the lines to such purchaser as should pay for them an amount equal to the sum of the prior lien and such additional sum as Congress should decide to be the fair value of the government claim. Yet three of the five government directors were the same persons.*

What sum the United States would be likely to realize by pursuing such a course is quite impossible to say. A consideration of that feature of the plan shows some of its greatest weaknesses. The government cannot expect to get more than the difference between the value of the properties and the amounts of the prior liens. But how is the value of the properties to be determined, by capitalizing the income or by estimating the "cost of reproduction?" If the Union Pacific were to be sold in the market, the cost of reproduction would not be considered; the purchaser would investigate its net earnings for a series of past years, calculate the likelihood of the future impairment of its earning power, and bid accordingly. The gross earnings and net earnings for the ten years ending with 1894 were as follows:

* A bill introduced by Senator Frye in August, 1893, provided for a settlement of the debt of the Sioux City and Pacific Railroad Company to be made by the Secretary of the Treasury in his discretion, but with the consent and approval of the President. A similar bill introduced by Senator Gear in January, 1896, sought to accomplish the purpose in the same manner, except that a body of three commissioners were to take the place of the Secretary of the Treasury in the transaction. A bill was introduced by Senator Thurston in December, 1895, for the sale of the claim of the government on the Central Pacific and Union Pacific companies to the highest bidder whose bid shall be in excess of fifty per cent of the amount due to the government, the bidder to thereby succeed to all the rights and remedies in the connection possessed by the United States and to be eventually the corporate successor of the Union Pacific Railway Company and Central Pacific Railroad Company.

	Gross earnings.	Net earnings.
1885	\$17,455,031.51	\$8,404,676.31
1886	17,806,132.59	7,522,707.02
1887	19,546,088.62	9,111,886.85
1888	19,898,816.93	8,119,468.16
1889	19,775,555.84	8,286,679.63
1890	20,438,208.36	7,274,759.06
1891	19,687,738.48	7,846,451.70
1892	20,361,401.66	8,550,268.22
1893	17,376,792.11	6,204,716.81
1894	14,739,436.76	4,315,077.25
Average for ten years	\$18,708,520.29	\$7,563,669.10

On the assumption that the future earning power of the lines will be unimpaired, and that five per cent will be the ruling rate of interest for such investments, they would be worth probably \$150,000,000—much in excess of the first mortgage indebtedness of about \$40,000,000, and the government debt of about \$60,000,000. But the future earning power of the system is entirely problematic; if its dismemberment already begun under the receivership should proceed, it would certainly be greatly impaired. So uncertain is the outlook, that the United States could hardly expect to realize from a forced sale of the property on the market more than one-half its claim. The government, if it desired to obtain the highest possible price, based on the earning power of the lines, would probably consult its own interests by purchasing them and holding them until their future earning power might be more definitely ascertained and until the market might be more favorable than now.

But there is a very serious objection to the use of the speculative value as the basis of a settlement of the government's claim. The Pacific railway companies were not chartered or aided with the mere intention of providing a source of profits for either investors or the United States, as indeed most railway companies are not so chartered or aided; but when the enterprises were left in private hands, the compensation for their benefit to society was left to be

determined by speculative commercial forces. As usually in such enterprises, the highest possible earnings were attempted and covered by the claims of "securities." Rates are not now regulated wholly by the service performed, but to a large extent by a watered capitalization based on previous earnings. Though possibly not always a safe rule to apply, it is safe to insist, in the case of the Pacific railways, that their freight and passenger rates ought not to be in excess of a fair rate of interest on the cost of their present reproduction. In other words, the bonded indebtedness and stock of the Pacific railway companies ought to be scaled down until they aggregate no more than the cost of reproduction of the lines; the water ought to be withdrawn. The cost of reproducing the subsidized Union Pacific lines was estimated by Richard P. Morgan, an entirely competent expert, in the course of the investigation made by the Pacific Railway Commission in 1887, as follows:

	Miles.	Cost of reproduction.	Average cost per mile without terminals.	Average cost per mile with terminals.
Union Pacific (Omaha to Ogden)	1039	\$27,857,500		
Terminals, Omaha and Ogden		10,300,000		
Total		\$38,157,500	\$26,814	\$36,728
Kansas Pacific (Kansas City to Denver)	639	14,907,870		
Terminals, Kansas City and Denver		7,000,000		
Total		\$21,907,870	23,315	34,263
Central Branch Union Pacific	100	2,004,000	20,040	20,040
Grand total, lines	1778	\$44,769,370		
Terminals		17,300,000		
		\$62,069,370	25.179	\$34,909

If the cost of reproduction would be \$62,000,000 (which is undoubtedly a too liberal estimate, because inclusive of the cost of lines and terminals on which the government

has no lien), and the first mortgage is approximately \$40,000,000, then the government ought not to claim more than the difference, or \$22,000,000. To claim more would be to impose an unjustifiable burden on the rate-paying public. Whether it would be the duty of the government to provide that if the properties remained in private hands they should be so managed as to earn only interest on their cost of reproduction, is a part of the general railway problem. All that may be said here is that the government must not be a party to the retention of water in the bonds and stock of the Pacific railways, because it would be an injustice to its subjects. If the government must lose a large sum by such a settlement, it means in general that it has had to pay a high premium (honestly or dishonestly obtained) to secure a Pacific railway before 1870, instead of waiting several years for it.

But the people of the United States, and not investors ready to put more water into the securities, ought to reap the advantages paid for by the great bonus. If Congress should decide to make a final settlement, it would probably be unable to determine by itself the amount to be accepted. The best plan, in that case, would probably be to appoint a commission of such reputable citizens that their recommendations could be implicitly relied on, and then to act on the advice given by them after a thorough investigation.

2. It has been ascertained by computation that if the Union Pacific and other Pacific railway companies could renew their first mortgage indebtedness at a lower rate of interest than six per cent (the present rate), and could also get an extension of time on the debt to the United States at a rate of two or three per cent, they might (the earning power of their lines remaining as at present) repay to the United States all their subsidy debts in the course of from fifty to one hundred years, either by making fixed periodical payments, or by maintaining a sinking fund similar to that now in operation under the Thurman Act, and by paying into it a larger percentage of net earnings.

Some objections to this plan have already been suggested under the preceding head. The United States would still be "in partnership" with the Pacific railway companies, as it is often expressed. Most of the present unsatisfactory relations would be perpetuated. The day of final reckoning might thus, possibly, be only postponed, and only temporary relief afforded. A year of "commercial depression," increased competition, or bad harvests, would threaten to bring forward all the old questions just as they are now, by a default in the payment of interest on other obligations. There is no possible guaranty that the earning power of the lines will remain as efficient as at present or in the immediate past. What will be the condition of the Union Pacific (as to its earning power) when it leaves the hands of the present receivers is impossible to predict.

A more serious objection, possibly, would be the maintenance of the fictitious capitalization of the lines. The Union Pacific Railway is now in the hands of receivers because its bonds and stock amount to about four times what they ought to be.* Rates on all the Pacific railways

* Statement of the amounts of funded indebtedness and stock of the bond-aided Pacific Railway companies (compiled from the annual report of the Commissioner of Railroads for 1895).

CHARACTER OF BONDS.	Date of Maturity.	Rate of Interest.	Amount of Bonds Outstanding.	LIEN.
<i>Union Pacific Railway.</i>				
Trust 5 per cent coupon.	1907	5	\$4,660,000	Bonds of branch lines held by trustees.
Trust 5 per cent registered.	1907	5	17,000	Bonds of branch lines held by trustees.
Omaha bridge renewal, second mortgage, . . .	1915	5	1,056,000	Omaha bridge.
Equipment Trust, . . .	1888-1900	5	2,010,000	Equipment.
Collateral trust, . . .	1918	4½	2,030,000	Bonds of branch lines held by trustees.
Kansas Division and collateral mortgage coupon,	1921	5	5,000,000	Bonds and lands, and bonds and stocks held by trustees.
Collateral trust notes,	1894	6	9,247,000	Bonds and stocks held by trustees.

are higher than they ought to be; and when western legislatures attempt to lower them, the courts prevent the execution of their laws by laying down the rule that the revenues of railway companies must, if possible, be sufficient to pay

CHARACTER OF BONDS.	Date of Maturity.	Rate of Interest.	Amount of Bonds Outstanding.	LIEN.
<i>Union Pacific Railroad.</i>				
First mortgage,	1896-99	6	\$27,229,000	Main line, Omaha to Ogden.
United States subsidy, second mortgage, . . .	1896-99	6	27,236,512	Main line, Omaha to Ogden.
Sinking fund mortgage, coupon,	1899	8	3,467,000	Main line, Omaha to Ogden, third mortgage; granted lands, second mortgage.
Sinking fund mortgage, registered,	1899	8	272,000	
Collateral trust,	1904	6	3,626,000	Bonds of branch lines held by trustees.
Omaha bridge,	1896	8	194,000	Omaha bridge, first mortgage.
Land grant mortgage, .	1887-89	7	7,000	Granted lands.
<i>Kansas Pacific Railway.</i>				
First mortgage,	1895-99	6	12,190,000	Main line, Kansas City to Denver.
United States subsidy, second mortgage, . . .	1895-98	6	6,303,000	Main line, Kansas City to 394th mile-post.
Leavenworth branch, first mortgage, . . .	1896	7	15,000	Leavenworth branch.
Income,	1916	7	11,400	Income.
Income (subordinated),	1916	7	23,100	Income.
Consolidated mortgage, Denver extension coupon certificates,	1919	6	11,724,000	Blanket mortgage, 779 miles of road and 294 miles of land grant.
	1916	6	385	Income.
<i>Denver Pacific Railway.</i>				
Cheyenne branch, first mortgage,	1899	7	4,000	Cheyenne branch, road and lands.
Total for <i>Union Pacific Railway</i> (Bonds),			\$116,322,397	
(Stock),			60,868,500	
<i>Central Branch Union Pacific.</i>				
First mortgage,	1896-98	6	\$2,230,000	Main line, Atchison to Waterville.
United States subsidy, second mortgage, . . .	1896-98	6	1,600,000	Main line, Atchison to Waterville.
Total (Bonds),			\$3,830,000	
(Stock),			1,000,000	
<i>Sioux City and Pacific Railroad.</i>				
First mortgage,	1898	6	\$1,628,000	Line from Sioux City to Fremont.
United States subsidy, second mortgage, . . .	1898	6	1,628,320	Line, Sioux City to Fremont (except five miles).
Total (Bonds),			\$3,256,320	
(Stock),			2,068,400	

interest on bonded indebtedness. It would be unconscionable in the United States to keep water in the stock and bonds of the Pacific railway companies for the sake of collecting its subsidies, as has been already suggested.*

CHARACTER OF BONDS.	Date of Maturity.	Rate of Interest.	Amount of Bonds Outstanding.	LIEN.
<i>Central Pacific Railroad.</i>				
First mortgage,	1895-98	6	\$25,883,000	Main line, Sacramento to Ogden.
United States subsidy, second mortgage, . . .	1895-98	6	25,885,120	Main line, Sacramento to Ogden.
First mortgage, California and Oregon, . .	1918	5	10,340,000	Line, Roseville Junction to Oregon State Line.
Land grant bonds, . . .	1900	5	2,647,000	Central Pacific and California and Oregon land grants.
Fifty-year bonds,	1936	6	56,000	Land grant and other property not subsidized.
Fifty-year bonds,	1939	5	12,283,000	Land grant and all other property.
<i>Western Pacific Railroad.</i>				
First mortgage,	1895-99	6	2,735,000	Lines, Sacramento to San José and Niles to Oakland.
United States subsidy, second mortgage, . . .	1895-98	6	1,970,560	Line, Sacramento to San José.
<i>San Joaquin Valley Railroad.</i>				
First mortgage,	1900	6	6,080,000	Line, Lathrop to Goshen.
<i>Total for Central Pacific Railroad, (Bonds),</i>			\$87,879,680	
<i>(Stock),</i>			67,275,500	

RECAPITULATION.	Bonds.	Stock.	Total.
Union Pacific Railway,	\$116,322,397	\$60,868,500	\$177,190,897
Central Branch Union Pacific Railway, .	3,830,000	1,000,000	4,830,000
Sioux City and Pacific Railroad,	3,256,320	2,068,400	5,324,720
Central Pacific Railroad,	87,879,680	67,275,500	155,155,180
Total,	\$211,288,397	\$131,212,400	\$342,500,797

* This is one of the features that must be condemned in the plan of the Reorganization Committee dominated by the Vanderbilt interests, of which the following are the principal features :

1. A new company (or the present Union Pacific Railway Company purified of its obligations through the pending foreclosure proceedings) is to own and operate the main lines of the Union Pacific System.

2. The new company is to issue \$100,000,000 of first mortgage railway and land grant fifty-year 4 per cent bonds, \$75,000,000 of 4 per cent preferred stock, and \$61,000,000 of common stock.

3. The new securities are to be distributed among the present security holders according to the extent of their holdings and the value of their securities;

If the lines have suffered such a shrinkage in value that they are not worth enough to satisfy both their first mortgages, and the government's second mortgage (or statutory lien) the government probably ought to be willing to suffer the consequences. It need hardly be denied here, and at this time, that railway rates are regulated wholly by competition; there are certainly many arbitrary factors in them, and one of the strongest is the effort to pay returns on watered stock and bonds.

The re-funding plan has the redeeming feature, that as far as the repayment of the subsidy is concerned, it would make matters no worse, and they might become much better; it is certainly the most conservative plan. But, after all, it is only a speculation by the government in its own credit. It expects to make the Union Pacific Railway Company able to pay its debts by lowering the rate of interest on them. It is the same as if it should borrow money at two or three per cent and loan it at four or five per cent. From that point of view, the plan is not different from the first plan (of present compromise and settlement), because the money thus obtained in settlement might be loaned out by the government to other borrowers at four or five per cent, and by successive increments might amount in fifty or one hundred years to the total present debt of the companies left in their

\$35,755,280 of bonds, \$20,864,400 of preferred stock, and \$131,500 of common stock are to be reserved for the settlement of the debt due to the government.

4. Present stockholders are assessed \$15 per share, and are to receive in return share for share of new common stock and the amount of their assessments in new preferred stock.

5. The syndicate having charge of the reorganization are to receive \$6,000,000 of preferred stock for their work, \$1,000,000 of which is to be retained by the bank furnishing the necessary funds.

The plan is based on the average net earnings of the past ten years, estimated at about \$7,500,000, but, while very satisfactory to the security holders and reorganizers, it is hardly encouraging to the rate-paying public. It is estimated that the lines could be duplicated for, at the most, \$75,000,000; why, then, should they be burdened with \$236,000,000 of bonds and stock? If it is the duty of the United States not to keep water in the obligations of the companies in order to secure its own debt, it may appear to be its duty to provide by legislation that reorganizing syndicates be prevented from retaining the water for the benefit of investors.

hands at two or three per cent. From another slightly different point of view, it is the same as if the United States were to cancel the principal of the present indebtedness, if the companies would agree to pay interest on it for fifty or one hundred years at five or six per cent, the rate that private investors would expect to receive.*

* A strong effort was made in the last (53d) Congress to pass a bill for the extension over fifty years of the time of payment of the debts of the Union Pacific and Central Pacific Companies to the United States. Several bills had been introduced in the House and referred to the Committee on Pacific Railroads. In July, 1894, the committee reported, in lieu of the referred bills, what was known as the Reilly Bill, with the following provisions: The companies were to discharge the first mortgages on their aided lines at once; the payment of the amounts due from the companies to the United States was to be collaterally secured by an issue of their bonds (bearing three per cent interest), delivered to the Secretary of the Treasury, and based on mortgages on all their assets; the interest was to be paid semi-annually; semi-annual payments of the principal were to be made of one half of one per cent for the first ten years, three-fourths of one per cent for the second ten years, one per cent for the third ten years, one and one-fourth per cent for the fourth ten years, and one and one-half per cent for the last ten years. If there should be a default in a payment for ninety days after its maturity, foreclosure should be begun. No dividends should be paid as long as obligations on the collateral bonds should be unfulfilled; nor should dividends of more than four per cent per annum be paid unless actually earned, and unless an amount equal to the excess over four per cent should be paid to the government to be credited on its claim. The plan was not to be operative unless accepted by the companies. The amounts in the sinking fund were to be made over to them upon their satisfaction of their first mortgages. (See H. R. Report, No. 1290, 53d Congress, 2d Session. For text of bill see *Congressional Record* for January 30, 1895, page 1738.)

In the third session, at the end of January, 1895, the bill was reached by the House and debated during parts of three days. An amendment forbidding the payment of dividends until the entire debt to the government should be paid was adopted by a vote of 145 to 89. An amendment to a motion to recommit the bill that would permit the discharge of the government debt on the payment by the two companies within six months of \$75,000,000 was defeated. The bill was then re-committed to the Committee on Pacific Railroads by a vote of 178 to 108, 63 not voting.

A bill introduced by Senator Frye in the last Congress and again introduced in the present Congress, aims to extend the repayment of the subsidy by the Union Pacific and Central Pacific Companies over a period of one hundred years with interest at two per cent, requires the securities in the sinking fund to be converted into money and applied on it, and permits the first-mortgage indebtedness to be maintained, all the present rights and remedies of the government being preserved. No legislation has been attempted in the Senate beyond the introduction and reference of bills, but the Senate Committee on Pacific Railroads, in response to a resolution, submitted a Partial Report (53d Congress, 3d Session, Report No. 830) that presents the most impartial and accurate discussion in a public document of the financial condition of the Union Pacific, its system of lines and the features of proposed legislation.

Very similar to the Frye bill was the bill recommended to the House by Attorney-General Olney in April, 1894 (H. R. Executive Document No. 203, 53d Congress,

Up to a year ago this plan had been most favored by those who had given special attention to the subject. The Commissioner of Railroads, in his special report of April 1, 1892, was able to say of it: "Every committee, commission, board of government directors, successive secretaries of the interior, railroad commissioners, President Cleveland, and others charged with the duty of investigating the question, and who have given it exhaustive consideration, have all agreed, without a dissenting opinion, that a settlement should be had and the debts of the road extended."

3. If, then, a present final settlement of the Pacific Railway debts to the government would probably be unsatisfactory as yielding too small a percentage of them, but quite commendable as merging the particular Pacific Railway question in the general railway question,—and if the extension of the debt, though it would probably yield to the government eventually a larger sum of money, would do it at the unjustifiable expense of large classes of producers in the western states and territories,—the only alternative course for the United States to pursue would be to take possession of some or all of the Pacific railways, but particularly of the Union Pacific and Central Pacific (because they constitute a homogeneous system), by a foreclosure of its lien and other legal procedure, and then to own and operate them as a public industry. That would be an extreme step and might be productive of unforeseen and far-reaching results, whether fortunate or unfortunate.

By foreclosing its lien and assuming or paying the first mortgage the United States would make only a beginning in its investment. In a well-known decision* the Supreme Court has decided that the lien of the United States covers

2d Session), providing for the extension of the subsidy debt for one hundred years at two per cent, and of the first mortgage at a rate not to exceed five per cent; all the present unsatisfactory relations between the Union Pacific Railway Company and the government were to be preserved, the only virtue of the bill being that it contemplated the lightening of the burdens of the company by decreasing the rates of interest on its debts.

* *United States vs. Kansas Pacific Railway Company*, 99 U. S. R., 455.

only such lines or parts of lines as have been constructed by the aid of the subsidy bonds. Under that rule the United States, through its foreclosure proceedings, would get only the Union Pacific from Omaha to a point five miles west of Ogden, and the Central Pacific thence to San José, California, the Kansas Pacific (Kansas division of the Union Pacific) from Kansas City to a point three hundred and ninety-four miles westward, the Leavenworth branch (from Leavenworth to Lawrence, in Kansas), * the Central Branch Union Pacific from Atchison to Watertown, in Kansas, and the Sioux City and Pacific from Sioux City to Fremont, Nebraska.† The terminals at Kansas City and Council Bluffs and probably the Omaha bridge would not be included. The portions of the lines secured through the foreclosure would not reach Denver or San Francisco; additional mileage and terminals, or the use of them would have to be obtained. Moreover, the branch lines are generally conceded to be necessary to the main lines; some of them, as the Union Pacific receivers have discovered, could well be dispensed with; others are naturally tributary to the main lines, and would not have to be under the same control; others still, like the Oregon Short Line (which is rather a part of the main line than a branch line), would have to be under the control of the United States. The question of branch lines is not as serious as the opponents of national ownership and operation are in the habit of regarding it; the main lines are as essential to most of the branches as the latter to the former. ‡ The Union Pacific Railway Company now controls most of its branches through leases and contracts, and the ownership of stock and bonds; the government

* There is much doubt whether the lien of the United States extends to the Leavenworth branch, but it is quite unimportant.

† It is well to note that there is an unsubsidized link of about five miles in the Sioux City and Pacific at California Junction, Iowa, and that the lien of the government probably does not cover the bridge over the Missouri River; and likewise an unsubsidized link of about five miles intervenes between the Central Pacific and Western Pacific at Sacramento.

‡ See Special Report of Commissioner of Railroads of April 1, 1892.

might obtain the same control through proceedings supplementary to the foreclosure, as the property covered by the lien would not satisfy the debt. But the stocks and bonds, like most of the other assets of the company, have been hypothecated as security for the payment of from \$20,000,000 to \$24,000,000, which the government would have to assume or pay in order to reach them; they are of the par value of about \$100,000,000, but were estimated before the depression of 1893 to have a market value of about \$45,000,000. From a purely financial standpoint, then, the assumption and operation of the Pacific railways (and particularly of the Union Pacific) would be a serious matter, involving the assumption or payment of first-mortgage and other prior indebtedness aggregating \$65,000,000, the investment of at least \$15,000,000 in terminals, and the assumption or payment of about \$20,000,000 in order to gain control of branch lines, in addition to indefinite expenditures necessary to complete the main lines (as the Kansas Pacific from the 394th mile-post to Denver) in case satisfactory traffic arrangements could not be made. Even with the perfect credit and inexhaustible resources of the national government, an investment of \$100,000,000 in addition to the \$120,000,000 already invested in Pacific railways is a matter of grave importance.

It is generally assumed without argument that the United States could not efficiently operate the Union Pacific or any of the other Pacific railways—as the truth of propositions incapable of demonstration is likely to be assumed. In the absence of experience, it is impossible to say positively that the federal government could not successfully operate the Union Pacific. The experience of some of the states between 1830 and 1850 in the management of railways and canals was under such different circumstances that it throws very little light on the present problem. One distinction of importance is that the several states encountered most of their difficulties in *building* railways and canals, not many of them in *operating* them. Sectional and local prejudices are so

strong that it is almost impossible for a democratic government like that of the United States to build railways in such homogeneous and correlated systems that they will be fully efficient; such prejudices are not brought to bear so strongly on the operation of a system already constructed, though they are certainly not entirely without influence. The experience of foreign countries is also quite unavailable. Perhaps that of France has been most like that of the United States (as far as the Pacific railways are concerned), and France has had more trouble than would have resulted either from the one extreme of owning and operating the lines or the other extreme of leaving them entirely to individuals. In some parts of Europe one policy, and in other parts another policy has been successful, success and failure being dependent largely on the temper and traditions of the public. Nothing but the test of experience will ever determine whether railways may be successfully operated by the Government of the United States. Possibly it is important that a test should be made at once. Such a large portion of the people of the United States are advocating the ownership and operation of the railways by the state that a fair test ought to be made. Unrestricted ownership and operation by corporations have proved unsatisfactory in many respects, not only to the general public, but to investors as well; the policy of exercising control through the medium of commissions has been all but a complete failure; there is only one policy left, it is said, and that policy is state ownership and operation. If state ownership and operation of railways in the United States may be successful, the sooner it is demonstrated the better; likewise, if such a policy must be unsuccessful, it ought to be known, even if the knowledge is to be acquired at a considerable expense; the question of control through commissions would be simplified in either event. If the test is to be made, the opportunity presented by the condition of the Pacific railways is most favorable, because the United States has already invested part of the necessary

capital and is in danger of losing it, while the business of the lines is affected less by competition than that of most other systems.

There has never been an adequate literary treatment of the question of governmental ownership and operation of railways in the United States. The political question involved, however, must not be overlooked. It is often asserted that corruption of the civil service would follow the "socializing" of the Pacific railways. The danger is overestimated; reform of the civil service in the post office and in other departments of the government has been so successful that little trouble might be expected in the railway service. It is added that the railways would be "dragged into politics." That has been just the trouble heretofore; corruption of the civil service could hardly be greater than the past and present political corruption caused by the private control of the Pacific railways; the "barrels" of money expended by the Central Pacific (or Southern Pacific) and Union Pacific in politics would have gone a long way toward satisfying the debt due to the United States. There is convincing evidence that they are not yet out of politics. In order that the policy of ownership and operation of railways by the state may be successful, it must have the strong support of public sentiment; whether such a condition exists with reference to the Union Pacific cannot be stated. Public sentiment on the general question is certainly adverse to it. But it may appear later that there is no alternative in the present case except an outrageous compromise or unreasonable extension of the companies' indebtedness to the United States; in such an event public sentiment would probably approve such an extreme step by Congress. It must be admitted that dependence of the people on state initiative and assumption of responsibility (involved in state operation of railways) would tend to weaken the energies of the people; but it is doubtful whether that effect would be more depressing in the

present case than the now prevalent (and largely justifiable) apprehension of the people west of the Missouri River (and especially in California) that their destinies are dependent on the whims of railway managers and that their government is unable to relieve them. The ownership and operation of the Union Pacific by the United States would not necessarily be a precedent for the enforcement of the general policy of state ownership and operation of railways, just as the original aid by loan of bonds was not followed by the general policy of extending such aid to railway enterprises. Congress is confronted by special conditions in the presence of which it might decide to operate the Union Pacific Railway without endorsing the general advisability of applying state socialism as a remedy for the evils of private or corporate ownership of railways.*

One unfortunate consequence of the operation of the Union Pacific Railway (or any other of the Pacific railways) by the government, would be its competition with corporations of citizens for traffic, especially if (as proposed in some of the bills introduced in Congress) the rates charged should

* A bill was introduced in the House in September, 1893, by Representative Geary for the purchase by the United States under foreclosure of the Union Pacific and Central Pacific lines and their subsequent operation through a commission of seven members. A similar bill was introduced in January, 1896, by Representative Kem, except that it seems to have been intended to apply to all the bond-aided Pacific railways, and no definite governmental means of operation were provided. In the Senate two such bills have been introduced:—that of Senator Peffer, in April, 1894, concerning the Union Pacific Railway, and providing for its operation under the supervision of the Secretary of the Interior; that of Senator Allen, in January, 1896, being the same as that of Representative Kem in the House. A joint resolution was introduced by Senator Pettigrew, in February, 1896, that the Secretary of the Treasury take possession of the main lines and lands of the Union Pacific Railway, proceed to a foreclosure of the government lien and pay the first-mortgage indebtedness out of the proceeds of a sale of 3 per cent government bonds.

A modification of the general plan of federal ownership and operation of the Pacific Railway is that of federal ownership and private operation championed by Representative Maguire, of California. Under that plan, while the title of the lines would be in the United States, all carriers would be allowed to use them under reasonable regulations; it is substantially an application of what is known among students of railway questions as the "king's highway" theory; and it has been generally condemned as infeasible, though without reference to any considerable body of experience in its use.

be only such as would be necessary to reimburse the expense of maintenance and operation; the government lines would be in a position to do as much harm as some bankrupt lines have heretofore caused in the hands of receivers; the effect of the operation of the Union Pacific and Central Pacific as the people of California desire would probably be quite disastrous to the Southern Pacific. But it must be remembered that the oppressive rates are not usually the through rates; as the local non-competitive rates would probably be the ones lowered, the owners of rival lines would have less reason for complaint. Even now, all the competing lines in any district are not on a level; some always have a larger capitalization or heavier financial burdens than others; the situation would not be much different if the government happened to be the owner of one of the less-burdened lines.

It must again be suggested that the relief of the producers of the Pacific coast from the Southern Pacific monopoly, or of the producing classes in the central western states from the excessive rates of the Union Pacific, is not the primary purpose in readjusting the relations of the Pacific railways to the government. All that Congress aimed at in its legislation of 1862 and 1864 was to get corporations of citizens to construct and operate a railway from the Missouri River to the Pacific Coast—a railway that, when complete, should sustain to the patronizing public the same general relations as other railways. The peculiar feature—and it is of slight importance now—was that the line should be particularly available for the use of the government; that was the reason for the grant of aid in the form of bonds. It was expected to be no more and no less serviceable to the people than a railway in any other part of the country. A disposition of the debt question is all there is to settle between the government and the companies,—except that incidentally Congress must do no injustice to either the public or investors. If Senators and Representatives from the western states insist that Congress make provisions for more efficient service and

more reasonable rates from the railway companies, it ought to be borne in mind that they are demanding a remedy for evils from which many other parts of the country are also suffering—in other words, they are seeking a solution of the general railway problem. If the use of railway commissions or commissioners has proved a failure, perhaps it is best to institute a new policy, or experiment with it in the case of the Pacific railways in preparation for its future use elsewhere. The West has much ground for complaint; the evils of railway mismanagement are acute on the Pacific Coast; but it is very doubtful whether the questions particularly pertaining to the Pacific railways ought to be obscured by others that are general in their nature.

Even if re-funding or settlement be decided on as a solution of the problem, it is likely that a foreclosure of the government's lien on the Union Pacific will have to be had in order to clear the property of subordinate liens and simplify the situation, though it be only a so-called "friendly foreclosure." It is suggested that it might be advisable for the United States to purchase the lines under foreclosure, pay the first mortgage, and operate the lines until the entire sums secured by the first mortgages and government lien on all the Pacific railways shall have fallen due in 1899; then the entire matter may be disposed of at one time. In the case of the Union Pacific, something must be done with little further delay, as the property of the company is now in the possession of receivers pending the foreclosure of the first mortgage, and a sale under foreclosure to third parties at a price such as is usually paid under such circumstances might be seriously detrimental to the interests of the government. As far as the other parts of the Pacific Railway are concerned, there is no likelihood that matters will change for the worse by the time of the final maturity of the government's debt.

Of the three plans proposed for the solution of the Pacific Railway problem, all have their advantages and

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disadvantages; the situation seems to involve a choice of evils. The first plan, that of accepting a present payment of money in full settlement of the debts due to the United States, has the advantages of severing relations with the railway companies that have been very expensive, almost always inharmonious and otherwise unsatisfactory, and of simplifying the general railway problem by placing the railways involved on a level with others before the law-making powers; it has the disadvantages, however, of causing a large pecuniary loss to the government and of being difficult to execute in its details. The second plan, that of an extension of the payment of the companies' debts over a long period of time at a lower rate of interest, has the advantages of being most conservative, causing less disturbance of vested interests and settled relations, lacking harshness in application, and promising a larger eventual pecuniary return to the government; its disadvantages are that the larger pecuniary return to the government is rather apparent than real, that it seems to set a seal of approval on the past dishonest conduct of the companies, and that it entails an unjust burden on the producing classes from which the companies are to derive their revenue. The third plan, that of the assumption and operation by the United States of the Union Pacific and other bond-aided Pacific railways, is justified not so much by the amount of money to be realized through it by the government as by its possible prevention of some consequences incidental to the execution of the first and second plans and exceptionally onerous to the general public; it has the further advantage of implying distinctly the condemnation of the past dishonesty and corruption of the companies; its disadvantages are that it is experimental in application, involves a very large investment by the government, is radical and almost revolutionary in nature, and is calculated to remedy evils not peculiar to the Pacific Railway question, but rather a part of the general question of the just relations of railway companies to society and the state.

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After the foregoing was written the Committees on Pacific Railroads of the Senate and House of Representatives submitted reports* in which they recommended the passage of a bill, substantially identical in both Houses, and containing the following chief provisions:

1. The present worth on January 1, 1897, of the balances to be paid by the Union Pacific (including the Kansas Pacific) and the Central Pacific (including the Western Pacific) companies, after the deduction of the estimated value of the securities in the Thurman Act sinking fund, was to be computed.

2. Bonds of \$1000 each, with interest of two per cent per annum, were to be issued by each company to the United States to the amount of its indebtedness as computed, their payment to be secured by a mortgage covering all its property, whether originally subsidized or not.

3. In addition to the current interest, payable semi-annually, each company, beginning in 1898, was to pay the principal of its bonds at the rate of \$365,000 for each of the first ten years, \$550,000 for each of the second ten years, and \$750,000 for each year thereafter, until all should be paid.

4. The mortgages executed in favor of the United States were to be subject only to a first mortgage to be executed by the Union Pacific as security for \$54,388,000 of fifty-year bonds, with interest of four per cent, and to the existing first mortgages of the Central Pacific or new mortgages executed in renewal of them at a rate of interest not in excess of five per cent.

5. The bonds so issued to the United States by the companies were to be accepted in satisfaction of their present indebtedness and in discharge of the present statutory lien.

6. The Union Pacific was to be permitted to issue preferred stock to an amount not in excess of its present

*Fifty-fourth Congress, First Session, Senate Report No. 778, and House of Representatives Report No. 1497.

outstanding stock, but neither company was to pay dividends, unless they had been actually earned, and unless all matured obligations on both first and second mortgage bonds had been discharged, and not even then in excess of four per cent per annum unless an amount equal to the excess should be paid to the United States for application on the principal of its bonds.

7. If the property of the Union Pacific should be sold under foreclosure, its purchasers should be a new corporation under the name and style of the "Union Pacific Railroad Company," with the rights and duties of its predecessor.

8. If any paramount claim should be paid by the United States for its own protection, and should not be repaid by either company within a year, its whole indebtedness might mature at once, at the option of the United States. If either company should be in default in the payment of matured installments of principal or interest, any sum due to it from the United States for services was not to be paid, but to be credited on the amounts overdue; if the default should continue for six months, the United States might, at its option, treat the entire debt as matured and take possession of the mortgaged property without resort to Congress or the courts for authority so to do.

9. The Southern Pacific was to guaranty the payment of the debt of the Central Pacific to the United States, and permit the immediate application on its principal of the sum of \$2,409,818.20 due to it from the United States for services; if the lease existing between them should be terminated, the United States might elect to consider the entire debt matured.

10. The offices of the government directors of the Union Pacific were to be abolished, and no percentage of the companies' net earnings or of their compensation for government services was, as formerly, to be regularly applicable on their indebtedness.

11. The act was to take effect, as to either company, upon acceptance of its provisions, if by the Union Pacific by

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January 1, 1897, or by the Central Pacific within three months from the time of passage; in the meantime all existing laws were to remain in force. But the act was to be only in alteration and amendment of previous acts and was to be subject to future amendment, alteration or repeal by Congress; nor was it to impair any existing right or remedy in favor of the United States.

The bill was commended by the committees because, by its provisions, (*a*) the expense and danger of federal ownership and operation of the railways, and the almost certain loss threatened by reliance on an ordinary foreclosure of the lien of the United States would be avoided; (*b*) the entire debts of the companies would be paid in the shortest time and largest installments consistent with the anticipated earning power of their lines, and (*c*) in case of default in payments, the United States would have larger and more accessible security for its claims. "The relations of the Pacific railroads to the United States may and should unhesitatingly be dealt with as a business problem, having no other incidents than those which may be usually involved in the relations of debtor and creditor and of mortgagor and mortgagee This legislation should be comprehensive and final and should terminate the intimate relations of the government with the enterprises of these railroad companies, placing them upon the same footing with all other railroad properties in the United States as respects legislative and Congressional control, and substituting definite and complete mortgage rights and remedies in the place of the present unsatisfactory provisions of law relating to the protection of the lien of the government and to its supervision of these enterprises." *

The minority of each committee presented adverse views. That of the House Committee averred: "(*a*) The committee

* House of Representatives Reports, Fifty-fourth Congress, First Session, No. 1497, p. 13.

have not learned enough of the affairs of the debtor companies to be able to tell the House what it is best to do; (b) the companies made offers before the committee, and are undoubtedly ready to concede terms very much better for the government than those embodied in the bill; (c) the propositions in the bill are neither good nor safe for the government;" it recommended, as a protective measure, the substitution and passage of a bill giving to the Court of Appeals of the District of Columbia, complete jurisdiction of suits by the United States for the enforcement of its liens on railway properties, with power to order the discontinuance or stay of suits brought by other parties in other courts having jurisdiction over only a part of the property involved; it suggested, also, the further investigation of the subject-matter of the report by committees of both Houses acting jointly.*

Senator Morgan, of the Senate Committee, recommended the substitution not only of the bill recommended by the minority of the House Committee (and known as the Morgan-Brice bill) but also of another, providing (a) that the officers and boards of directors of the Union Pacific and Central Pacific be replaced with appointees of the United States; (b) that the first mortgage bonds and subsidy bonds be replaced with thirty-year three per cent bonds of the United States, to be liquidated through sinking funds of the net receipts of each company; (c) that the debts subordinate to those due to the United States be paid out of the net receipts of the companies; (d) that their stock be canceled and replaced with new stock according to the actual value of the property of each of them; (e) that Congress continue to control "the two companies and their property under the corporate powers and systems now existing as they shall be amended from time to time," and (f) that the property and franchises of each company be taken into possession by

* House of Representatives Reports, Fifty-fourth Congress, First Session, No. 1497, Part II.

the United States upon such default of either as may justify the taking under existing laws.*

Of the platforms of the national political parties, adopted at recent conventions, that of the Republicans contains no mention of the Pacific Railway; that of the Democrats "approves of the refusal of the Fifty-third Congress to pass the Pacific Railroad Funding bill † and denounces the efforts of the present Republican Congress to enact a similar measure;" that of the Populists declares, "The interest of the United States in the public highways built with public moneys and the proceeds of grants of land to the Pacific Railroads should never be alienated, mortgaged or sold The foreclosure of existing liens of the United States on these roads should at once follow default in the payment thereof by the debtor companies; and at the foreclosure sales of said roads the government shall purchase the same if it becomes necessary to protect its interests therein, or if they can be purchased at a reasonable price; and the government shall operate said railroads as public highways for the benefit of the whole people, and not in the interest of the few. . . . We denounce the present infamous schemes for refunding these debts and demand that the laws now applicable thereto be executed and administered according to their intent and spirit."

The problem of the future relations of the United States to the Pacific Railway and especially to the Union Pacific Railway, the trunk of the great system, involving the very large pecuniary claim of the government, the immense holdings of investors, and the economic welfare of millions of producers, must be given an early solution; but it is not likely to be given without a severe contest. The historical facts that must be the basis of legislative action, arousing as well the shame of public and private corruption as the pride of industrial achievement and national development,

* Senate Reports, Fifty-fourth Congress, First Session, No. 778, Part II.

† See p. 76, note *supra*.

permit a wide divergence of opinions, while they are so recent in time and so personal in character that they give opinions based on them the support of a strong sentiment. The details of the present situation, so numerous and intricate that committees cannot master them and experts disagree in their inferences from them, seem to justify widely different policies. Numerous technical questions of the principles of law applicable to the facts contribute elements of discord and controversy. So many opposing theories of the functions of the state, of the social relations of individuals and classes, and of the rights of property are called into application that opposing opinions on the subject-matter must be irreconcilable. It would be hazardous to attempt to predict what the outcome will be.

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