Wayward Child of the State: The Union Pacific Railroad and the Challenge of Mixed Enterprise, 1862-1879

by

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INTRODUCTION

The Union Pacific Railroad’s westward push from Omaha across the Great American Desert to the mythical joining of the rails at Promontory Summit is the stuff of American lore. Many recognize the Credit Mobilier, the Union Pacific’s infamous construction company that came to exemplify the graft of the Gilded Age and the pernicious influence of railroad lobbies in the late nineteenth century. But beneath these morsels of popular history of the first transcontinental railroad lies the story of an audacious public-private partnership: a heavily-subsidized railroad, federally chartered amid the national crisis of the Civil War for the national purpose of binding the Pacific states to the Union and alleviating the possibility of their secession. The Civil War ended four years before the Union Pacific met the Central Pacific in Utah, which leads one to wonder: if the Union Pacific Railroad, chartered in an act of central state authority for the purposes of national defense, did not tether the western states to the Union in time to make a difference in the Civil War, what was the nature of the mixed enterprise’s relationship with the federal government?

The literature on the Union Pacific and the transcontinental railroad is vast. First among its notable works is Maury Klein’s three-volume *Union Pacific*, which railroad historian Albro Martin has hailed as “the most impressive work of western railroad history.” Klein’s corporate history is unrivaled in his attention to detail in chronicling the Union Pacific’s construction and business activities. David Haward Bain’s *Empire Express* chronicles the Central Pacific as well as the Union Pacific, focusing on a myriad of characters related to the transcontinental railroad to convey the scale of the undertaking. Robert G. Athearn’s *Union Pacific Country* is an
excellent history of the railroad’s impact on the country through which it built and acquired land grants, and Richard White’s *Railroaded* provides a lens into the dealings of the executives of federally-subsidized railroads in the second half of the nineteenth century.

Other literature focuses on the nineteenth-century expansion of federal authority that was made permanent by the Union’s victory over the confederacy. Brian Balogh’s *A Government Out of Sight*, examines the growth of federal power from its origins in land acquisition, promoting commerce, and protecting Americans on the frontier. Bensel’s *Yankee Leviathan* contrasts the Union and Confederacy’s divergent economic policies and the challenges of reconstruction. Finally, I would be remiss to not mention Robert G. Angevine’s *Railroad and the State*, which tells a compelling story about the U.S. Army’s command of and collaboration with American railroads in the nineteenth century.

My topic lies somewhere between these two general areas, as this thesis explores the outcomes of the federal government’s use of central state authority to charter and subsidize the Union Pacific Railway as a mixed enterprise. In Chapter One, I examine the discourses and previous failures before the First Pacific Rail Act of 1862 that animated the Union Pacific. In Chapter Two, I examine the close collaboration between the Union Pacific and the U.S. Army as the railroad pushed into unsettled territory and faced armed resistance from the Native Americans. In Chapter Three, I investigate the origins of the Credit Mobilier scandal, the government’s reaction to it, and the implications of the legal battles with the government in which the Union Pacific is engulfed in the 1870s. While the Union
Pacific was integral to the federal government’s promotion of white settlement of the west and removing the Native Americans to reservations, the Union Pacific’s prolonged indebtedness to and tension with the government tarnished its reputation as a project of national pride and purpose, and led to it instead being viewed as the wayward child of the state.
CHAPTER ONE: IMMEDIATE AND EFFICIENT AID

Americans had dreamt of a transcontinental railroad long before the passage of the Pacific Railroad Act of 1862. In 1832, only four years after construction had begun on the first railroad in the United States, the Ann Arbor Emigrant called for a “national project” to “unite New York and the Oregon by a rail way.” Initially, the public disregarded the idea of a transcontinental railroad as an expensive and technologically unachievable folly that would run through worthless wilderness, much of which did not even belong to the United States at the time and was inhabited by Native Americans hostile to white settlers. But despite the public’s initial disinterest, a number of persistent advocates kept the vision of a railroad to the Pacific coast alive.

Whitney’s Vision

The most significant of the early advocates was Asa Whitney, an American merchant whose travels through England had instilled in him the importance of rail transportation for economic development in the nineteenth century, and whose voyages to China led him to envision a transcontinental American railroad serving as a vital commercial link between the Far East and Europe. In Whitney’s treatise “A Project for a Railroad to the Pacific,” presented to Congress in 1849, he wrote that

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1 “Something New,” Ann Arbor Emigrant, February 8, 1832. CPRR Photographic History Museum.
“the entire commerce of the world must be tributary” to the United States.³ Whitney began petitioning Congress to allocate funding for the construction of a Pacific railroad in 1844, and spent the following decade in its single-minded pursuit. Whitney offered to build the road himself in exchange for a 60-mile wide land grant along its route from Lake Michigan to Oregon, which he would in turn sell to settlers to recoup the cost of the road’s construction, which he estimated would be $65 million.⁴

Whitney’s plan, even with its reliance upon an unprecedentedly large federal land grant—and to a single private citizen, no less—was motivated by his concern for the national welfare rather than personal gain. Whitney proposed that he would own and manage the railroad until it turned a profit, at which point he would immediately turn over ownership and control to the federal government, with his net earnings coming only from land sales after construction costs had been recovered. “My desire and object,” Whitney wrote, “have been … to give my country this great thoroughfare for all nations without the cost of one dollar … . If they will but allow me to be their instrument to accomplish this great work, it is enough; I ask no more.”⁵ Whitney told Congress that a transcontinental railroad would unite the geographically disparate American people “together as one family, with but one interest—the general good of all.”⁶ In addition to proclaiming the economic benefits that would be gained by providing a commercial channel from the Far East to Europe, Whitney implored

Congress to envision his transcontinental railroad as an outlet for the thousands of immigrants arriving in Eastern port cities to migrate westward and settle the nation’s uninhabited and inexpensive lands as independent yeoman farmers. In the 1840s and 1850s, the glut of territory acquired through victory in the Mexican War, the discovery of gold in California, and a spike in overland migration via the Oregon trail made obvious the United States’ dearth of transportation and communication through its vast interior that left the Pacific possessions isolated and difficult to defend. Whitney’s proposal was ultimately defeated in Congress in 1852 over concerns that it would vest too much economic and political power in one person’s hands and disagreements among Congressmen over whether or not such a railroad should be built by private citizens or the government, and in turn, whether or not the government had the authority to do so. Whitney’s decade-long congressional crusade left him penniless, but his persistence in keeping the prospect of a transcontinental railroad in the public consciousness for over a decade advanced the project’s status from fool’s errand to legitimate national enterprise whose undertaking seemed only a matter of time.7 Thanks to the groundwork laid by his efforts, Whitney’s vision for the railroad’s realization via federal land grant and its serving as an outlet for immigration and inducer of settlement would come to pass within his lifetime.

Corporations and Consolidation

After Congress showed itself to be uninterested in hiring individual contractors to build it a transcontinental railroad, in February 1853, the Senate debated a bill reported by its Select Committee on the Pacific Railroad which authorized the President to choose the route for a transcontinental railroad, after preliminary surveys were completed, and designated six-mile swaths of public land on each side of the railroad’s 300-foot-wide right of way to be sold to finance the railroad’s construction. The bill also chartered the Pacific Railroad and Telegraph Company to complete the work in exchange for $20 million in fifty-year, five percent interest United States bonds, to be disbursed to the company as the road was built.8 The undertaking of so large a project through a federally-chartered corporation elicited a passionate debate in the Senate that situated the Pacific railroad within the broader national divisions between advocates of federal authority and advocates of state sovereignty, as well as competing visions for America as an empire of centralized authority versus a confederation of sovereign republics. Before the Pacific railroad bill was even taken up by the chamber, in December 1852, Senator Robert F. Stockton, a Democrat from New Jersey, expressed his strong opposition to advocates of a federally-chartered corporation “who are endeavoring to extend the powers of this Government with the expectation and hope of making a splendid and magnificent empire” in lieu of his preferred “simple and frugal government.”9 When the Senate began to debate the bill in February 1853, Senator James A. Bayard, Jr., a Democrat from Delaware, opposed the bill on the grounds that in chartering a corporation at the federal level, Congress was poised to repeat its mistakes of the Second Bank of the

8 Congressional Globe, 32nd Congress, Session II, Senate, 469.
9 Ibid., 126.
United States, calling the proposal a “project to create a corporation with a power which, if you ever do create it, will be fourfold the power of that corporation against which the Democratic party of the United States were at war for a series of years.”

Notwithstanding the question of Congress’s constitutional authority to even charter such a corporation, Bayard expressed concerns over the dangers of corporate influence on a transcontinental scale, imploring his colleagues to consider “whether the corruption that would result from the irresponsible power vested in such a corporation would not be greater than all the benefits to commerce which could flow from such a road.”

Firing back against Bayard’s and other Democrats’ invocation of party principles in opposition to the bill, Senator John B. Weller, a Democrat from California, reminded Bayard and other opponents that Congress had previously exercised its “constitutional power to appropriate the public money for works of internal improvements and of national character” when it aided the National Road under the approval of Democratic Presidents from Jefferson to Polk. Weller chided the bill’s opponents, for seeming to have only just then discovered “that there is no constitutional power to do that which all those apostles of Democracy have sanctioned.”

Weller’s reference to the National Road in advocating for the Pacific railway bill illustrates the impact that early enterprise had on arguments for federal internal

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10 Ibid., 473.
11 Ibid.
12 Ibid., 488.
13 Ibid.
improvements and railway surveys in the first half of the nineteenth century. Running from Cumberland, Maryland and eventually reaching Vandalia, Illinois, the federally-built National Road (or Cumberland Road) reached Ohio before the first midwestern state was admitted to the Union, and thus served as a prime example of a federal project to promote western settlement of unorganized territory. As the National Road was under construction, difficulties moving troops during the War of 1812 painfully demonstrated the United States’ lack of infrastructure and prompted Congressman John C. Calhoun, in what Balogh called the South Carolinian’s “brief nationalist phase,” to propose that federal income from the Second Bank of the United States be used for national internal improvements.14 “Let us then,” said Calhoun, “bind the Republic together with a perfect system of roads and canals.”15 Calhoun’s efforts in Congress and later as Secretary of War would lead to the passage of the 1824 General Survey Act, which authorized the president to organize Army surveys for roads and canals. In the late 1820s, this enabled the Baltimore & Ohio Railroad to have its surveys conducted by Army engineers in an early collaboration between the military and private railroad companies. The Baltimore & Ohio, as its name suggests, was founded to tap into commerce from the west, which in the 1820s and 1830s meant the territory that would become the midwestern states. What Americans perceived of as “the west” changed as the frontier was pushed farther by settlers, but arguments for government aid to railroads to the west stayed constant. While most early American

15 Quoted in Balogh, Government Out of Sight, 130.
railroads ran north-south, almost all government and Army surveys were conducted along east-west routes, demonstrating the government’s focus on promoting construction into unsettled territory.\textsuperscript{16}

In response to Weller’s invocation of the National Road, Senator James Cooper, a Pennsylvania Whig, pointed out that unlike earlier projects, the Pacific railroad’s unprecedented scale, “spanning a continent of three thousand miles in width, over territory larger than the whole territory of Great Britain and Ireland,” threatened to concentrate too much political and economic influence in the hands of a single corporation. “Who can foretell,” Cooper asked, “who can judge, with any degree of accuracy, the amount of power which such a corporation as this would possess?”\textsuperscript{17} Challenging Cooper, Senator John Davis, a Massachusetts Whig, characterized opposition to the federal chartering of corporations as an arbitrary and inconsistent position. “The danger resulting from a corporation,” said Davis, “seems to spring entirely from the character of its paternity. If it be within a State, its claws are cut, its teeth are draw; if it be a work of the United States, it becomes a savage monster, full of evil and full of defilement.”\textsuperscript{18} Cooper responded that it was the pervasive influence of railroad corporations in particular that made the proposed endeavor so hazardous:

\begin{quote}
… let a railroad of this kind be built across the continent; let the company have at its command the transportation of the commodities of the whole eastern world, … what kind of powers will it possess? Unexampled in the history of the world. I repeat, I cannot particularize in what way it might affect
\end{quote}

\begin{list}{\textsuperscript{\arabic{enumi}}}{\setlength{itemsep}{0pt}
\item Ibid., 503.
\end{list}
the public interests; how it might eventually be used to the danger of the public liberties.\textsuperscript{19}

Echoing Cooper’s reservations about the dangers of federally chartering such a large railroad corporation that would monopolize commerce and wield unprecedented influence, Senator Andrew P. Butler’s remarks in opposition to the bill provide the most prescient warning of what government-aided construction of the Pacific railroad through uninhabited territory by a federally-chartered corporation would mean for the balance of power between federal and state governments:

We are about to embark upon a system that will swallow up all others, and will increase the tendency of their Government, once a free confederacy of Republican States, to become a consolidated empire. We are departing from old landmarks and entering upon a boundless wilderness powers, without chart and without compass. We are committing our destinies to the discretion of irresponsible legislation, instead of allowing it be controlled and protected by the obligations and the guarantees or a written and once-respected Constitution.\textsuperscript{20}

The Senate’s debate in early 1853 over the chartering of the Pacific Railroad and Telegraph Company exemplifies not only the opposition of states’ rights, limited-government advocates to building with a federally-chartered corporation, but also the understanding that such an undertaking of centralized government authority would weaken the political power of the states, and set America on a path towards empire. The debate became heated at times, with Senator James M. Mason, a Virginia Democrat, going so far as to call the bill a “rape of the Constitution.”\textsuperscript{21} The 1853 Senate bill failed to pass, but its opponents’ concerns about the Pacific railroad’s expansion of federal authority, corruption, and gateway to empire would come to

\begin{footnotes}
\item\textsuperscript{19} \textit{Cong. Globe}, 32nd Cong., Sess. II, Appendix, 185.
\item\textsuperscript{20} Ibid., 177.
\item\textsuperscript{21} \textit{Cong. Globe}, 32nd Cong., Sess. II, Senate, 676.
\end{footnotes}
fruition in the 1860s, as the United States used the Pacific railroads as an instrument to advance its frontier empire (to be discussed in Chapter Two) and in the 1870s, as Congress sought to intervene in the affairs of the privately-owned Union Pacific and Central Pacific in response to public outrage over the railroads’ unscrupulous financial practices (to be discussed in Chapter Three).

Surveys and Sectionalism

Despite the debate over constitutional authority as well as emerging sectional squabbles over which route the railroad would take, in March 1853 Congress passed a bill appropriating $150,000 to the Secretary of War “to ascertain the most practicable and economical route for a railroad from the Mississippi River to the Pacific Ocean,” invoking the benefits of the Pacific railroad for national defense. In his first annual message to Congress in December 1853, President Franklin Pierce, a northern Democrat, continued to press Congress on the topic of the Pacific railroad for which surveys were underway. Pierce appealed to the military and communication benefits the proposed railroad would provide, referring to it as “the means of communication by which different parts of the wide expanse of our country are to be placed in closer connection for purposes both of defense and commercial intercourse.” Pierce noted the necessity of the construction of military roads “incidental to and indispensable for the exercise” of Congress’s war powers, as well as the “heavy expense, the great delay, and, at times, fatality” of traveling between the

22 Haney, 1850-1887, 51-54.
23 10 Statutes at Large, 219.
coasts via steamship to Panama and overland travel through that country to board a second steamship. These difficulties, said Pierce would be “magnified and still further increased in time of war.” He argued that “it would seem both expedient and proper if an economical and practicable route shall be found to aid by all constitutional means in the construction of a road which will unite by speedy transit the populations of the Pacific and Atlantic States.”

In his address the following year, Pierce maintained the constitutionality of Congress’s furnishing aid for a Pacific railroad, but noting the “crippled condition of many works commenced and prosecuted upon what were deemed to be sound principles and safe calculations,” he withdrew his support for land grant aid on the grounds that the public lands might be donated for better purposes. Nevertheless, Congressional interest in a transcontinental railroad was growing, as were sectionalist tensions in the discussions over its route. Southern Congressmen began clamoring for a southern transcontinental route to the Pacific and heralded the 1853 Gadsden Purchase as a means to that end. Senator Stephen A. Douglas of Illinois tried to quell the route debate by proposing the construction of three Pacific roads, but despite passing the Senate his bill failed to pass the House.

Sectionalist proclivities were further exacerbated in February 1855, when Secretary of War Jefferson Davis published his route recommendation based on the surveys sanctioned in 1853. Five survey parties explored the Northern route (47th-48th parallels), the Overland route (41st-42nd parallels), the Buffalo Trail

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25 Ibid.
(38th-39th parallels), the 35th parallel, and the Southern route (32nd parallel). The surveying parties recorded volumes of scientific information about the terrain, flora, and fauna, but since they lacked experienced railroad engineers among their ranks, they only gathered estimates rather than precise figures of the grades, curves, ascents, altitudes, and other data that would be needed for a railroad’s construction. The surveys also found that Davis’s favorite route, the Southern one along the 32nd parallel, was afflicted by a dearth of easy passes through the Sierra Nevada into San Diego. But despite the its lacking a clear advantage of the other routes surveyed, Davis, a native son of Mississippi, still recommended the Southern route to Congress. Since the surveyors’ reports endorsed the viability of several routes for a railroad to the Pacific, Davis’s recommendation was seen to be so overtly sectionalist that Congress dismissed it and became relatively inactive on the matter of a Pacific road for the next couple of years. Nevertheless, the 1853-1855 surveys marked the first time the federal government organized railroad surveys before a corporation had been contracted or chartered to build the railroad, and thus represented the federal government’s initiative towards the Pacific rail project of its own volition, and unprompted by any particular corporation.28

While Congress was still unable to pass a Pacific railway bill due to disagreements over its route, its members were nonetheless attuned to the growing need and public support for the project. The 1856 report of the House Pacific Railroad and Telegraph Committee began by asserting “the necessity that exists for

constructing lines of railroad and telegraphic communication between the Atlantic and Pacific coasts of this continent is no longer a question for argument; it is conceded by every one.”\(^29\) The report cited the discovery of gold in California, the perils of lengthy maritime travel between the coasts, the precedent of previous internal improvements undertaken by the federal government, the vulnerability of Western settlers to attacks from Native Americans, and the successful federal land grant to the Illinois Central Railroad in 1850 as rationale for the federal government taking a proactive role in the project.\(^30\)

Both of America’s major political parties included the construction of a Pacific railroad in their platforms for the election of 1856. The Republicans made the Pacific railroad a prominent issue in the campaign,\(^31\) and were more outwardly in favor of the road being constructed through federal initiative. Their platform resolved

> That a railroad to the Pacific Ocean by the most central and practicable route is imperatively demanded by the interests of the whole country, and that the Federal Government ought to render immediate and efficient aid in its


\(^{30}\) Ibid. The first federal land grant on behalf of a railroad passed Congress in 1850 and allotted lands to Illinois, Mississippi, and Alabama on behalf of the Illinois Central Railroad and the Mobile and Ohio Railroad. The grant’s allotment of alternating sections of public land in six-mile segments beside the road became the default pattern for railroad land grants, including the grant to the Union Pacific. Whereas the Illinois Central grant encompassed the federal government granting lands to the states through which the road would run, who in turn would grant it to the private railway companies, the Pacific railway grants ran largely through territories that had not yet joined the Union. This meant that in these later grants, the federal government gave the lands directly to private corporations. See Balogh, *Government Out of Sight*, 288. For more on the Illinois Central grant see Haney, *to 1850*, 363-64; Lloyd J. Mercer, *Railroads and Land Grant Policy: A Study in Government Intervention* (New York: Academic Press, 1982), 3; Goodrich, *Government Promotion*, 170.

construction, and as an auxiliary thereto, to the immediate construction of an emigrant road on the line of the railroad.\textsuperscript{32}

The Democratic platform of 1856 resolved that the party,

recognizing the great importance, in a political and commercial point of view, of a safe and speedy communication, by military and postal roads, through our own territory, between the Atlantic and Pacific coasts of this Union, and that it is the duty of the Federal Government to exercise promptly all its constitutional power to the attainment of that object, thereby binding the Union of these States in indissoluble bonds, and opening to the rich commerce of Asia an overland transit from the Pacific to the Mississippi River, and the great lakes of the North.\textsuperscript{33}

While the Republican platform explicitly advocated proactive federal aid for construction of a railroad, the Democratic platform was more hesitant and vague in its position. The Democrats advocated that the federal government exert its power within the limits of the Constitution (or at least within their interpretation of its limits) to achieve the existence of a railroad, rather than stimulate its construction through direct aid or action. The Republican platform also called for construction along the most central route, which is revealing of the fledgling party’s geographical preferences for where the road ought to run, as well as the geographic distribution of its constituents. The mention of the construction of an emigrant road for wagon migration alongside the tracks is indicative of the Republicans’ vision of the Pacific railroad as part of a larger land settlement program, and not just a means of communication and military transportation. The Democrats’ allusion to securing the Pacific states’ membership in the Union by the road’s connection to the East is ironic given that the Democratically-controlled South would soon secede from the Union.


Both parties fully understood that the transcontinental railroad would dramatically reshape the United States. Northerners associated the railroad and its related technologies with the westward expansion of free labor, while Southerners associated the railroad with the westward expansion of slavery. Much was at stake in the contested colonial project that was the first transcontinental railroad. Whichever section could tether the Pacific states to it via the Pacific railway would hold much leverage over the economic, political, and social future of the nation, especially with talk of disunion seething in the late 1850s.\textsuperscript{34}

Though the Democratic plank carried less urgency than its Republican counterpart, Democratic President James Buchanan argued strongly for a Pacific railroad in his first annual message to Congress in December 1857. Buchanan told Congress that the “difficulties and expense” of building such a railroad had been “greatly exaggerated.” Hinting at the favorable terrain of the Southern route along the 32nd parallel but carefully avoiding to declare an explicit preference among the proposed routes, Buchanan recommended the subject of the Pacific railroad be undertaken by Congress under the auspices of the war powers for the military, postal, and commercial benefits the road would bring the nation, as well as its forming a “powerful additional bond of union” between the Atlantic and Pacific states. Buchanan opposed the government’s undertaking the construction of the railroad itself, advocating that the project would be best served if shouldered by private actors assisted by Congress with land grants, monetary aid, or both.\textsuperscript{35}

\textsuperscript{34} Thomas, \textit{The Iron Way}, 39, 199.
In his annual address the following year, Buchanan again pressed Congress to turn its attention to the construction of a Pacific railroad and further articulated his position that the government would be better served by subcontracting its construction rather than embarking on the enterprise itself. “Such a policy,” of government management and financing, said Buchanan, “would increase the patronage of the Executive to a dangerous extent, and introduce a system of jobbing and corruption which no vigilance on the part of Federal officials could either prevent or detect.” Buchanan thought it best that the project be fulfilled by “companies incorporated by the States or other agencies whose pecuniary interests would be directly involved,” but not by a company or companies incorporated by the federal government itself. The federal government had not chartered a corporation since the Second Bank of the United States in 1816, and was trepidatious even try to do so again amid the fierce debates of the late 1850s regarding whether the states preceded the Union or vice versa and the superiority of federal or state authority, such as the Senate’s in 1853. Buchanan’s proposal for state-chartered corporations to perform the construction was thus in line with contemporary conventional wisdom and a logical method of contracting the railroad’s construction without expanding the scope of federal authority and government spoils.

A month after Buchanan’s second annual address, the Senate began debating a bill that would have provided for the construction of three Pacific railroads. The debates surrounding this bill indicate the rising intensity of the conflict between North

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37 Klein, Birth of a Railroad, 13.
and South over the railroad’s route. A speech by Senator Alfred Iverson, a Georgia Democrat, delivered to the Senate on January 6, 1859, is instructive as to the sectionalist dimensions of the route dispute that would hamper congressional discussions of the Pacific railroad until secession.\textsuperscript{38} “I have not a solitary doubt,” Iverson said,

that if only one road is provided for and the route is left open to be selected by the company who shall undertake it, a northern route will be adopted … . The South may now and then get a straggling passenger, or a box of stray goods, but the great bulk of all its operations will be turned towards the North; … Will it be said, sir, that if the South has the best route, capitalists will build the road on that route? No, sir; not a dollar will ever be spent. The political and sectional prejudices which pervade the northern people against the South would be sufficient of themselves to deter them … . Open this speculation to Northern cupidity, put this glittering prize of twenty-five million acres of the public land and twenty-five millions of government money, in the shape of a twenty-five years’ mail contract, up to competition, and who can doubt for a moment that it would be clutched by northern speculators and capitalists?\textsuperscript{39}

Iverson recognized the tremendous economic benefits the Pacific railroad would bring, and was savvy to the capital-intensive nature of railroads that necessitate significant investment from outside the Pacific railroad’s area of operation. His concerns that Northern financial interests would come to dominate a single state-sanctioned transcontinental railroad would be vindicated as the Union Pacific Railroad, soon to be animated by the first Pacific Railway Act in 1862, indeed became a Western railroad stewed by Northern business interests. While the West would get its long sought-after federally-funded transcontinental railroad, the road was controlled by Eastern financial interests overwhelmingly concentrated in New York.

\textsuperscript{38} Haney, 1850-1887, 60.
\textsuperscript{39} Congressional Globe, 35th Congress, Session II, Senate, 242. Significance of speech discussed in Haney, 1850-1878, 60-61. Goodrich also has noted Congress’s hesitation to let the route be determined by private capital (or by the executive branch for that matter) in Government Promotion, 182.
and Boston. Notwithstanding Iverson’s well-reasoned concerns over the sectional distribution of the road’s investors, the Southerners’ lengthly and numerous quarrels in Congress in favor of a Southern route were succinctly captured in 1862 by John S. Watts, the New Mexico Territory’s non-voting representative to Congress, when he quipped that “all are in favor of a Pacific railroad, but they do not just like the particular bill, nor will they like any bill unless it starts in the corner of every man’s farm and runs though all his neighbors’ plantations.”

The Lawyer Seeks Counsel

In August 1859, while Congress was stumbling over another complex bill for the construction of three Pacific railroads, an important meeting took place in Council Bluffs, Iowa that would be the foundation of the military’s and the executive branch’s proactive and indispensable role in facilitating the construction of the Union Pacific Railroad over the next decade. The lawyer Abraham Lincoln, who had spent significant portions of his career representing railroads, was in town on behalf of his client, the Mississippi & Missouri Railroad. Riding the wave of public attention

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41 Congressional Globe, 37th Congress, Session II, House, 1706.
42 Haney, 1850-1887, 61-62.
43 Starr, Lincoln and the Railroads. Lincoln tried cases for the Illinois Central and the Alton & Sangamon Railroad, and he represented railroad interests in Hurd v. Rock Island Bridge Company, a famous case involving a railway bridge over the Mississippi River connecting the Chicago and Rock Island Railroad with the Mississippi & Missouri Railroad between Rock Island, Illinois and Davenport, Iowa. Thomas C. Durant, the future promoter of the Union Pacific, was an investor in the Chicago and Rock Island Railroad, and the M&M would later connect with the Union Pacific by bridge over the Missouri River between Council Bluffs, Iowa and Omaha, Nebraska. For further reading on Hurd v. Rock Island Bridge Company, see ibid., 92-116; Brian McGinty, Lincoln’s Greatest Case: The River, the Bridge, and the Making of America (New York: Liveright, 2015).
44 McGinty, Lincoln’s Greatest Case, 177-78.
generated by his debates with Stephen A. Douglas the previous year, Lincoln was invited by the community to speak at Council Bluffs’s Concert Hall. In attendance was a young civil engineer named Grenville M. Dodge, who had since 1853 surveyed the territory west of the Missouri River on behalf of a railroad—the Mississippi & Missouri, as it happened—and had just returned from an expedition surveying a possible route for a Pacific railroad. Having been told that Dodge knew more about railroad engineering than any two men put together, Lincoln sought out Dodge on the porch of the Pacific Hotel after dinner.45 Lincoln inquired frankly, “Dodge, what’s the best route for a Pacific railroad to the west?” to which Dodge immediately replied, “From this town out the Platte Valley.”46 Dodge’s recommendation was rooted in experience rather than sectionalism. He had spent the last few years obsessively searching for the best route for a Pacific railroad and had taken it upon himself to publish a map of his route that was used by overland immigrants heading west.47

Some years later, Dodge recalled this first meeting with Lincoln in Council Bluffs:

For two hours, [Mr. Lincoln] engaged me in conversation about what I knew of the country west of the Missouri River, and greatly impressed me by the great interest he displayed in the work in which I was engaged. He stated that there was nothing more important before the nation at that time than the building of the railroad to the Pacific Coast.48

Dodge would also say of this meeting with Lincoln that “he ‘shelled my woods,’” as Lincoln meticulously extracted all of the information Dodge knew of prospective

48 Grenville M. Dodge, *Personal Recollections of Lincoln: An Address Before the Young Men's Christian Association of Council Bluffs, Iowa, on February 12th, 1911* (Council Bluffs, IA: Monarch, 1911), 11-12.
westward railroad routes. Dodge would soon fight for the Union Army in the Civil War and rise to the rank of Major-General before directing the construction of the Union Pacific Railroad as its chief engineer. Dodge’s meeting with Lincoln in 1859, however brief, was a critical basis for the relationship between the military, the executive branch, and the Union Pacific Railroad that would grow stronger over the following decade. Dodge attended the 1860 Republican convention in Chicago to help nominate Lincoln, and Lincoln would consult Dodge again a few years later about the Pacific railroad’s route and whether the enterprise ought to be undertaken by the government or private industry. Furthermore, it would prove to be Dodge’s relationships with the post-Civil War military brass, including Generals Grant and Sherman, that would furnish the supplies and protection needed for Dodge’s men to actually build the Union Pacific Railroad through Native American lands.

Secession and Military Necessity

Buchanan’s annual address to Congress in 1859 again called for federal action to spur the construction of a Pacific railway due to the “defenseless condition of our States and Territories west of the Rocky Mountains” by way of public-private partnership. As support for such a hybrid enterprise was gaining traction with the public. In April 1860, the New York Times observed,

Capitalists have hitherto regarded all data and speculations as to the cost, time and interest, maintenance, operation, and business of a railway to the Pacific, too indefinite and unreliable to justify investments in its construction; and they

49 Dodge, How We Built, 11.
50 Dodge, Personal Recollections of Lincoln, 13, 17-18.
Continuing the push for government subsidy of a private company, a bill proposing $60 million of aid to a firm called the Peoples’ Pacific Railway Company to construct the road was introduced by Congressman Samuel R. Curtis, an Iowa Republican, in May 1860. Curtis advocated the bill’s passage in large part as an instrument of holding the Pacific states in the Union. The bill passed the House in December of that year but an amended version was not passed by the Senate until January of 1861. But it was so encumbered with amendments by the Senate that the Chicago Tribune wrote that “the probability of the passage of any Pacific railroad measure is highly improbable at the present session.” The bill fell by the wayside as Lincoln was elected president and the secession crisis seized Congress’s attention.

Though the Democratic Party and its Southern Breckenridge Faction both called for federal aid for a Pacific railroad in their 1860 platforms, it was Lincoln whose divisive ascendance to the presidency and whose political vision for the transcontinental railroad would guide the project to legislative fruition. The sixteenth plank of the Republican platform on which Lincoln ran for president in 1860 included a resolution

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53 Haney, 1850-1887, 61; Dodge, How We Built, 10.
55 Dodge, How We Built, 62; Klein, Birth of a Railroad, 13.
That a railroad to the Pacific Ocean is imperatively demanded by the interests of the whole country; that the federal government ought to render immediate and efficient aid in its construction; and that, as preliminary thereto, a daily overland mail should be promptly established.\footnote{Republican Party Platforms: “Republican Party Platform of 1860,” May 17, 1860.}

Like its counterpart four years earlier, the 1860 Republican platform spoke of the vitality of the project and the urgency with which the federal government ought to undertake it. But unlike its predecessor in 1856, which spoke of the “most central and practicable route,” the 1860 platform neglected to indicate which route the road ought to take. Perhaps more noteworthy, however, was its call for the organization of a daily overland mail route. This invocation of Congress’s enumerated power to establish post offices and mail routes was not only a foreshadow of the constitutional rationale that would be provided for the first Pacific Railway Act in 1862, but also a manifestation of the Republicans’ belief in the cruciality of centralized federal authority to accomplish broad policy objectives. The Republicans’ zealous support of western railroad expansion became intertwined with Northern political ideas regarding free labor, land settlement, and a number of other issues. This moment gave rise to the “Railroad Republicans,” an entire generation of young American men engaged in politics and business whose fervent support of the Republican program of westward commercial expansion via railroad helped carry Lincoln to the White House in 1860.\footnote{Thomas, \textit{The Iron Way}, 39.}

When the secession crisis began following Lincoln’s election in late 1860, it seemed that the Pacific rail project would be condemned to legislative purgatory once more as the Union became preoccupied with the looming military conflict. However,
secession actually provided a window of opportunity for Congress to expediently pass a Pacific railroad bill as it removed Southern Congressmen who stoked the sectionalist conflict over the railroad’s route and opposed the use of centralized federal authority to charter the road or aid its construction. Secession also begat a wartime spirit of nationalism that dampened remaining Northern concerns over the constitutionality of federal aid. Just before leaving Congress to enlist in the Union army, Congressman Curtis reintroduced his Pacific rail bill in the House in July 1861 during a wartime session called by President Lincoln. The outbreak of the Civil War clearly demonstrated to Congress the military benefits of a Pacific railroad, and Lincoln promptly seized the opportunity afforded by secession to advocate the bill’s passage and expedient building of the railroad. For the remainder of his life, Lincoln would be actively engaged in the legislative and administrative processes behind the construction of the Pacific railroad, particularly in the Union Pacific Railroad which was to be constructed westward from the Missouri River. L.O. Leonard, a historian of the Union Pacific, remarked that “no statesman that ever lived had a keener interest in the Union Pacific than Abraham Lincoln. His clear vision of the future and what transportation really meant to the country he loved so well, and for which he gave his life, is most clearly shown in the close scrutiny it is quite evident he gave to all those papers which were presented to him for his signature.” Lincoln promoted the passage of the Pacific Railway act not only as a military necessity, but to secure the

60 Quoted in Starr, Lincoln and the Railroads, 199.

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membership of the Pacific states in the Union. At the war’s outset, the Chicago Tribune wrote that Pacific railway bill was “still strongly urged by the Californians, who maintain that it is the only way to prevent revolution in the Pacific States.”

Charles L. Scott, a Democratic Congressman from California, claimed to have received letters from his constituents “stating that the project of a Pacific Republic was rapidly gaining in favor there.”

As the United States grappled with the unprecedented national crisis posed by the Civil War, military necessity and the desire to preserve the membership of California and the West in the Union were the primary ideological bases for the first Pacific Rail Act of 1862. In addition to providing for the defense of the Pacific states and Western territories, the railroad would enable the federal government to effectively use the military to forcibly remove Indians from their lands by making it easy to deploy men and munitions across the continent’s vast interior.

Though Republicans and remaining Democrats alike viewed the railroad as an instrument for advancing American political, economic, military, and symbolic objectives, there was still much debate over whether the road should be built by

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61 Dodge, How We Built, 10.
63 Ibid.
64 White, Railroaded, 17. A 1946 booklet published by the Union Pacific Railroad about the company’s history noted the military basis of the railroad’s origins: “On December 20, 1860, the next major move which resulted in the forwarding of the Pacific Railroad idea was made as South Carolina adopted its ordinance of secession. Several of her sister states followed suit, the Civil War began, and a new argument for the building of the railroad emerged. With the nation engaged in civil war, it became clear that the nearly-isolated west coast was extremely vulnerable to any hostile force … national defense, rather than trade, [was] the prime influence in [the passage of the first Pacific Rail Act of 1862].” See Union Pacific Railroad Company, Union Pacific Railroad: A Brief History (Omaha, NE: Omaha Printing Company, 1946), 15.
65 Haney, 1850-1887, 149-50. White, Railroaded, xxiii.
public or private means. Suspicion prevailed on both sides: the advocates of a strong government role sought to avoid the greed of unscrupulous private contractors and speculators, while the advocates of private enterprise feared rampant government corruption and spoils. Additionally, even though the advocates of a Southern route were conveniently on a rebellious hiatus from Congress, there was still much disagreement about whether the Pacific railroad should take a northern route through Minnesota, a central route through Iowa, or a lower route from the border of Missouri.66

Despite these persisting disagreements, Congress would not squander the opportunity afforded by secession to deliver on a promised project that had been discussed for three decades. Thus, in the crafting of the first Pacific Railway Act of 1862 concessions were made on the questions of route and construction by public versus private enterprise in the hope of satisfying all sides, though in actuality the cumbersome act likely left all sides equally dissatisfied and would yield a troublesome responsibility for the federal government in the late nineteenth century.67

The Act of 1862: Mixed Enterprise, Centralized Authority, and the Wartime Republican Agenda

“The Act 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, Military, and Other Purposes” was signed into law by Lincoln on

July 1, 1862 while the Seven Days’ Battle unfolded just one hundred miles from Washington, outside Richmond, Virginia. The act federally chartered the Union Pacific Railroad Company, whose auspicious name, Dodge would recall, left no doubt “that the building of the railroad would hold the Union together.” Capitalized at one hundred thousand shares of one thousand dollars each, the Union Pacific was authorized to build a railroad line starting from a point on the 100th meridian of longitude between the Republican River and Platte River valleys in the Nebraska Territory and running westward to the western border of the Nevada Territory. In order to compromise between various political and economic interests along the Missouri River, the act also called for the construction of five westward lines from the riverfront cities of Sioux City, Omaha, St. Joseph, Leavenworth, and Kansas City that would join the Union Pacific’s trunk line at the 100th meridian.

The chartering of the Union Pacific, a private company, to undertake the national project was rooted in Americans’ distrust of the government’s ability to fairly and efficiently operate an enterprise of a railroad’s nature and the project’s continental scale. The act of 1862 drew on the American tradition of “mixed enterprise,” in which the government sought to incentivize private agents to fulfill public goals. Due to concerns of government corruption, the economic program put forward by Alexander Hamilton and the Federalists in the late eighteenth century, which featured a National Bank and internal improvements, used federal authority to harness the self-interest of wealthy Americans to towards public benefits. In 1808, Secretary of the Treasury

Albert Gallatin advocated in his Report on Roads and Canals that the government provide aid for internal improvements that would “diffuse and increase the national wealth” by having the federal government subscribe to the stock of corporations who would undertake the work. By blending public and private methods, argued Gallatin, the works might benefit from government oversight and the economy of private-sector initiative. Investing in private corporations also had the benefit of evading questions of the constitutionality of federally-funded internal improvements, since in the first half of the nineteenth century, corporations undertaking the works were chartered in individual states and not by the federal government.71

Chartering railroads provided its own set of challenges, as railroads in particular were inherently a capital-intensive enterprise with high fixed costs: their stations, track materials, rolling stock, and bridges were paid for with borrowed money; substantial maintenance costs were incurred protecting assets from decay due to use and exposure to the elements; and regular interest payments had to be made on the railroad’s debt. While buying stock in any railroad was an uncertain proposition, transcontinentals in particular had long been viewed as a foolish investment. Unlike state- and locally-aided railroads that ran through settled areas with existing markets, transcontinentals needed to stimulate demand for settlement and freight traffic through the uninhabited (and thus perceived as valueless) territory through which they ran. The paradox of the transcontinental railroad was that the it would hasten the settlement of United States territory, but the railroad could only be profitable if there

were settlements it could service. Westerners looked towards the federal government to solve the conundrum using central authority to provide the necessary inducements to spur the railroad to completion.\textsuperscript{72}

In order to compromise between the public’s unwillingness to be taxed to pay for the railroad and the railroad promoters’ lack of interest in investing their own money in the risky and costly enterprise, a system of federal land grants and bond subsidies was devised to incentivize private investment in the Union Pacific. As the company completed forty-mile segments of continuous road, the federal government would issue land patents to the Union Pacific for alternating sections of land that ran a fifth of a mile along the track and extended ten miles away from it. In total, the 1862 act called for the issuing of land patents for 9.05 million acres to the Union Pacific, the logic behind it being that by granting large swaths of virtually worthless land to the railroad, the government could increase the value of adjacent lands and incentivize settlement while the railroad sold its grants to recoup the cost of construction. As each forty-mile segment of track was completed, in addition to land patents, the Secretary of the Treasury would issue the Union Pacific sixteen $1000 United States bonds per mile, to be repaid with six percent annual interest at their maturity in thirty years. To compensate for the “mountainous and difficult” portions of terrain through which the road would run, the bond subsidy was increased to $32,000 per mile for the plateau between the Rocky Mountains and the Sierra

Nevada, with a bond subsidy of $48,000 per mile to be issued for railroad that ran through the mountain ranges themselves.\textsuperscript{73}

The act of 1862 not only made the federal government a first mortgage holder on the private Union Pacific Railroad Company, but also subjected the company to a degree of federal government control that no railroad chartered before or after it would experience. First, the act stipulated that when Union Pacific’s board had elected thirteen directors, the President of the United States was to appoint two additional directors to act on behalf of the federal government. The government directors were prohibited from owning stock in the company, while the other thirteen directors were each required to own at least five shares of stock.\textsuperscript{74} Second, the aforementioned land patents and bond subsidies were only to be issued to the Union Pacific after each forty-mile segment of railroad was inspected and certified by three commissioners appointed by the President of the United States to have “all necessary … appurtenances of a first class railroad.”\textsuperscript{75} The act mandated that the Union Pacific was to give priority to government, postal, and military freight and personnel over other shipments, and the President of the United States was authorized not only to determine the uniform gauge of the transcontinental railroad and all of its branches, but also to affix the location of the eastern terminus of the Union Pacific branch on Iowa’s western border.\textsuperscript{76}

\textsuperscript{74} 12 Statutes 489-91.
\textsuperscript{75} Ibid., 492.
\textsuperscript{76} Ibid., 493, 495-96.
The Union Pacific was to build westward to the border of California and the Nevada Territory, where it would join a line built eastward from the Pacific coast by the Central Pacific Railroad Company, a firm that had existed for a number of years and was chartered in the state of California.\textsuperscript{77} The legislation also included a provision that in the event of the railroad’s default the United States government could repossess the company’s material assets and unused land grants.\textsuperscript{78} While the 1862 act offered the same land grant and bond subsidy incentives to the Central Pacific and other Missouri River branches, it was only the Union Pacific that had government officials appointed to its board of directors. Noting this unique feature of the Union Pacific, Dodge later made clear to Congress that “No other of the roads receiving Government aid has any such board or any such supervision … .”\textsuperscript{79}

The Pacific Rail Act of 1862 and the government aid it provided for the Union Pacific and other railways was an exercise in nation-building and an assertion of central state authority. The act was ideologically intertwined with the ongoing Civil War, which, Balogh has argued, served as a “catalyst for national consolidation” of political structures away from local and state governments and towards the federal government.\textsuperscript{80} In addition to its promotion of federal authority by seeking to solidify membership in the Union and suppress secession, the Pacific railroad was a critical component of the Republican program of ambitious federal legislation to catalyze western settlement. In 1862, Northern Republicans pursued a three-pronged

\textsuperscript{77} Ibid., 493-94.
\textsuperscript{78} Ibid., 492-94, 497.
\textsuperscript{79} Dodge, \textit{How We Built}, 87.
\textsuperscript{80} White, \textit{Railroaded}, 38; Balogh, \textit{Government Out of Sight}, 277.
The legislative agenda comprised of the Homestead Act (effective May 20), the Pacific Railroad Act (effective July 1), and the Morrill Land-Grant Act (effective July 2). The Republicans’ political agenda was a capitalist, free-labor vision for westward expansion rooted in Henry Clay’s American System, which sought to create demand for American agricultural products by nurturing industry with a national banking system and protective tariffs—which, along with the sale of public lands—would finish the funds for internal improvements. At the groundbreaking of the Union Pacific in Omaha in December 1863, Secretary of the Treasury Salmon P. Chase noted the significance of the Pacific Railroad Act within the Republican legislative package in a letter to the railroad’s president, John A. Dix:

> The Thirty-seventh Congress will be forever memorable in history as the anchor of many acts of legislation of transcendent importance and far-reaching consequences. Among these great acts, the Pacific Railroad bill will remain as one of the most illustrious monuments of the wisdom and courage of its members.

Quantitative analysis of Congressional voting records in the years leading up to the three acts shows a strong relationship between support for an aggressive response to secession and support for federally-aided internal improvements such as the Pacific railroad and agricultural colleges. The federal government chose the route of the Pacific railroad, thereby influencing the direction of settlement and making the lands adjacent to it lucrative for settlement under the Homestead Act due to the easy access to national markets the railroad would provide.

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83 Bensel, Yankee Leviathan, 80-84, 178; White, It's Your Misfortune, 142.
Consistent with Whitney’s early vision for the Pacific railroad as a means to settle inland the throngs of immigrants in east coast cities, labor advocates and supporters of the Homestead Act theorized that it would incentivize the east’s unemployed laborers to move west and become independent landowners while the workingmen who stayed behind would then experience rising wages and spur national economic growth. The federal government was content to give away so much land to the Union Pacific and other railroads named in the 1862 Pacific Rail Act because it figured the railroad would so increase the value of the government-retained land plots adjacent to the tracks that the government could sell the lands to homesteaders for $2.50 per acre for 80 acre sections—a steep price hike from the standard $1.25 per acre for 160 acre sections. The final dimension of the Pacific railroad land grant as a state-building instrument was its ability to dispossess Native Americans of their lands much more expediently than public land grants by granting the lands directly to a single corporation, rather than waiting for many different parties of settlers to gradually claim the lands in a competitive fashion. The Union Pacific’s confiscation of Native American land would incur attacks from the tribes whose ancestral lands the railroad ran through, and the Union Pacific would become the pioneering model for the U.S. Army’s use of Pacific railways to subdue the frontier’s Native American population and concentrate them on reservations (to be discussed in Chapter Two).

The 1862 act also included provisions that a number of critical attributes regarding the Pacific railroad’s leadership, construction, and inspection for the

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issuance of land grant patents fell under the purview of the executive branch. In addition to the two Union Pacific board directors and three government inspectors the president was to appoint, the president was charged with selecting the railroad’s uniform track gauge and affixing the the Union Pacific’s eastern terminus. With respect to the track, the 1862 act read:

The track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri River to the Pacific coast; the grades and curves shall not exceed the maximum grades and curves of the Baltimore and Ohio railroad … .

Thomas A. Scott, vice president of the Pennsylvania Railroad and future president of the Union Pacific, was one of the many railroad officials who saw an advantage to choosing a gauge to match that of the existing eastern and midwestern railroads, and wrote to Secretary of the Interior Caleb B. Smith in October of 1862 to advocate this position:

… I beg to say that in my opinion the proper gauge of the Pacific Railroad would be four feet, eight and one-half inches, this being the gauge of all the New England roads the New York Central, the Pennsylvania Central, the Baltimore and Ohio, as also all the roads leading westward from Detroit, Toledo, Chicago and Indianapolis ….

Scott hoped that if “a line so important to the commercial world as … the Great Pacific Railway” was to adopt the 4 feet 8½ inch gauge, it would prompt the midwestern lines using a gauge of 4 feet 10 inches to narrow their lines, “thus practically giving us a uniform connection throughout all the free states, an advantage to the government, at times, beyond value” that would equal the military advantage of

85 12 Statutes 495.
86 Klein, Birth of a Railroad, 275, 286-87; Starr, Lincoln and the Railroads, 217.
87 Quoted in Starr, Lincoln and the Railroads, 218.
in the Southern states’ standardized five-foot gauge. The Civil War added pressure to adopt a national standard gauge, and Lincoln’s 1863 decision to standardize the Pacific railroad’s gauge at 4 feet 8½ inches prompted West Coast rail contractors to abandon their five-foot gauge and incentivized future railroads that wanted to connect with the Union Pacific’s trunk line to adopt the standard gauge. This, along with the act’s prescribed adherence to the grading and curving standards of the prominent Baltimore & Ohio, was an important measure that prompted a “continental uniformity” of gauges that would persist through the development of additional Western railroads, as well as Canadian and Mexican railroads. These measures effectively made the Pacific railroad the prototype for a continental transportation network that would tap into the resources of vast unsettled territory, and not merely a standalone line for inter-coastal transportation.

To aid him with setting the Union Pacific’s eastern terminus along the Missouri River, Lincoln once again sought the counsel of General Dodge, whom Lincoln abruptly summoned to Washington from his Union Army post in Corinth, Mississippi in the spring of 1863. Consistent with the recommendation he gave Lincoln in 1859, Dodge advised Lincoln that the eastern terminus was best situated in Council Bluffs, Iowa, directly across the Missouri River from Omaha and offered a connection to the western terminus for the Mississippi & Missouri Railroad, which Dodge had fixed there in 1856 while working in that railroad’s employ. Lincoln

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88 Ibid.
issued an executive order following Dodge’s recommendation on November 17, 1863, two days before delivering the Gettysburg Address:

In pursuance of the fourteenth section of the Act of Congress, entitled “An Act to aid in the construction of a Pacific Railroad … ”; I, Abraham Lincoln, President of the United States, do hereby fix so much of the western boundary of the State of Iowa as lies between the north and south boundaries of the United States Township, within which the City of Omaha is situated, as the point from which the line of railroad and telegraph in that section shall be constructed.91

Dodge’s recommendation for the terminus was based not only on his engineering experience and Omaha’s connection with the Mississippi & Missouri, but also on his significant investment in tracts of land adjacent to the Council Bluffs route for the Union Pacific. Without the railroad to increase their value, Dodge faced the possibility of financial ruin. A few weeks after the executive order, on December 1, Thomas C. Durant, one of the Union Pacific’s principal promoters and contractors, staged a groundbreaking ceremony in Omaha which led to tremendous land speculation in and around Omaha and the Platte Valley.92 Though Dodge’s integrity was never questioned, his fusion of public and personal interests was an unavoidable component of the mixed enterprise of the Union Pacific and a hallmark of the dawning Gilded Age.

The groundbreaking ceremony following Dodge’s lobbying of Lincoln was attended by the governor of the Nebraska Territory as well as the mayors and city councilmen of Omaha and Council Bluffs. Describing the affair, the New York Times wrote that the “grand work” was “inaugurated with the utmost zeal and

enthusiasm." The significance of the Union Pacific’s groundbreaking with the Civil War ongoing was not lost on Secretary of State William H. Seward, who wrote to Union Pacific president John A. Dix in honor of the occasion:

> With your brave help … I hope we shall soon put down this wretched and wicked insurrection against the Union. With the help of our capitalists and our free and loyal laboring men, the Union Pacific Railroad can, and I hope will, be extended to the Pacific Ocean. When this shall have been done, disunion will be rendered forever afterward impossible. There will be no fulcrum for the lever of treason to rest upon.\(^{94}\)

Seward’s remarks not only acknowledged the elimination of the possibility of Pacific secession, but made specific reference to the financiers and free laborers who would build the road. Financiers were important Northern voting bloc, and free labor was an important feature of the Republican program for western expansion. That the Union Pacific was built by free laborers and not slaves was noted by Seward to underscore the distinction between the Union and the Confederacy as the war waged on.

The Amendatory Act of 1864: Increased Aid and the Government’s Second Mortgage

Aside from settling the Union Pacific’s eastern terminus, Dodge’s second meeting with Lincoln in 1863 is hugely significant for its discussion of how the railroad was to be financed and constructed in light of the shortcomings of the act of 1862. Though the federal government had given its credit to the Union Pacific, it did not extend sufficient aid to make investing in the railroad seem lucrative amid the myriad of emerging wartime business opportunities that were far less ambitious and risky.\(^{95}\) Per the 1862 act, the federal government owned the first lien on the railroad,\(^{93}\) "The Union Pacific Railway." *New York Times*, December 4, 1863. *Historical Newspapers*.\(^{94}\) Ibid.\(^{95}\) Klein, *Birth of a Railroad*, 16; Haney, 1850-1887, 63; Mercer, *Railroads and Land Grant Policy*, 39.
while the company’s bonds were merely second mortgage bonds. This meant that in
the event of the Union Pacific’s default, private investors could only recover their
investment after the government had been recompensed. “There was no one in the
United States then who had enough confidence in the future of the Union Pacific
Railroad to buy second mortgage bonds at any price,” recalled Dodge. Only
$300,000 of the company’s target of $2 million had been raised in the six months
since September 1862, preventing the start of construction. Dodge explained to
Lincoln the difficulties of raising capital and the weaknesses of trying to organize a
project so large through private industry, and he advocated that the government itself
take up construction and ownership of the railroad. Lincoln told Dodge that the
government had its hands full with the ongoing war and was not in a position to
undertake the enterprise itself. When Dodge and Lincoln met in spring of 1863, the
national debt had more than doubled from $524 million at the time of the 1862 act’s
passage to $1.1 billion. In spite of the looming debt, Lincoln did tell Dodge that he
and the federal government
were willing to do anything they could to aid any company who would take
this matter up in earnest and raise the money and go forward with it. [Lincoln] intimated that he was perfectly willing to have the law changed so that the
Government should take the second mortgage and the promoters of the road
take the first.

96 Dodge, Personal Recollections of Lincoln, 18.
97 Dodge, How We Built, 12. Dodge, Personal Recollections of Lincoln, 18.
98 Mercer, Railroads and Land Grant Policy, 38; Klein, Birth of a Railroad, 22-23; Dodge, How We
Built, 12; Dodge, Personal Recollections of Lincoln, 18; “Historical Debt Outstanding — Annual
1850-1899,” United States Department of the Treasury Bureau of the Fiscal Service, TreasuryDirect. In
1860 the national debt was $64.8 million and would climb to $2.7 billion by war’s end.
99 Dodge, Personal Recollections of Lincoln, 18.
Upon receiving this information, Dodge went to the Union Pacific’s New York headquarters to convey the details of his conversation with Lincoln to the railroad’s promoters and managers. The Union Pacific officials were emboldened by Lincoln’s message to Dodge and set about lobbying Congress for an amendatory act.\textsuperscript{100}

The product of the Union Pacific’s (and Central Pacific’s) lobbying was the Pacific Railway Act of 1864, signed into law by Abraham Lincoln on July 2, 1864. The 1864 act amended the 1862 legislation by altering the Union Pacific’s capitalization to make the company more attractive for investment, doubling the size of the Union Pacific’s land grant (and increasing the size of the grants to all Pacific railroads), enabling the railroads to receive the promised government subsidies after every twenty miles of track completed instead of forty, and—most significantly—reducing the government’s claim on the railroad’s property from first to second mortgage. The number of alternate sections of land on each side of the railroad per mile was increased from five to ten, granting 12,800 acres to the Union Pacific per mile of track. When all was said and done, the federal government granted the Union Pacific an amount of land roughly equivalent to the square mileage of New Hampshire and New Jersey put together. The 1864 act also amended the provision of the 1862 act’s third section to allow the Union Pacific to be granted lands rich in iron and coal, raw materials that would be integral to the railroad’s operation.\textsuperscript{101}

The 1864 amendatory act sought to make the Union Pacific more lucrative to investors by altering the terms of its capitalization and expediting its access to federal

\textsuperscript{100} Ibid.
\textsuperscript{101} 13 \textit{Statutes} 356-60; Klein, \textit{Birth of a Railroad}, 31; White, \textit{Railroaded}, 24. The aggregate amount of land given to all the land grant railroads in the United States totaled 131,230,358 acres, which combined into contiguous territory would be the third largest state behind Alaska and Texas.
subsidies. The par value of a share in the company was lowered from $1,000 to $100, and its total number of shares was proportionately adjusted from one hundred thousand to one million in the hopes that a lower share price would attract more stock subscribers. The act also stipulated that U.S. Treasury bonds could be issued to the Union Pacific and the other Pacific railroads named in the original 1862 act after twenty-mile segments had been completed rather than the original threshold of forty miles. The government guaranteed both the principal and interest of the bonds, figuring as it did with the land grants that the railroads would earn enough from land sales and government and private shipments to repay its debt at the bonds’ thirty-year maturity.102

A further modification to the issuing of government bonds was an amendment to the 1862 act’s provision that the Union Pacific main line would meet the Central Pacific Railroad at the eastern border of California and the western boundary of the Nevada Territory. The Central Pacific was authorized by the 1864 amendatory act to build until it met the Union Pacific up to 150 miles into the Nevada Territory, with no exact meeting point specified. This extension of the Central Pacific line, the ambiguity of the meeting place, and an additional provision in the 1864 act allowing other branches to join the Union Pacific’s trunk line west of the original 100th meridian would lead to a construction race between the Union Pacific and the Central Pacific as each sought to acquire as many of the subsidized government bonds as possible before its the other road. Adding to the incentives for both companies to build towards the other as quickly as possible was the 1864 act’s provision that the

102 13 Statutes 356-360; Klein, Birth of a Railroad, 31; White, Railroaded, 22.
road could be graded up to three hundred miles in advance of completed continuous track, and the companies would be issued up to two-thirds of the government bonds for the graded line in twenty-mile segments (the last third of the government bonds would be issued upon completion of the track). Additionally, another amendatory act signed into law March 3, 1865 authorized the Union Pacific and other aided companies to issue their own first-mortgage bonds one hundred miles in advance of their completed line of railroad, which similarly served to compel the companies to build as quickly as possible.¹⁰³

Most consequentially, the 1864 act permitted the Union Pacific, Central Pacific, and other companies named in the 1862 act to issue their own first mortgage bonds in an amount no greater than the amount of U.S. bonds they were issued, effectively doubling the railroads’ debt. The act stipulated that “the lien of the United States bonds shall be subordinate” to that of the bonds issued by the companies themselves.¹⁰⁴ This was an enormously aggressive maneuver on the part of the government, since if any of the aided railroads defaulted, the government would only be able to recover what it was owed after the private first mortgage bondholders recouped their losses.¹⁰⁵ Dodge credited Lincoln with recognizing that the subordination of the government’s lien would allow the Union Pacific to attract enough private investment to actually build the road:

> In 1864 [Congress] passed the law which placed the mortgage bonds of the company ahead of the mortgage bonds of the Government, and with the Government’s and other mortgage bonds they were enabled to start the road … . It was the foresight, the nerve and determination of Abraham Lincoln that

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¹⁰³ 13 Statutes 359-60, 362-63; Klein, Birth of a Railroad, 80; White, Railroaded, 26.
¹⁰⁴ 13 Statutes 360.
¹⁰⁵ White, Railroaded, 22.
forced Congress to give the promoters of that road the first mortgage bonds and the Government taking a second lien that insured its completion.\footnote{Dodge, \textit{Personal Recollections of Lincoln}, 19.}

On the other hand, many were critical of the great lengths to which the 1864 act went to aid the Pacific railways. Reflecting on the circumstances that would compel the government to act so strongly, Congressman James G. Blaine, a Republican from Maine, observed of the 1864 act that it was the wartime urgency of the early 1860s that led to such gigantic aid legislation:

> The terrible struggle to retain the Southern States in the Union had persuaded the Administration and the Government that no pains should be spared and no expenditures stinted to insure the connection which might quicken the sympathy and more directly combine the interests of the Atlantic and Pacific Coasts. ... a more careful circumspection might perhaps have secured the work with less expenditure.\footnote{Quoted in ibid., 209.}

John Sherman—a Republican Senator from Ohio, brother of General William T. Sherman, and future author of the eponymous antitrust statute—argued that the decision to reduce the government’s claim on the road to second mortgage was “a fatal error, which lent to all the serious complications which followed.”\footnote{Ibid.} He criticized the wartime rhetoric that facilitated the passage of the acts of 1862 and 1864:

> It is not wise during war to provide measures for a time of peace. ... if the Act [of 1864] had been delayed until after the War, when the securities of the United States rapidly advanced in value, it could not have passed in the form it did. ... The constructors and the benefit of the advancing value of the bonds and of the increasing purchasing power of United States notes.\footnote{Ibid.}
The terms of the substantial bond subsidy Sherman referenced would become a source of great conflict between the Union Pacific and the federal government, as the railroad’s mounting debt to the government, public scorn over the Credit Mobilier scandal, and the anti-corporate political climate of the 1870s would lead Congress to pass legislation to control the Union Pacific’s corporate policies by dramatically altering the terms of the railroad’s chartering legislation (to be discussed in Chapter Three).

Starting with the Union Pacific, land grant railroads became the premier promoters of western settlement. Born from the American tradition of mixed enterprise, the chief rationale for this new method of railroad promotion, in which the federal government donated unsellable lands directly to private companies, was the absence of state governments in the uninhabited territory and the federal government’s right, as a landowner, to dispose of its property as it saw fit to increase its value. The federal government’s chartering of and land grant to the Union Pacific was a critical exercise of centralized authority during the Civil War, a unique moment in American history that decided the superiority of the federal government’s authority over that of the states on the battlefield. The Republican legislative agenda, of which the Pacific Rail Acts were a crucial component, wielded central state authority to promote the settlement of the west and would become structurally integral to the postwar economy and the federal government’s regulation of it. As Sherman’s remarks indicate, the wartime exuberance of the 1864 act’s reducing the government’s lien to a second mortgage would prove a shortsighted error, as the federal government
would find itself engulfed in legal battles with the Union Pacific over the railroad’s repayment of its government debt a decade later. The portion of the Union Pacific’s cost borne by the government was so much greater than the portion borne by private investors that it probably would have been more effective, as Dodge suggested to Lincoln in 1863, to have the government itself undertake the road’s construction.  

Regardless of the inefficiencies of the federal mixed enterprise, the Union Pacific became the pioneering railroad to rapidly facilitate western settlement and would prove to be the technological breakthrough that would enable another creature of centralized federal authority, the United States Army, to definitively subdue the Native American population that occupied the “uninhabited” country through which it ran.

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The previous chapter referred to both the 1862 Pacific Railroad Act’s nullification of Native American land titles, which enabled the United States government to remove the Native Americans to secure settlement of the west by white Americans, as well as the railroad’s enabling the U.S. Army to quickly and inexpensively deploy men and munitions across the continent’s interior. This chapter will discuss in detail the relationship between the Union Pacific Railroad and the United States military in light of the railroad’s “Indian troubles,” and how the Union Pacific enabled the federal government to fulfill its broader objectives for the removal of Native Americans in the 1860s and beyond. The result of the synergy of the railroad and the military was the concentration of Native Americans on reservations and the closure of the American frontier.

The relationship between the Union Pacific and the U.S. military developed at the margins of American society on the Western frontier, which Richard White has noted “served as the kindergarten of the American state.” In the absence of state governments to compete with its authority, the frontier was the perfect environment in which the federal government could exercise and expand its spheres of power, which for most of the nineteenth century were primarily acquiring land, promoting trade, and ensuring the security of Americans on the frontier by deploying the military and removing the Native Americans.113 Constructing the Union Pacific Railroad

111 Dodge, How We Built, 18.
112 White, It’s Your Misfortune, 58.
113 Balogh, Government Out of Sight, 11, 154, 158.
precipitated attacks from the Native Americans, who saw the westward spread of railroads as a threat to their way of life because of their depletion of the bison and promotion of westward white emigration.

Rights of Way

In contrast to the Pacific railway bill recommended by the majority of the 1856 House Committee on the Pacific Railroad (which provided that “no road shall be located through any Indian reservation or Territory, except upon the written approval of the Secretary of the Interior, and the consent of the Indian tribe or tribes interested therein, previously obtained by the government of the United States,”114) the Pacific railway act that was passed by Congress in 1862 took a decidedly more aggressive approach towards the Native American lands that stood in the railroad’s path. The second section of the 1862 act, which granted the Union Pacific and Central Pacific the right of way through public lands, critically stipulated that “the United States extinguish as rapidly as may be, the Indian titles to all lands following the operation of this act and required for the right of way and grants hereafter.”115 This section of the act not only provided the legal authority upon which General Dodge and the Union Pacific track-laying crews made their forays into Native American territory, but also served as the basis upon which they would summon the U.S. Army to provide munitions, provisions, and protection from Native American attacks during construction when hostilities veered towards war.116

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114 House of Representatives Select Committee on the Pacific Railroad and Telegraph, Pacific Railroad, 13.
115 12 Statutes 491-92.
116 Klein, Birth of a Railroad, 72-73.
The 1862 act’s annulment of Native American titles along the Pacific railroad’s route was hardly the first time the federal government legislated the construction of railroads through Native American lands. The April 1859 treaty with the Walla Walla, Cayuses, and Umatilla tribes stipulated that “all roads highways and railroads shall have the right of way through the reservation.”117 Similarly, the treaties the General Government made with the Sauk and Fox tribes on October 1, 1859, and with the Kansa tribe October 5, 1859, included a provision that granted a right of way for roads and railroads through the tribes’ territory as if they were on publicly held land, but mandated that railroad companies remunerate the Native Americans for the land they seized:

… all roads and highways laid out by authority of law shall have right of way through the lands within the reservation hereinbefore specified … and railroad companies, when the lines pass through the lands of said Indians, shall have the right of way on the payment of a just compensation therefor in money.118

Another treaty that merits attention in the context of railroad development through indigenous territory is the 1866 agreement between the U.S. government and the Choctaws and Chickasaws, who were then sojourning in reservations in modern-day Oklahoma after their removal from their native lands in the southeastern United States in the early 1830s. The treaty reiterated the right of way through the tribes’ reservations for railroad companies that had been granted by an 1855 treaty between the government and the tribes.119 Additionally, within the framework of federal

117 12 Statutes 948.
118 Treaty with the Sauk and Foxes, 15 Statutes 467; Treaty with the Kansas Tribe, 12 Statutes 1111.
railroad land grant policy established by the Pacific railroad acts of 1862 and 1864,

Article VI of the treaty enabled the tribes to

subscribe to the stock of the particular company or companies such amount or amounts as they may be able to pay for in alternate sections of unoccupied lands for a space of six miles on each side of said road or roads, at a price per acre to be agreed upon between said Choctaw and Chickasaw Nations and the said company or companies … .\textsuperscript{120}

This provision is particularly curious as it enabled the tribes to relinquish their lands to the railroad companies, which would help fulfill the federal government’s vision for white homestead farming, but would at the same time theoretically remunerate the Native Americans by making them stockholders in the railroad companies. The act also stipulated that the railroad companies to whom the Choctaws and Chickasaws sold their lands in exchange for stock could not resell the lands to anyone who was not a member of the tribes.\textsuperscript{121}

This unconventional facet of the agreement was the product of negotiations by the Choctaws’ lawyer, John H. B. Latrobe, who believed that the Choctaws’ granting the railroads privileges through their lands, the ability to convert their land into stock assets, and the mandate that the railroads could not resell the lands to people outside the tribes gave the despondent Chickasaws their best chance to gain economic strength and prevent their tribe’s disappearance. In the years immediately after the Civil War, as the United States was ramping up its military’s budget and size, compliance became an integral part of Native American leaders’ strategy to ensure their peoples’ survival. The Choctaws, along with the Cherokees and Seminoles, made concessions to railways in 1866 in an attempt to demonstrate their willingness

\textsuperscript{120} 14 Statutes 771.
\textsuperscript{121} Ibid.
to cooperate with the U.S. government’s program for settling and developing the western states. However, this attempt would prove unsuccessful, as the U.S. government placed the proceeds from Native American land sales into federal trusts that often invested in railways running through the tribes’ own reservations. In 1870, when the federal government tried to tax bonds of the Nashville and Chattanooga railroad it had purchased and held in trust for the Chickasaws without their consent, as well as debit the Chickasaw trust fund to cover the railroad’s defaults on loan repayments, the Chickasaws vociferously petitioned that “to aid in the mighty march of the white man,” the government had wrongfully

… lent the poor and meager proceeds of the Indians’ land to railroads, that brought wealth and population and built up cities in the old hunting grounds of the race. … now the attempt is made to force the Indian to contribute his pittance to the growth of all this prosperity and power … .

The confiscatory language used in these treaties regarding rights of way and land grants was founded on John Marshall’s 1823 ruling in Johnson v. M’Intosh. Marshall’s opinion established the discovery doctrine of the superiority of Euro-American land claims in the New World, and ruled that the United States, not the Native American tribes themselves, held the ultimate land title, and any Native American land claims were predicated upon Congressional approval. Thus, the term “Indian title” in the 1862 Pacific rail act is a misnomer, and the 1862 act explicitly

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123 Holmes Colbert et al., Letter from Hon. Holmes Colbert … And Other Indian Delegates to Hon. J. D. Cox … in Relation to the Attempt of the Commissioner of Internal Revenue to Collect Taxes on the Interest Due the Chickasaws and Other Indian Nations on Bonds Held in Trust by the U.S. (Washington, D.C., 1870), quoted in Miner, The Corporation, 10.
invoked the already tacitly understood power of the federal government to perform what it perceived as a land reclamation rather than a land seizure.

Civil War Veterans Go West

Despite Commissioner of Indian Affairs D.N. Cooley’s hope that the Native Americans would use the arrival of the Union Pacific railroad in their territory as an opportunity for employment and income, shortly after the commencement of the railroad’s construction in 1864 violence broke out between the Native Americans and the Union Pacific construction crews. Over a decade before work on the Union Pacific began, members of Congress anticipated that a transcontinental railroad through Native American lands would incite resistance. During the Senate’s 1853 debate over federally chartering a private corporation to build the Pacific railroad, Senator Stephen A. Douglas responded to concerns that protecting the railroad from Native American attacks during construction might be too costly, hinting that the railroad’s construction could be intertwined with an American military conquest of the frontier. “I do not see the force of the argument,” said Douglas,

that we shall have to put military posts along the country, at every twenty miles, to protect the laborers from the Indians. Would not military posts look well protecting five thousand laborers along the line of that road? Why sir, how near to those laborers do you think any hostile Indians will approach? In my opinion, the Indians will require more protection against the laborers than the laborers against the Indians.

The Union Pacific workmen building in harm’s way were comprised predominantly of Civil War veterans, the leaders of whom retained their personal

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126 *Congressional Globe*, 32nd Congress, Session II, Senate, 508.
relationships with top military brass after the war and organized construction in a manner steeped in military discipline learned in the U.S. Army. This enabled Union Pacific personnel under the leadership of retired General Dodge to fight the Native Americans with the most technologically advanced rifles available and to call on the Army for protection and supplies. The symbiotic relationship that developed between the Union Pacific Railroad and the U.S. military became the model for cooperation between the military and the railroads on the frontier for the remainder of the nineteenth century.\footnote{Angevine, \textit{Railroad and the State}, 174.}

Dodge had fought under Ulysses S. Grant and William Tecumseh Sherman in the Civil War, and commanded a division in the Army of the Tennessee.\footnote{Charles Edgar Ames, \textit{Pioneering the Union Pacific} (New York: Appleton Century Crofts, 1969), 135.} Grant praised Dodge as an “exceedingly efficient leader” and wrote that “besides being a most capable solider, was an experienced railroad builder.” Grant also commended Dodge’s engineering expertise for “intrench[ing] his men and protect[ing] them against surprises by small parties of the enemy” using only “the tools of the pioneers—axes, picks, and spades.”\footnote{Ulysses S. Grant, \textit{Personal Memoirs of Ulysses S. Grant} (1885-1886; repr., New York: Cosimo, 2007), 244, 375.} Dodge’s experience organizing railroad construction under fire during the Civil War would prove invaluable for his leadership of the Union Pacific’s construction while besieged by Native American Attacks. When he assumed his post as the Union Pacific’s head engineer on May 1, 1866,\footnote{Dodge, \textit{How We Built}, 14.} Dodge wrote to Grant,
… if I can ever be of service to you in any way that you will not fail to command me, and that you will visit our section of the country in some of your travels. We are fast civilizing this Western country, and I believe our railroad will do more towards taming Indians than all else combined.\textsuperscript{131}

Recognizing the implications that the Pacific railroad would have for the land acquisition and Indian removal objectives of the federal government, General Grant, General Sherman, and the U.S. Army under their command took an active interest in the construction of the Union Pacific and protecting the enterprise from the Indians.

Dodge recalled,

From the beginning to the completion of the road our success depended in a great measure on the cordial and active support of the army, especially its commander-in-chief, General Grant, and the commander of the Military Division of the West, General Sherman. [Sherman] took a personal interest in the project. He visited the work several times each year during its continuance, and I was in the habit of communicating with him each month, detailing my progress and laying before him my plans. In return I received letters from him almost every month.\textsuperscript{132}

Sherman indeed had a personal interest in the Pacific railroad; he had been surveyor for a potential railroad route through the Sierra Nevada in 1849, led an early attempt to build a railway east from San Francisco in 1854,\textsuperscript{133} and in 1859 expressed support for government aid of the transcontinental railroad.\textsuperscript{134} Sherman reorganized the Army’s frontier districts that it might afford the Union Pacific the military protection


\textsuperscript{132} Dodge, \textit{How We Built}, 18-19.


\textsuperscript{134} Grenville M. Dodge, \textit{Personal Recollections of President Abraham Lincoln, General Ulysses S. Grant and General William T. Sherman} (Council Bluffs, IA: Monarch, 1914), 185. W.T. Sherman wrote to his brother, John, a Republican Congressman from Ohio who three decades later would be the principal author of the eponymous antitrust law, that the Pacific railroad was “a work of giants, and Uncle Sam is the only giant I know who can grapple the subject.” Quoted in ibid.
it would need to build through Indian territory, and his initiative would become the model for future railroads through Native American lands. Sherman wrote in his memoirs that

The construction of the Union Pacific Railroad was deemed so important that the President, at my suggestion, constituted on the 5th of March, 1866, the new Department of the Platte … [with] headquarters at Omaha, with orders to give ample protection to the working-parties, and to afford every possible assistance in the construction of the road; and subsequently in like manner the Department of Dakota was constituted … with headquarters at St. Paul, to give similar protection and encouragement to the Northern Pacific Railroad.\textsuperscript{135}

In addition to the rapport Dodge had with the military brass, he also summoned the expertise of his old Army companion Brigadier General John S. Casement and his younger brother Daniel T. Casement, both Civil War veterans from the Western Army, to take charge of the Union Pacific’s track-laying crews.\textsuperscript{136} The Casement brothers organized one thousand men into ten-man teams whose ranks consisted primarily of Civil War veterans, and led them in what Dodge called “the best organized, best equipped and best disciplined track force I have ever seen.”\textsuperscript{137} Dodge noted that the “organization for the construction of the Union Pacific Railroad was upon a military basis, nearly every man upon it had been in the Civil War; the heads of most of the engineering parties and all chiefs of the construction forces were officers in the Civil War.”\textsuperscript{138} Dodge also wrote, “every chief of the different units of

\textsuperscript{135} Sherman, \textit{Memoirs}, 902. The same day it passed the amendatory Pacific rail act of 1864, Congress gave the Northern Pacific Railroad a land grant of about forty-two million acres (roughly the area of New England) along a route from Lake Superior to Puget Sound. As with the original 1862 Pacific rail act, the 1864 Northern Pacific legislation included a provision for the extinguishing of Native American titles to lands granted to the railroad. See 14 \textit{Statutes} 365-72; Haney, \textit{1850-1877}, 19; White, \textit{It’s Your Misfortune}, 146.


\textsuperscript{137} Dodge, \textit{How We Built}, 38.

\textsuperscript{138} Ibid., 118.
the force had been an officer of the army, and entered on this work the moment they were mustered out.”139 The men were further broken down into companies of eighteen or twenty men, who were armed for defense against the Indians and regularly drilled, though Dodge postulated that the men retained such discipline from their recent military service that drilling was unnecessary. These smaller companies also typically included a ten-man military escort, who would strategically position themselves along the hills surrounding the area where work was being done to head off Indian attacks.140

Serving in the U.S. Army’s Department of the Missouri after the Civil War, in 1865 and 1866 Dodge led campaigns against the Sioux, Cheyennes, and Arapahoes, the Native American tribes who populated the territory through which the Union Pacific was to be built. Dodge was none too fond of the Native Americans, and was known to often say that “there really were no friendly Indians.”141 He even went so far as to suggest that the Union Pacific might use between one and two thousand captured Native Americans as contraband laborers, but Thomas Durant refused to let their railroad be the instrument that reanimated slavery, in the free state of Nebraska no less. Dodge also wrote to the Secretary of the Interior in 1866 expressing his opposition to the U.S. Indian Agents’ practice of selling firearms to “friendly” Native Americans, and reported that the settlers of Denver felt similarly.142 Chronicling clashes with the Native Americans while building the Union Pacific, Dodge recalled

139 Ibid., 38.
140 Ibid., 15.
141 Dodge, How We Built, 20; Ames, Pioneering, 141; Dodge, Autobiography, 376, quoted in Ames, Pioneering, 141. Ames notes that the Pawnees of Nebraska never attacked the whites.
142 Bain, Empire Express, 210; Ames, Pioneering, 142.
that the builders’ “Indian troubles” began at the commencement of the railroad’s construction in 1864 and persisted until its completion in 1869 at Promontory, Utah.\textsuperscript{143} “Hardly a mile” of the Union Pacific, Dodge also said, “was not built under the protection of the United States forces.”\textsuperscript{144} In recognition of the emerging vitality of the Army’s support to its enterprise, when the Union Pacific received its first locomotive on July 8, 1865 in Omaha, it christened engine No. 1 the General Sherman after the Civil War hero who took such an interest in the road’s success. On September 22 of that same year, General Dodge encountered his first Native American attack at the hands of the Crow tribe as he surveyed a route for the Union Pacific through the Black Hills of northeast Wyoming while returning from a successful campaign in the Powder River area. Dodge noted the significant technological advantage his party enjoyed over the Crow, observing that “with our rifles, which carried much further than any arms they had, we could keep them at bay.”\textsuperscript{145} Dodge’s late-September fight with the Crow was ultimately won when the American cavalry saw a smoke signal sent by Dodge and arrived to provide armed support.

\textit{Frontier Deployment: From Dispersal to Concentration}

In 1867, two battles took place in the Nebraska territory with the Cheyenne that would lead the United States to intensify its campaign against the Native Americans, in which the Union Pacific Railroad would figure prominently as it

\textsuperscript{143} Dodge, \textit{How We Built}, 18.

\textsuperscript{144} Dodge, \textit{Personal Recollections of Lincoln, Grant and Sherman}, 186.

pushed farther and farther west. In August 1866, at which point the Union Pacific had reached Plum Creek, Nebraska (230 miles west of its origin in Omaha), the railroad was attacked by Native Americans for the first time when a company of Cheyenne fighters seized a freight train, held its crew, and set it ablaze. When Dodge received word of the attack the next day, he swiftly rallied together a party of twenty men in his “traveling arsenal” of an armored rail car, and steadily drove the Cheyenne away with such military efficiency that it reminded him of the 1864 Battle of Kennesaw Mountain, during which he fought under Sherman’s command in Georgia.146

While the August 1866 fracas at Plum Creek gave the workmen of the Union Pacific their first exposure to Native American attacks, another battle that year was even more influential on the development of American military policy in the unsettled frontier in which they were laying track. On December 21, around two thousand Sioux, Cheyenne, and Arapaho launched a coordinated assault on a wagon train of American soldiers on the Bozeman Road, about ten miles north of Fort Phil Kearny in northern Wyoming. All eighty-one Americans under the command of William J. Fetterman were killed, with many of their corpses disemboweled and mutilated, some with their limbs and genitals hacked off. Even though Americans had previously inflicted similarly gruesome attacks upon the Native Americans, the December 21 defeat, called the Fetterman Massacre by the Americans and the Battle of the Hundred Slain by the Native Americans, was the worst defeat to date the Army suffered at the

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146 Ames, Pioneering, 144; Dodge, How We Built, 36, 104. For more on the Battle of Kennesaw Mountain, see McPherson, Battle Cry of Freedom, 749-50.

The Fetterman Massacre led Sherman to abandon his hopes for peace with the Indians as it was becoming increasingly clear that war would only intensify.\footnote{Ames, Pioneering, 144.} A few weeks after the battle, Sherman wrote to Dodge on January 16, 1867:

> I regard this road of yours as the solution of the Indian affairs and the Mormon question, and therefore, give you all the aid I possibly can … . The first step, of course, is to arrange for the accumulation of the necessary men and materials at the right points, for which your railroad is the very thing. So far as interest in your section is concerned, you may rest easy that both Grant and I feel deeply concerned in the safety of your great national enterprise.\footnote{Dodge, How We Built, 17. Many American politicians and military leaders hoped that the Pacific railroad would expose the Mormons to modern civilization and lead them to abandon polygamy. Oakes Ames cited the railroad’s solving the “perplexing problem of polygamy” as one of the public benefits wrought by the Union Pacific. See Oakes Ames, “Defence of Oakes Ames against the Charge of Selling to Members of Congress Shares of the Capital Stock of the Credit Mobilier of America, with Intent to Bribe Said Members of Congress. Read in the House of Representatives, February 25, 1873.,” in The Credit Mobilier of America: Its Origin and History, Its Work of Constructing the Union Pacific Railroad and Relation of Members of Congress Therewith, by Jay Boyd Crawford (Boston: C. W. Calkins, 1880), 210.}

The “accumulation of the necessary men and materials at the right points” that Sherman described to Dodge, for which the Pacific railroad would be the optimal instrument, offers a lens into the internal debate within the U.S. Army on how to most effectively station its forces across the frontier to protect American citizens and interests. The two principal strategies for frontier deployment were dispersal and concentration. The latter strategy entailed positioning small units of soldiers at many points across the frontier to maintain a visible Army presence and cover the widest geographic area possible. Dispersal was costly—in 1865 the Secretary of the Interior
estimated that each unit stationed on the Great Plains cost $2 million per year to supply—and the companies lacked the necessary equipment and military discipline of a larger force to effectively respond to Native American attacks. Concentrating higher numbers of soldiers in a smaller number of strategically-located and heavily-armed forts was not only more cost-effective but would also enable the Army to maintain higher levels of discipline and organization while striking with greater force.

However, in the mid-1860s, American settlers preferred the method of thin, widely-spread deployments for the reassurances that a visible army presence provided, which presented the Army with political opposition to pursuing concentration. Sherman lamented the Army’s use of dispersal, writing in 1865 that “It is plain to me that we cannot undertake to keep any part of our army massed according to the systems of Europe, but will be forced for years to come to adapt our conduct to the prevailing sentiment and necessities of the Frontier.”

The arrival of railroads to the frontier, of which the Union Pacific was the pioneering enterprise, was poised to substantially reduce the costs of moving large numbers of men and munitions and enable the Army to transition its deployment strategy from dispersal to concentration.

The importance of railroad logistics in military planning was no secret to the American military from their experience using railroad supply lines during the Civil War, which despite the disregard of many contemporaneous Europeans for its lack of ceremoniousness would later be recognized as the first industrialized war. In the mid-nineteenth century, cheap steam-powered transportation by rail and sea was enabling

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Europeans to militarily penetrate China, Japan, inner Asia, and Africa at minimal cost. Railroads enabled armies of over one hundred thousand to battle on for years while cheaply drawing supplies from distant warehouses, seen most decisively when masterful railroad supply line planning by the Prussians underpinned their victories in 1866 over Austria and 1870-71 in the Franco-Prussian War.152

Building Under Fire

In 1867, Native Americans, the Sioux in particular, began a campaign of guerrilla warfare against the Union Pacific. A legion of Sioux attacked Percy T. Browne's surveying party on May 12, killing an Army Sergeant in the party’s military escort and one of the workmen before running off with their mules and weapons. Six days later, Union Pacific watched helplessly as eight hundred Native Americans tore up a mile of stakes they had just laid. On May 20, Dodge wrote to Sherman: “The Indians are getting to be very troublesome. … It seems to me that we are at the mercy of the Red Man.”153 Dodge wrote to Durant that same day complaining that the Army was not giving the Union Pacific enough protection, which prompted Durant to forebodingly inform General Grant that “The Indians are interfering very seriously with our operations. … Unless some relief can be afforded by your Department immediately, I beg leave to assure you that the entire work will be suspended.”154 On May 25, five out of a six-man Union Pacific section gang were killed and scalped.


154 Records of Union Pacific Historical Museum, quoted in Ames, Pioneering, 217.
while working on track near Overton, Nebraska, 220 miles west of Omaha, while Sioux Indians killed four men and stole sixty heads of livestock elsewhere along the line. Two days later, one hundred Native Americans attacked a Union Pacific grading camp only five miles from an Army outpost, where General Dodge was escorting the three presidentially-appointed government commissioners as they inspected the track before the issuance of land patents, per the 1862 act. The skirmish demonstrated the dire need of military protection for the national project to the commissioners, who quickly grabbed rifles and fought alongside the Union Pacific’s graders. Dodge wrote that the Union Pacific “did not fail to benefit from this experience, for, on returning to the East the Commission dwelt earnestly on the necessity of our being protected.”

Union Pacific workers were attacked again on June 2 along a twenty-mile stretch of track near Lodge Pole Creek, which surveyor Arthur N. Ferguson described as “an exciting time … men cheering, Indians yelling, and the entire camp a scene of intense action and extreme excitement.” The Union Pacific men retaliated, reclaiming some of their stolen livestock and retrieving a white woman’s scalp held by the Indians as a prize which had turned “quite green” after having been separated from its owner for a few days. A few days later, fifty Cheyennes attacked a Union Pacific work crew near Julesburg, Colorado, scalping three men and mutilating their corpses. On June 14, a Union Pacific survey party chief named L.L. Hills was ambushed six miles east of Cheyenne, Wyoming. After Hills was killed, the party was

158 Ibid.
saved when a young axeman in their ranks named J.M. Eddy, who had fought under Dodge in the Civil War, “rallied the party, and by force of his own character took it to Camp Collins.” Dodge immediately promoted Eddy after learning of his bravery in the field and his military record, and he served under Dodge through the remainder of the Union Pacific’s construction.

The Union Pacific work crews sustained an especially demoralizing attack on July 23, when survey party leader Percy T. Browne was killed in an ambush by three hundred Sioux. Browne was a Civil War veteran who Dodge described as “one of the brightest of our young engineers.” Browne’s party was attacked as it made its way through the sagebrush of Red Desert near Bitter Creek, Wyoming, 785 miles west of Omaha. After the Sioux struck, Browne and his escort of eight U.S. Army men captured a small hill, from which they held off their attackers from noon until dusk. Browne was badly wounded when a Sioux rifleman shot him through the abdomen, and begged his men to leave him behind to save themselves. The men refused, and released their horses to draw away the Sioux before carrying Browne fifteen miles through the sagebrush to the Fort LaClede stage station. To his party’s sadness, Browne died half an hour after reaching the station. Even typically hard-hearted Dodge was moved by the second death of one of his survey chiefs. Dodge

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159 Dodge, How We Built, 24.
160 Ibid.
161 Ibid., 25.
163 Dodge, How We Built, 25, 112.
said that Browne’s death was “a great loss to me,” and he saw “no way to replace
him.”

A couple of weeks later, on the night of August 4, the Union Pacific was
targeted for the second time near Plum Creek. On this occasion, the railroad was
attacked by a band of Cheyenne warriors attempting to derail it, a new tactic that
would be imitated by white bandits, including Butch Cassidy, in years to come. The
Cheyenne bound a railroad tie to the tracks using telegraph wire, set a bonfire and
waited for a train to approach. Their victim was a handcar with by a five-man crew,
who sped up when they saw the Cheyennes’ bonfire only to be thrown from the tracks
moments later when their car derailed. Among the Union Pacific crew was William
Thompson, an English telegraph technician whom the Cheyennes shot with an arrow,
clubbed and scalped alive. Presumed dead, Thompson grabbed his scalp, which had
been dropped by his attacker, and crawled fifteen miles to safety where he was picked
up by another work train. In the meantime, the Cheyenne set to work pulling up the
railroad tracks, hoping to derail a train and steal its contents, which they reasoned
must have been valuable. “If we could bend the track up and spread it out, the Iron
Horse might fall off,” said a Cheyenne named Sleeping Rabbit. “Then we could see
what is in the wooden houses on wheels.” As Sleeping Rabbit foretold, the
Cheyenne successfully derailed an approaching work train and pillaged its stores of

164 Ibid.; Klein, Birth of a Railroad, 105, 107; Dodge, Autobiography, 643-44, quoted in Ames,
Pioneering, 220.

165 Bain, Empire Express, 387-388; Ames, Pioneering, 221-22. Thompson put his scalp in a bucket of
water in the hope that his doctor in Omaha would be able to reattach it, but the effort was in vain as it
could not be replanted. Thompson’s scalp can be seen on display today at the Union Pacific Museum in
Omaha.

166 Quoted in Brown, Bury My Heart, 139.
tobacco, flour, sugar, coffee, boots, clothing, and whiskey. The Cheyenne promptly shot and scalped the crashed train’s engineer and brakeman after they hobbled away from the wreckage. Major Frank North was dispatched to Plum Creek with a group of Pawnee scouts, who dislodged the one hundred and fifty Cheyenne and took two prisoners—a woman and a boy—who they later exchanged for five white children the Pawnee had held as prisoners from raids in the spring. Four days later, Oliver Ames, who along with his brother Oakes (a Republican Congressman from Massachusetts) was one of the railroad’s principal promoters, suggested that additional Army support might have saved the men’s lives—and Thompson’s scalp. “Bad news that the Indians had piled ties on the track ditched a train & kill seven men and burned up the cars,” Oliver wrote in his diary on August 8, “Govt. is not giving sufficient protection.” Sherman was incensed by the Plum Creek attack, telling Durant that he intended to defend the Union Pacific at all costs against the Sioux and Cheyenne, whom he called a “worthless set of scamps.” Sherman wrote, “No interruption to work upon the the line of the U.P. will be tolerated,” and deployed more infantry to guard the workmen and more cavalry to watch the completed track. “Eastern people must not allow their sympathy with the Indians to make them forget what is due to those who are pushing the ‘frontier’ further and further west,” Sherman continued. “These men deserve protection and they must have it.”

167 Ames, Pioneering, 221-22; Bain, Empire Express, 389.
168 Quoted in Ames, Pioneering, 222.
170 Ibid., 92-93.
The peak of the Union Pacific’s “Indian troubles” in 1867 gave rise to a shift in the U.S. Army and federal government’s relationship with the Union Pacific, and the other federally-aided Pacific railroads, as it became clear that the completion of transcontinental lines would be the decisive blow to the Native Americans of the Plains who obstructed the white settlement of the West. The Army’s leaders already understood that the Pacific railroads would enable them to shift their frontier strategy from dispersal to concentration to more effectively protect settlers from the Native Americans, but Congress and the federal government at large began to fully grasp this with the publication of General Grant’s 1867 report to Congress as Interim Secretary of War. Delivered in November of that year, Grant described the implications of the Pacific railroads with respect to frontier military costs and the Army’s ongoing conflict with the Native Americans:

During the last summer and summer before I caused inspections to be made of the various routes of travel and supply through the territory between the Missouri River and the Pacific Coast. The cost of maintaining troops in that section was so enormous that I desired, if possible, to reduce it. This I have been enabled to do, to some extent, from the information obtained by these inspections; but for the present the military establishment between the lines designated must be maintained at a great cost per man. The completion of the railroads to the Pacific will materially reduce this cost, as well as the number of men to be kept there. The completion of these roads will also go far towards a permanent settlement of our Indian difficulties. There is good reason to hope that negotiations now going on with the hostile tribes of Indians will result, if not in a permanent peace, at least in a suspension of hostilities until the railroads are pushed through that portion of the Indian territory where they are giving the most trouble.172

171 Dodge, How We Built, 18.
Grant also wrote that the progress thus far made on the Union Pacific Railroad had already begun to “afford great facilities for reaching and supplying distant occupied posts, heretofore supplied by trains of wagons at special seasons of the year,” and noted that the Union Pacific enabled the Army’s division of the Pacific to be fed pork produced in New York, as even before its completion the railroad was demonstrably creating a national market. Grant’s use of the phrase “permanent settlement of our Indian difficulties” in the context of Army deployments along the frontier conveyed in no uncertain terms that the Pacific railroad would be the instrument that would enable the Army to forcefully subdue the Native Americans once and for all.

In the same document that presented the Pacific railroads as the solution to the United States’s “Indian difficulties,” Grant discussed another instrument that was greatly aiding the Army in its campaign against the Native Americans: the breech-loaded rifle. His 1867 report informed Congress that in the past fiscal year, over twenty-three thousand muzzle-loaded, percussion-cap Springfield rifles had been retrofitted into trapdoor breech-loaders. “All of the converted arms have been issued to troops,” wrote Grant, “and nearly all of the infantry serving in the departments of the Missouri and the Platte,”—the latter of the two military districts having been specifically organized by Sherman for the Union Pacific’s protection—“have been armed with them.” Grant conveyed that commanders whose units had been outfitted with the breech-loaders had submitted monthly reports that were “highly favorable to the arm, and furnish abundant evidence of its excellence and fitness for

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173 Ibid., 9.
174 Ibid., 17. From 1842 until 1877, Congress began the fiscal year on July 1, meaning that the fiscal year to which Grant referred began on July 1, 1866 and ended on June 30, 1867, just before the Hayfield and Wagon Box fights.
the military service,” while also noting that the new rifles “have done excellent
service in an Indian campaign during the past summer … .”\textsuperscript{175}

Just two days before the Cheyenne attacked the Union Pacific at Plum Creek, the Hayfield and Wagon Box fights between the Army and Native Americans in the summer of 1867 demonstrated the substantial effects of the breech-loading rifles on the Army’s frontier campaigns. Together, these three skirmishes marked the debut of the Springfield breech-loader in the American Indian Wars, and would affect the trajectory of U.S. policy towards the Native Americans with respect to the westward-marching Pacific railroads. In late July 1867, the Sioux and Cheyenne gathered at a sun-dance and medicine-arrow ceremony in which they planned a coordinated attack on two U.S. Army forts. On August 1 over five hundred Cheyenne and Arapaho, with the help of some Lakota Sioux, attacked an Army haying party in a field a few miles from Fort C. F. Smith in southern Montana. The new Springfield breech-loaders enabled the Army to repel the attack, and they proved so advantageous that only one Cheyenne warrior was able to break through the Americans’ line before he was quickly killed. In the early morning hours of the following day, a thousand Sioux attacked Fort Phil Kearny in Wyoming. Twenty-eight soldiers and four civilians in a woodcutting party were ambushed and hastily erected impromptu wooden wagon-box barricades, under which they took cover and fired upon the Sioux. The Sioux expected the Americans to use muzzle-loading rifles, which meant they would fire in a coordinated volley then pause for some time to reload, at which point the attackers would make their charge. But with the new Springfield breech-loaders, there was no

\textsuperscript{175} Ibid.
 RESPITE FROM THE AMERICANS’ FIRE. CAPTAIN JAMES W. POWELL’S MEN SUSTAINED THREE
CASUALTIES AND TWO WOUNDED, WHILE THE INDIANS SUSTAINED ABOUT SIXTY CASUALTIES AND
OVER A HUNDRED WOUNDED. 176 THE SIOUX WARRIOR FIRE THUNDER RECALLED THE EFFICACY OF
AMERICANS’ NEW BREECH-LOADED GUNS:

There were not many Wasichus, but they were lying behind the boxes and
they shot faster than they ever shot at us before. We thought it was some new
medicine of great power that they had, for they shot so fast that it was like
tearing a blanket. Afterwards I learned that it was because they had new guns
that they loaded from behind, and this was the first time they used those guns.
… There were many, many of us … . But our ponies were afraid of the ring of
fire the guns of the Wasichus made … . There were dead warriors and horses
piled all around the boxes and scattered over the plain. … I do not know how
many of our people were killed, but there were many. It was bad. 177

Breech-loading rifles were also used by William Thompson’s handcar team that was
ambushed by the Cheyenne at Plum Creek. When the Cheyenne picked up the rifles,
which were the first breech-loaders they had ever seen, they were so perplexed by the
new technology that they assumed the weapons were broken and discarded them. The
summer of 1867 was only the beginning of the Army’s use of mass-produced, rapid
fire small arms against the Native Americans. In the coming years, the War
Department would become the single biggest purchaser of the Winchester repeating
rifle, which was designed specifically for its use in the campaigns on the Plains and
incorporated breech-loading technology similar to that of the Springfield rifles, which
allowed its user to fire multiple rounds in quick succession without reloading. 178

176 Brown, Bury My Heart, 140-41; Bain, Empire Express, 385-86, 388.
177 John G. Neihardt, Black Elk Speaks: Being the Life Story of a Holy Man of the Oglala Sioux (New
was a term used to describe white Americans, though its etymology had nothing to do with skin color.
See ibid., 8n.
178 George Bird Grinnell, The Fighting Cheyennes (New York: Charles Scribner’s Sons, 1915), 257;
Dunbar-Ortiz, Indigenous Peoples’ History, 234.
The emerging technological superiority of the breech-loading rifles was part of a global revolution in small arms led by the United States. The “American system” of small arms manufacture that used automated milling machines to produce interchangeable parts debuted in Europe in 1851 when Samuel Colt displayed his revolvers, an icon of American westward expansion, at London’s Great Exhibition. Enthralled by the efficiency and ease of use of small arms with interchangeable parts, in the 1850s and 1860s England, Russia, Spain, Turkey, Sweden, Denmark, and Egypt all imported American small arms-making machinery to begin mass-production. The advent of easy to use, cheap to repair and maintain breech-loading rifles enabled soldiers to shoot from a crouched or prone position, letting them to take cover easily without having to stand and expose themselves to enemy fire while reloading. In the late 1850s, Prussia began converting its muzzle-loading rifles to breech-loaders—Dreyse’s “needle gun”—which scored decisive victories against Austria in 1866 and against France in 1870-71. The 1860s began a new era of imperialism in which European powers were able to exert tremendous power in Asia and Africa with relatively few soldiers due to the technological advantages of the steamship, railroads, and mass-produced small arms.¹⁷⁹ The completion of the Pacific railroad and arrival of the breech-loaded rifle in the late 1860s enabled the Americans to engage in an identical colonial expedition in the resource-rich lands inhabited by Native Americans which lay within its own borders instead of overseas territory.

_Treaty Negotiations at Fort Laramie_

One month after Grant published his report as interim Secretary of War, President Andrew Johnson told Congress on December 3 that it was “of vital importance that our distant Territories should be exempt from Indian outbreaks, and that the construction of the Pacific Railroad, an object of national importance, should not be interrupted by hostile tribes.” To those ends, Johnson recommended the adoption of a system of reservations (for the Native Americans’ “moral and intellectual improvement”) that he described as “concentrating [the Native Americans] upon portions of country set apart for their exclusive use and located at points remote from our highways and encroaching white settlements.” After the winter thawed, in the first half of 1868 the Army deployed five thousand troops along the Union Pacific line as far as Salt Lake City to furnish more adequate protection for the railroad. Nonetheless, in early April five Union Pacific section men were killed while working at Elm Creek, Nebraska, and two off-duty conductors were brutally attacked and one was scalped alive while they were fishing near Lodge Pole Creek. On April 23, two hundred Native Americans attacked a construction crew near the Dale Creek bridge in southeastern Wyoming, killing two men, wounding four, and plundering their livestock. The next day, Olive Ames wrote to Dodge, “I see nothing but extermination to the Indians as the result of their thieving disposition, and we shall probably have to come to this before we can run the road safely.”

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180 Andrew Johnson, “Third Annual Message,” December 3, 1867, The American Presidency Project. Though Johnson does not name the Union Pacific, since the Central Pacific avoided clashes with the desert Indians they encountered by employing them in the road’s construction, it is clear that he is referring to the former railroad. For the Central Pacific’s employment of the Paiute Indians, see Brown, Hear that Lonesome, 101.

181 Ibid.

182 Ames, Pioneering, 263; Dodge, Autobiography, 748, quoted in ibid.
At the same time, the U.S. Indian Peace commission, led by “Great Warrior” Sherman, had arrived at Fort Laramie, hoping to rectify its failure to broker an agreement with the Sioux the previous November. The American government was eager to make peace with Red Cloud, the Sioux leader who had been leading the campaign against the military and the Union Pacific for the past three years, and was willing to abandon the forts in the Powder River region of Wyoming to appease him. The Sioux entered the talks from a strong military position, as their raids had proven to the Americans that they were a force to be reckoned with. However, their economic position was more precarious, as over the previous decades they had shifted away from agriculture and came to rely on hunting bison for both subsistence and trade. This new lifestyle made the Sioux dependent on European-made firearms, tools, and other wares that could only be acquired through trading bison pelts to Americans, which entrapped them in a vicious circle of colonialism wherein the they were forced to participate in the destruction of their own way of life in order to secure short-term material necessities. As the bison population declined, the Sioux became beset with disease and starvation, which only led to more clashes with the U.S. Army.183

The agreement that Sherman struck at Fort Laramie in April 1868 was only signed by a small number of minor Sioux chiefs, since to Sherman’s embarrassment, Red Cloud did not attend the peace talks, saying he would only meet with the Americans when the Powder River forts were abandoned. The treaty began by calling for an immediate cessation of hostilities between the Army and the Sioux, detailing how the tribe would be reimbursed for property damages inflicted by the Americans,

and allocating the Sioux a reservation that was essentially the western half of modern-day South Dakota, with the Missouri river as its eastern boundary. Nestled among a myriad of provisions regarding policy towards the Indians’ property, education, and agricultural practices, the treaty’s ninth article contained a number of important stipulations regarding the Pacific railroad:

1st. That [the Indians] will withdraw all opposition to the construction of the railroads, now being built on the plains.

2d. That they will permit the peaceful construction of any railroad not passing over their reservation as herein defined. …

6th. They withdraw all pretence of opposition to the construction of the railroad now being built along the Platte river and westward to the Pacific Ocean, and they will not in future object to the construction of railroads … which may be ordered or permitted by the laws of the United States. But should such roads or other works be constructed on the land of their reservation, the government will pay the tribe whatever amount of damage may be assessed.

Though the Union Pacific was not mentioned by name in the Fort Laramie treaty of 1868, with the words “railroad now being built along the Platte river and westward to the Pacific Ocean,” the United States government used its constitutional power to “regulate commerce … with the Indian tribes” to legislate the protection of that very corporation, which despite being chartered by the government, was in fact privately owned. With these provisions of the treaty, the United States government formally cloaked the Union Pacific railroad in the protection of the U.S. Army, for if the Sioux attacked the railroad they would have violated the treaty and provided legal basis for military retaliation. In the summer of 1868 the War Department ordered the Army’s withdrawal from Fort C. F. Smith and Fort Phil Kearny, and Red Cloud

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184 Brown, Bury My Heart, 146; 15 Statutes 635-636.
185 15 Statutes 639.
186 United States Constitution, Article I, Section 8.
signed the treaty on November 6, believing that he and his people had triumphed over the Americans. However, over the next two decades the United States government would renege on promises it made throughout the rest of the treaty, and the language used precluding the Sioux from objecting to railroads pushed through their lands by U.S. legislation would become particularly important when the Northern Pacific Railway began its westward march from the Great Lakes to the Pacific Northwest in 1870.\textsuperscript{187}

Notwithstanding the 1868 treaty’s protective provisions, the Union Pacific sustained its last Native American attacks that summer. Around a dozen men were killed in early June, and on July 21, Union Pacific surveyor Arthur N. Ferguson wore an entry in his journal describing Indian raids that month in which a half dozen men were killed. Noting the desperation of the Indians’ last attempts to halt the progress of the iron horse and the total settlement of the west it would bring, Ferguson preceptively observed, “The time is coming, and fast too, when in the sense it is now understood, \textbf{THERE WILL BE NO WEST}.” In September 1868, the Indians derailed a Union Pacific freight train for the last time near Ogallala, Nebraska, and in November they burned a small rail bridge at Pine Bluffs along the Wyoming border, concluding the three-year battle between the Native Americans and the railroad that necessitated the intervention of the United States Army.\textsuperscript{188}

\textsuperscript{187} Brown, \textit{Bury My Heart}, 145-46; Brown, \textit{Hear that Lonesome}, 203. See also 19 Statutes 255 for the 1877 treaty with the Sioux and other tribes stipulating that “ … wagon and other roads … may be constructed and maintained, from convenient and accessible points on the Missouri River, through said reservation, to the country lying immediately west thereof ….”

\textsuperscript{188} Ames, \textit{Pioneering}, 264; Ferguson journal in Records of Union Pacific Historical Museum, quoted in ibid.
Military Intervention at Fort Sanders

In addition to providing the railroad with military protection, in July 1868 the U.S. Army intervened in a dispute among the Union Pacific’s executive leadership on behalf of General Dodge, illustrating the network of relationships between the Army, the federal government, and the Union Pacific that underpinned the railroad’s construction. As part of a larger internal power struggle, Thomas Durant sought to wrest control of the Union Pacific’s construction from Dodge when he had the road’s executive committee pass a resolution on July 3 that put Dodge under his direction. This contradicted the agreement Durant had made with Dodge in April 1866 in which Durant had promised the General complete authority over the Union Pacific’s construction in exchange for his accepting the post of chief engineer. Durant and his supporters wanted to meet the Central Pacific as far west as possible to acquire as much of the per-mile federal subsidy as they could, and to this end wanted to change a portion of the Union Pacific’s route west of the Black Hills. Dodge, who had surveyed and plotted the lines Durant wanted to change, said that he was “acting in a double capacity, as chief engineer for the railway, Generals Grant and Sherman also holding me accountable for carrying out the instructions of the Government.” Dodge considered his line not only to be “commercially economical” for the Union Pacific but also what he thought was most agreeable to the “specifications of the

189 Bain, Empire Express, 515; Klein, Birth of a Railroad, 72.
190 Dodge, Personal Recollections of Lincoln, Grant and Sherman, 102. In the course of the Union Pacific’s construction, Dodge had made “some requests upon the military commanders” of the Department of the Platte that were “unusual.” In response, Sherman wrote to Dodge, “Don’t forget not only what your duties are to the Union Pacific, but also what your conscience tells you is right towards the United States in such circumstances, and what we can approve.” Dodge reflected that this was a “nice, quiet, gentle reminder that [Grant and Sherman] trusted me, and I had gone a little beyond what they considered was fair to their trust.” See ibid., 186.
Government,” in that it did not seek to swindle the government out of more subsidy than was necessary. He protested to the executive committee, “if my lines were changed without notifying me it would be necessary for me to resign.” Pressuring Dodge to leave his post was one of Durant’s objectives of the July 3 board resolution, understood by Oakes Ames when he wrote to his brother Oliver on July 10, “Durant is really down on Genl Dodge and he means to remove him.” Dodge was camped near the Wyoming-Utah border when he received word that Durant wanted to meet with him at the end of the track, and seemingly sensing Durant’s usurpation of authority, rode in the opposite direction. On July 23, however, Dodge received a telegram from Durant and Sidney Dillon, another Union Pacific executive, instructing him to attend a meeting on July 26 at Fort Sanders in southeast Wyoming. Joining the Union Pacific executives would be some of the U.S. Army’s most celebrated officers, including General Grant—who was at the time out west campaigning for the presidential election that fall—as well as Generals Sherman, Sheridan, Augur and others. Dodge arranged to meet Grant’s envoy, many of whom were his friends, in Benton, Wyoming on July 25, to present his position before the next day’s confrontation with the railroad’s executives.

The July 26 meeting in the small one-story, log-built officers’ club at Fort Sanders began with Durant launching into a bombastic tirade alleging that Dodge had

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191 Dodge, *How We Built*, 31. When the Union Pacific was completed in 1869, the three government commissioners inspected the railroad and praised Dodge’s line, reporting that it demonstrated a “thorough knowledge of the features of the country.” Quoted in Goodrich, *Government Promotion*, 191-92.

192 Dodge, *Personal Recollections of Lincoln, Grant and Sherman*, 102.


194 Bain, *Empire Express*, 515-16.
badly mismanaged the road’s surveys and construction. Dodge successfully refuted all of Durant’s claims, and fired back that Durant’s desired alterations to the railroad’s route were “not for the benefit of the road, but simply for the purpose of driving me off the road.” Durant and Dillon, Dodge wrote, “knew they could not have their way while I was on the road … .” Dodge had the backing of his old friends from the military, Grant and Sherman, who were fully supportive of his position and “took very strong grounds with Durant and Dillon.” The generals’ interest in backing Dodge in Union Pacific infighting was borne not only out of loyalty to their former comrade-in-arms, but also because they recognized the mutual benefits of the relationship between the Army and the Union Pacific, in the middle of which sat Dodge:

… Grant and Sherman had stated very emphatically, to the Union Pacific people, that my lines must be maintained or the Government would take action in the matter; that they knew me and had confidence in me, and there was no person whom they could make chief engineer to whom they would give the authority they had given me me calling upon the commanders for troops for escorts, and upon the posts for supplies, etc. that we might need.

Durant had originally sought Dodge for the role of the Union Pacific’s chief engineer for both his engineering prowess and his personal relationships with the military leadership and Abraham Lincoln that would prove useful to the road’s political and military interests. Durant’s coup in the summer of 1868 failed for exactly that reason. Grant and Sherman considered the Pacific railroad to be of vital national

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195 Dodge, *Personal Recollections of Lincoln, Grant and Sherman*, 188.
196 Ibid.
197 Ibid.
198 Ibid., 103.
importance, and knowing its need for protection through Indian country, they realized that the only person in the United States uniquely equipped with both the engineering knowledge to build the Union Pacific as well as the military expertise to issue orders in the field to the Army units protecting it was their colleague General Grenville M. Dodge. Despite its private ownership, the U.S. Army needed the Union Pacific to be built by someone working in a “double capacity,” to use Dodge’s own words, who had the wherewithal to command the construction crews’ military escort despite his being a civilian. When Dodge began his work as the Union Pacific’s chief engineer in 1866, Dodge told Grant that if he could “ever be of service” to him, he trusted that Grant would not fail to command him. In 1868, it was the government’s man in the Union Pacific who needed Grant’s help, and the Army was happy to intervene in the railroad’s corporate proceedings to keep their man in charge for their and the railroad’s mutual benefit. Grant and Sherman ordered Durant and Dillon to withdraw their proposed changes to the railroad’s route, and made Dodge agree to stay with the Union Pacific until it was completed. Dodge said that he “had no further trouble” with the road’s contractors afterwards. After the meeting, a local photographer captured an image of the Union Pacific executives, the military brass, and a number of their wives, of which Dodge observed in 1910, “Probably no more noted military gathering has occurred since the Civil War.” The photograph was widely

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201 Dodge, *How We Built*, 31.

202 Ibid.
distributed by the Union Pacific in advertisements, the company undoubtedly wanting to fuse its image with the celebrated Civil War brass, among whom was the eighteenth President of the United States.203

“The thorough and final solution of the Indian question”

In February 1869, just over one month since the Union Pacific had built track past the 1,000 milepost west of Omaha and just three months before it would link with the Central Pacific at Promontory Summit, the Senate Committee on Pacific Railroads published a report advocating the appropriation of government aid to two more Pacific railroads: the Northern Pacific, which would serve the northern states and would run from Lake Superior to Puget Sound, and another Pacific road which would serve the southern states and would run from Arkansas to southern California. The report not only discussed the commercial benefits and the increased access to transcontinental transportation that two additional Pacific railroads would bring the northern and southern sections,204 but also ruminated heavily on the impact that the first and subsequent Pacific railroads would have on the Native Americans with respect to the dwindling bison population and U.S. frontier military policy.

Recognizing the effects the railroads would have on frontier Army deployment, the

203 Dodge, *Personal Recollections of Lincoln, Grant and Sherman*, 188-89. The photograph was doubtless good publicity for Grant, as well as the Union Pacific. Grant sought Sherman’s endorsement in the presidential campaign, but knew that a military man like Sherman would not make such political statements. Grant initially invited Sherman on his campaign trip through the west in the hopes that people seeing the two Civil War heroes together might serve in lieu of a formal endorsement. See Bain, *Empire Express*, 516.

report argued that railway lines to the Pacific were “necessary to move troops and supplies at the minimum cost and the greatest speed into the Indian country. … As avenues of sudden approach to Indians on the war-path, and of cheap and quick movement of supplies to troops, they are equally a military necessity.” The Senate Committee’s report also referenced the argument for the Pacific railroads’ role in subduing the Indians put forward by Grant in his 1867 report as interim Secretary of War and called attention to recent statements by the chairman of the House Committee on Indian Affairs, who estimated that the ongoing war with the Indians was costing the government $1 million per week. Additionally, the report quoted correspondence was quoted from Sherman to Grant conveying that the completion of the Kansas Pacific Railroad (a Pacific railroad aided by the federal government in the Pacific rial acts of 1862 and 1864) “would end, almost substantially, our Indian troubles by the moral effect it exercises over the Indians, and the facility it gives the military in controlling them.”

The “moral effect” the railroad had on the Indians that Sherman described to Grant in the Senate Committee’s citation was the peril the tribes suffered from the declining bison population on the Plains, which was largely a consequence of the construction of the Union Pacific and subsequent railways through the region. Bison were integral to the Native Americans’ economy and way of life: the large game were used for tepees, robes, meat, and tools, and the bison played an important role in the culture of the Plains tribes. The elimination of the bison began with the arrival of whites to the North American continent, as the bison population east of the

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205 Senate Committee on Pacific Railroads, Extending Government Aid, 16.
206 Ibid., 15, 16.
Mississippi River had been hunted to extinction by the start of the nineteenth century. Before 1850, one giant herd of buffalo roamed the plains, its population peaking at around twenty-five million. After the Mexican War, overland emigrant traffic split the herd into northern and southern halves, and the completion of the Union Pacific finalized the division. Black Elk recalled, “… the Wasichus had made their iron road along the Platte and traveled there. This had cut the bison herd in two ….”

White settlers drove the bison west of the lush tall grasses they relied upon for survival in times of drought, and when the “big die-up” of 1867 struck, the bison were few in number, with no ecological refuge, and soon facing a deluge of white hunters brought west by the railroads.

White hunters sought to tap into the booming market for bison-skin robes and pemmican, the latter good being a concentrated concoction of pounded dried bison meat, fat, and berries that lasted years without spoiling and was an immensely valuable high-energy food source on the frontier. The construction of railroads into Native American country not only provided a faster and cheaper means of transporting goods made from bison to market, but also enabled the pelts to be shipped to eastern tanneries that used the latest mass-production and chemical processing techniques. The newest breech-loading firearms enabled hunters to slaughter the buffalo at an unprecedented rate, allowing a single hunter to snipe one hundred bison from a safe distance before the herd stampeded. The best hunters tallied 2,500-3,000 buffalo carcasses per year, and when tourists started hunting bison

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208 Neihardt, Black Elk, 20.
209 White, It's Your Misfortune, 216-218.
from trains for sport, the bison’s decline greatly accelerated.210 *Harper’s Weekly* provided a glimpse into this “peculiarly American” sport in December 1867:

… The train is “slowed” to a rate of speed about equal to that of the herd; the passengers get out fire-arms which are provided for the defense of the train against the Indians, and open from the windows and platforms of the cars a fire that resembles a brisk skirmish. … When the “hunt” is over the buffaloes which have been killed are secured, and the choice parts placed in the baggage-car, which is at once crowded by passengers, each of whom feels convinced and is ready to assert that his was the shot that brought down the game.211

The white hunters did not make efficient use the bison they killed. Most of the meat spoiled and hides were often wasted since many hunters did not know the proper technique to skin the carcasses. By 1875 the southern herd was all but extinct, and the northern herd would be exterminated by 1883 due to the construction of the Northern Pacific Railway and additional Army campaigns against the plains Indians.212

The Native Americans were keenly aware of the disappearance of the bison and its implications for their way of life. Foreseeing the negative effects of the railroad, in 1866, Red Cloud personally confronted a group of Union Pacific surveyors in Wyoming and told them, “We do not want you here. You are scaring away the buffalo.”213 At the Medicine Lodge peace talks between the Sioux and the Indian Peace Commission in 1867, a member of the Sioux told Sherman and the commissioners, “Ever since I’ve been born I have eaten wild meat. My father and

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210 Ibid., 218-219.
grandfather ate wild meat before me. We cannot give up quickly the customs of our fathers.”

In 1869, the Senate Committee on Pacific Railroads was similarly aware of the relationship between the development of western railroads and the decline of the bison. But rather than seeking to alleviate the humanitarian peril this posed to the Plains’ original inhabitants, the committee explicitly sought to exacerbate it through government subsidy of additional Pacific railways. The Committee’s report painted the conflict with the Native Americans as a clash between the civilized and the savage, and the portrayed the railroads’ decimation of the bison herd through their impact on the Plains’ ecology and their advancement of white settlement as the key to removing the Native Americans once and for all.

… It is not in Indian nature to meekly accept the loss of hunting grounds and a forcible change of their traditional life. It is not in the nature of the American to obtain from new and unoccupied soils; he will have them. The causes of war will continue while the large game lasts … .

… [The Indians] can only be permanently conquered by railroads. The locomotive is the sole solution of the Indian question … . The railroads will settle the country as they progress. The water stations and freight stations built on their lines immediately become the germs of towns and the centers of military operations. … As the thorough and final solution of the Indian question, by taking the buffalo range out from under the savage, and putting a vast stock and grain farm in its place, the railroads to the Pacific surely are a military necessity.

The Senate Committee on Pacific Railroads, which was chaired by William M. Stewart, a Nevada Republican, referenced the implementation of a “vast stock of grain” in place of the bison hunt to appeal to the Republican vision of settling the

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west by homesteading, of which the Pacific railroad acts of 1862 and 1864 were an integral component. The Committee’s 1869 report promoted not only the homestead vision for the Northern Plains via government assistance to the Northern Pacific Railway, but also the cost-reducing effects that railroad would have on military expenditures to protect settlement in that region from Native American resistance:

> There will be an immense conflict to determine the question, which no philanthropy and no policy can avoid, whether the northern region of the United States, between the lakes and the ocean, shall be kept as an antelope park and buffalo range for the use of Indian hunters, or whether it shall be cut up and occupied in farms by white men. And when that conflict comes the cost of military transportation, above officially stated at over $6,000,000 a year, will be trebled and quadrupled unless the North Pacific railroad is built.  

The Committee’s minority report opposed the extension of government aid to two more railroads on the basis of the “misconduct and mismanagement” of the railroads that had already received aid, as well as and the financial burden the measure would pose to the federal government. Nevertheless, the minority report acknowledged that the land grant and subsidy system had “added hundred of millions of dollars to the nation’s wealth, and enabled thousands of poor landless men to obtain farms and fair prices for the products of their labor.”

Frederick Jackson Turner argued in 1901 that the importance of the Homestead Act in western settlement was not fully realized until the completion of the Pacific railways which made their land grants more valuable. Richard White has contested the level of symbiosis between the Homestead Act and the railroad land grants, arguing that the land grants were so expansive that

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216 Ibid., 18-19.
settlers much more frequently purchased land from the railroads than obtaining it through the Homestead Act. Regardless, the result was, as Turner described, “an epoch-making extension of population,” as the railroads, in conjunction with the steamship, propelled American immigration rates to a historic high in the early 1880s.\textsuperscript{218}

\textit{Golden Spike, Nail in the Coffin}

Three months after the Pacific Railroad Committee’s report, the Union Pacific and Central Pacific met at Promontory, Utah to join their rails, completing a national project of unprecedented scale that was once regarded as fantasy. The race for the per-mile bond subsidies between the two roads had led each company to wastefully grade two hundred miles of parallel lines. After an agreement between the two companies on April 9 to meet at Promontory Summit and reimburse the Union Pacific for its excess construction, a joint resolution was hurried through Congress on April 10, the last day of its session, to fix the “common terminus” of the two railroads “at or near Ogden … .”\textsuperscript{219} On May 10, Americans across the country waited with baited breath for telegraph operators to hear the taps from Utah indicating the hammering of the golden spike and the union of the two railroads into one. When word came over the wire at 12:47 PM Promontory time that the spike had been driven, bells were sounded across the country in celebration: the Capitol in Washington, Trinity Church in New York, City Hall in San Francisco, and even the Liberty Bell in Philadelphia rang out.


\textsuperscript{219} Klein, \textit{Birth of a Railroad}, 208; 16 Statutes 56.
the completion of the national work. Chicago held a miles-long parade, and festivities were held in dozens of other cities. While a detachment of Army regulars from Utah’s Fort Douglass joined the party at Promontory Summit, a group of military elite gathered in the telegraph office of the War Department; among their ranks was Sherman, who reportedly said of the Pacific railroad in 1865 that he “hardly expect[ed] to live to see it completed.”220 After the roads were linked, Dodge, who played a large role in the ceremony in Utah, immediately wired Sherman to express his gratitude for the Army’s critical support:

THE TRACKS OF THE UNION AND CENTRAL PACIFIC RAILROADS WERE JOINED TODAY AT PROMONTORY, UTAH …. YOUR CONTINUOUS ACTIVE AID, WITH THAT OF THE ARMY, HAS MADE YOU A PART OF US AND ENABLED US TO COMPLETE OUR WORK IN SO SHORT A TIME. I CONGRATULATE YOU UPON IT, AND THANK YOU FOR ALL YOU HAVE DONE FOR US.221

Sherman telegraphed back:


Indeed, as Sherman said, despite the Native Americans’ valiant resistance, the Pacific railroad was finished, and as Dodge and his Central Pacific counterpart, Samuel S. Montague, drove home the golden spike at Promontory Summit, so too did the Pacific railroad drive the figurative nail in the coffin of the Native Americans on the Plains. The year of the railroad’s completion saw the continued aggravation of the

220 Dodge, How We Built, 68; Klein, Birth of a Railroad, 227; quoted in Bain, Empire Express, 245.
221 Dodge, Personal Recollections of Lincoln, Grant and Sherman, 203.

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two principal problems brought by the railroads to Indian country, a spike in white emigration and the decimation of the bison. These issues were worsened by the Fort Laramie Treaty’s of 1868, in which the Brule and Ogallala bands of Sioux inadvertently forfeited the right to hunt large game on their traditional hunting grounds south of the Platte River. Forcened to hunt only small game on their reservation, by 1869 they were in a “suffering condition” and on the verge of extinction. As the bison vanished, the dwindling Kansas tribe was pushed out of the hunt by larger Cheyenne groups, and had to consider selling their land to the Union Pacific before opting instead to sell the railroad the right of way and the right to cut timber on their lands. At a peace conference with the Arapaho and Cheyenne in August 1869, Commissioner William E. Dodge advised the Native Americans, “look at your present situation and see that the white man is inclosing and surrounding you, and that railroads will be built through the country and will soon drive away the buffalo, and soon you will have nothing to depend on.” In September, U.S. Indian Agent M.M. McCauley wrote to Washington from the Montana territory, describing the plight of the Pend d’Oreille and Kootenay Indians in relation to the growth of railroads:

The buffalo hunt, their main dependence, becomes each year less reliable. The mighty herds that once swept the prayer like a whirlwind are fast disappearing

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223 15 Statutes 639.
225 Ibid. 496.
before the onward strides of civilization, and the mighty engines, the locomotive, and telegraph have already subdued the wilderness.\textsuperscript{226}

M.M. McCauley was hardly the only government official in 1869 to describe the disappearance of the bison within the context of the completion of the transcontinental railroad. The annual report of Secretary of the Interior Jacob D. Cox, published in December 1869, began by analyzing the completion of the Pacific railroad in its introductory remarks about the nation’s “Indian Affairs”:

The completion of one of the great lines of railway to the Pacific coast has totally changed the conditions under which the civilized population of the country come in contact with the wild tribes. Instead of a slowly advancing tide of migration, making its gradual inroads upon the circumference of the great interior wilderness, the very center of the desert has been pierced. Every station upon the railway has become a nucleus for a civilized settlement . . . . Daily trains are carrying thousands of our citizens and untold values of merchandise across the continent, and must be protected from the danger of having hostile tribes on either side of the route. The range of the buffalo is being rapidly restricted, and the chase is becoming an uncertain reliance to the Indian for the sustenance of his family.\textsuperscript{227}

The report referenced the joining of the rails at Promontory Summit again later on, echoing the sentiments of the Senate Pacific Railroad Committee’s report published ten months earlier that cast the completion of the Pacific railroad as a victory for the civilized in their crusade against America’s savage original inhabitants:

The advancing waves of population from the East and West have met; they are spreading over the fertile valley of the Platte, and ascending the Rocky Mountains; the buffalo will soon disappear from the old hanging grounds; the Indian must relinquish his nomadic habits, and accepting the destiny prepared for him by Divine Providence, he should submit to the restraints and aspire to the enjoyments of civilized life.\textsuperscript{228}

\textsuperscript{226} Ibid., 737.
\textsuperscript{227} Ibid., vii-viii.
\textsuperscript{228} Ibid., 780.
While the Secretary of the Interior’s report portrayed the proposed forceful transition of the Native Americans from nomadic hunters to subsistence farmers as both seemingly straightforward and to their ultimate benefit, other Americans did not fail to recognize the brutal reality that the encroachment of white Americans and depletion of the bison, dramatically accelerated by the competition of the Pacific railroad, had driven the Indians to the brink of extinction and made all-out war their last resort. As early as 1866, Major-General John Pope, Commander of the Department of the Missouri, saw that “the Indian, in truth, has no longer a country. He is reduced to starvation or to warring to the death … .”

Pope also saw the contradiction between the government’s purported intentions to make peace with the Native Americans and its proactive promotion of railroad construction and westward emigration:

The Indians’ first demand is that the white man shall not drive off his game and dispossess him of his lands. How can we promise this unless we prohibit emigration and settlement? The Government every day is stimulating emigration, and building roads guarded by soldiers.

Pope concluded that total dispossession was the only logical outcome of the situation, noting that the “only practical question is how this can be done with the least inhumanity. … The end is sure and dreadful to contemplate. Military force and heavy expenditures must either be accepted, or the plains given back to the Indians … .”

Of Pope’s two choices, the United States opted for military aggression, and as Grant indicated in his report as interim Secretary of War in 1867, the Pacific railroads were

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229 Quoted in Ames, *Pioneering*, 143.
230 Ibid.
231 Ibid., 143-144.
a lucrative tool for lowering military costs in the intensifying war with the Native Americans.

Some Americans were more sympathetic to the plight of the Indians in light of the Pacific railroad’s penetration of their native lands. In July 1869, just two months after the rails were joined at Promontory Summit, Harper’s Weekly ran a cartoon by Thomas Nast title “All Hail and Farewell to the Pacific Railroad,” in which a locomotive, adorned by a five-pointed star, rounds a curve through a mountain pass where a knife-wielding Indian warrior stealthily lies in wait on the tracks. Harper’s ran the cartoon in conjunction with a speech of the same name by Wendell Phillips, a prominent abolitionist and advocate for granting U.S. citizenship to the Native Americans. Phillips said

The telegraph tells us that the Indians have begun to tear up the rails, to shoot passengers and conductors on this road. We see great good in this. At last the poor victim has found the vulnerable spot in his tyrant. ... For seventy years and more the Indian has begged this great nation to attend to his wrongs. His cries have been unheard. Ruthless and unheeding we have trampled him down. To-day the worm turns and stings us. 232

Phillips also wrote that “The Pacific Railway is the Indians’ Alabama,” arguing that the Indians should be able to pursue claims against the U.S. government for violence and damages caused to them by the arrival of the Pacific railroad just as the United States had filed claims that same year against Great Britain for the dozens of prizes taken during the Civil War by the C.S.S. Alabama, a British-built Confederate warship. 233

233 Ibid.
Similarly, not all public officials ignored the role of the United States government in pushing the Native Americans to the precipice of extinction. The members of the government’s Indian Peace Commission, one of whose explicit objectives was “to secure … the safe building of our railroads looking to the Pacific,”\(^{234}\) scathingly reported in November 1869 that the government’s treatment of the Indians had been “unjust and iniquitous beyond the power of words to express,” and called it a “shameful record of broken treaties and unfulfilled promises.”\(^{235}\) The Commission cited testimony by the military elite that white settlers were “almost without exception” the first aggressors in conflicts with the Indians, and described white settlers’ relations with the Indians as “a sickening record of murder, outrage, robbery, and wrongs committed by the former as the rule, and occasional savage outbreaks and unspeakably barbarous deeds of retaliation by the latter as the exception.”\(^{236}\) The Commission continued to argue that violence against whites by Native Americans was primarily reprisal rather than instigation:

> Paradoxical as it may seem, the white man has been the chief obstacle in the way of Indian civilization. … Whatever may have been the original character of the aborigines, many of them are now precisely what the course of treatment received from the whites must necessarily have made them—suspicious, revengeful, and cruel in their retaliation. … In his most savage vices the worst Indian is but the imitator of bad white men on the border.\(^{237}\)


\(^{236}\) Ibid.

\(^{237}\) Ibid., 490.
But despite the sympathy of some government officials and citizens towards the plight of the Native Americans in the age of the Pacific railroad, the May 1869 union at Promontory Summit sealed their fate and doomed America’s original inhabitants to reservations and dependency. In his annual message to Congress at the end of 1869, President Grant wrote:

The building of railroads … is rapidly bringing civilized settlements into contact with all the tribes of Indians. No matter what ought to be the relations between such settlements and the aborigines, the fact is they do not harmonize well, and one or the other has to give way in the end. A system which looks to the extinction of a race is too horrible for a nation to adopt without entailing upon itself the wrath of all Christendom and engendering in the citizen a disregard for human life and the rights of others, dangerous to society. I see no substitute for such a system, except in placing all the Indians on large reservations, as rapidly as it can be done, and giving them absolute protection there.238

The following year, while the Sioux continued to be badly burdened by their prohibition from hunting buffalo south of the Platte, Secretary of the Interior Jacob D. Cox noted in his annual report that “the building of the Union Pacific Railroad had driven the buffalo from their former hunting grounds so far to the southward that it was impracticable for the Indians to rely upon this natural supply of food, clothing, and shelter.”239 After the Civil War, the Pacific railways “began their work as colonists.”240 The extermination of the bison they wrought and the removal of the Plains Native Americans to reservations set forth by the 1868 Fort Laramie treaty and

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240 Turner, The Frontier, 276.
other agreements concluded Red Cloud’s resistance against the growth of the iron horse and led to the Naive Americans’ reliance on American officials for food.241

As Sherman wrote that the military’s creation of the Department of the Platte to protect the Union Pacific from Native American attacks became the model for the Department of Dakota to protect the Northern Pacific, so too was the latter railroad protected during construction and used by the United States Army to put down Native American uprisings. The Sioux, corralled on a reservation between the Union Pacific and Northern Pacific railroads with no bison to hunt, declared in 1872 that they would resist the Northern Pacific’s construction, which led to the Sioux War of 1876-77 between that tribe and the U.S. Army. As the Union Pacific was linked to the U.S. Army through General Dodge, so too was the Northern Pacific connected to the military through its chief publicity officer, who had fought alongside Lieutenant Colonel George A. Custer in the Civil War, and one of its engineers, who was a classmate of Custer’s at West Point. After Custer’s defeat at Little Bighorn in June 1876, Sheridan used the Northern Pacific to deploy reinforcements who would eventually force Crazy Horse to surrender in May 1877. Once the Sioux War ended, the Army used the railways to keep Native Americans confined to reservations, such as when its deployment of soldiers from the Fifth Cavalry via the Union Pacific to put down the Ute uprising in Colorado in October, 1879. When the Northern Pacific was completed, Sherman declared in 1883 that the four transcontinental lines had “settled forever the Indian question.”242

241 Ibid., 144.
242 Angevine, Railroad and the State, 198-201, 205-08, 211, Sherman quoted on 216.
Closing the Frontier

Turner wrote in 1893 that “the frontier reached by the Pacific Railroad, surveyed into rectangles, guarded by the United States Army, and recruited by the daily immigrant ship, moves forward at a swifter pace and in a different way than the frontier reached by the birch canoe or the pack horse” during the first half of the nineteenth century. The frontier of the 1860s-1880s was pummeled as if in a vice between the American societies of the Atlantic and Pacific in a technologically-driven, militarily-protected, and nationally organized fashion that can only be described as transcontinental imperialism. Sheridan, writing in 1882, reflected upon the significance of the Pacific railways in relation to the shifting of the military’s burden with the moving frontier, the demise of the Native Americans, and the expansion of American civilization:

As the railroads overtook the successive lines of isolated frontier posts and settlements spread out over our country no longer requiring military protection, the army vacated its temporary shelters and marched into remote regions beyond, there to repeat and continue its pioneer work. In rear of the advancing line of troops the primitive ‘dug-outs’ and cabins of the frontiersmen, were steadily replaced by the tasteful houses, thrifty farms, neat villages and busy towns of a people who knew how to best employ the vast resources of the Great West. The civilization from the Atlantic is now reaching out toward that rapidly approaching it from the direction of the Pacific … finally the dividing lines will entirely disappear and the mingling settlements absorb the remnants of the once powerful Indian nations who, fifteen years ago, vainly attempted to forbid the destined progress of the age.

Paxson observed, “In the history of the frontier the Union Pacific Railway marks the beginning of the end,” and with the subsequent chartering of the Northern

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243 Ibid., 10.
244 P. H. Sheridan, Record of Engagements with Hostile Indians within the Military Division of the Missouri, from 1868 to 1882, Lieutenant General P.H. Sheridan, Commanding (Chicago: Headquarters, Military Division of the Missouri, 1882), 120.
Pacific, Atlantic and Pacific, Texas Pacific, and Southern Pacific between 1864 and 1871, “Congress provided the legal equipment for the annihilation of the entire frontier.” While the rationale for the original Pacific rail act of 1862 that animated the Union Pacific was based on the rhetoric of national defense and steeped in the desire to prevent the Pacific coast’s secession, the act in practice provided the catalyst for the government to begin its military conquest of Native American country. This was made possible through the 1862 act’s explicit extinguishment of Native American titles, the personal relationships General Dodge had with military leaders that led to the Army prioritizing the Union Pacific’s protection to the great extent that it did, the extermination of the bison the railroad accelerated, and the military advantages the railroad begat in deploying soldiers across the frontier to protect white settlers from Native Americans. As Charles Francis Adams told the Pacific Railway Commission in 1887, the Union Pacific Railroad had “ended for the Government the Indian wars.”

The conquest of all of America’s untamed territory prompted the Superintendent of the Census to declare in 1890 that the frontier had been closed, and would lead the United States to channel its imperial ambitions overseas, being unable to do so any longer within its own territory.


Taken after the July 26, 1868 meeting at Fort Laramie, including Sheridan (left), Grant (straw hat, center), Dodge (in doorway), Sherman (to Dodge’s left, facing towards Grant) and Durant (seated on fence at right)

Andrew J. Russell, *General Grant and party at Fort Sanders*, July 28, 1868, photograph, ZZc10 864un, Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library, Yale University, New Haven, CT.

Rowe, Henry. *Map of Union Pacific Railroad, Northern Pacific Railroad, and Great Sioux Reservation*. 2017

Depicts Union Pacific and Northern Pacific Railroads and their land grants, along with Great Sioux Reservation as prescribed by 1868 Ft. Laramie Treaty. Dots along Union Pacific line demarcate battles referenced in this paper. The arrival of the Northern Pacific effectively boxed the Sioux in on their reservation and led them to resist its construction.

Also marked are
1 — Fort C.F. Smith, site of Hayfield Fight, August 1, 1867.
2 — Fort Phil Kearney, site of Wagon Box Fight, August 2, 1867.
3 — Fort Laramie, site of Fort Laramie Treaty, April 28, 1868.
CHAPTER THREE: BUYER’S REMORSE

The two previous chapters have shown that the Pacific railroad project was inaugurated by the federal government in an exercise of central state authority as part of the Republican program for the settlement of the West, specifically with respect to its charting of a private corporation in the Union Pacific Railroad, its donation of public lands, and its lending the credit of the United States to induce private investment towards the enterprise’s completion. The American state also provided the might of the U.S. Army to construct the Union Pacific through hostile territory controlled by Native Americans and theretofore uninhabited by white settlers. In doing so, the government was not only aware of the decimating colonial forces the railroad would bring upon the Native Americans, but also sought to exacerbate those forces to settle the “Indian question” once and for all.

This chapter explores how the Union Pacific’s relationship with the federal government evolved in the decade following its completion. In the 1870s, the postbellum corporate economy beginning to take hold in the United States, the federal government’s mortgages and financial entanglements with the Pacific railway companies became an important battle line of competing public and private economic interests at the dawn of the Gilded Age. The Union Pacific’s federal subsidization, its embroilment in the notorious Credit Mobilier scandal, and its clashes with the government over how to interpret the vague wartime acts that created the company would lead to the 1878 passage of the Thurman Act, the first Congressional
antimonopoly legislation that was a dramatic alteration to the terms of the
government’s contract with the Pacific railways set forth in the acts of 1862 and 1864.

*The Construction Company*

Though the Union Pacific could raise funds for its construction by selling its stock and the subsidized government bonds, the road’s promoters understood that these methods of attracting investment could only offer stock subscribers long-term returns once the railroad began to turn a profit. Construction required large amounts of cash on hand, which led the promoters to contrive a mechanism by which they could build the railroad and simultaneously be able to dole out short-term dividends to make the enterprise more lucrative for private investment. Chartering a separate construction company to which the railroad’s construction could be contracted would enable the promoters to pay out profits to investors before the road’s contract, and afford the builders coveted limited liability privileges that were not given by the Union Pacific’s Congressional charter. Additionally, investors were not as hesitant to invest in construction companies as they were to invest in railroads, as the former lacked the volatile reputation of the latter.248

In response to the public’s lack of confidence in the Union Pacific as an investment, in March 1864, Union Pacific executives Thomas Durant and George Francis Train purchased a controlling stake in little-known corporation called the Pennsylvania Fiscal Agency.249 As it happened, the corporation had been chartered in Pennsylvania in 1859, with the professed purpose to “become an agency for the

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249 Ibid.
purchase and sale of railroad bonds and other securities, and to make advances of money and of credit to railroad and other improvement companies.”

Inspired by the Credit Mobilier of France, a joint stock company formed in Paris in 1852 on the principle of limited liability and for the purpose of constructing public works and developing domestic industry, the Union Pacific directors changed the Pennsylvania Fiscal Agency’s name to the Credit Mobilier of America, with Durant and Train made directors and Durant appointed its president. Though the Credit Mobilier was registered to an office it retained in Philadelphia (to maintain its Pennsylvania charter), the construction company operated out of a room adjacent to the Union Pacific’s corporate office in New York. By letting the construction contract to themselves, the Union Pacific’s promoters could assure that the work could be done at a rate which would guarantee them a handsome profit.

In March of 1864, work on the Union Pacific sat at a standstill as the company found itself more than $300,000 in debt. That August, just over one month after the amendatory act had passed Congress increasing the government subsidy, the Union Pacific awarded a contract to Herbert M. Hoxie to construct one hundred miles of railroad west from Omaha at the rate of $50,000 per completed mile. The contract was extended another 147 miles at the same rate, bringing the total price agreed upon for the construction of 247 miles of railroad to a whopping $12.35 million. Peter A.

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251 Ibid., 14; Klein, *Birth of a Railroad*, 35-38, 40, 42. Klein posited that given the “tendency of Americans to distrust anything they could not pronounce,” and the Credit Mobilier’s name “smack[ing] of foreign exotica,” the Union Pacific directors’ changing the construction company’s name may have exacerbated the public’s antipathy towards it. See Klein, *Birth of a Railroad*, 36.
Dey, who served as the Union Pacific’s head engineer before Dodge’s arrival, had liberally estimated the cost of building that particular section of road at $30,000 per mile, but, to his suspicion, he was directed by Durant to change the estimate to $50,000 per mile. Hoxie, who had perviously worked as a promoter and lobbyist for Durant’s earlier railroad interests, never intended to fulfill the contract himself and was acting as a false front. In early October, Hoxie transferred the contract to Durant and a number of Union Pacific executives, who in turn transferred the contract to the Credit Mobilier of America. Hoxie was given $5,000 in cash, $10,000 in Union Pacific stock, and a job with the company. When Dey learned of this racketeering by Durant in December 1864, he resigned in protest, writing to the Union Pacific’s president John Dix that he considered the Union Pacific’s managers to be the “trustees of the bounty of Congress,” and he could not in good conscience help Durant with what, as he told Dodge, could not be called “anything but a big swindle.” The Hoxie contract was extended for an additional fifty-eight miles at $22,500 per mile, moving another $1,345,000 into the Credit Mobilier’s coffers to compensate it for track it had already built (without contract, no less) and for which it was expecting reimbursement. Witnesses would testify to a Congressional committee in 1873 that the Hoxie contract yielded $5.2 million in profits to the Credit Mobilier. The payment from the Union Pacific to the Credit Mobilier for the Hoxie contract was undertaken in a transparently unscrupulous manner: the Union Pacific wrote a check to the Credit Mobilier, which then returned the check to the Union Pacific in exchange for the

253 Quoted in Ames, *Pioneering*, 43-44.
254 Quoted in Bain, *Empire Express*, 199.
equivalent value in stocks and company bonds. This was recorded on the Union Pacific’s books as a cash transaction, despite no money having changed hands.²⁵⁵

The construction contract that would become the crux of the infamous Credit Mobilier scandal of 1872-1873 was the one assigned by the Union Pacific to Oakes Ames, a Congressman from Massachusetts who sat on the House Pacific Railroad Committee. Oakes, along with his brother, Oliver, had made a fortune in their family’s shovel-manufacturing business, no small thanks to the increase in highway and railroad building that began in the 1830s and 1840s, and the Ames brothers invested in the Credit Mobilier in August 1865. Oakes’s motives for investing in a corporation affiliated with the Union Pacific were professedly steeped in the patriotic dimension of the transcontinental rail project.²⁵⁶ Mrs. Oakes Ames wrote in her diary on Friday, January 20, 1865, that President Lincoln sent for Oakes to join him after dinner at the White House, where the two talked until midnight. With the Union Pacific’s construction moving along sluggishly, Lincoln is reported to have said,

Ames, you must take hold of this. If the subsidies provided are not enough to build the road ask double and you shall have it. The road must be built, and you are the man to do it. Take hold of it yourself. By building the Union Pacific, you will be the remembered man of your generation.²⁵⁷

²⁵⁵ Crawford, Credit Mobilier, 28, 29, 31, 34-35. The Credit Mobilier’s $5.2 million profit was in the form of Union Pacific stock, and calculated based on its par value. Crawford notes, however, that at the time the shares were transferred to the Credit Mobilier they were only worth about 30 cents on the dollar at market value.


²⁵⁷ Quoted in Ames, Pioneering, 89. Ames attributes this quote to a memorial for Oakes Ames printed privately by the Ames family, and notes that the diary in which Mrs. Oakes Ames recorded the meeting with Lincoln has been lost. Nevertheless, Bain refers to Ames and the cited source material. See Bain, Empire Express, 211-12.
Lincoln’s endorsement of an increased government subsidy is curious considering his evening meeting with Oakes Ames supposedly took place six months after the July 1864 amendatory act had doubled the Union Pacific’s subsidy. Regardless, the anecdote, if it is true, underscores Lincoln’s understanding of the road’s national importance and the legend that would be made of the transcontinental railroad.

The Oakes Ames contract of August 16, 1867 was for the construction of 667 miles of railroad, at prices ranging from $42,000 per mile to $96,000 per mile, with an aggregate per mile cost of approximately $72,000 per mile. At the time of the contract, the outstanding stock of the Union Pacific was about $5 million, almost all of which was in the hands of the owners of the Credit Mobilier, which since Durant’s ousting from the company’s board in May 1867 was stowed by the Ames brothers. The Ameses and their group of investors desired that the railroad and the construction company be controlled by the same individuals, fearing that if the Union Pacific’s stock were to be sold to individuals opposed to their vision for managing the road’s construction it could preclude its expedient completion. As the Union Pacific was an enterprise on an unprecedented scale, so too was the Ames contract for its construction: contemporary observers postulated that his obligation for $47 million worth of construction was at the time the largest contract assumed by any individual in the United States or the entire world. Before the contract was issued, there was a tacit agreement that Ames would transfer the contract to the seven trustees who ran both the Union Pacific and the Credit Mobilier, and the profits would be divided among the shareholders of the Credit Mobilier. Ames obtained the permission of all the Union Pacific’s stockholders to transfer the contract as such, and the first
dividends from the Ames contract were paid out in December 1867 when $2,244,000 in Union Pacific first mortgage bonds and Union Pacific stock in that same amount were issued to the Credit Mobilier. To complete the last 125 miles of the railroad, a contract based on the one with Oakes Ames was issued to James W. Davis in November 1868. When all was said and done and the road completed, the Union Pacific Railroad Company was $6 million in debt, but by using the Credit Mobilier to construct the road, the promoters pocketed Union Pacific stock, Union Pacific bonds, and subsidized government bonds. Nineteenth- and early-twentieth century historians estimated the promoters’ profit to have been between $11 million and $20 million in cash value, while Robert Fogel calculated in 1966 that the upper bound of the Credit Mobilier’s profit was $16.5 million, with the return on investment for the years 1864-1869 having been between 480 and 610 percent.258

There was nothing illegal about the Union Pacific contracting the construction of its road to the Credit Mobilier. Hiring separate construction or finance companies to build railroads was a common business practice in the years 1855-1880. The Central Pacific was similarly using Charles Crocker & Co., and later the Contract and Finance Company, in the same fashion as the Union Pacific used the Credit Mobilier, with the construction company charging the Central Pacific roughly twice the amount of the actual construction cost to line their own pockets.259 Regardless of its legality, the Credit Mobilier’s close ties to Congress and the conflict of public and private interest that its relations presented would become a source of great public curiosity.

258 Crawford, Credit Mobilier, 38, 44-45, 58, 60, 63, 68; Ames, Pioneering, 169-70, 255; James Dabney McCabe, Behind the Scenes in Washington: Being a Complete and Graphic Account of the Credit Mobilier Investigation … (New York: Continental, 1873), 250-51; White, Railroaded, 35.
259 Ames, Pioneering, 49; White, Railroaded, 28-29; Goodrich, Government Promotion, 190.
and scorn when it was revealed that members of Congress and the former Vice President of the United States were among the subscribers of its stock.

The Scandal

By early 1869, with the transcontinental railroad mere months from competition, public opinion turned against the Union Pacific and other Pacific railroads amid allegations that the road was being mismanaged and the contracts were pocketing large personal profits for government-subsidized construction. While Congress contemplated extending additional aid to the Northern Pacific Railroad in January 1869, the House passed two resolutions expressing opposition to federal railroad aid. The first resolution against further monetary assistance or bond subsidies for railroads passed by a vote of 87 to 67, while the second resolution against further land grants to railroads passed 110 to 55.260 The Chicago Daily Tribune called Congressional railway aid a “grand game of plunder,”261 while the Washington Post published a lengthily tirade against railway aid alleging that “the public land, bought with the people’s money and conquered by their valor, is being transposed to loose and irresponsible corporations under visionary and corrupt influences ….”262 The Post calculated that the federal government had to date donated five million acres of land to railway companies and argued that the grants threatened American Republicanism as they would “furnish estates for a future landed aristocracy,


endowed as no aristocracy in the world has ever been.” The first Pacific railroad, wrote the Post, was built with “unseemly greed, haste and want of principle,” and the paper postulated that the United States could “better afford to declare war with the whole of Europe than to undertake to build and endow these railroads.”

Further encouraging the public’s antagonism towards the Pacific railroads was the first piece of investigative journalism aimed at exposing the Credit Mobilier, published by Charles Francis Adams in the North American Review in January 1869. Adams presciently observed that “[the Pacific Railroad] will one day be the richest and most powerful corporation in the world; it will probably also be the most corrupt. What the Erie and the New York Central have been to the politics of a single State, that, and more, this road may yet be to those of the whole country.” Responding to mounting rumors about the construction company’s windfall profits at the expense of the government, Adams wrote that the Credit Mobilier is but another name for the Pacific Railroad ring. The members of it are in Congress; they are trustees for the bond-holders, they are directors, they are stockholders, they are contractors; in Washington they vote the subsidies, in New York they receive them, upon the Plains they expend them, and in the Credit Mobilier they divide them. Ever-shifting characters, they are ever ubiquitous—now engineering a bill, and now a bridge,—they receive money into one hand as a corporation, and pay it into the other as a contractor. … As stockholders they own the road, as mortgagees they have a lien upon it, as directors they contract for its construction, and as members of the Credit Mobilier they build it. … Here, however, is every vicious element of railroad construction and management; here is costly construction, entailing future taxation on trade; here are tens of millions of fictitious capital; here is a road built on the sale of its bonds, and with the aid of subsidies; here is every element of cost recklessly exaggerated, and the whole at some future day is to make itself felt as a burden on the trade which it is to create, and will surely

263 Ibid.
264 Ibid.
hereafter constitute a source of corruption in the politics of the land, and a resistless power in its legislature. 266

Adams’s piece stirred up further public inquiry into the Credit Mobilier by newspapers across the country, and would portend the public relations nightmare that would embroil the Union Pacific just a few years later. 267

The Credit Mobilier scandal broke amid the election of 1872 due to a dispute between Oakes Ames and Henry S. McComb, a Union Pacific executive who filed suit against the Credit Mobilier alleging that 375 of its shares were rightfully his. On September 4, 1872, amidst a bitter presidential campaign between Ulysses S. Grant and Horace Greeley, the Democratic-leaning New York Sun published a lengthily expose titled “The King of Frauds: How the Credit Mobilier Bought its Way Through Congress,” which featured testimony from McComb describing infighting and corruption in the Union Pacific, along with a list of politicians who subscribed to Credit Mobilier stock that included Grant’s former Vice President Schuyler Colfax, his current vice presidential nominee, Henry Wilson, as well as Speaker of the House James G. Blaine, James A. Garfield, and other well-known Republicans. Most damning was the text of letters from Oakes Ames to McComb describing the purported distribution of Credit Mobilier stock among Congressmen to secure the Union Pacific’s legislative interests in Congress. 268

Ames’s letters, with which McComb had repeatedly tried to blackmail Ames for $100,000 in exchange for his not publishing them, were made public in early 1873. They appeared in the report of the Poland Committee, a House panel convened

266 Ibid., 148.
267 Bain, Empire Express, 601; Klein, Birth of a Railroad, 195.
268 Crawford, Credit Mobilier, 95, 97; Klein, Birth of a Railroad, 291-92.
to investigate the Credit Mobilier after James G. Blaine, harboring presidential ambitions and eager to downplay his being named in the Sun’s article, introduced a resolution to launch a Congressional investigation into McComb’s allegations of corruption.\footnote{Ames, Pioneering, 434; Klein, Birth of a Railroad, 293.} In Ames’s first letter to McComb of January 25, 1868, he responded to McComb’s critique that he had not shared Credit Mobilier stock with Congressmen from geographically diverse constituencies: “I have 3 [shares] to place, which I shall put where they will do the most good to us. I am here on the spot, and can better judge where they should go … .”\footnote{Quoted in Ames, Pioneering, 210.} Ames’s second letter, dated January 30, 1868, continued to discuss acquiring Credit Mobilier stock subscriptions from Congressmen: “I have used [placement of Credit Mobilier stock] where it will produce most good to us, I think. In view of King’s letter and Washburn’s move here, I go in for making our bond dividend in full.”\footnote{Ibid., 211.} Finally, the third letter from Oakes Ames of February 22, 1868 asked for an increase of Credit Mobilier stock to sell to Congressmen: “We want more friends in this Congress, & if a man will look into the law (& it is difficult to get them to do it unless they have an interest to do so,) he can not help being convinced that we should not be interfered with.”\footnote{Ibid., 212.}

Ames’s desire to place the stock with representatives from different sections of the United States is understandable, since by doing so he could garner a truly national interest in the project. However, the reference to “Washburn’s move” in the second letter was the strongest evidence for Ames attempting to exert influence in
Congress with Credit Mobilier stock on behalf of the Union Pacific. On December 9, 1867, a little over a month prior to Ames’s second letter, Representative Cadwallader Washburn of Wisconsin introduced a bill to the House that would regulate rates on the Pacific railroad. The House referred the bill to the Pacific Railroad Committee, which was then chaired by Oakes Ames himself, where the bill failed to gain any traction. The stifling of Washburn’s rate bill, as well as the defeat of other legislation for the regulation of Pacific railroad, was cited by the Poland committee as evidence that the corporate influence of the Union Pacific had permeated Congress. Also detrimental to the railroad was the revelation that Credit Mobilier stock had been bought by Congressman James Brooks of New York, who was serving as one of the Union Pacific’s government directors as prescribed by the 1862 act. The act forbade the government directors from owning stock in either the Union Pacific or Central Pacific, and though Brooks’s ownership of Credit Mobilier stock was thus not technically in violation of the law, he clearly understood that it presented a conflict of interest since he had it placed in the name of his son-in-law to avoid attention. Crawford noted in his oft-cited *The Credit Mobilier: Its Origin and History* that at the conclusion of the Congressional inquiry, each matter that had been investigated seemed “more in doubt than ever,” with committee reports having been written “more to appease the public … than to arrive at exact justice.” Nevertheless, the sensationalist politics of an election year triumphed over reason, and Brooks and Ames were censured from the House to satisfy the public rancor. Their names

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274 Crawford, *Credit Mobilier*, 222-23.
irrevocably tarnished, Brooks and Ames both died in the months immediately following the scandal, Brooks in April from a fever he contracted in India some years prior, and Ames from a stroke in early May 1873.\textsuperscript{275} Criticizing the vote of censure, Dodge said that to Oakes Ames, his expulsion from the legislature was “worse than death; and it was the blow given by the action of Congress which, followed by others, put him in his grave.”\textsuperscript{276} In evaluating the Congressional investigation of the Credit Mobilier, historians and contemporary commentators alike have criticized Congress’s suppression of charges against Colfax, its lack of attention to charges against the various Congressmen named, and its unjust scapegoating of Oakes Ames, who passionately pursued the completion of the Union Pacific for the national bounty it would yield and was never shown to have broken the law.\textsuperscript{277}

The Credit Mobilier proceedings were to that point the most significant moment in which the federal government was forced to critically evaluate its relationship to the Union Pacific Railroad—a private corporation that it chartered, subsidized, and aided with its military, yet did not own or control. In spite of all the government assistance that had been given, as Union Pacific and Credit Mobilier executive John M.S. Williams told the Wilson Committee (a second House committee investigating the Credit Mobilier), the Union Pacific’s promoters “thought they were only dealing with their own property; they didn’t think they had anything to do with


\textsuperscript{276} Dodge, \textit{How We Built}, 40.

the government.”278 In contrast to Peter A. Dey’s view that the Union Pacific’s managers were responsible to the public, Horace F. Clark, a Union Pacific executive who was similarly involved with the Credit Mobilier, told the Wilson Committee:

The relation of the Government to [the Union Pacific] in respect of its property is nothing more nor less than that of a creditor with a lien. I have never been able to see how the Government is injured, provided the road is maintained and the government debt is paid. … I think that the relation of trustee and cestui qui trust does not exist between the Government and the Company … . The Government cannot complain of any act which does not … obstruct or interfere with the purpose for which the act was passed. The Government made the bargain. It may have been wise or unwise. I think the object of the Government was to get a road built, and the Government got it. I do not think it could have got it in any other way. The Government, instead of advancing its own capital, instead of building the road itself, saw fit to make a contribution of its credit to a limited extent, and to call upon citizens to furnish the balance in one shape or other.279

The Wilson Committee rejected Clark’s argument, finding instead that:

The United States was not a mere creditor … the railroad was not a mere contractor. … The law [of 1862] created a body politic and corporate, bound, as a trustee, so to manage this great public franchise and endowments that not only the security for the great debt due the United States should not be impaired, but so that there should be ample resources to perform its great public duties in time of commercial disaster and in time of war.280

The significance of the Credit Mobilier scandal and the government’s reckoning with its relationship to the Union Pacific lies in the rude awakening the event gave the American public to the concept of conflict of interest, a hallmark of the new corporation-driven economy that was beginning to take over the United States at the time the scandal broke. The Credit Mobilier was a single battle in a larger conflict mounting in the United States over the growing political, economic, and legal influence of big business. Chandler argued that railroads were America’s first modern

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279 Ibid., 443.
280 Ibid., 445.
business enterprises, and Roy noted that railroads were the foundation of corporate capitalism. Since 1840, the rapid expansion of railroads in the United States had created a national market in which growth was driven primarily by the activities of corporations. Corporations originally were chartered by governments as quasi-state enterprises to provide public functions and complete projects too big for the government to fund by raising taxes. Acquiring a corporate charter, argued Roy, was to “pledge fealty to the state” that the company might enjoy limited liability and the ability to be financed by Wall Street capital. Early railroad corporations required government support and public financing to be feasible enterprises, but as the publicly-subsidized Union Pacific was under construction, the existing railroad industry in the United States had become almost entirely privatized. In this sense, the Union Pacific, and the other Pacific railroads aided by the government, were anomalies in the ecosystem of railroad corporations in the 1870s.

In addition to pushing back against the notion of the Union Pacific as a trustee of the government, Clark also told the Wilson Committee that the presence of government directors on the Union Pacific’s board as a condition of the company’s public-private origins was “a most unfortunate circumstance for the company.” Clark’s criticism of the mixed board of directors, a commonplace feature of early railroads, is indicative of the anachronistic nature of the Pacific railroad scheme. The


lack of state governments in the territories, as well as the need for government aid in so large a project, compelled the federal government to adopt a system of mixed-enterprise promotion which had since faded into obscurity at the state level. The government aid to the Union Pacific presented opportunities for conflict of interest, but not necessarily more so than in any other sector of the swelling national economy in which the federal government had its hands. As Oakes Ames told the Poland Committee in his defense, “There is no law and no reason, legal or moral, why a member of Congress should not own stock in a road any more than why he should not own a sheep when the price of wool is be affected by the tariff.”

_Railroad Influence and the Lobby_

The government’s aid to and legislative influence over the private corporations who built the Pacific railroad also gave birth to “third house” of Congress, the modern corporate lobby. The effects of the rising influence of the lobby are well detailed in McCabe’s somewhat sensationalist 1873 account of the Credit Mobilier investigation and the contemporary political climate of Washington, DC. Enterprises were springing up all over the country, wrote McCabe—“some of [them] are legitimate, and some are whatever you choose to call them”—and their promoters were flocking to Washington seeking government assistance for their projects. “Although they do so for their own private benefit,” the promoters “rely upon using the money of the whole

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283 Goodrich, _Government Promotion_, 176, 199.
284 Poland Committee Report, quoted in Klein, _Birth of a Railroad_, 296.
285 White, _Railroaded_, xiv; Thompson, “Corruption—or Confusion?,” 174, 182-83.
people rather than their own.” At the time of the Credit Mobilier scandal, due to the rising influence of corporate lobbyists in American politics, “… both in Washington and throughout the whole country, the integrity of many men in public life [was] doubted,” as Congressmen were perceived of as bent on “carrying out the most iniquitous schemes, of preventing inquiry into them, and shielding from punishment those engaged in them.”

McCabe also quoted at length an article from the *New York World* which he felt “very cleverly expressed the popular sentiment” towards the extension of government aid towards railroad companies during the revelation of the Union Pacific’s Credit Mobilier scheme:

One particularly specious plea is that unless the millions were thus robbed in behalf of the scores, the scores could not provide great and beneficent instrumentalities for the use of the millions. It is forgotten that the scores charge the millions as much for the use of the instrumentalities as if they had not been built with the millions’ own means, but had come bodily out of the bank accounts of the scores. If a man steal from me enough to buy him a horse and vehicle, and then insists he is doing me an immense service by charging me $5 for carrying me a mile on my own property, he does that on a small scale which subsidized corporations, railroad or any other, do upon large. … If the records of the Credit Mobilier investigation reveal anything, they disclose this—that tactics of this kind were employed with exquisite skill and relentless tenacity; and despite the half-frantic denials of the victims, it is perfectly evident the strategy of the subsidy adventurers won.

This general antagonism among the public towards corporations, especially those receiving government aid, expressed in the outcry over the Credit Mobilier caused the unjust censure of Oakes Ames and the besmirching of his name. It would also lead to

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287 Ibid., 223.
288 Ibid., 218.
289 Ibid., 219-20.
a series of legislative showdowns between the Union Pacific and the United States
government in the 1870s that would pave the way for broader federal railroad
regulation.

The Credit Mobilier scandal continued to make an impact on political
discussions in and out of Congress, even once the investigative proceedings were laid
to rest. In March 1873, one month after Ames and Brooks were removed from the
House, the Atlantic Monthly explored the dangers of the great political and economic
influence exerted by the railways, those “gigantic monopolies” whose “enormous
wealth enables them to set themselves above the law and above justice,” controlled by
“irresponsible and unscrupulous men, whose sole interest in transportation is the
money that can be made out of the public by it.”\textsuperscript{290} The journal implored its readers to
look at

the affairs of the Union Pacific Railroad, the typical corporation of the day, with its land grant of 12,800 acres to the mile, and government subsidy besides, its Credit Mobilier parasite, its hundred millions of worthless stock, and its principal projector disturbing shares among members of Congress … \textsuperscript{291}

With scores of employees and gifts to judges and legislators across the country,
railroads were assuming the “position most dreaded by all lovers of liberty,—a
powerful and enormously rich corporation, surrounded by a timid, weak, and hopeless
public.”\textsuperscript{292} The antidemocratic concentration of wealth and influence in railroad
corporations in 1873 could be plainly seen, wrote the Atlantic Monthly, by anyone
“who has followed with any attention the helpless struggles of the government of the

\textsuperscript{290} “Politics,” Atlantic Monthly 31, no. 185 (March 1873): 381.
\textsuperscript{291} Ibid.
\textsuperscript{292} Ibid., 383.
United States—formerly supposed to be quite able to take care of itself—in the foul toils of the Union Pacific Railroad.”\textsuperscript{293}

\textit{Congressional Reaction and Gould’s Settlement Offer}

Riding the wave of public hostility towards the Union Pacific that resulted from the Credit Mobilier scandal, Jeremiah M. Wilson, head of the eponymous House committee that investigated the Credit Mobilier, successfully entered an amendment into Congress’s March 1873 appropriations bill for the fiscal year beginning July 1, 1873, that instructed the Attorney General to file suit against the Union Pacific or anyone who received dividends from the Credit Mobilier. More importantly, however, the appropriations bill included an amendment entered by Senator George F. Edmunds of Vermont that retributively directed the Secretary of the Treasury to withhold payment to railroad companies for government cargoes transported so that the withheld sums might be put towards payment of the interest owed on the subsidized bonds, which was defined as five percent of the road’s net earnings. The law included a provision that the railroads could sue in the federal Court of Claims to attempt to recover the withheld payments, and the government or the railroad could appeal the Court of Claims’s ruling to the Supreme Court. Given the timing of their passage and the public sentiment that crated them, these two provisions together became known as the Credit Mobilier Act.\textsuperscript{294}

\textsuperscript{293} Ibid.

Led by its new principal, Jay Gould, the Union Pacific filed suit against the United States government to recover the withheld transportation payments. When the Union Pacific was on the brink of bankruptcy during the Panic of 1873, Gould colluded with Sidney Dillon, the Union Pacific’s president, to acquire a significant portion of Union Pacific stock through insider dealing that profited Gould and saved the railroad from insolvency. With the lawsuit over government freight payments pending and questions swirling about how railroads calculated their net earnings, Gould realized that in order to guarantee the future stability of the Union Pacific he would have to disentangle the railroad from the mercuriality of federal legislation.

The pressure mounted as bills floated around Congress calling for the Secretary of the Treasury to immediately requisition the payment of the five percent interest due on the subsidized bonds. In early 1875, Gould proposed to the federal government a plan for the Union Pacific to pay off its debt to the government through a sinking fund (in addition to the one enacted by the March 1873 appropriations bill) with the railroads’ payments into it ranging from $500,000 to $750,000 annually. Gould’s proposal got a shot in the arm in February of 1875 when the Supreme Court’s ruling in *St. John v. Erie Railroad Company* defined net earnings as revenues minus operating costs, construction expenses, rent on leased roads, and—most critically—interest payments.

The definition established by the Court’s ruling swung settlement negotiations between the U.S. government and the Union Pacific by about $200,000 per year in the railroad’s favor, making Treasury Secretary Benjamin Bristow more inclined to reach an agreement with the railroad. General Dodge and Representative James F. Wilson of Iowa, one of the government directors on the Union Pacific’s board, travelled to
Washington to discuss the settlement with Grant and Bristow. The President and Treasury Secretary were both in favor of a settlement, as were all but one cabinet member. Grant drafted a message to Congress advocating that it pass an act accepting the agreement, but his message never reached the body and Congressional Republicans persuaded Grant to consider pursuing a settlement the following session instead.\textsuperscript{295} Dodge claimed that financiers with an interest in shorting Union Pacific shares conspired to convince Grant that the settlement was “a mere stock-jobbing scheme,” and that “General Grant often said to me in later years that he regretted he did not settle the matter at that time.”\textsuperscript{296} Though neither the government nor the Union Pacific realized it at the time, their last best hope for a settlement had been squandered. Dodge wrote that Gould’s attempt to settle with the government [demonstrated] that at the moment the Union Pacific began to be prosperous the men who put their money in it and built it made the first effort to pay the debt due the Government at or before its maturity, … This is one of the many instances in which the Union Pacific Railway has endeavored to fulfill, not only in letter, but in spirit, every obligation it owed to the Government, and I undertake to say that the Government of the United States, from the time the road was finally completed and in continuous operation, has never fulfilled any one of its obligations to the company, except the simple giving of its credit at the time of the building by the issue of its bonds.\textsuperscript{297}

“A national undertaking for national purposes”


\textsuperscript{296} Dodge, \textit{How We Built}, 41.

\textsuperscript{297} Dodge, ibid; Klein, \textit{Birth of a Railroad}, 377. The operative words in Dodge’s claim are “from the time the road was completed.” Considering the military aid and protection given to Dodge and the Union Pacific’s workmen during the railroad’s construction, Dodge of all people could hardly claim that the U.S. government fell short of its obligations before the road was finished.
After Gould’s settlement fell through, the Union Pacific scored a victory in its struggle with the federal government when in May 1875, the Court of Claims ruled in the company’s favor in the lawsuit over the withheld payments and ordered the government to pay the railroad $512,632.50 for services rendered between February 1871 and February 1874.\(^{298}\) The government appealed the ruling, and in doing so prompted the Supreme Court not only to grapple with the particulars of the Union Pacific’s claim to compensation for government freights transported, but also to ruminate on the dynamics of the federal government’s relationship to the Union Pacific given the company’s unique origins.

*United States v. Union Pacific Railroad Company* hinged on the language of the Pacific rail acts of 1862 and 1864.\(^{299}\) Section five of the original act stipulated that the thousand-dollar United States bonds were “payable in thirty years after the date, bearing six per centum per annum interest (said payable semi-annually).” Additionally, section six of the act provided that the land grants to the Union Pacific were “made upon the condition that said company shall pay said bonds at maturity … and all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid.”\(^{300}\) Finally, section five of the 1864 amendatory act provided that “only one-half of the compensation for services rendered for the government shall be required to be applied...
to the payment of the bonds issued by the government in aid of the construction of said road.”

On November, 29, 1875, with the health of the Union Pacific’s stock hanging in the balance, “an eager and anxious crowd of speculators, Wall Street agents, lawyers, and reporters” excitedly packed into the chambers of the Supreme Court to hear its decision. Justice David Davis delivered the opinion of the court, beginning with the acknowledgement that the government’s claim was based on the “general right of set-off,” which was typically used by the government when settling with individuals or corporations with claims against it. “But, manifestly,” said Davis, “the rules applicable to ordinary claimants for services rendered the United States do not apply to this controversy.” Noting that the United States bonds were “issued in pursuance of a great national highway,” Davis acknowledged that the Court was unable to consider the individual motives of the legislators who crafted the legislation in question, but the Court might “with propriety recur to the history of the times when [the legislation] was passed … in order to ascertain the reason as well as the meaning of particular provisions in it.”

Doing just that, Davis posited that many components of the 1862 act were “outside the usual course of legislative action concerning grants to railroads,” and with the “war of the rebellion in progress” there was “no better way” to “furnish that degree of protection to the people occupying [our Pacific possessions] that every

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301 13 Statutes 359.
302 “Union Pacific.: The Decision of the Supreme Court.” Chicago Daily Tribune, December 3, 1875. Historical Newspapers.
303 91 U.S. 79.
government owes to its citizens” than to build a transcontinental railroad.\textsuperscript{304} Davis recalled that at the time of the act’s passage,

it was felt that the government … could not justly withhold the aid necessary to build it; and so strong and pervading was this opinion, that it is by no means certain that the people would not have justified Congress if it had departed from the then settled policy of the country regarding works of internal improvement, and charged the government itself with the direct execution of the enterprise.\textsuperscript{305}

Davis argued that the Union Pacific was a “national undertaking for national purposes,” and as such, the public who demanded it was concerned more with securing that end than the means by which it was accomplished due to the project’s military necessity, its facilitation of westward settlement, and its making accessible the vast natural resources of the west for the “wealth and power” of the United States.\textsuperscript{306}

“The scheme for building a railroad two thousand miles in length,” continued Davis, “over deserts, across mountains, and through a country inhabited by Indians jealous of intrusion upon their rights, was universally regarded at the time as bold and hazardous undertaking.” Noting Congress’s use of the public-private method of railroad charters and land grants that was commonplace at the state level before the Civil War, Davis observed that “Congress acted with reference to a state of things believed at the time to exist.” The Pacific railroad “was a national work, originating in national necessities and requiring national assistance,” and Congress’s enlistment of private capital was a result of “the policy of the country, to say nothing of the

\textsuperscript{304} Ibid., 79-80.
\textsuperscript{305} Ibid., 80.
\textsuperscript{306} Ibid.
supposed want of constitutional power,” that precluded the federal government from undertaking the work itself.\textsuperscript{307}

Since the government endeavored to construct the railroad for public rather than private purposes, simply because a number of private individuals profited from the enterprise did not tarnish its goal. In true Hamiltonian fashion, Congress sought to “engage individual co-operation as a means to an end—the securing a road which could be used for its own purposes.”\textsuperscript{308} To support this claim, Davis pointed to the 1862 act’s title: “An act 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, military, and other purposes.”\textsuperscript{309} Furthermore, the act itself also contained language that outlined one of its objects was to “secure to the government at all times (but particularly in time of war) the use and benefits of the [road] for postal, military, and other purposes.”\textsuperscript{310} Thus, wrote Davis, “the act itself was an experiment,”\textsuperscript{311} without federal precedent and crafted by and for the particular political moment in which it was passed.

Bearing in mind the national purpose and extraordinary circumstances that underpinned the 1862 act, Davis said that the phrase ordering the Union Pacific to “pay said bonds at maturity” was commonly understood to mean the end of the term fixed for their payment. If Congress had meant for the interest to be paid sooner, they ought to have said so in the act, since “courts cannot supply omissions in legislation,

\textsuperscript{307} Ibid., 81.
\textsuperscript{308} Ibid.
\textsuperscript{309} Ibid., 82. Emphasis added.
\textsuperscript{310} 12 Statutes 497, quoted in ibid.
\textsuperscript{311} Ibid.
nor afford relief because they are supposed to exist.”\textsuperscript{312} Davis argued that in light of the act’s passage “in the midst of war, when the means for national defence were deemed inadequate, and the public mind was alive to the necessity of unifying by iron bands the destiny of the Pacific and the Atlantic States,”\textsuperscript{313} the dearth of specific language regarding bond payments did not entitle the government to retroactively change the terms of the 1862 and 1864 acts because they were “deemed too liberal now.”\textsuperscript{314} The terms of the act were aimed at the “ultimate security” of the road’s completion, “rather than immediate reimbursement.”\textsuperscript{315} If the Union Pacific Railroad proved a successful enterprise, it would be able to repay the government and provide benefits to the whole country. If it failed, the government could repossess the railroad and all of its property through a declaration of forfeiture which was provided for by the 1862 act.\textsuperscript{316} The government, however, was not to dictate the terms on which the railroad operated that would determine whether it succeeded or failed.

With this decision, the Court conveyed to Congress that even though public opinion had turned against the Union Pacific during the Credit Mobilier scandal and created feelings of buyer’s remorse, Congress could not pass retributive legislation upon the Pacific railroads to attempt to rectify the vague terms of the 1862 and 1864 laws that resulted in insufficient federal control over the corporations. In chartering the experiment, Congress assumed a share of the risk.\textsuperscript{317} The 1875 ruling in \textit{U.S. v.}

\begin{thebibliography}{9}
\bibitem{312} Ibid., 85.
\bibitem{313} Ibid., 88.
\bibitem{314} Ibid., 88-89.
\bibitem{315} Ibid.
\bibitem{316} Ibid., 89; 12 \textit{Statutes} 497.
\bibitem{317} James W. Ely, Jr., \textit{Railroads and American Law} (Lawrence, KS: University Press of Kansas, 2001), 56.
\end{thebibliography}
Union Pacific was seen as a refutation of the public outcry over the Credit Mobilier and vindication of Oakes Ames’s innocence. The Court’s decision precluded the government’s collection of about $85 million plus interest from the Union Pacific for the following two decades and was a watershed moment in the relationship between the government and the railroad. The Court essentially endorsed the position Horace F. Clark put forward to the Wilson Committee in 1873, wherein the Union Pacific was permitted to operate as it saw fit as long as in doing so the company maintained the road to fulfill the public functions stipulated by the 1862 and 1864 act.

In 1894, John P. Davis observed that

Congress thought, until otherwise instructed by the Supreme Court, that the Union Pacific promoters were the agents and trustees of the government, inspired by the highest motives of patriotism to build the national highway,— [in fact] they were only men of the nineteenth century, building a railway just as other men built railways, and making all the profit they could from the venture.

As soon as the verdict came down in the Union Pacific’s favor, unfriendly Congressmen began introducing new measures to wrangle the railroad into paying off its debt sooner than the thirty-year bond period was over. In March 1876, Congressman William Lawrence of Ohio proposed a bill instructing the Secretary of the Treasury to withhold money to the Pacific railroads for government services, mandated the railroads adhere to a semiannual payment plan, and prohibited them from paying out dividends until the terms of the proposed law were met. In spite of

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318 Crawford, Credit Mobilier, 222-24.
strong lobbying efforts against it as well as criticism that it ignored the Supreme Court’s recent ruling, the Lawrence bill passed the House in a landslide vote of 153-9. However, the measure was considered so austere by even conservative financial pundits that the Senate killed the law in committee.\(^{321}\)

The government also made use of the provision in the 1873 appropriations law passed in reaction to the Credit Mobilier scandal that called for the Attorney General to file suit against the Union Pacific or any parties believed to have defrauded the government as part of the railroad’s construction. Attorney General George H. Williams sued the Union Pacific, the Credit Mobilier, and the Wyoming Coal Company in the Connecticut Circuit Court, alleging that the parties had defrauded the Union Pacific Railroad in what became known as the *Credit Mobilier Case*. The Circuit Court dismissed the charges, but the government appealed to the Supreme Court, which heard arguments in early 1877 but failed to reach a conclusion until after a re-argument which began in November 1878.\(^{322}\)

The opinion in the *Credit Mobilier Case* was written by Justice Samuel Miller, a vocal critic of the railroads and their unscrupulous use of receivership to continue operation without fulfilling their obligations. Miller disappointed reformers when he observed that in the *Credit Mobilier Case* it was not the government, but rather the Union Pacific Railroad Company itself that had been defrauded. The real victims were those who bought shares in the Union Pacific but were not part of the Credit


\(^{322}\) Kens, “Credit Mobilier,” 175; *United States v. Union Pacific Railroad Company*, 98 U.S. 569 (1879).
Mobilier scheme, who Miller said were “capable of asserting their own rights”323 by bringing suit themselves if they so chose. The United States was both a party to contract with the Union Pacific and a sovereign over it, wrote Miller, and as such could sue the company for a breach of trust. However, the statute under which the suit was brought did not provide for a trust between the company and the government, so the decision of the lower court in favor of the company was upheld.324

Miller’s ruling against the Credit Mobilier Act greatly disappointed anti-corporate reformers, who in the late nineteenth century regarded railroads as “landed monopolies.” The biggest source of anti-corporate sentiment was anti-monoplism, and the Pacific railroads’ privileged status as state-sponsored private corporations, the immense aid bestowed upon them by the government in the form of land grants, bonds, and other subsidies, as well as their rate-setting power over shipping to and from newly accessible western markets altogether made them the ideal target for the ire of the Granger and reform movements.325 The Union Pacific’s Credit Mobilier scandal figured prominently in the early proceedings of the Patrons of Husbandry, who during the 1870s frequently cited the affair when calling for stronger national regulation of the economy and used the construction company’s name as a metonym for corruption.326

324 Kens, “Credit Mobilier,” 176-77.
The Credit Mobilier was also frequently mentioned in publications by reform advocates, such McCabe’s 1874 *History of the Grange Movement*. McCabe argued that in 1873, Congress ought to have outright confiscated the Union Pacific’s property in retribution for the Credit Mobilier, and that its merely withholding payments to the railroad indicated the extent of the company’s rampant influence on the government.327 Suggesting that the Grangers seek to remove from power pro-corporate legislators “who are stained with the infamy of the ‘Credit Mobilier’”328 and referring to the Union Pacific’s land grant as a “land grab,” McCabe asked his readers,

Is the Congress of the United States the true exponent of the popular will? Do the people really sanction the “land grab,”… the Credit Mobilier swindle, the numerous jobs and schemes which plunder the people, and enrich a few unscrupulous individuals, and which bear the stamp of Congressional approval? Are the people really engaged in robbing themselves? It is absurd to ask the question.329

While reform advocates who thought similarly to McCabe opposed the Court’s decision in the *Credit Mobilier Case*, Miller’s opinion provided a vivid analogy for the government’s frustrations with the Union Pacific Railroad in the 1870s, as it found itself repeatedly wrestling its own creation in the aftermath of the ignominy of the Credit Mobilier scandal and the Union Pacific’s appearing to have betrayed the public trust.

In the feeble infancy of this child of its creation, when its life and usefulness were very uncertain, the government, fully alive to its importance, did all that it could to strengthen, support, and sustain it. Since [the Union Pacific] has

328 Ibid., 509.
329 Ibid., 397.
grown to a vigorous manhood, it may not have displayed the gratitude which so much care called for.\textsuperscript{330}

In the 1870s, the revelation of the Credit Mobilier, the Pacific railroads’ growing government debt, and public antagonism towards the emerging economic and political dominance of railways and other large corporations led the United States government to view the Union Pacific Railroad, as Miller described, as its wayward and ungrateful child. While the 1873 law’s efforts to curtail the child’s unruly behaviors were struck down by the Supreme Court, the parent was undeterred. Since the Credit Mobilier and the Court’s ruling for the Union Pacific in 1875, a reform-inclined president, Rutherford B. Hayes, had taken office, along with many like-minded new members in both houses of Congress. Gould understood that the political winds were turning against the Union Pacific and that its legal successes would be short-lived with new sinking fund legislation looming on the horizon.\textsuperscript{331}

\textit{The Thurman Act}

As the \textit{Credit Mobilier Case} was pending its re-argument, in May 1878 Congress passed the Pacific Railroad Sinking Fund Act, introduced by Senator Allen G. Thurman of Ohio. Reprising a bill that had failed the previous session, the so-called Thurman Act provided that the Union Pacific and Central Pacific had to pay twenty-five percent of their annual net earnings into a sinking fund to pay off their obligations (to all creditors, not just the federal government), which at the time were $88 million for the Union Pacific and $96 million for the Central Pacific. From the

\begin{footnotesize}
\textsuperscript{330} 98 U.S. 620.
\textsuperscript{331} Klein, \textit{Birth of a Railroad}, 381-82.
\end{footnotesize}
twenty-five percent was to be deducted half of the amount owed the companies for
government transportation, which would be put toward interest accrued, while the
other half plus the remainder of the twenty-five percent of net earnings would be
retained in the U.S. Treasury. Under penalty of a fine up to $10,000 and a one-year
prison term, the companies’ managers were not to pay out any dividends until the
sinking fund had been capitalized.332

In introducing the law to the Senate, Thurman estimated that at the maturation
of the thirty-year bond period, the Union Pacific and Central Pacific would
collectively be $170 million in debt, and that it was “the duty of Congress,” acting in
its capacity as both a creditor and a second-lien holder, “to begin to look out for some
security that this immense amount shall not be lost.”333 Thurman projected that based
on the payment schedule of the act of 1864, the railroads would only pay the
government $15 million, a staggering $114 million short of the total amount that
would be due at the end of the bond period. Thurman criticized the two railroads for
distributing millions of dollars in dividends to shareholders in lieu of paying off the
government debt despite taking in tremendous revenues, telling the Senate that “there
is not one railroad I believe in fifty in the United States that makes such dividends [as
the Union Pacific or Central Pacific]. … I venture to say that in less than twenty years
from now these corporations will be the two richest railroad corporations on the face
of this earth.”334 As indicated by Thurman’s remark, the Union Pacific’s high

332 Kens, “Credit Mobilier,” 177; Klein, Birth of a Railroad, 380; 20 Statutes 56, 58-60; Haney,
1850-1887, 98-99. Around this time, the Supreme Court prohibited the Union Pacific from deducting
interest paid on bonded debt from gross income in calculating its net earnings. See Union Pacific
Railroad Company v. United States, 99 U.S. 402 (1878); Haney, 1850-1887, 91.
333 Congressional Record, 45th Congress, Session II, Senate, 1690.
334 Ibid., 1690, 1692.
revenues amid the depression of the 1870s and the railroad strikes in the summer of 1877 curried it no favor in Washington.\textsuperscript{335} Thurman also justified his proposed legislation by asserting that “no matter how rich a railroad may become, security for its creditors is essential,” and that the United States sought not to foreclose or operate the railroad itself, but rather sought only its repayment. “We do not want the road,” said Thurman, “we want our money.”\textsuperscript{336}

David Davis, who three years prior wrote the Supreme Court’s opinion in \textit{U.S. v. Union Pacific R.R. Co.} striking down the withholding of government payments to the railroad, had since resigned the court and become a senator from Illinois. Davis, from his new position on the Senate Judiciary Committee, endorsed Thurman’s sinking fund legislation on the grounds that the government needed to protect its own investment in the railroads. “It requires no spirit of prophecy,” Davis told the Senate, “to tell that unless some adequate provision can be presently made for the ultimately extinction of this indebtedness, the interests of the Government will be seriously endangered.”\textsuperscript{337} Davis argued that the twenty-second section of the 1864 amendatory act, which enabled Congress to “at any time alter, amend, or repeal” the statute,\textsuperscript{338} and precedent set by individual state legislatures amending charters provided the legal authorization for Congress to pass the Thurman Act.\textsuperscript{339}

Senator John T. Morgan of Alabama advocated the Thurman Act’s passage, echoing Davis’s arguments that the last section of the 1864 bill gave the legislation

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\textsuperscript{335} Klein, \textit{Birth of a Railroad}, 381, 383.
\textsuperscript{336} Cong. Record, 45th Cong., Sess. II, Senate, 1692.
\textsuperscript{337} Ibid., 1693.
\textsuperscript{338} 13 Statutes 365.
\textsuperscript{339} Cong. Record, 45th Cong., Sess. II, Senate, 1693-94.
\end{flushleft}
legal backing. Morgan also cast the measure as a critical battleground in Congress’s larger struggle to wrangle control of the new corporation-dominated national economy. “Either the people and their Government,” said Morgan,

must succumb to the power accumulated in the corporations of the country or the corporations must be declared to be within that power of the law by which the legislative authority which gave them existence may so far control them as to prevent them from an abuse of their powers.340

In a thinly-veiled criticism of the Supreme Court’s ruling for the Union Pacific in 1875, Morgan depicted the Thurman Act as Congress acting within its rights to regulate a company of its own creation:

Congress, if it can make corporations, can unmake them, can alter and amend their charter powers, can control them in subordination to the public welfare . . . . And in the exercise of these powers Congress will act as justly, as wisely, as impartially, as carefully, and as with as much regard for personal rights as the courts would do, and with more of representative authority from the people . . . than any court possesses.341

Finally, Morgan referenced the acrimony felt by the nation towards the Pacific railroads in the wake of the Credit Mobilier scandal and held up the Thurman Act as a step towards rectifying past wrongs committed by the immensely-aided enterprises that were flush with revenues. According to Morgan, the Union Pacific and Central Pacific were

… not free from defalcation in their dealings with the Government. Waiving of the present the question as to the extraordinary concessions made to them in the act of July 2, 1864, . . . and blinding our eyes to the hideous Credit Mobilier, which like a beast of prey was permitted by the companies to gorge itself on this great enterprise, look to the roads that have been purchased and built with the income of these companies, and the millions of surplus in their treasury, while the people are bearing burdens that crush soul and body to pay the interest on their debt.342

340 Ibid., 1857.
341 Ibid., 1858.
342 Ibid., 1859.
Notwithstanding that the Union Pacific’s settlement offer to the Grant administration was tendered before the 1875 Supreme Court decision was announced, public animosity towards the railroad persisted. The Thurman Act passed the Senate by a wide margin of 40 to 19 and was signed into law on May 8, 1878. Noting the Thurman Act’s ramifications in the larger political battle between anti-corporate interests and big-business advocates, the New York Times heralded the act’s passage as the “utter defeat of the Jay Gould lobby.”

The Sinking Fund Cases and Congressional Managerial Intervention

Both railways sued straightaway to challenge the validity of the Thurman Act, the Union Pacific filing suit in the Court of Claims while Albert Gallatin, a Central Pacific stockholder, sued the Central Pacific in the Federal District Court in California in a claim designed to test the statute. The Supreme Court combined the two cases and heard them together in the Sinking Fund Cases. Delivering the opinion of the Court, Chief Justice Morrison Waite upheld the Thurman Act, arguing that in light of the railroads’ distribution of large dividends instead of paying back their debts to the government and other creditors, the government—which he noted, was both sovereign over and creditor to the Pacific railroad companies—was acting within its duties, “as sovereign, to see to it that the current stockholders do not, in the administration of the affairs of the corporation, appropriate to their own use that

344 Kens, “Credit Mobilier,” 177.
which in equity belongs to others.” The Thurman Act, Waite said, would secure the railroads’ long-term solvency, which was ultimately to the benefit of the stockholders as much as it was to the government and the railroads’ other creditors. Since, when Congress made the “contracts” in the form of the Pacific rail acts of 1862 and 1864, it could foresee neither whether the railroad would be financially successful nor what its particular managerial practices would be, Congress in 1878 interfered, and, under its reserved power [in section twenty-two of the 1864 act], limited the privilege of declaring dividends on current earnings, so as to confine the stockholders to what is left after suitable provision has been made for the protection of creditors and stockholders against the disastrous consequences of a steadily increasing debt.

Waite’s argument viewed the Thurman Act as a remedy for the railroads’ irresponsible managerial practices that placed emphasis on pleasing shareholders with robust dividends but did not adequately service their government debts. At the time, railroads were driving what Alfred Chandler called the “managerial revolution.” Railroads were, and still are, a highly complex industry featuring a myriad of operational areas, including the maintenance of permanent way, locomotives, rolling stock, and facilities for handling passengers and freight. Their intricate and geographically dispersed functions required a large administrative apparatus of executives overseeing a hierarchy of specialized managers. As discussed in Chapter One, the capital-intensive nature of railroading meant that a company needed financing from multitudes of investors, who were too great in number and lacking the engineering and administrative expertise to effectively manage the railroad. This led to a separation between ownership and management and gave rise to a new social

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346 Ibid., 724-25, 727.
class of managerial experts who operated largely disconnected from their shareholders. The division between principals and agents in the United States during the Second Industrial Revolution began with railroads, but soon spread to corporations in other industries who tapped into economies of scale made possible by the transportation and communication revolution wrought by the railroad and telegraph which enabled the flow of large quantities of raw materials over long distances.347

Raising capital, determining the company’s financial policies, and appointing top-tier management were among the only ways in which owners could influence the operations of a railroad run by salaried managers.348 Waite’s rationalization of the government’s obligation to intervene in the managerial practices of the Union Pacific rested on the railroading industry’s divorce between management and ownership:

Railroads are a peculiar species of property, and railroad corporations are in some respects peculiar corporations. A large amount of money is required for construction and equipment, and this to a great extent is represented by a funded debt, which, as well as the capital stock, is sought after for investment, and is distributed widely among large numbers of persons. Almost as a matter of necessity it is difficult to secure any concert of action among the different classes of creditors and stockholders, and consequently all are compelled to trust in a great degree to the management of the corporation by those who are elected as officers, without much, if any, opportunity for personal supervision. The interest of the stockholders, who, as a rule, alone have the power to select the managers, is not infrequently antagonistic to those of the debt-holders, and it therefore is especially proper that the government, whose creature the corporation is, should exercise its general powers of supervision and do all it reasonably may to protect investment in the bonds and stock from loss through improvident management.349

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348 Chandler, Visible Hand, 87.
349 99 U.S. 722.
These were the peculiarities of what Chandler called the “managerial revolution” in corporate governance typical of the industries of the Second Industrial Revolution. In late nineteenth-century America, expert managers stewarded the rise of large, concentrated corporations—first railroads, eventually firms in all industries—that commanded tremendous economic and political clout.\textsuperscript{350} Adelstein noted that in this rapidly changing environment of big corporate interests, pro-autonomy advocates feared that the industrial concentration begun during the Civil War was not just inefficient but immoral, stifling the spirit and entrepreneurial energy of common people, separating owners of firms from responsibility for their conduct, enabling corporations to seize effective control of the levers of democracy and reducing ordinary citizens to voting spectators of rather than full participants in their own government.\textsuperscript{351}

Remote ownership would politically hurt the railroads in the 1870s and 1880s, as state legislatures had no trepidations about regulating corporations whose owners did not even reside within their borders.\textsuperscript{352} In 1879, Congress and the Court may have understood that railroads were capital-intensive and managerial enterprises, but in their fervor to regulate the railroads, the scandalous and deeply-indebted Pacific railways in particular, they were slow to grasp the dynamics of railroad competition. The Thurman Act manage to wrest some measure of control over the Pacific railways away from their managers and into the hands of Congress, and would prove be a harbinger of the regulatory and legislative battles in the following decades between

\textsuperscript{351} Adelstein, Rise of Planning, 182, 185. Quoted is the author’s interpretation of Louis Brandeis’s jurisprudence.
\textsuperscript{352} Bensel, Political Economy, 313.
the government and not only the Union Pacific, but also between the government and railway industry at large.\textsuperscript{353}

\textit{Dissenting Opinions and Field’s Rebut of Centralized Authority}

The three dissenting opinions in the \textit{Sinking Fund Cases} merit attention for their analysis of the government’s relationship to the original two Pacific railways, as well as their remarks on the superiority of centralized federal authority, which, in concert with industrial concentration, had been increasing since the Civil War.\textsuperscript{354} Justice William Strong opposed Waite’s ruling on the grounds that Congress could not retroactively modify a contract it made with any individual, citing Hamilton’s observation that when the government makes a contract with someone it forfeits its role as a legislator over its partner in the agreement.\textsuperscript{355} Calling the Thurman Act a “radical change in relations”\textsuperscript{356} between the two Pacific rail companies and the government, Strong argued that the legislation was hardly a law at all, but rather an ad-hoc edict the likes of which was beyond Congress’s authority to issue:

\begin{quote}
A statute undertaking to take the property of A. and transfer it to B. is not legislation. It would not be a law. It would be a decree or a sentence \textellipsis \textquote{[The Thurman Act] is little, if any, more. It does not purport to be a general law. It does not apply to all corporations or to all debtors of the government. It singles out two corporations, debtors of the government, by name, and prescribes for them as debtors new duties to their creditor. It thus attempts to perform the functions of a court. This, I cannot but think, is outside of legislative action and power.}\textsuperscript{357}
\end{quote}

\begin{footnotesize}
\item[353] Klein, \textit{Birth of a Railroad}, 384.
\item[355] \textit{Sinking Fund Cases}, 99 U.S. 700 (1878), 731, 736.
\item[356] Ibid., 740.
\item[357] Ibid., 739.
\end{footnotesize}
Strong further criticized the Thurman Act for interfering “only with the fruits of the franchise” granted by the acts of 1862 and 1864, and not the franchise itself, calling the act a “very grave and dangerous assertion” of the twenty-second section of the 1864 act which could damage the public’s perception of the good faith of the government towards its contracts. Justice Joseph P. Bradley, in his dissent, also rebuked the Thurman Act’s application of the 1864 legislation’s provision for amendment, arguing that it was an imposition of a tax on the companies rather than a modification of the Congressional charter.

The most wide-reaching and impactful dissent, however, came from Justice Stephen Field, who unlike his colleagues on the bench, crafted his opinion around the position of the Central Pacific, since it was chartered by the legislature of California and not, as Waite so called the Union Pacific, a creature of the federal government. Since the Central Pacific was a state-chartered corporation, Field argued, the Court’s upholding of the Thurman Act—and all of its retroactive amendments to the terms of the chartering legislation—absolved the federal government of fulfilling its contracts with state corporations and asserts a supremacy of the Federal over the State government in the control of the corporation which … is subversive of the rights of the State.” Just as Bradley said the Thurman Act was more a tax and less a legislative amendment to a corporate charter, Field lambasted the act as the

extraction from the company of money for which the original contract did not stipulate … . Its purpose, however, disguised, is to coerce the payment of

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358 Ibid., 740, 743.
359 Ibid., 749-50.
360 Ibid., 719.
361 Ibid., 750.
money years in advance of the time prescribed by the contract. That such legislation is beyond the power of Congress I cannot entertain a doubt.362

Field, unlike the other justices, addressed the nation’s enmity towards Pacific railroads, urging that the prominent political feelings of the moment not lead to the pursuit of legislation that prioritized popular outcomes in lieu of equal protection before the law. “I am aware of the opinion which prevails generally,” wrote Field, that the Pacific railroad corporations have, by their accumulation of wealth, and the numbers in their employ, become so powerful as to be disturbing and dangerous influences in the legislation of the country; and that they should, therefore, be brought by stringent measures into subjection to the State. This may be true; I do not say that it is not; but if it is, it furnishes no justification for the repudiation or evasion of the contracts made with them by the government. The law that protects the wealth of the most powerful, protects also the earnings of the most humble; and the law which would confiscate the property of the one would in the end take the earnings of the other.363

In his closing remarks, Field returned to the issue of state- versus federally-chartered corporations. he admonished the Court’s decision to effectively intervene in a state’s chartering of a corporation, arguing that upholding the Thurman Act meant that “the United States have only to make a contract with a State corporation, and a loan to it, to oust the jurisdiction of the State, and place the corporation under their direction.”364 When he delivered his opinion orally on October 20, 1879, Field castigated the majority of the court for their flagrant undermining of state authority. “He must be dull indeed,” said Field, “who does not see that under the legislation and the course of decision of late years, our government is fast drifting from its ancient

362 Ibid., 756.
363 Ibid., 767.
364 Ibid., 769.
moorings—from the system established by our fathers into a vast centralized and consolidated government.”

Field was skewered in the press for the outspoken states rights argument he put forward in the Sinking Fund Cases. The Chicago Daily Tribune called Field’s opinion “simply scandalous,” reprimanded his affirmation of the “vicious and exploded doctrine of state sovereignty,” and characterized Field as a retrograde “voice from the tombs.” The Tribune argued that since the Central Pacific had “acquired a full share of the privileges and subsidies of the general government,” the federal government could regulate the railroad’s behavior in the public interest. The Tribune also wrote, “If there were any honest intention on the part of the [Pacific railroad] Companies to pay the bonds advanced by the Government, they would welcome the sinking fund as the easiest plan for such payment,” either unaware of or ignorant to the Union Pacific’s efforts four years prior to settle its government debts with the Grant administration. The New York Times wrote that with the dissenting opinion, “Mr. Justice Field mounted his high horse and charged into the majority of the court,” alleging that he delivered his states-rights address “with one eye on the Democratic National Convention of 1880 and the other on the powerful corporation for which he has always had the kindest feelings,” the former comment accusing Field of using

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365 “The Validity of the Thurman Act.” New York Times, October 21, 1879. Historical Newspapers. Quoted in Kens, “Credit Mobilier,” 181. The final sentence of Field’s less expressive written opinion is reproduced here, from 99 U.S. 769: “It would seem plain that if legislation, taking institutions of the State from its control, can be sustained by this court, the government will drift from the limited and well-guarded system established by our fathers into a centralized and consolidated government.”


367 Ibid.

the bench as a platform from which to seek the Democratic presidential nomination, and the latter referring to Field’s friendships with the Central Pacific’s Collis Huntington and Leland Stanford and his association with a group of California businessmen who reformers called the “Pacific Club Set.”

Regardless of allegations that Field’s opinion was motivated by political ambition or loyalty to powerful associates, his dissent’s invocation of states’ rights is incredibly significant in the history of the Pacific railroad due to its seemingly contradictory support for the large, government-sponsored enterprise based on limited federal powers. Any Senator who was part of that chamber’s 1853 debate about the federal government’s authority to charter a large, concentrated, monopolistic corporation to build a railroad to the Pacific would be flabbergasted to hear the doctrine of states rights’ used to defend just such corporations. The Tribune’s columnist correctly pointed out that the Central Pacific had in fact received substantial government subsidies, and the fact that it was a state-chartered corporation, unlike the Union Pacific, did not hinder its access to federal aid. But Field and Strong were also right in their dissents that the Thurman Act was less a statute for the betterment of the United States legal code, and more an ad-hoc piece of legislation targeting two specific organizations that retroactively altered the terms of agreements they had made with the government. The Thurman Act was an extraordinary piece of legislation designed to deal with the federal government’s extraordinary role as a creditor to railroad corporations. As Davis explained in his ruling in 1875, the first Pacific Rail Act of 1862 was an experimental endeavor shaped

\[369\] Kens, “Credit Mobilier,” 174.
by and for its particular political moment amid wartime concerns of Pacific secession and the Republicans’ advancing their agenda for the settlement of the west using federal power. Similarly, the statutes passed by Congress that were challenged by the Union Pacific in the Supreme Court during the 1870s were shaped by and for their political moment, amid revelations of Congressional corruption with the Credit Mobilier and the loudening voices of reformers and anti-corporate advocates who saw the concentration of economic and political influence wielded by the railroads threatening American republicanism.

The Thurman Act was unsuccessful at diminishing the indebtedness of the Pacific railroads, chiefly due to the decline in railroad revenues during the 1880s and 1890s which lowered the amount the Union Pacific and Central Pacific paid into the sinking fund. Despite its ineffectiveness, the Thurman Act was a successful piece of antimonopoly legislation, and an early successful attempt by the federal government to control the behavior of railroad corporations through legislation. The Credit Mobilier scandal gave the American public a rude awakening to conflicts of interest between public and private spheres that would define the Gilded Age, and the scandal’s tainting of the Union Pacific would result in retributive legislation from Congress in the Credit Mobilier Act. The Court’s opinion that the privately-owned Union Pacific was the product of experimental legislation in which Congress bore risk but received no influence over its corporate governance in return, and the Court’s rulings in the Union Pacific’s favor on both components of the Credit Mobilier Act, and the railroad’s increasing government debt despite high revenues and dividend
payouts soured the public’s opinion towards the national enterprise. Congress produced the Thurman Act to address the railroads’ looming financial burdens, and the Supreme Court, in seeking to rectify the shortcomings of a prior extraordinary act of Congress, validated another extraordinary act of Congress. The Thurman Act allowed Congress to directly interfere in the managerial affairs of specific private companies, retroactively alter the terms of federal contract, and (arguably) supersede the states’ authority to charter corporations. Such an interventionist maneuver on the part of the federal government in the operations of two private companies could only be justified by the public’s distaste for those particular corporations. One of those corporations was the Union Pacific, the federally-chartered railroad that, in spite of its facilitating western settlement and enabling the U.S. Army to finally subdue the Native Americans, its embroilment in the Credit Mobilier scandal showed such disrespect to its federal maker that the railroad would perpetually found itself in the government’s regulatory crosshairs after its completion.
The story of the Union Pacific and the United States federal government, beginning with the railroad’s wartime chartering in 1862, through its thrust into Native American territory under the protection of the U.S. Military, and up to the Supreme Court’s upholding of the Thurman Act in 1879, is one defined by circumstance, concentration, and federal intervention.

Like many internal improvements, the genesis of the Pacific railroad idea was its commercial benefits. A transcontinental railroad stood to make the United States the world’s vital commercial link between East Asia and Europe, enabling white settlers to push farther inland and dispersing the throngs of immigrants to America’s east coast. The capital-intensive nature of railroads assured that private capital unaided would never be able to independently raise the astronomical funds to undertake a project so risky and across so vast a distance.

Advocates for a transcontinental railroad thus looked to the federal government, the proprietor of the vast, unsettled public lands between the coastal states through which the railroad would run, to use what central authority it had to instigate the enterprise’s commencement. The land grant soon emerged as the optimal method of government railway promotion, not only since federal lands in uninhabited territory had negligible market value, but also because railroads created demand for settlement and tapped into new markets, which was poised to increase the value of the government’s land adjacent to the parcels it allocated to the railway.

But despite the land grant’s appearance of costlessness, when it came to inaugurating such a large, capital-intensive enterprise to run through public lands yet
to be incorporated as sovereign states, and poised for monopolistic exploitation by the federally-sanctioned company, limited-government advocates balked at having the Pacific railroad’s construction contracted by the federal government either to private individuals, such as Asa Whitney, or to corporations, such as the Pacific Railroad and Telegraph Company. Even by the mid- to late-1850s, by which point the Pacific rail project was commonly accepted by both political parties as an inevitable development, sectional interests in the railroad’s route stymied the prospect of a Pacific rail bill.

The unique circumstances of the Civil War provided the perfect collision of factors to culminate in the passage of a Pacific railway act. Secession not only removed from Congress the Southern delegates, who opposed Pacific rail legislation for its use of strong centralized authority and would not consider a railroad that did not run through their section, but it also created a spirit of wartime nationalism that made large, federally-initiated programs possible. Adding to the circumstances that worked immaculately to the Pacific railroad’s favor was the particular person who occupied the White House at the time. Lincoln was a career railroad lawyer and a strong advocate for the Pacific railway during his Presidential campaign, and he shrewdly used the wartime environment to pursue the Pacific railroad as a military necessity more than a commercial one. Lincoln also used the opportunity to push though Congress the Republican agenda for the settlement of the west, of which the Pacific Rail Act was an integral part.

But while Lincoln endeavored to push forward his party’s sweeping three-pronged western settlement platform, he would not go so far as to have the Union
Pacific be built and owned by the government. He explained to Dodge that his disinclination towards government ownership was due to the large federal expenditures incurred during the Civil War. But even if the United States had the funds, given America’s history of mixed enterprise and its distrust of government administration (a proclivity shared even by Hamilton, the champion of federal authority) it is doubtful it would have taken up the mantle of the Pacific railway for itself.

The government-aided private corporation, in the form of the Union Pacific Railroad, so-named for its tethering the Pacific states to the Union by iron bands, seemed an ideal compromise that provided sufficient aid to induce private investment (after the 1864 amendatory act) and guaranteed the government’s use of the railroad, without the onus of constructing and operating it.

Though the federal government did not construct the Union Pacific Railroad, it provided such substantial and indispensable military support to the railroad as it made its way into Native American territory, that the government could hardly claim to have not played a role in its building. As the Union Pacific crews pushed the railroad farther into the continent’s unsettled interior, their success was made possible by a number of fortunate developments that were well beyond the foresight advocates of the 1862 act.

First, the initial act proved insufficiently attractive to garner the investment need to begin construction right away. This meant that construction did not begin at full pace until the Civil War was over, which was ironic given the Union Pacific’s chartering as a wartime measure to connect the coastal blocs of states. But since
construction was delayed, the Union Pacific was able to predominately hire Union Army veterans for its work crews after the war. As the railroad was building through hostile territory, military discipline and weapons training would be critical assets for the men organized by the Casement brothers. Second, the workmen were commanded by Grenville M. Dodge, who aside from being an accomplished railway engineer, maintained close friendships with the U.S. Army’s top generals, Grant, Sherman, and Sheridan, ensuring that the Army gave the Union Pacific the utmost consideration in providing for its protection and whatever supplies Dodge might require. The U.S. Army leadership was happy to give as much aid to the Union Pacific as they could afford, not only due to the road’s national importance, but because its chief engineer, their old brother-in-arms Dodge, was, in his own words, acting in a “double capacity,” building the Union Pacific with the considerations of the United States government as much on his mind as the considerations of the Union Pacific’s promoters. The circumstances of the Civil War that enabled the Pacific rail act’s passage and the Union Pacific’s utilization of Union Army workmen and leadership were integral to the road’s commencement and completion.

The Union Pacific Railroad exerted the forces of concentration characteristic of railroads, both on the frontier and in American society at large. The Union Pacific’s penetration of the frontier made it possible for the U.S. Army to shift its deployment strategy from dispersed units to concentrated outposts. The railroad also enabled the cheap and rapid movement of men and munitions into hostile territory, which along with the use of the newest breech-loading rifle technology, enabled the Army to first subdue the Native Americans, then concentrate them on reservations. Adding to this
was the railroad’s decimation of the bison population on which the Native Americans relied for their livelihood. When the federal government grasped the realities of the ecological and military transformation that the Union Pacific and other Pacific railroads were exacting on the Plains, it actively sought to exacerbate those forces through further aid to Pacific railroads. The United States government used the Union Pacific, the Northern Pacific, and other railroads, in an exercise of frontier imperialism that systematically and violently removed Native Americans to make way for white settlers.

Unlike on the frontier, where the Union Pacific’s concentration of capital made it a resource for the U.S. Military, in society at large its massive political and economic clout worked very much to its disadvantage. Though the Credit Mobilier construction company provided limited liability and a steady payout of dividends necessary for a successful corporate enterprise, its coziness with prominent members of Congress and allegations of its influence over legislation precipitated the Union Pacific’s fall from an engineering accomplishment of national pride and purpose to the scourge of corruption and pervasive corporate influence in the new postbellum economy of big business, and would make it perpetual target of retributive government legislation and regulation.

The Union Pacific’s status as a mixed enterprise also made it prone to federal intervention. As was the case with concentration, intervention worked to the railroad’s advantage on the frontier, and to its detriment in society at large. On the frontier, federal authority intervened in the Union Pacific’s internal affairs when Grant and Sherman backed Dodge when he clashed with Durant at Fort Sanders in 1868. While
Durant wanted to push Dodge out of the Union Pacific’s leadership, the generals’ confidence in Dodge, as a civilian, to issue orders to U.S. troops in the field made him a critical asset not only for the railroad, but for the government that subsidized its construction.

However, government intervention towards the Union Pacific in the 1870s, in reaction to the humiliation of the Credit Mobilier scheme, came in the form of ad-hoc legislation that targeted the railroad to dictate managerial authority over the company by forcing it to contribute to a sinking fund and prohibiting its directors, under penalty of fine and imprisonment, from paying dividends to shareholders until the government’s sinking fund was capitalized. Even though in 1875, Justice Waite seemingly released the Union Pacific from the federal government’s managerial oversight, the Court’s upholding of the Thurman Act was an early victory for antimonopolists and railway reformers that would spell the beginning of the Union Pacific’s long struggle to free itself from the yoke of periodic federal intervention.

Lessons from the Union Pacific’s origins as a mixed enterprise lie in Justice Miller’s opinion in the Credit Mobilier case, and Justice Field’s opinion in the Sinking Fund Cases. Miller’s comparison of the Union Pacific to a feeble child, given the utmost attention and care only to grow into an ungrateful adult, is indicative of the anachronistic status of mixed enterprise railroads in the 1870s. To build through unincorporated territory where railroads would have to stimulate immigration and demand for their services, the federal government sought to recompense the railroads for this inconvenience by providing extravagant land grants, bond subsidies, and other supports. The Pacific railroad was a long sought-after national objective of the
United States for which it paid handsomely. The Union Pacific began the demise of the Native Americans, opened up new markets for interstate commerce, and facilitated the colonization of the west. However, as John P. Davis observed, the Union Pacific’s promoters and shareholders, perhaps with the exception of Oakes Ames, were less concerned with the nation-building dimensions of their enterprise than they were with their personal profit. The vague language and liberal subsidies given to the Union Pacific in the 1860s only set it up to disappoint its federal creator when it rose to corporate manhood after construction was completed.

Field’s invocation of states’ rights in trying to protect the Union Pacific’s counterpart, the Central Pacific, from government intervention, is also instructive as to the legal challenges presented by bold legislative undertakings, such as the chartering and subsidization of large railroad corporations. Field’s acknowledgement of the public’s dislike of the Pacific railroads was a warning that extraordinary government actions, even though they may be popular at the time they are undertaken, can have unintended consequences. In trying to ostensibly protect the loans made to the companies by the government and private citizens, the Thurman Act invalidated a federal contract through Congress’s radical alteration of its terms, and instantly overrode a state corporate charter using federal authority.

Whether or not Field’s states right claim holds up in the case of the *Sinking Fund Cases* is less important than the challenge it presents. The Union Pacific Railroad was animated into existence with an extraordinary piece of legislation that invoked a liberal interpretation of federal authority. With the Thurman Act, Congress struck back against the railroad, as the tide of public opinion had turned on it. The
Union Pacific’s founding, construction, and legal battles with the federal government are instructive to the plight of mixed enterprises: government authority is always welcome when wielded in the enterprise’s favor, but despised when wielded against it. The government learned its lesson from its wartime experiment in mixed enterprise, with the Pacific Railroad Committee declaring in 1887 that “the sovereign should not be mated with the subject.”

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