

**THE PACIFIC RAILROAD. THE  
RELATIONS EXISTING BETWEEN  
IT AND THE GOVERNMENT OF  
THE UNITED STATES**

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The Pacific Railroad. The Relations Existing Between it and the Government of the United States by Henry V. Poor

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HENRY V. POOR.

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It is impossible to discuss, intelligibly, the question of the relations between the government of the United States and the Pacific Railroad Companies, and of their respective legal obligations and rights, under and by virtue of the act incorporating said companies, without a full and careful consideration of the condition of the country at the time of the passage of the bill and the amendments thereto, as nearly all the arguments urged in favor of or against the proposed measure were drawn from such condition, which was one of civil war threatening the very existence of the nation. All the mind and strength of the people of the North were put forth for self-preservation and the maintenance of their territorial unity. One of the means to this end was a railroad across the continent to unite its two great slopes. It was inaugurated, on the part of government, almost wholly as a military measure. The appropriations made to it were regarded as fully justified on such ground. Its construction was committed to a private company, or companies, for the reason of their greater competency to construct and manage works that were to be commercial as well as military in their character. As the value of the road, for whatever purposes, would be shared equally by the nation, it was but just that its cost should, as far as necessary, be assessed equally upon the nation.

All these considerations entered into and gave the peculiar form of language to the bill that was finally passed. Strange to say, these considerations are now almost wholly forgotten, and by none more so than by the government which inaugurated and supplied the means for the construction of the roads, and which is supposed to be always cognizant of its acts in the past. But this very government now seeks to construe the law, not by reasons and conditions existing when it was enacted, but by those now existing, and which are wholly different. But the companies need not shun a legal contest. They can be compelled to do only what they agreed to do. Government was compelled to make an outright gift of its bonds, if it chose—or to give credit for the interest, as well as principal, for the whole time the latter had to run. There is no privity between the holders of the bonds of the government and the railroad companies. The attorney-general unfortunately knows nothing of all this. He was not in a position to know any thing of the feeling or action of the North when the railroad bill became a law. He has, consequently, assumed both his law and his facts to support his conclusions.

The railroad companies are perfectly willing to join issue with him on all the questions he has raised. But a rigid construction of the law, while it would fully maintain their legal positions, would now satisfy no one—not the government, as it would still be paying, yearly, a large sum by way of interest, without receiving what would appear to be an adequate equivalent in return. It would not now satisfy the companies, although it would fully vindicate their rights, as it would still leave them subject to a repetition of attacks similar to that now made on them, and create constant distrust as to the value of their securities, which have passed almost wholly into the hands of innocent parties, and are scattered over the world. The reasonableness and equity of their position, consequently, must be restated and established, as they can be, beyond controversy or cavil. It must be shown that it was never intended that they should pay interest on the government bonds “except in manner provided”—to wit, by the transportation of government mails, troops, and munitions of war; that they ought not to pay the interest in any other manner; that the services ren-



dered and to be rendered to the government are, what it was anticipated they would be, a full and ample equivalent for any and all aid extended to the road; and that the positions taken by the attorney-general—that “it is incredible that Congress should have intended to assume so large a liability, with so small a provision for its reimbursement”—“that the Union Pacific Railroad Company is substantially an act of bounty on the part of the government”—“that the government and company are in the relations of *donor* and *donee* ;” and “that, consequently, the government may lawfully claim from the company the interest on its bonds as it falls due”—are wholly gratuitous and unfounded assumptions, while his reasoning from these premises is absurd and puerile to the last degree. The controversy with the companies was not one of their seeking. A grievous wrong has been done them, and they should not now rest till their positions and rights are fully vindicated and accorded, not only by the action, but by the conviction, both of the government and the people.

As already stated, the arguments made use of, when the subject of the Pacific Railroad was under discussion and the company chartered, were drawn from the condition of the country, then convulsed and threatened with dismemberment by civil war; the saving that it would effect in the transportation of troops, subsistence, and munitions, and the advantages that would result to the nation, in opening up to settlement and cultivation of immense areas of territory hitherto inaccessible, and by connecting by a grand highway the oceans that front the two great slopes of the continent. The subject, however, was by no means a new one. For ten years previous, a railroad to the Pacific coast had been constantly urged as a military and commercial necessity; but no progress was made toward its construction. Elaborate examinations had been made at the cost to the government of many millions of dollars. Several routes were proposed, although it was felt that only *one* road could or should be built. The bitterest local jealousies prevailed. The Southern States insisted upon one route, the Middle States upon another, and the extreme North upon another. No route proposed could command a majority in

Congress. Could a majority for any particular one have been obtained, the constitutional bugbear stood in the way of a direct appropriation to it of money; at the same time it was felt that, without government aid, private capital would not advance a dollar. The undertaking was regarded as altogether too vast for individual enterprise. There was no precedent for a work of such immense magnitude. If constructed, no one had any confidence that it would make its current expenses, or that it could be maintained by any hand less powerful than that of the Federal Government. The two loftiest mountain ranges on the continent had to be overcome. It was generally believed that the conditions necessary to the maintenance of a railroad over them did not exist. While, therefore, the importance of such a work was universally admitted, and while it was the subject of constant discussion, no progress was made, apparently, from year to year toward its accomplishment.

Early in 1861, the war of the rebellion broke out. With the civil, foreign wars were most imminent—the Trent affair showed *how* imminent. Another and similar occasion might any day arise. Both England and France regarded the country as dismembered, and the crisis as their opportunity. With the characteristic indecision of a trading and commercial nation, England waited till we should fall to pieces, when her *rôle* would be that of a *wrecker* rather than that of an assailant. France actually proceeded upon the assumption that we had ceased to exist as a nation, and invaded Mexico for the purpose of being in a position to assail our south-western frontier. But the North, instead of sinking, rose with the emergency. It struck for empire as well as for existence. One of the first questions considered was the preservation of its Pacific possessions. It was seen that, cut off from communication with them by sea, they could be retained only by means of a railroad, which should unite them, through our own territory, with the Eastern States. There was no longer a doubt as to the right to appropriate money for the opening of such a communication, no more than there was in appropriating money for the building of ships or forts, or for the raising and maintaining

of armies. *The paramount necessity was law.* The war at the same time put an end to all other questions which had stood in the way of the work. The South was no longer in Congress. The North was reconciled to one route, which, commencing at the hundredth meridian, was provided with branch lines, so as to be almost equally accessible from all portions of the loyal States. The war, while it created the necessity of the road, had greatly enlarged the ideas of the people as to the wealth of the country and of their capacity for great enterprises. What were the few millions that were required for a Pacific railroad, compared with the monthly expenditures that were then being made for the war? All obstacles to the inauguration of this great enterprise were removed. The only questions left for consideration were, By whom should it be constructed and managed? and Upon what basis should the means for its construction be supplied?

By general consent it was agreed that, for reasons already recited, it should be committed to the charge of a private company, but upon terms that would bring to it the largest amount of private experience and capital. After a full consideration of the whole subject, it was agreed that government should advance its bonds, bearing six per cent interest, and payable in thirty years, and that the road should do the government transportation at reasonable rates; that the charges for this transportation, which it was supposed would equal twice the accruing interest, should be credited to the company; and that the whole amount of principal and interest found to be due at the expiration of thirty years, should be a debt against the company, to be secured by a mortgage on the road. A final settlement, for very good reasons, was not to be made till the bonds fell due. It could not well be made till then. Government, one year, might be largely in debt to the company, in the matter of transportation. In another, it might be largely its creditor. It was felt that the utmost indulgence should be extended on the matter of interest, if not earned, in the mean time, by charge of transportation. At the end of thirty years, there would be 75,000,000 of people in the United States. The commerce of the country at the end of this period could not fail to make the road good