

## THE TEXAS AND PACIFIC RAILROAD.

APRIL 17, 1878.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. MORRISON, from the Committee on the Pacific Railroad, submitted the following as the

### VIEWS OF THE MINORITY:

[To accompany bill H. R. 4397.]

The Texas and Pacific Railroad Company seek to obtain the guarantee of the United States for the payment of the interest on thirty-eight million seven hundred and fifty thousand dollars of fifty-year five per cent. bonds, to be issued by said railroad company, and used by it in building and extending its railroad from Fort Worth, in Texas, to the Pacific Ocean at San Diego, in California. The road to be constructed is 1,400 miles in length; the bonds to be issued amount to \$27,678 per mile; and the interest guaranteed to be paid by the United States, used as a sinking fund and invested in government bonds bearing the same rate of interest, would pay \$300,000,000 of the public debt.

Has Congress the power to authorize the coveted guarantee? If it has, then power has been conferred upon Congress to make gifts of the public moneys and public property to private corporations and individuals. Has any such power been granted by the Constitution, or is it necessary to the execution of any power that is granted?

This railroad, when built, will be the private property of the shareholders. It will be a military and post road, in the same sense, and to the same extent, and none other, that all other railroads of the country over which the government may transport its mails, troops, or supplies, for reasonable compensation, are military and post roads. It is submitted that the power has not been conferred upon Congress to make the United States a partner in such an enterprise by subscription to its capital stock; or more, to authorize the construction of the road out of the resources of the people to be made a gift to the railroad company.

The attempt to derive such power, the power to build and give away a railroad, from the power to *establish* military and post roads, is, in the opinion of the undersigned, an attempt to pervert the obvious purpose of a power intended for the public good to private ends. The United States are bound to provide for the general defense, but it does not follow that they may construct or operate a railroad for the exclusive benefit of a private corporation, because they may ultimately and in some possible contingency want to use it for a military purpose, any more than they may go into partnership with a stock-raiser because horses are necessary in war. The United States have power to regulate foreign commerce and commerce between the States, but it does not follow that they may indorse the notes of a ship-builder or merchant

by way of stimulating and encouraging business. The undersigned is unable to perceive any distinction in principle between these cases and the demand of the projectors of this railroad for a loan of the government credit to the extent of many millions, with which to prosecute a private speculation.

President Jackson, in his veto message of the Maysville road bill, discussed the power in question and denied the right of Congress in the premises without a previous amendment to the Constitution granting the power, which, in his opinion, was clearly reserved by the instrument as it stood and now stands in respect to this power. President Polk held the same views, and devoted a large part of his last annual message to this grave question, then just beginning to assume dangerous proportions. The weight of authority in favor of the views of Presidents Jackson and Polk is overwhelming. Among the statesmen of the earlier days of the republic there was little or no difference of opinion. I content myself with the naked statement of the historical truth, and will not burden these pages with the bright array of names, from Jefferson down, which might be brought to its support.

The railway company which asks for this enormous appropriation of credit presents no claim upon the public which entitles it to exemption from the general rule. The enterprise is essentially a private one, and the company has already received from the United States and the State of Texas a sufficient basis of credit to have built the road had its assets been prudently managed.

The undersigned is not unmindful of the fact that at a later period a different rule of construction prevailed from that which prevailed in the earlier days of the republic and which is now here insisted upon.

Undelegated power is necessarily unregulated and unrestrained. Power usurped never was and never will be honestly administered.

When we passed the limits of constitutional power we invited venality, corruption, and all the perils of corporate greed with which the country under the later construction has become unhappily familiar. First, as if by stealth and indirection, gifts and grants of the public property were made through the States; then directly to private corporations; and finally, under the necessities, real or supposed, of civil war, subsidies assumed the objectionable form proposed in the pending bill.

The undersigned would remind the House that this later rule of construction only obtained a footing at a period when American statesmanship had grown restive under constitutional restraints, which are still believed to be essential and indispensable to the protection and well-being of the people; and when rules of construction obtained a footing which finally wrecked us in civil war, we should retrace our steps and return to the doctrines and the practices of the fathers. In this the people have preceded us, and this House has, by solemn resolution, condemned the further grant or renewal of subsidies in any form. The lands granted already exceed two hundred millions of acres, a quantity in area and acres equal to the seven great States of Ohio, Kentucky, Tennessee, Indiana, Illinois, Wisconsin, and Iowa, equal to the original thirteen States if we exclude West Virginia. The money-subsidies already granted, guaranteed, loaned, or given, which in Pacific railroad legislation have hitherto proved to be equivalent terms, used as a sinking-fund, would liquidate more than \$380,000,000 of the public debt.

The property out of which this 1,400 miles of railway, to be owned by private individuals, is to be constructed is wholly the creature of the government. The shareholders contribute no part of it under the

provisions of this bill. If this road is a matter of sufficient national concern to be built by the government, it is submitted that the government, and not the railroad company, should own it. The present value of the \$38,750,000 of fifty-year bonds, were the principal also guaranteed by the government, would not exceed \$3,000,000. In their proposed form, were the interest-guarantee of the government detached, the bonds would be absolutely worthless.

The 444 miles of constructed road is not included in the proposed mortgage to indemnify the government for its guarantee. The land-grant of the State of Texas, which constituted the most valuable of the securities heretofore offered by the Texas and Pacific Railroad Company to the government as indemnity for its guarantee, has lapsed, and is not included in the proposed mortgage for indemnity under this bill. The lands heretofore granted to the company by Congress, situate in the Territories of New Mexico and Arizona and the State of California, are believed to afford the government no substantial indemnity for its guarantee; the area of tillable or available agricultural lands is inconsiderable—the whole proceeds are liable to be consumed in their survey and sale. If railroad history repeats itself, the bondholders will foreclose any claim of the government when the bonds are payable. The only real indemnity, therefore, which the government obtains for its guarantee is found in its right to retain the price and cost of carrying its mails, troops, and supplies over, not the Texas and Pacific Railroad, but over that part of it to be built upon its (the government's) own credit. The local or way carrying on the road to be constructed west of Fort Worth to be paid for by the government must long be inconsiderable, while through carrying will be divided between this and other roads and branches.

The history of Pacific Railroad legislation and the practices under it does not justify the expectation of net earnings which will inure to the benefit of the government in compensation for its guarantee or otherwise. That the road might be so constructed and so operated as in a considerable degree to save the government harmless in its guarantee is possible; that it will not be so constructed or operated, our experience abundantly proves. We have fostered by lavish grants from the public treasury a number of corporations, which, in return for our ill-considered bounty, have oppressed the people and grown so strong as to defy the government, or so rich as to corrupt its officers. The proof is abundant that Congress itself has failed to withstand the corrupting influences of the great corporations it has created. There is nothing in the history of the Texas and Pacific Railroad Company which justifies the conclusion that its methods and practices will be different from the methods and practices of its predecessors.

The undersigned is not unmindful of the commercial importance and special advantages of the proposed road as a transcontinental railway, and concurs in the belief expressed by the majority of the committee that, "but for our unfortunate civil disturbances, there can be little doubt that the first transcontinental line of railway constructed would have been on or near the 32d parallel." But it is submitted that this belief affords no sufficient justification for the guarantee and subsidy asked. For were it conceded, as it is not, that this enterprise is essentially of the Southern character with which it is attempted to be stamped, no reason can be built upon that fact which may not be urged with equal force as a reason why the government should equalize between the lately contending sections all the losses resulting from "our unfortunate civil disturbances."

The statement of the majority that the Government of the United States, in view of the quantity of lands given to it by Southern States, has been unjust to the South in the bestowal of bounties, is believed to find its refutation in the character of the men who before the war represented that section. They were too sensitive as to the rights of their section to be satisfied with less than what was rightfully theirs. The undersigned is not advised as to how the Texas and Pacific Railroad Company acquired the franchise and right of way by which it is authorized to construct its railroad from Fort Worth to El Paso in the State of Texas, whether by grant from the State of Texas, or by purchase from or consolidation with the Memphis, El Paso and Pacific Railroad Company, under the fourth section of the act of March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road and for other purposes."

In the case of *Davis vs. Gray*, 16 Wallace, page 203, United States Supreme Court decided that the Memphis, El Paso and Pacific was a surviving corporation, with all its property in possession, and all its faculties unimpaired. This franchise and right of way the company proposes to mortgage to indemnify the government for its guarantee. It becomes a material fact, therefore, to know if it was ever acquired in either of the modes suggested, or otherwise, and whether it has been forfeited or lost with the Texas land-grant. The undersigned expresses no opinion upon this question, which was not considered by the committee, but submits that due regard for the interests of the government demands that before any guarantee is made, based in part on a mortgage of the said franchise and right of way, the House should be informed and advised as to the title to what is proposed to be mortgaged.

Respectfully submitted.

WM. R. MORRISON.