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RELATIONSHIP OF THE NATIONAL GOVERNMENT
TO THE TELEGRAPH, 1866-1884.

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THE CONSTITUTION FACES TECHNOLOGY:
THE RELATIONSHIP OF THE NATIONAL GOVERNMENT
TO THE TELEGRAPH, 1866-1884

by

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PREFACE

This study grew out of my interests in government-business relations. A question concerning its feasibility hung over the project until I discovered that Western Union Telegraph Company had rich resources neatly arranged in a safe in the company Secretary's Office in New York. To my knowledge these sources--mainly Western Union president's letter books and other company records--had not been touched by scholars prior to my employment of them in this study. Before coming across them, I feared that my main resources for the undertaking would be public documents, a good but frequently dreary source, and certainly not enough to sustain the type of work I had envisioned. Finding the Western Union materials confirmed the fact that the project I had undertaken was feasible. Shortly later I was delighted when I discovered that National Geographic Society had relevant letters of Gardiner G. Hubbard, one of the early proponents of telegraph reform, later a founder of the geographical society. Neither of these sources were listed in the standard reference works; together they provided the
crucial documentation necessary to round out the work I had undertaken.

As a result of the study I am most impressed with the inability of post-Civil War Americans to create economic reform or regulation. Using the telegraph industry as a case study, it became evident early in my work that this inability to promote reform came not from the industry itself, but from the proponents of regulation. First, they were unable to suggest workable alternatives. Second, they were unable to envision an increased role for government in a rapidly expanding economy. They held out the promise of telegraph regulation while maintaining that the cost and size of government would not increase. Many of them went the opposite route—promising that regulation could be effected using existing governing institutions and that regulation would pay its own way, plus adding to government's revenues. Regulation, in short, could be a money-making operation. Third, the idea that post-Civil War economic development was led by "robber barons" may have partial validity for specific industries; for the telegraph industry it is simply irrelevant.

Telegraph entrepreneurs made a conscious effort to consolidate and succeeded by 1866, when Western Union gained
monopoly control of telegraphing. In consolidating these entrepreneurs established order within the industry, making it efficient, giving Americans the fastest communications system then in existence. They were in the vanguard in applying technology to improving communications. This does not deny or imply that Western Union was also operating to make a profit or dividend for their stockholders. That was the company's avowed aim. Proponents of telegraph reform regulation were not opposed to profits; their objective in most cases was to share in those profits, but without a concomitant sharing of risks. They wanted government promotion of a competing private company with any profits going to the company while the government would either absorb or partially absorb losses. The best examples of this approach were Senator John Sherman of Ohio and Gardiner G. Hubbard, a private entrepreneur from Boston.

The other approach was for government operation of the lines, but here again it would be government ownership and operation at Western Union's expense. Cadwallader C. Washburn of Wisconsin best represents this approach. He insisted that the government should purchase and operate the telegraph system. Western Union officials were opposed to this plan, but recognized it had validity and conformed with
traditional American practice. Private property would be taken but only after compensation. However, Washburn went further, contending that the government purchase the telegraphing system at a "bargain basement" price. He argued that evaluation of the entire system should be based on tangible property only, thereby dismissing Western Union's insistence that patent rights which it had purchased, the entrepreneurial talent it employed, the important press and business relationships it had formed, its important connections with the nation's railroads, and other intangibles had no capitalization value.

It was only natural that Western Union officials responded negatively to these simplistic reform proposals. With respect to the telegraph industry then, it was not the case of a money-grabbing company transgressing the public interest. Instead it was a case where a few individuals, purporting to speak for the public who were the aggressors trying either to secure a share of the profits that the company made or to secure government ownership of an eminently successful enterprise at a "deal".

Fourth, this study impressed me with the necessity of the Populist and Progressive movements. I centered my
attention on the decades after the Civil War and prior to the Populist movement. In that period government's growth was inadequate to cope sufficiently with a growing nation. The Populists and Progressives were trying in part, to stimulate that growth. Having made this study helps me to understand the need for their labors. In the end the telegraph industry was brought under government's authority in the first decade of the new century.

My obligations to the scholarship of others are adequately acknowledged in the footnotes and bibliography. There is one signal exception, however, for which no satisfying method of noting credit has been devised. It would be very difficult to imagine this work without the professional guidance I received from Professor Harold M. Hyman. His support and criticisms, his willingness to tolerate but help correct obvious weaknesses, his knowledge of problem areas and sources, and his enduring interest were all crucial in completing my work. My special thanks to him for his assistance in securing Western Union materials and for supplying enthusiasm for the project when mine faltered. I am indebted to Rice University for the University Fellowship and research funds I received, and to the Rice University History Department, whose cordial support
of my endeavor created a rich environment in which to work. To three fellow members of Professor Hyman's seminar I also express my gratitude--Les Benedict, Joe O'Connor and Cathy Tarrant. The staff of the Rice University library, especially the inter-library loan division, offered efficient assistance. Outside of Rice University I feel a special debt to Miss Ethel M. Harker of Western Union for her extensive knowledge of and help in using Western Union materials. Sylvia Ross receives my thanks for her capable, cheerful work as typist. And to my wife, Letty, I owe my deepest gratitude.

Lester G. Lindley
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CHAPTER I

NEW PROBLEMS AND OLD SOLUTIONS

The rapid growth of the telegraph industry in the late Jacksonian period contradicted familiar, acceptable economic ideas. Jacksonians envisioned a free, self-regulating economy, governed through natural restraints by numerous, small competing economic enterprises. Telegraph development initially followed this model, but within two decades had become a unified national economic institution, unrestrained by competing companies. According to the best student of the subject, "No new device, not even the railroad, experienced a more rapid growth than the telegraph." 

Jacksonians thought free-functioning natural regulation required a minimum of government involvement in the nation's economic life. They considered government's power over the economy to be primarily negative—to prevent abuses. Andrew Jackson had made "separation of political authority from the conduct of economic affairs," a focal point of his political philosophy. This concept of limited governmental authority suited Jacksonians' distrust of concentrated power. With
the economy fragmented by competition the need for national direction was minimized. Thus, like economic activity, governmental authority and power remained decentralized.

The rapid growth of the telegraph industry in the late Jacksonian period demonstrated the inadequacy of the views of Jacksonians' political economy. While they feared monopoly and championed free economic activity, they never suspected that the dreaded scourge would emerge out of free, untrammelled, private economic endeavors as in the telegraph industry. The very freedom telegraph entrepreneurs enjoyed in competing among themselves forced monopolistic organization.

Initially telegraph entrepreneurs acquiesced in accepting small competing companies, but within a short time they agreed that competition had become too intense. Realizing by the early 1850s that centralization of their industry conformed to realities of their enterprise, telegraph entrepreneurs, alert to "the possibility of material betterment," consciously consolidated their industry. By 1866 the telegraph was a monopoly under Western Union's control.
The industry was based on Samuel F. B. Morse's telegraph invention of the 1830s. In 1843 the national government appropriated $30,000 to assist him in constructing an experimental line between Baltimore and Washington. The line was completed successfully by June 1844. In the next year and a half the government appropriated $12,000 to keep the line in operation. After the line proved successful Morse tried to sell his patent to the government where telegraphing would be done under the postal authority. He feared that his invention might come under the control of speculators who would use it against the public good. But the government was disinclined to purchase his invention, although it appropriated funds to keep the line in operation. However, since receipts were too low compared to the costs, the government decided to lease the line to private parties. In the spring of 1847 it became part of the Magnetic Telegraph Company, organized in Maryland in 1845. By the end of 1847 the telegraph, under private auspices, became a recognized mode of rapid communication in both the United States and Canada.

Unbridled, reckless construction programs characterized the industry from the late forties into the fifties. Empire builders envisioned systems connecting major cities of the
nation; dozens of optimistic promoters entered the communications industry to exploit the eagerness of all sections of the nation for lines. Competing companies constructed duplicate lines where business for one wire was scarce enough. Numerous companies struggled bitterly for survival. Questionable construction techniques minimized costs but frequently produced inoperable lines which had to be rebuilt. Neither consistent nor rational approaches to rate making was possible due to extreme fluctuations provoked by intense competition. Telegraph stock, earnestly sought in the late forties became an extremely poor risk a few years later.

The industry was plagued by inadequate internal organization, cooperation and cohesion. Heated competition made investments insecure. The nature of the business had changed radically from its beginnings a few years earlier. Jacksonians had feared that government interference in the economy promoted special privilege preventing opportunity. Instead the very freedoms Jacksonians achieved resulted in an insecurity which rendered opportunity undesirable. Equality of opportunity in telegraphy increasingly meant equality of losses and bankruptcies.
The principle underlying investment is a judgment of certainty of return; a hope for increased profits, a bonus. After the late 1840s that principle was inapplicable to telegraph investments. Yet despite wastes, losses and frustrated hopes, by the close of 1852 the communications system of the United States had been thoroughly revolutionized. Messages which had previously taken days or weeks, sometimes months, now sped along wires in electrical impulses at the speed of light.

However, harsh realities resulting from excessive competition and subsequent bankruptcies, worthless stock and inefficient service impelled entrepreneurial reorganization of the industry. Telegraph managers realized that small competing companies were detrimental to a profitable future. Unrelenting competition had destroyed "a framework of reasonable expectations with which rational decisions could be taken for the future." Ironically it was not governmental interference but excesses of freedom within the industry which threatened its continued prosperity. The very circumstances of freedom came to mean that entrepreneurs' hopes of future economic gains were contingent upon internal reorganization. This was the only alternative to continued
bankruptcies and worthless stock.

Telegraph managers responded quickly and effectively to the industry's anarchy. Rejecting competition they consciously sought consolidation. The initial move came in 1849 when Henry R. Selden, president of the Atlantic, Lake & Mississippi Telegraph Company, presented merger proposals to Henry O'Rielly, an able competitor. Selden felt the time had come to make arrangements with various companies to put them on surer footings thus insuring maximum usefulness of the telegraph and making it more profitable. "As long as the rival systems are in different hands there will be continual strife and controversy," he said. "Can they not now all be combined?" Nothing came of Selden's overtures.

A few months later the New York and Mississippi Valley Printing Company organized. This was the forerunner of Western Union. Its incorporators agreed that they would "use their power as stockholders and their personal influence to bring about ... consolidation with other companies when possible."

When this company merged with other telegraph companies half a decade later it justified its decision by alluding to the "great confusion" of small companies. Previously, it noted, lines were "short, disconnected and poorly-built;"
companies acted without concert, "and without responsibility beyond their respective limits," stockholders were poorly paid. The company expressed hope that consolidation would end "confusion heretofore prevailing in telegraph business . . ." and create harmony. With this merger firmly established the trend accelerated toward telegraph reorganization. In the future the number of telegraph companies would decrease, their size increase.

Security was the key consideration in consolidation. Norvin Green, president of the South Western Telegraph Company, complained in 1859 that telegraph stock "is the meanest property in the world." It was uncertain, its value contingent upon trickery, and its security "the next thing to stock in a faro bank . . ." he grumbled. He felt his stock was threatened by too many "schemes of competition and treachery . . ." Green's company enjoyed increased business after the Civil War started. Its dividends were "larger and more uniform and reliable" than before, yet Green felt "quite shakey about the permanent value" of his stock. Before war's end he concluded that consolidation was the solution to stock security questions, although he feared it meant reduced dividends. But, he explained, justifying the reduction, a portion of the present revenue
would be sacrificed for "greater security and a stronger and more permanent stock..." In the first few months after the war, Green's company merged with several regional companies in Arkansas and Texas.

By war's end other telegraph managers accepted the irreversible trend for fewer but larger units. In 1866, the year of great consolidations, the telegraph emerged as the nation's first great nationwide monopoly. At that year's beginning, three large companies dominated the business—Western Union, United States Telegraph, and American Telegraph. By July the three companies had united and Western Union emerged having monopolistic control of the industry.

Presidents of the major companies defended their mergers in terms of practicality and necessity. William Orton, president of the United States Company, soon to be Western Union's president, considered the "possibility of a consolidation" only "in the light of necessity." It was essential if stockholders were to have a return on their investments. "As a separate organization a dividend is too remote for satisfactory contemplations," he claimed. He noted that the company's customers liked competition; they saved money. But he also observed that should the United States company cut its rates, few if any of its customers would remain if
Western Union reduced their rates even lower. "They're selfish--and so am I. Neither of us are doing business from patriotic or philanthropic motives--but for profit," he explained.

In January 1866 Orton informed a United States director that the company could continue to compete with Western Union but neither could "crush out the other." All funds he said expended in a struggle between the companies would be wasted needlessly and withheld from stockholders. However, if the companies would consolidate they could "easily pay 10%." Consolidation would reverse the trend of continued losses. The further the company's lines extended the more it lost, he informed a stockholder. The deficit from December 1865 to March 1866 alone exceeded forty thousand dollars. Consolidation with Western Union would reduce combined operational expenses by more than fifty percent. And, he claimed, if the merger were immediately effected it would save the companies half a million dollars the next nine months.

The United States company had more than Orton's dour predictions to compel it to merge. By October 1865 its stock had dipped to a low of 20 from a high of 98 the previous March. The merger with Western Union was completed in
March 1866 and the U. S. board of directors informed its stockholders that consolidation insured "greater security and more permanent value of telegraph property." In seeking a solution to the industry's instability "... consolidation of the lines naturally suggested itself," the U. S. directors said. And retrospectively Orton made no apologies or excuses for the consolidation. "... I am prepared," he said, "to defend [it] on the score of legality--as of necessity and prosperity."

Thus by mid-1866 innovative entrepreneurial skill had reorganized the telegraph industry. Company managers had found in centralized administration an appropriate remedy to internal chaos. The solution assured the nation an improved communications network, but it also represented a novel expression of economic enterprise. In accepting centralized management, telegraph managers had subverted accepted ideals and values. The intensity of competition had pushed telegraph development beyond its decentralized, local and regional basis and beyond natural regulation through free competition. Entrepreneurs, using the corporate form, had united to produce an efficient reorganization of the industry.

Western Union was not a gigantic corporation in the
modern sense or in terms of the 1890s, but in 1866 some Americans perceived it as a real if ambiguous threat to the nation's political economy. Its magnitude may have been exaggerated, but compared to their past experiences, it was huge. They felt it was too large, beyond the reach of the law. It was a creature of New York State, yet it had become a national institution. And although they were unaware of the difficulties of regulation, their demands for it came during the very months that final consolidations were consummated.

No parallel growth in governing power or authority occurred comparable to the advances Western Union had made economically. Entrepreneurial activity had been innovative enough to keep pace with economic aspects of the new technology; however political power remained fragmented. In a recent study Wallace D. Farnham noted that in reference to the Union Pacific, the government was unable through its frailty, to govern adequately. That frailty, he observed, "went beyond the Pacific Railway Acts ..." Employing a metaphor M. Ostrogorski had used in commenting on American government half a century earlier, Farnham argued that because of inherent structural weaknesses and prevailing concepts and attitudes, the government suffered from a
weakened spring. Governmental neglect, inadequate governing agencies, and lack of technical competence all contributed to government's inability to govern. He concluded that "though, the spring was almost as weak before the war as after . . . the war wrought fewer changes than it is now fashionable to believe."

These same governmental inadequacies impressed Stanley Elkins, who argued that government through its weak institutional basis had inadvertently connived with slaveholders in augmenting the strong grip of slavery upon the nation's social and economic life. And although Robert Marcus could accurately point out that significant institutional development occurred in the Jacksonian period, none of the ones he mentioned--corporations, school systems, and professional reformer--were national governing institutions; none augmented national government. Leonard White was equally impressed with government's weakness and overall inefficiency in both the pre- and post-war periods. The general picture of the pre-Civil War period which Farnham, Elkins, and White presented of congressional indifference to efficient administration and lacking governing institutions, accurately described problems frustrating advocates of telegraph legislation.
Early proponents of telegraph controls were either reluctant or unable to perceive the imperative for creating appropriate governmental agencies or institutions to effect goals they desired. They wanted solutions which would neither increase governmental bureaucracy nor public administration costs. They were so hostile to increasing government operating costs that their reform proposals were presented with promises that regulation could be effected while simultaneously increasing government income. Thus, rather than adding to governmental expenses, regulation would increase public revenue. They wanted regulation but were opposed to creating agencies to administer controls. They did not discern "that the vast administrative experiences of the Civil War had applications in time of peace." Instead the private and public apparatus essential for successful execution of the war was dismantled. "The country seemed ready to return to the standards of Buchanan's administration." Effective restraints could not be accomplished until this strong anti-institutional, anti-spending bias was overcome.

Before growth in governing power or regulatory authority comparable to the giant reorganizational strides in the telegraph industry could occur, government's institutional
agencies for effecting that regulation required adjustments. Lester Ward, writing in 1881, aptly describes a key consideration involved in overcoming the disinclination to augment government's authority. Americans held to "the theory of natural, against that of artificial regulation," he noted. With natural regulation governmental involvement in the economy was minimal. Therefore, the opposition to increasing government's power was understandable. Until Americans could accept artificial regulation, they would not support national economic reforms. Effective national telegraph regulation would thus require augmentations of governing power and a basic shift in attitudes of the relation of the government to economic endeavors.

Hostile congressional reactions to Western Union were first enunciated in 1866 by Republican Senators John Sherman of Ohio and B. Gratz Brown of Missouri. Both attempted to erect counterweights to Western Union's consolidated enterprise. Both dimly realized that nationalization of the nation's economic life should prompt creation of national regulatory powers. Thus the search for appropriate public restraints began immediately after destruction of natural controls.

However, their searchings were weak, sporadic, unsure,
lacking in broad support. They bore a closer relation to vain groping than to steady searching. Brown and Sherman and other would-be reformers confronted an industry which created unique problems, as well as those created by the weakened spring of government, which Farnham, Elkins and White discussed. These problems compounded, not lessened, the general inability of government to govern adequately. For example, within a few years of the formation of the telegraph monopoly, the Grangers would gather enough support to pass state railroad regulatory legislation. That legislation was predicated on wide political support. Prospective telegraph reformers would be chagrined to learn that they would be virtually unable to generate popular support for their proposals during the next two decades.

The primary clients for telegraph service were businessmen and newspapermen. Both groups desired fast, efficient, dependable service. Western Union's consolidated system provided precisely that. With its unified, national system Western Union could send telegrams direct, eliminating transfers from one company's lines to another. This meant increased speed and reduction of errors. The nation's commercial community naturally desired efficient service.
And the evolution of state telegraph law tied their interests directly to accurate service. Courts and legal analysts generally accepted the contention that common law doctrines applicable to carriers had little relevance to telegraph communications. Carriers were responsible for goods they agreed to transport. Liability for damaged goods laid with the carrier. "For a very long time," Isaac Redfield noted, carriers have "been held liable for all damage and loss of goods during the carriage, from whatever cause unless from the act of God, which is limited to inevitable accident, or from the public enemy."

However, by the middle of the 1860s a different calculus had been accepted for determining liability resulting from errors in telegrams. Telegraph companies were largely exonerated from the liability of an erroneous telegram, unless it could be proved that obvious, gross negligence was involved. The courts justified this severe limitation of liability on several counts. Carriers, they said, had actual manual possession of the goods entrusted to them; telegraph companies did not carry goods. The Michigan Supreme Court noted that telegraph companies did not transmit items, or convey the identical message or words. Rather it reproduced the same words at another place to another person. The
company might make an error, it noted, but nothing was stolen or lost. "Any analogy [with carriers] must be more fanciful than real, and likely to lead to error and injustice," the Court continued. It could be extremely unjust considering the small amount of consideration for sending a message, to hold telegraph companies "absolutely liable as insurers for the entire correctness of all messages transmitted . . . ." The cost might be the same for a telegram closing a business transaction involving several thousand dollars, or announcing a Sunday School picnic. So unlike carriers, no direct relationship existed between costs of transmission and value of the message. Carriers generally knew where goods were lost; electrical impulses speeding through wires could be lost any number of places or ways. Uncontrollable changes in atmospheric conditions could "change the wires and pervert a telegraphic message," a Kentucky court decided.

By 1868 the general attitude of courts and analysts was summed up with the observation that the peculiar liabilities of common carriers grew and were fixed by the custom of the real or common law, while the telegraph grew "independently of any common-law obligation."

In practical terms this meant that telegraph companies
enjoyed relative freedom from liability resulting from errors in telegrams. If a transaction were concluded at a loss of several hundred or even several thousand dollars due to a misstated price or size of an order, the parties involved, not Western Union bore the greater percentage of the loss. In this regard, then, it was completely unlike a businessman's relation to railroads. Where he might be interested in rate reductions for both telegraph and railroad service, and might express his concern for reduced transportation rates in political terms, his interest in telegraph service was for speedy, accurate service--accuracy meant more than rates. And both the accuracy and speed of his telegrams were enhanced by a unified telegraph system. Message transfers from one company's lines to another's were circumvented. Western Union thus offered major telegraph users a system which offered better service, and least possible likelihood of suffering damages from erroneous telegrams.

Telegraph law and telegraph consolidation tended to blunt possible political agitation for rate reduction by its major users. Few if any telegraph reformers could present proposals convincing major telegraph users that they improved telegraph service. And none of them could completely deflect arguments that their proposals would decrease communications
efficiency, speed, and accuracy.

Brown and Sherman would both complain that rates were high. Although such complaints existed and were identified as being an unjust "tax" on the public, those rates could never be a burden to the extent that railroad rates were. Charles Francis Adams, Jr., for example, asserted that at times, railroad rates were so high as to rob the producer of the entire fruits of his labor. Telegraph users, however, did not suffer from rates that cut deeply into their margins. Since the large bulk of telegraph business came from the commercial world, speed and accuracy were important. This ameliorated cost increases, and it was simple for telegraph users to pass the relatively low cost of rapid communications on to their customers—certainly this was more easily done for their communications than for transportation costs. Major newspapers had formed press associations in the 1850s. This enabled newspapers to receive wire service at reduced costs.

Thus unlike railroad reformers, advocates of telegraph legislation would find it almost impossible to generate political support for their proposals. Rather than dissatisfaction, major users of the telegraph after 1866 were more impressed with telegraph service than displeased. After
1866 they would receive the best telegraph service yet available to them. Protests that arose would be mute, ineffective, disparate.

Western Union's success presented special problems. Gabriel Kolko has argued recently that railroad leaders had struggled for internal self-government for years, but failed. That failure, combined with fears of state legislatures, especially in the Granger states, convinced railroad leaders to turn to the national authority "to put its house in order." Railroad officials thus supported national railroad regulation. Even with their support it took over a decade to secure the 1887 Interstate Commerce Act. After 1887 two more decades passed before regulation became effective. With the creation of the Interstate Commerce Commission, proponents of railroad controls thus had the advantage of having an institutional device for regulation. Their only problem after that was getting the right men on the Commission's board. While this was difficult enough, it was easier than not even having the Commission.

Proponents of telegraph regulation faced another unique problem. In theory, they had the strong positive factor of antimonopoly sentiment in their favor. However, Western Union was a radically new species of monopolistic organization.
Thus advocates of telegraph restraints overlooked the fact that Western Union, appearing to be a monopoly, was different from monopolies which had engendered heated passions in the past. It was not a monopoly in restraint of trade but rather an agent which could be used to break up combinations of trade. "When all men are put on an equal footing of intelligence as to prices and markets," the *Nation* observed, "... all fair traders have equal chances." The telegraph, it thought, did that. The telegraph was not an article of trade; it expedited commerce. It did not corner markets; it gave information which could destroy them. And since the practicality of sending cipher messages had been proved through extensive use in the Civil War, any individual or company could send confidential information with minimum risk of information leaks. The company had a monopoly on rapid communications, but did not enjoy control of message contents. Conceivably it might transmit coded messages which prospective competitors might use to construct opposition lines.

Traditional antimonopoly thought was thus irrelevant when applied to Western Union. Instead of using old antimonopoly ideas to create support for their positions, advocates of regulation allowed those ideas to obscure the issues involved. Rather than exploit that antimonopoly sentiment
effectively, champions of regulation transformed a possible advantage into a serious obstacle. Early proponents of regulation were second generation Jacksonians, and viewed the giant corporation in traditional terms of monopoly. Their concern with monopoly, rather than a modern economic institution, forced their discussion into a rigid dichotomy of monopoly versus competition. It prevented responses based upon changes introduced into the nation's economic life by Western Union, dictating rather that discussion be focused upon alternatives from a past when such an economic institution did not exist. Those wanting regulation failed to realize that it was not a legal, but a de facto monopoly. It was not like the Bank, or the steamboat monopoly or the Charles River Bridge Company, based on legal grants of privilege. Rather it was based on the general incorporation act of New York of 1848, which epitomized Jacksonian political reform.

In passing general incorporation acts, Jacksonians had successfully united their economic attitudes and political ideas. General acts, they thought, prevented the evils of special acts, and the artificial intrusion of governmental power into economic life, thus preventing interference with natural regulation. They hoped this employment of political
power would ensure continued diffusion of economic power and prevent the growth of monopolies and other unnatural threats to equality and liberty.

However, the charter triumph was less than a complete victory. It might have worked in a stable, agrarian economy, but America was moving rapidly away from those halcyon days. In the telegraph industry results of the very reform of general incorporation, passed to prevent monopoly, had impelled entrepreneurs to accept consolidation and then monopoly. No other alternative existed to create the stability entrepreneurs desired. Thus the political reform of one generation compounded problems of a subsequent generation rather than solving them.

Supporters of telegraph legislation failed to realize that it was not a monopoly preventing continued economic development. Unlike the steamboat monopoly and the Charles River Bridge, there were no legal impediments preventing another company from offering identical service. Western Union did not prevent responsiveness by other companies to technological nor economic change; it did not stand in the way of progress; it did not prevent new entrepreneurs, new risk-takers from engaging in business. By the fact of its existence, the New York-based telegraph company discouraged
investors in efforts to build competing lines, but that discouragement was based on economic realities, not legislative fiat.

Rather than impeding technological progress, Western Union applied technology to improving man's communal life. Its leadership was committed to continued development and extension of telegraph facilities. It employed the nation's most competent telegraphers. In merging with other companies, the best men were kept; the least competent released. The company was thus in an enviable position. It was a national institution, identified with progress, and staffed with the nation's most capable telegraphers. Western Union was a monopoly, but it was a monopoly completely unlike those of the past.

In focusing attention on the monopolistic aspect of Western Union, telegraph reformers failed to acknowledge that significant changes had occurred in the nature of corporate organization. The corporation was a well-established institution in American life, but it had undergone changes equal in significance to those Western Union had effected in communications. In the colonial period corporations were largely quasi-public in nature, and community objectives dominated corporation formations well into the nineteenth
century. They were used to start new communities, to build roads, bridges and turnpikes, as well as organizations for charitable, educational and ecclesiastical purposes. However, after the Revolution they became increasingly useful in mobilizing capital for economic growth and development. In an era marked by a dearth of capital, corporations were elastic and well-suited for capital organization. States had frequently accorded them special rights in securing capital, such as permitting lotteries. In some instances a corporation was granted rights of exclusive operation in an area--a legal monopoly--others were exempted from taxation, or exempted until a certain dividend should be declared. Increasingly as the nineteenth century wore on, corporate formations for private purposes began surpassing those formed for public ends.

Had advocates of telegraph legislation accorded proper attention to the significant transformation of the corporation by the early post-Civil War period, they could have attacked problems of economic regulation generally, instead of being concerned now with telegraph reform, now with railroad reform, or another time with canal regulation. However, they limited themselves to the rhetoric of monopoly, and in doing this they inadvertently complicated their problem by
obscuring alternatives. Marvin Meyers contends that the Jacksonian views of political economy were reactionary for the 1830s-1840s. If that argument is true for the earlier period, it had even greater truth for the early post-war period. Until antimonopoly thought could be freed from extraneous and superficial rhetoric, it would continue to conceal alternatives, not offer them. Not until antimonopoly sentiment could be wrecked from its backward looking stance could it be exploited to support creation of national restraints. Until then it would continue to be a liability to reform, not an asset.

If antimonopoly sentiment obscured reform possibilities other attitudes and practices, also legacies of the past, directly challenged them. Familiar economic and constitutional practices and ideas would require fundamental reshaping before being relevant as counterthrusts to the telegraph giant. Antimonopoly practices would need redirecting. In the past antimonopoly actions had been state-centered initiatives. State antimonopoly legislation was based on common law background. On occasion corporate combinations and consolidations had been challenged on grounds that their charter did not sanction their formation. However, "The vast majority of cases at common law," Hans Thorelli noted,
"were private suits between parties to restrictive agree-
ments."

The common law afforded no predictable outcomes for litigation arising from attempts to suppress competition. Americans in the eighteenth and nineteenth centuries held that common law had always opposed monopolies, or favored competition. But no consistent tradition of antimonopoly practice evolved. A greater difficulty stemmed from the non-existence of a federal common law of monopoly. Consequently antimonopoly actions were characterized by "lack of coordinated and aggressive public prosecution and, not least, the lack of adequate penalties." The common law of restraints against monopoly had no apparent relevance to Western Union's consolidated communications company in 1866. And inherent common law potentials for restraining combination were diluted by conflicting lawyers' attitudes on the applicability of common law doctrines to this country's legal system.

In taking over the common law, American jurists trapped themselves in a dilemma. In England, law developed "through centuries of struggle against a monarch." Its outstanding achievement was securing limitations on royal prerogatives. In applying it to their practice American lawyers "on the one hand ... were required to administer a legal method
premised upon the assumption that all government was a constant threat to the liberties of the citizen, and on the other to adopt this method to the official proposition that in this nation no such threat existed." Consequently, hostility toward national regulation of the economy had deep rootage in the American past.

This hostility toward government and the nation's general economic policy would need redirecting prior to regulating the telegraph. However, the country was yet undeveloped economically, but expanding rapidly. The transportation system remained in a developmental stage. Consequently massive national, state and local assistance would be given to railroad development in the decade after Western Union's consolidation. It was given with few restrictions, without accompanying government controls tied in with it. The telegraph, on the other hand, was a fully developed, mature industry. It neither sought nor wanted government assistance. Unlike railroads with enormous capitalization requirements, financing telegraph development had been accomplished through private means. Government economic policy was thus at an awkward juncture: in some respects the nation's underdeveloped economy required massive public assistance; on the other hand, the telegraph was fully
developed, requiring not assistance, but in the view of some nineteenth century Americans, regulation. In this uncertain transitional phase of government economic policy shifting from actively assisting economic development to that of regulation, it was difficult enough to mobilize government for regulatory purposes where enormous public grants had been given; it would be nearly impossible where private resources were involved.

Apparent lack of suitable constitutional provisions also directly challenged efforts to restrain Western Union. Theoretically the commerce clause was employable. "This power touches most intimately the relations between government and economic enterprise," Felix Frankfurter later noted. However, this was not always the case. Up to the death of Chief Justice Waite, in 1888, relatively little emerged "regarding the Court's attitude towards the commerce clause as an affirmative instrument for promoting 'commerce among the states.'" The preoccupation of the Marshall, Taney, and Waite Courts was the "restrictive use of the clause."

There were no doubts that telegraphy was an agent of commerce, yet it seemed immuned from national authority. The precedent of the 1824 steamboat monopoly case had no relevance to the 1866 telegraph monopoly. The steamboat case
had involved state grants of exclusive privilege resulting in localism joining hands with monopoly to interfere with interstate commerce, reminiscent of the Confederation period. It involved state abridgment of a national licensing act, making it amenable to the courts.

Marshall's steamboat decision only indirectly had implications applicable to telegraph enterprises. Navigation, Marshall said, was an indispensable aspect of commerce. Commercial activities that were "among or intermingled" with the states was also interstate commerce. He noted that "the laws of Congress for the regulation of commerce do not look to the principle by which vessels are moved." The question of technology was not at issue. The commerce power was expansive, and if the government wished it could have expanded its authority across state boundaries, to regulate electrical impulses speeding communications across the nation. The commerce clause might have been useful in bridging the gap between state and national authority in the federal system. But reluctance characterized the national legislature and without appropriate agencies or commissions to push court suits, the communications monopoly never faced a federal court test. The one effective basis for effective national action was thus inaccessible to advocates of reform.
In the past courts had been able to break the steamboat and bridge monopolies. But even that institutional structure could not be employed to restrain Western Union.

In 1866 advocates of national telegraph legislation were in nearly a hopeless position. Attitudes toward government's role in the economy would need remolding; government's weak, inefficient administration would require refurbishing and novel governing institutions would need to be built. And yet for a while any attention champions of regulation could give telegraph problems would be diluted by perplexing problems attending reconstruction. When economic issues did receive attention problems of tariff, currency and railroads loomed larger than telegraph regulation. Although railroads and telegraphs presented similar problems, reform initiatives to attack them with a united front did not materialize. The implications of economic reality had not yet affected Congressmen's thinking. Economic and legal thought were thus caught short by a nation about to revolutionize itself through rapid industrialization. Although optimistic of their future now that the Union was secure, Americans in the quarter century after Appomattox mortgaged influence they might have had in controlling economic aspects of that future by their devotion to past alternatives. Telegraph reformers reflected
the confusion of hopes and fears generally in American thought— the acknowledgment of the social utility of corporations and the fear of their power.
FOOTNOTES


2 The term "government" is used throughout this paper to refer to the national government unless otherwise specified.


5 Western Union was a monopoly only in the sense that it was the sole telegraph company capable of transmitting messages coast to coast without depending on other companies to relay its messages. Small local companies continued to exist, and other companies would be created after the 1866 telegraph consolidations, but none served more than a small, limited area.

6 At the end of its first three months of operation receipts had amounted to $193.56 while expenses were over a thousand dollars. Robert L. Thompson, *Wiring a Continent: The History of the Telegraph Industry in the United States, 1832-1866* (Princeton, 1947), 32.

Thompson, Wiring a Continent, 69.

Frederick A. Cleveland and Fred W. Powell, Railroad Promotion and Capitalization in the United States (New York, 1909), 84.

Thompson, Wiring a Continent, 37-258; James D. Reid, The Telegraph in America (New York, 1879), 112-52.

James W. Hurst, Law and the Conditions of Freedom in the Nineteenth-Century United States (Madison, 1956), 10-11.

Thompson, Wiring a Continent, 158. The quote is from H. R. Selden to O'Rielly, January 1, 1849, Henry O'Rielly Papers, New York Historical Library, Albany, New York.

Record and Minute Book, Western Union Telegraph Company, I, 31. The agreement was September 6, 1850.


Green to Mrs. Green, April 10, 1859, Norvin Green Family Papers, University of Kentucky [Microfilm].

Green to Pinckney Green, October 24, 1864. At the time he wrote Pinckney the company's dividends were 3% quarterly. Ibid., January 15, 1865.

Ibid., February 4, June 14, August 31, October 29, 1865.

Thompson, Wiring a Continent, 406-26; Reid, The Telegraph in America, 518-50.

Orton to George F. Davis, February 2, 1866, Western Union's President's Letter Book, I, (hereafter designated as WU followed by the volume). This concern for stockholders
was an honest one. The correspondence of Western Union's president, William Orton, refers to it repeatedly. In this concern he shared the attitude of railroad leaders. Thomas C. Cochran found that "An unquestioned part of the role of the [railroad] executive was his duty to make profits for the stockholders." *Railroad Leaders, 1845-1890: The Business Mind in Action* (Cambridge, 1953), 109.

20 Orton to George F. Davis, February 2, 1866, WU II.

21 *Ibid.*, January 18, 1866, WU I.

22 Orton to Josiah King, March 12, 1866, WU II.

23 Circular of the United States Telegraph Company, March 16, 1866, in the *Telegrapher*, II, April 16, 1866, 93.

24 Orton to B. E. Bates, September 1866, WU I. For over a year after the merger Orton was still writing former U.S. stockholders explaining the reasons behind consolidation.


30 White, *Republican Era*, 16.


Nation, I (August 3, 1865), 144.

Meyers, Jacksonian Persuasion, 1-23. In 1848, for example, a writer to the editor of the New York Express, celebrating passage of New York's general telegraph incorporation act, claimed confidently that it created the "possibility of free competition in the telegraph industry which cannot fail to be a great and permanent benefit to the public." Public sentiment, he concluded, placed the business of telegraphing "where it ought to be . . . open to competition for the benefit of all." Express, April 19, 1848.

Historians assessing the second quarter of the nineteenth century conclude that it was a period of considerable economic growth. Glyndon G. Van Deusen characterized Jacksonians as "a people in motion." Chapter 1, The Jacksonian Era: 1828-1848, New York, 1959. They were a people marked by a "mixture of restless vigor," an "urge for material achievement" particularly suited to make the most of opportunities opened by rapid economic change, he concluded. Richard Hofstadter viewed the era as "a phase in the expansion of liberated capitalism." The activities of government were "closely linked to the ambitions of the small capitalist," he argued. The American Political Tradition, and the Men Who Made It (New York, 1948), 56. Its objectives were "to open every possible pathway for the creative enterprise" of a rising middle class, he concluded. Ibid., 62. James W. Hurst suggested that the legal system of the period was geared to releasing economic energy. Government at all levels was enlisted to support individual economic endeavors. It helped "mobilize the resources of the community . . . by minimizing the limiting forces of circumstances." Law and the Conditions of Freedom, 6. In a recent study, Edward Pessen agreed with these interpretations. "Opportunity," he said simply, "meant above all economic opportunity." Jacksonian America: Society, Personality, and Politics (Homewood, 1969), 93.

For several years following consolidation the company would invest its profits in improvements.


46 *Ibid.*, 53. An interesting example of state-centeredness of antimonopoly practices is contained in a Senate commerce report of 1858. Senator Bayard, Delaware Democrat, submitting the report, in response to petitions from the Magnetic Telegraph Company and the New England Union Telegraph Company, seeking enactment of a law to prevent monopolizing cable business between this country and foreign nations, noted that it was doubtful if Congress can "legislate penalty on the subject..." but it cannot be doubted that the legislature of each State has full authority to control and regulate telegraph companies so far as their lines pass through the State, and to them it belongs most appropriately, either by penal legislation, or by the restrictions contained in corporate acts to prevent the monopoly and oppression within the United States..." U.S., Congress, Senate, *Report on Telegraph Monopolies*, 35 C., 1 S., June 9, 1858, Senate Report 313, 2.


49 Scholars on this subject are in agreement. Dewey, in relation to the conspiracy aspect of monopoly noted that "when the Sherman Act was passed in 1890 there existed no settled common-law doctrine of conspiracy with respect to restraint of trade except for the acknowledged principle that an agreement to commit a palpable criminal act would support an indictment . . . Federal Judges who received the task of construing the criminal provisions of the Sherman Act were on their own." *Monopoly*, 122. William Letwin described the Sherman Act as "an innovation," not something which "merely declared the common law." *Law and Economic Policy in America: The Evolution of the Sherman Antitrust Act* (New York, 1965), 52.

50 Perry Miller, *The Life of the Mind in America: From the Revolution to the Civil War* (New York, 1965), 121-34.


53 Even a national banking system had been seen as a threat to liberty and was reestablished only after exigencies of the Civil War made it essential.

54 Carter Goodrich, *Government Promotion of American Canals and Railroads, 1800-1900* (New York, 1960), 7-8. Developmental undertakings had to depend for most of their prospective revenue on the settlement and the economic activity which its own construction was intended to promote. Such development could not be immediate and little prospect existed for substantial early profits. Benefits from current investments were deferred to a future date. They required either public enterprise or public assistance. *Ibid*.


58 22 U.S. 1 at 192.

CHAPTER II

RESTORE COMPETITION--"THE EVIL WILL THEN CURE ITSELF"

In his turn-of-the-century study of American life, M. Ostrogorski noted that the nation suffered from inadequate government. "[T]he constituted authorities are unequal to their duty," he observed. "[T]hey prove incapable of ensuring the protection of the general interest ... The spring of government is weakened or warped everywhere."

In response to governmental inadequacies, Ostrogorski continued, "manifold and varied and often desperate attempts at making up for the inadequacy or the irregularity of governmental action" occurred. Private associations tried to fill the gap left by government, whether it was inadequate law enforcement which encouraged vigilante groups, or a lack of sanitation facilities, which prompted "private initiative ... to step in to get the streets cleaned ..."

After Western Union's consolidation successes, an increasing number of Americans, though never a large percentage of them, felt that telegraph regulation or restraints were necessary. Ostrogorski's observation that private
attempts to make up for governmental inadequacies held true in reference to creating telegraph regulation in post-war America. However, it was only half of the picture—private attempts were balanced by attempts of men in public life. In each Congress from the Thirty-Ninth, (convened December 1865) through the Forty-Second, (ended March 1873) Congress considered both private and public proposals for achieving telegraph regulation.

Two basic arguments were consistently employed by those supporting legislative measures, purporting to effect regulation. First, rates were unjustly high. Second, monopolies were undesirable in American economic life. One of the functions of government, the Constitution said, was to "establish Justice." Advocates of telegraph controls felt that Western Union's rates were unjustly high. Although they never tied their demands for telegraph reform to the Constitution's preamble, they used the argument of unjustly high rates throughout their efforts to pass legislation. They knew that "a simmering ferment of antimonopolistic ideas" existed. They hoped to unite their contention that rates were unjustly high with existing antimonopoly sentiment, and through that union to create a demand for reform or regulation. In trying to create a demand for regulation,
disinterested reformers were hopelessly out-maneuvered by those supporting bills providing economic gain for the bill's advocates. Reformers with a financial interest at stake were quicker to learn from past mistakes and failures the workings of Congress, and they discerned the need of creating efficient lobbying techniques. On the other hand, disinterested advocates of government regulation seemed only to fumble, almost as if they were incapable of learning from past mistakes or successes.

In 1866 two telegraph proposals were presented to Congress. Senator B. Gratz Brown, Missouri Republican, sought direct employment of national power to control telegraphing. The government, he thought, should operate a telegraph system competing with Western Union's lines. Senator John Sherman, Ohio Republican, sought national authority to promote a competing private company. Government, in his view, should assist in destroying the restrictive fetters in which Western Union had bound the industry.

The Brown and Sherman proposals represented a significant beginning move. Both Senators recognized that telegraphing had become a national economic institution. They knew its local, regional basis was gone forever. Consequently, they concluded, the need for national restraints
had become imperative. Appropriately enough, then, they both suggested national restraints.

Historically the government had shied away from telegraph regulation. In the late 1830s–early '40s Congress had considered telegraph problems in light of what assistance, if any, it should extend to Samuel Morse for testing his invention. In the 1840s it weighed alternatives either of developing telegraphy as an adjunct to the post office or leaving its exploitation entirely to private parties. It chose to step aside. Throughout the fifties and early sixties Congress gave fleeting attention to telegraph matters, but its interest was in communications expansion, not regulation. In 1860 Congress approved the Pacific Telegraph Bill to aid in connecting the two coasts with rapid communications. The act guaranteed an annual business of forty thousand dollars for ten years to any company building a line from western Missouri, where it could connect with existing lines, to the Pacific Coast. The transcontinental telegraph became operational by the fall of 1861 and subsequently became part of Western Union. The Pacific railroad bills provided for construction of telegraph lines along their routes, but like the transcontinental telegraph bill of 1860, these lines were to expand telegraph service and assist in railroad
operations. But, instead of operating independent wires, the Pacific railroads permitted Western Union to care for their telegraph needs. With respect to the telegraph, then, Congress up to 1866 had not acted either as a regulatory or antimonopoly agency.

In presenting their proposals, the two Senators accurately defined telegraph problems existing in 1866. Three inter-related problems needed solving. The key problem of high rates was an inevitable characteristic of monopolies, they insisted. Brown argued rightly that recent consolidations had destroyed effective competition. The industry was "sealed against it as much as Brigham Young's heaven against a rebellious wife," he informed the Senate. Second, both inferred that telegraph capitalization methods had an illegitimate aura about them, artificially forcing Western Union to inflate its rates. Neither clearly articulated capitalization problems in a clear, rational analysis, but both alluded to them. But if the Senators did not discover capitalization problems through a reasoned examination of telegraph history, they inadvertently stumbled on them. Third, both realized Congress needed telegraphic information prior to passing effective legislation.

Although the Senators agreed in analyzing the problem,
they disagreed fundamentally on its solution. The Missouri Senator insisted that letters and telegrams were analogous. In his view telegraphing was merely another method of transmitting communications, thus making it amenable to government regulation under the Constitution's post office clause. Through the use of that clause, he insisted, Congress had authority to regulate telegram costs, just as it did postal rates. This could be done either by government telegraph lines built along post roads, or by contracting with existing companies. However, he emphatically preferred a nationally owned government system operating in competition with Western Union. Fundamentally, then, he offered government competition at controlled rates as a method for regulating private monopoly.

Sherman sought a national charter for a private company, the National Telegraph Company. Regulation in his view should be accomplished by granting national privileges to private enterprise. The bill he introduced would secure the charter and allow the company to build its lines along post roads and through the public domain. Instead of bold governmental interference with the economy, regulation, in Sherman's view, would be accomplished by this competing company. His proposal avoided dogmatically setting rates or construction
costs. Western Union's rates would be regulated, naturally as it were, through the renewed competition the National company would offer.

Brown's approach to telegraph regulation was awkward, uninformed, and utterly insensitive to realities of the economic world and the prerequisites of reform. He had the rashness and impetuosity of one who was determined to correct existing evils, but one who focused so intensely on the desired end, that he myopically lost sight of the means to that end.

In supporting his proposals, Brown relied upon two sources for information--himself and the Post Office Department. In a short, simplistic discussion of construction and operating costs, of rates and income, he insisted telegrams could be sent at costs comparable to letters--three cents for messages under sixty words. In coming to this conclusion he assumed that recent postal reforms were valid in helping determine telegram costs. Two decades earlier Congress had eliminated cumbersome zoning for postal charges and lowered 8 postage. This produced an increase in postal revenue. This same practice, he argued, could be applied to telegrams. He assumed that government telegraph charging low rates would be busy throughout the day, and that postal employees using
existing offices for stations could provide adequate service for the public and transmit government business free. "In other words," he concluded, "the post office on wire will be cheaper than the post office on rail."

Brown dogmatically insisted his proposed system could work with the rates he indicated. Yet he realized that Congress needed telegraph statistics before enacting legislation creating a government line. Consequently he asked the Senate to pass a resolution authorizing the Postmaster General, William A. Dennison, to supply telegraph "data and statistical information." He also wanted Dennison's evaluation of the expediency of extending postal services to include "telegraphic facilities ... I am sure," Brown said, "the Post Office Department, with reasonable effort, can supply [information] to the Senate." If the Post Office desired to "keep up with the spirit of the age," he concluded, it would act on his proposal. The Senate agreed to his resolution.

Brown, however, had overlooked a significant factor. In consolidating the nation's telegraph system, Western Union had also consolidated telegraph talent. Dennison had no source of data other than Western Union. During the war government telegraph service had been extensive, but even then it was largely under private control. But in 1866 the
former head of the Military Telegraph Corps, Anson Stager, was again a Western Union manager. And following the war Western Union retained the most competent employees of the various companies when it merged, releasing the remainder. Thus Dennison had no alternative but to seek information from the very company Brown wanted regulated.

Based upon the data Western Union supplied him Dennison concluded that Brown's proposals were impractical and unacceptable; they were impractical "because of [their] doubtful financial success," and unacceptable because of their "questionable feasibility under our political system." Brown got no further than this rebuff in his reform endeavors.

The information which Western Union supplied Dennison showed that Brown's ideas were ludicrous. It was erroneous, Western Union officials argued, to assume that letters and telegrams were similar. This had been the keystone in Brown's argument. Letters and telegrams shared some characteristics in common, the telegraph officials conceded, yet they were more dis-similar than alike. Letters were carried in bags and delivered with the same expense whatever the number. Likewise the time to transport them was the same whether one or any number were involved. "It was this fact," they concluded, "which led to the reduction of postage"
Brown had alluded to. By way of contrast, a telegram required calm, steady attention, with its contents being tapped out letter by letter. "It demands a whole wire for its use, and a given time for its solitary passage." The entire message had to be translated to code, sent, re-translated, written out, and delivered. And although two messages might be placed simultaneously for sending, only one could be sent at a time. Frequently they had to be re-sent from a repeating station. Letters could be handled in mass; telegrams required individual treatment, and consequently handling costs were directly proportional to the numbers sent.

In short, they argued, the two were not analogous. Brown's argument had fallen; its major premise was invalid.

Western Union spokesmen also demolished Brown's economic analysis of the industry. They showed that Brown had used estimates of construction costs based on prices paid in the '50s, when competing companies used reckless methods and poor materials in building their lines. Brown had argued, for example, that a line of six wires from New York to Washington could be built for fifty-seven thousand dollars and main-15 tained for twenty-six thousand. Western Union pointed out that American Telegraph had a score of lines between New York and Washington, and an annual operating expense, not
including new construction, of one and a third million. Dennison, in fulfilling his obligation to secure data, had found one independent telegrapher—Henry J. Rogers, who had worked with Morse in the forties in building the first telegraph line. He concurred with Western Union in rejecting Brown's analysis. Little wonder that Dennison, in his official capacity, also rejected it. Based upon the replies submitted by the telegraph companies and Rogers, Dennison estimated that construction costs of an adequate telegraph system would be seven million dollars, with an additional annual maintenance cost of ten percent. Brown had earlier estimated the cost to be just over two million.

And finally, Western Union officers turned the monopoly argument on its head. They noted that telegraphing did not create a news monopoly, as Brown had argued, but prevented one by allowing small newspapers to obtain inexpensive news service through one of several press associations. Papers forming the associations received news at greatly reduced rates. This, they said, prevented large, wealthy papers from enjoying a monopoly of wire services.

Contrasted to Brown, Sherman was more impressed with the novelty of telegraphing. Consequently he refused to charge blindly into concocted solutions. He also displayed greater
insights both into Congressional attitudes toward regulation and the inavailability of information in offering his solution to Western Union's monopoly. Brown had assumed the Postmaster General would support his plan of a nationally sponsored competing line, but when Dennison rejected Brown's idea, the Missouri Senator castigated him. Brown claimed he "has shown himself . . . utterly unworthy of the position which he holds as public officer so far as a comprehension of the necessities of that service goes. I think that he has exerted himself rather to throw before us details antagonistic to the project than to seek out and collate any information that would bear out the enterprise." He thought the information Dennison had gathered for the Senate was at best "under the disguise of a report."

Sherman realized the difficulties Dennison had faced fulfilling the Senate's desire for telegraphic data. "Where would he get that information?" Sherman asked. He argued that Dennison had done the best he could, given the situation. In support of the postal head Sherman observed, "he thinks we have not sufficient information to engage generally in the business. In that opinion he may be wrong; but upon the information that he gathered he probably was not wrong . . . The whole system is new," he continued, being "but a little
over twenty years since the first message was sent across the wires between Baltimore and Washington." Sherman recognized the impossibility of securing information from an independent, impartial source. Brown had avoided the issue through ignorant self-assertions.

Where Brown's proposal depended entirely on reliable telegraph data for construction and maintenance costs and fair rates, Sherman's bill avoided that difficulty. Sherman was not opposed to government telegraphs, but he thought that before Congress accepted such a rash act, it needed to accumulate more data. He was more sensitive to government's inadequacies than Brown. Establishment of fair rates and other costs could not be conjured up by a spur-of-the-moment hocuspocus. Instead it would take time. And rather than be arbitrary about it, he thought a privately owned company could ease monopolistic control of telegraphing. Before the government operated a system as in Europe, Sherman informed the Senate, "We must first get a rival or private competition with the existing company to reduce prices, and then, perhaps, after a while the government may do as the republic of Switzerland has already done, assume the whole telegraphing."

This rival line would have built in provisions for
securing the information that would be necessary for government telegraphing. It would compensate for Congress's present ignorance of telegraph matters, by providing another source of telegraphic statistics. With it in operation both Western Union's monopoly on telegraph data and its monopolistic control of rates and personnel would be broken. The new company would also force Western Union to lower its rates. But it would do it through the natural process of competition rather than the artificial, arbitrary rate-setting scheme Brown had advocated. And through construction of a nation-wide company, with carefully controlled expenditures, National Telegraph Company would provide valid capitalization data. It would act as the needed corrective to the great amounts of water on which Western Union allegedly floated. Later, with accumulated telegraph data, with rates lowered to their natural level, and with capitalization values determined, the government, Sherman inferred, could purchase the entire telegraph system, if it chose.

Sherman also exemplified greater knowledge and skill in using existing government machinery to secure his end, as compared to Brown. Other than introducing his resolution requiring the Postmaster General to secure telegraph data, Brown did not work behind the scenes supporting his hopes
for government telegraph. Perhaps he thought the reform possibility he broached could be carried by Dennison in his administrative capacity. But that was impossible. Postmasters General were helpless in introducing effective reform even in their own departments. They were burdened with routine duties, and usually had short encumbencies. Lincoln had appointed Dennison in October 1864, and in July 1866, he resigned. "The administrative impact of Postmasters General was thus necessarily curtailed," Leonard White observed, "except in the field of appointments."

In selecting the Post Office Department Brown had selected a most unlikely institution from which to initiate reform. Unable to introduce changes in his own department, the Postmaster General was not the place to seek support for legislation which would have destroyed a large private institution. And in trying to work outside of Congress, Brown lost all chances of channeling his proposals. He foreclosed opportunities of using Congress to achieve his objective.

Sherman, on the other hand, had served in the House and Senate, and as a result of the Civil War had learned the value and flexibility of special committees. Consequently he asked for and was granted a select committee to consider
25 his bill. His committee refused to accord the prospective company a national charter. While Sherman had no doubt of Congress's power to grant the charter, "it was hard to convince others," he later complained. Yet the select committee did agree to grant the National Telegraph Company the right to construct its lines along the nation's post roads. In early June the select committee reported a bill granting the company those privileges.

Compared to Brown, Sherman also had greater skill in presenting and supporting his case. In introducing his bill to the Senate he insisted that the privileges he sought for National Telegraph were legitimate considering the power of its competitor. Western Union was a powerful company with a capital stock of forty-five to fifty million dollars, he informed the Senate. Not only that, but it received "a gratuity from Congress," he claimed, referring to the 1860 telegraph act, and its agents were spread across the nation. Further, it had contracts with the country's major railroads for exclusive use of their right of ways. Consequently, Sherman concluded, "... it is no idle task for any new company to enter into this kind of competition. I do not wish to say it to discourage any one, but the probability is that in such a competition there will be a good deal of
capital lost before the business is put on a stable footing."

He observed that companies which tried to construct lines between Washington and Boston, potentially the nation's most lucrative lines, had suffered by Western Union's rivalry and were driven out of business. Any rival company would suffer the same unprofitable end unless it could "extend its branches to the leading cities of the United States."

Local or regional competing companies would not work—a nationally based competitor was indispensable.

He was not opposed to general legislation, but, he said, the select committee thought it best "to take up this company, which showed at least an inclination to enter into competition with the great and powerful corporations now existing. . . . The purpose of this bill," he concluded, "is simply to enable this particular company to engage in this competition."

William Stewart, Nevada Senator, agreed with Sherman's analysis of the imperative for a remedy to offset Western Union's high rates. That remedy, he asserted, "is competition. The only way to reduce fares upon railroads is to build more railroads," he claimed. Likewise, "the only way to reduce the charges of telegraph companies is to build
more telegraph lines." However, it was improper, he insisted, to build a line by granting it special privileges. "I say that the privileges that this Government can grant to corporations for the purpose of telegraphing . . . should be as free as the air to competition . . . If we can open the door and make this free, there are commercial interests enough to build the necessary lines of telegraph, and the evil will then cure itself . . . Pass this bill and the charges of this monopoly will be reduced tomorrow; of it they remain as they are, the business men of New York, Boston, and every other city will unite to build opposition lines," he informed the Senate.

Although the Senate generally feared growing corporate power, this fear was not balanced by an inclination to discard their distrust of specially privileged companies. Senator Grimes, Iowa Republican, amended significantly Sherman's bill by insisting that the act's provisions be general, allowing any company to establish telegraph lines along national post roads. "[I]nstead of confining [the act's authority] to one particular company [it should] put them all on a par," as he phrased it. On the second day of debate, shortly before the Senators accepted Sherman's bill, they approved Grimes' amendment putting all telegraph companies
on a par. The Senate then accepted Sherman's amended bill 34
sixteen to thirteen with twenty not voting. The House
accepted it after a short debate, seventy-two to sixty-two,
and President Johnson approved it July 24, 1866.

In its final form the bill granted any state-chartered
company the right to construct and operate telegraphs along
the nation's post roads, and through public lands. Forty
acre plots of land at least fifteen miles apart were granted
for stations. The government had priority in using lines of
companies taking advantage of the act with rates for govern-
ment business being annually fixed by the Postmaster General.
Companies accepting the bill's privileges were prohibited
from selling their lines to other companies. Five years
after the bill's passage (1871) the government could pur-
chase companies accepting privileges of the act. The pur-
chase price would be established by five representatives--
two from the government, two from the industry, and the
fifth selected by the four. Finally, all companies wishing
to exploit privileges of the act were required to file
written acceptance of it with the Postmaster General. The
government thus had been given legislative approval to
nationalize the industry in mid-1871.

The measures Brown and Sherman introduced, the arguments
they used for support, and Congress's reaction to them point to a group of uncertain men confronting certain but ill-understood change. Telegraphing, they acknowledged, was new. The entire system, Senator William Nye observed, "has grown up within my recollection . . ." Jacksonians had reformed the basis for corporate organization in passing general incorporation laws, but they had not realized the great expansive potential of corporate growth. The reform of an earlier generation now needed changing, it appeared, but no appropriate suggestions of how to achieve that goal emerged. The first step in reform had been taken in the Jacksonian era, but the equally important second step seemed frustrated through a paralysis of will or ability. No corporation, regardless of its size, the two Senators agreed, should enjoy immunity from government regulation. Both agreed on the need to restore competition, and they agreed that it could not be done through natural evolution of the economy. In a sense, they turned Jacksonian arguments over—rather than government standing aside, they agreed that Western Union was amenable to regulation only by special governmental intervention. However, neither was able to suggest alternatives to achieve that end.

Purportedly Brown spoke for the "public demand" for
lower rates, but he gave no evidence that the public demanded what he supported. His plan, he said, would reduce the enormous "taxation" the public was forced to pay the communications monopoly. By implication, then, justice was on his side. He agreed with Ostrogorski's analysis that government was unduly weak. To remedy that weakened spring he advocated granting the government a strength it never had over private economic matters.

Had his proposal for reform been accepted with the rates he suggested Western Union would have been destroyed. His response to Western Union's successes was blatantly inappropriate—it implied that too much success in economic endeavors should be punished by government action through confiscatory rates. Alleged injustice against the public, he seemed to say, should be balanced by governmental injustice against the guilty company. A competing government telegraph line, Western Union officials rightly contended, "built without appeal to the public for capital . . . would not rival, but dominate all other lines." Brown's suggestions were not real alternatives for regulation. A property-conscious Congress refusing to confiscate traitor's property would hardly confiscate the property of a company which had played a vital role prosecuting the war. Brown did not suggest alternatives;
instead his ideas were an outright rejection of the turn modern economic development had taken in post-war America.

Sherman's bill was somewhat better. It had the advantage of being plausible. The bill was more realistic since the National Telegraph Company appealed to businessmen, not to a mythical "public demand." The company stated in its prospectus that its purpose was to better meet the "growing ... commercial and business wants of the country" which demanded "an increase of telegraphic facilities at reasonable rates." The benefits of the company, it continued, "shall be enjoyed ... by the business men of the country ...." The company envisioned a truly national system of lines, a necessity for commercial use. Its promoters realized the impossibility of building small competing lines, and decided to wait until it was capitalized to start construction.

Unlike Brown's proposal, which posed a serious threat to Western Union's property, Sherman's bill sought governmental assistance to reduce Western Union's alleged high rates by promoting another private company. Government's power should be employed only to restore the balance Western Union had destroyed in monopolizing the industry and to permit entry of competition. But once it recreated that balance, it should
step aside.

Like Brown, however, Sherman had not yet adjusted his values or outlook to the modern economic world either. He was specially sensitive to capitalization practices. Western Union, he claimed, had "nominally fifty millions capital," but only "ten or fifteen millions of property; the rest is 41 accumulated profits or water." He knew that in some way rates and profits were connected to capitalization, and felt that over-financing led to high rates. He had thus gotten hold of a major aspect of modern economic development. And he was correct in contending that telegraph growth had been predicated on watered stock.

But he uncritically imputed distorted and historically incorrect meanings and connotations to past capitalization practices. Telegraph entrepreneurs had not watered their stock as an immoral conspiracy to bilk the public. Stock-watering had been a distasteful, necessary expedient undertaken only after the national government had refused to provide capital for telegraph development. After government refusal to assist, private entrepreneurs initially found it difficult to secure private investments. To overcome investors' reluctance Magnetic Telegraph Company chartered in 1845, included a provision in its Articles providing that
"for fifty dollars paid in by subscribers . . . . a certificate for one share of one hundred dollars" would be issued. Stocks would thus be worth twice the amount paid for them. The company's subscription goal for building a line between New York and Philadelphia was fifteen thousand dollars, meaning an actual stock issue worth thirty thousand. The patent holders would receive an additional stock issue of thirty thousand. "In other words," the historian of telegraph development concluded, "the value of the line was estimated at four times its cost, so that an actual outlay of $15,000 was to be represented by a capitalization of $60,000."

Telegraph entrepreneurs in 1845 knew over-capitalization was a necessity for mobilizing capital. Economically the government experimental line between Baltimore and Washington had been a fiasco. From April to October 1845 the lines' operating costs were nearly four thousand dollars; revenue produced by its operation was slightly over four hundred. Consequently, the government withdrew its support of the line. Private entrepreneurs were thus confronted with a glaring failure; over-capitalization would overcome that failure, they rightly reasoned. Investors might be enticed with the promise that greater risks could mean potentially
greater returns on their investment. Thus unable to secure continued government support, they accepted the stock-watering expedient.

Subsequently telegraphers accepted similar funding methods. To consolidate and eliminate unwanted competition, they were forced to purchase patent rights and competing lines, all increasing capitalization costs. In the final 1866 consolidations Western Union, in merging with American Telegraph, issued over eleven million dollars of stock in exchange for approximately four million of American stock.

Telegraph managers accepted these great capital expenditures assuming that patent ownership and expanded lines would increase earning power, and consequently their company's value. And, although the cost might be high, it eliminated the conditions of ugly chance and violent fluctuations which had characterized the industry its first two decades. While the industry developed these funding methods were accepted without question. However, once it reached maturity, as it had by 1866, what had been necessities for entrepreneurs now took on an illegitimate aura in reformers' eyes. Patent rights had either expired or were expiring as Brown pointed out in the Senate. Now that these rights and the need to buy competing lines were past, it was easy to forget or
discount past problems.

Thus, on the one hand Sherman recognized the reality of closed opportunity in telegraphing, yet refused or was unable to accommodate his views and values to the equally important reality of mobilizing capital under adverse and unpromising conditions. Senator Doolittle sympathized with Sherman's objective of creating regulation, yet rightly argued that Sherman had misread the past. Sherman had referred to the "gratuity" Western Union received for the transcontinental telegraph built in 1861. However, Doolittle said, correcting him, "The truth is . . . it was regarded as almost a Utopian scheme to propose to build a telegraph to the Pacific . . ." In the first decade of telegraph development, he continued, there were many telegraph companies, "and as a general thing they were failures . . . The fact that this company took upon itself the risk . . . when many believed it was a chimera to suppose that a line could be built and kept up across the continent, ought to weigh something with us."

Instead of checking or threatening Western Union's success as a company, Sherman's bill sought only to limit it. To do so he proposed special legislation, but gave it a new twist compared to special legislative grants of the past.
In the nation's colonial and early national periods, special or privileged grants were given to promote economic development in fulfillment of specific needs, such as building canals and roads where none existed. Sherman, however, sought such a grant to promote an industry which had reached maturity, as it were. And although he sought to limit Western Union's success, he did so by attempting to share that success by law with another company—a company which presumably would share in the profits of telegraphing without a concomitant sharing of risks. Neither Brown nor Sherman was suggesting alternatives for regulation; they proposed measures only to reverse, limit or share Western Union's successes.

Grimes had been right in amending the original Sherman bill. Although he failed to offer an alternative of substance, he was more modern than Sherman—he reached into the more recent Jacksonian past to find a precedent to frustrate Sherman's even deeper reach into the American past. And Grimes blunted what would probably have become a scramble for additional special grants had Sherman's bill succeeded. Only two days after introducing his bill a representative of another hopeful telegraph company wrote Sherman "that your present Bill should be made general in its provisions—Or, in case of any objection to a general law . . . will you
assist us in an application for a similar charter [?]."

If Sherman and Brown were uncertain men, groping for solutions, this was also characteristic of Congress. The proposals of the Senators were too neat, too simple, too pat to be effective, but Congress offered no assistance to the beginnings they made. Both Senators acknowledged the lack of institutional agencies to collect telegraph data, but neither they nor Congress sought to create governing bureaus to supply that lack. Before that could occur a basic shift in attitudes would be necessary. Additional governing bodies would increase government's operating expenses and personnel. The belief that a public debt was a public blessing, commonly accepted in the Republic's early history, no longer held. Instead it was thought to be a danger to republican institutions. "A bureaucracy to collect taxes enhanced the power of presidential patronage and filled the country with snoopers and informers; the presence of the debt unhinged the will to conduct public business economically . . ." Edward Kirkland observed in his interpretation of post-Appomattox attitudes. Thus when Sherman assured the Senate that his bill did not increase governing costs, but that "on the other hand, [the government] retains important advantages and privileges," he was not making a demagogic appeal.
He enunciated a shared value, and a sentiment commonly expressed in letters he received.

The House had created a committee on railroads in 1831. By adding another committee the House avoided the expense of a bureau. But at least it added the committee within a few years of the railroad's advent into the nation's economic life. Congress first took cognizance of the telegraph in the late thirties, but there was no concomitant expansion of House or Senate committees to consider telegraph problems. Congressional interests in the telegraph shifted from one committee to another, and from one branch of government to another. From 1837 to 1845 Senate committees on manufactures and commerce, the House committee on Ways and Means, the Treasury and Post Office departments all considered telegraph matters. Now in the post-war period the Post Office Department became involved again, along with a select committee. Yet neither Brown nor Sherman had made an effort to supply the lack to which they alluded several times in discussing telegraph legislation. Nor were other Congressmen inclined to increase governing agencies or the costs of governing.

This inattention to the telegraph is understandable. Telegraph developments did not entail large public
expenditures, nor did it affect the lives of the American people as the railroads did. However, it was symptomatic of the disdain Americans evidently felt toward government's growth. The economy, they agreed, should grow; government's institutional structures and authority of that economy should remain static. A good indicator of this temper was the new committee the Senate would create in a few months—the retrenchment committee. Governmental cutbacks, not expansion, prevailed.

Had the Senate created a telegraph committee or agency, there is room for questioning whether it would have functioned. Even with a House committee on railroads created in 1831, that committee had to admit in 1868 that although it believed Congress "had the power under the Constitution," to regulate railroads and "the right to supervise rates of fare . . .," it could not report a suitable regulatory bill, "for want of the necessary information upon which to act." It concluded that such a bill should only be prepared after a full and careful investigation of the whole subject, and the examination of persons of competent skill and experience to give reliable information.

And in 1874, the Windom committee complained that "Perhaps the most extraordinary feature of our governmental
policy touching the vast internal trade of the nation is the apparent indifference and neglect with which it had been treated. While detailed information has been obtained by the Government, under customs and revenue law, in relation to commerce with foreign countries, no means have been provided for collecting accurate statistics concerning the vastly more important interests of internal commerce. No officer of the Government has ever been charged with the duty of collecting information on this subject, and the legislator who desires to inform himself concerning the nature, extent, value, or necessities of our immense trade, . . . must patiently grope his way through the statistics furnished by boards of trade, chambers of commerce, and transportation companies." The committee recommended that to help Congress legislate properly and intelligently on railroads and commerce generally that a bureau of commerce be established in one of the executive departments to collect and report information to Congress on trade and every railroad in interstate commerce.

Charles Francis Adams, Jr. looked upon this absence of governing agencies as a potential for creating effective governing agencies in the near future. Those who must build national economic policy, he observed, will not be hampered
by precedents, or trammelled by any machinery, "inadequate and yet existing, but they will be free to create a system both adequate to the needs of the age, and in conformity with the character of our constitutions." He thought, also, that it was a "work which in all probability must soon be undertaken . . ." However, the machinery he envisioned was several decades in the future, and even further into the future before it would be effective. Until that time, Congress would not have its own, independent source of telegraph data. It was forced to depend either on Western Union or parties seeking legislation hostile to that company.

Congress's disinclination to create adequate governing institutions sprang directly from its distrust or suspicion of government. Although equally fearful of growing corporate power, that fear was not matched by initiatives to increase regulatory or governing institutions. Instead men in Congress responded to corporate growths through denunciatory flourishes, but little else. Lester Ward later complained that the American public generally shared this contradictory attitude. Two incompatible theories coexisted, he noted, often in the same individual and permeated society, which complicated regulatory problems. "A political speaker may harangue an American audience on the dangers to be apprehended
from the centralization of power, from Government interference in private enterprise . . . from attempts of the State to manage lines of transportation . . . and all these sentiments will be applauded," he observed. However, "Another speaker may address the same audience the next day, warning them of the dangers of grasping corporations, from industrial, commercial, and financial monopolies . . . and he, too, will receive equally unqualified approbation."

Both Senate and House members opposed Sherman's amended bill with the argument that it increased national power at the expense of states. They argued that the bill unconstitutionally allowed the national government to extend rights of state-chartered corporations in allowing them to build along post roads. Thomas Hendricks observed that "This session of Congress has been characterized to some extent by the number of propositions for the exercise of extraordinary powers heretofore conceded to belong to the States . . . and now the proposition is that Congress shall undertake to control the telegraph system through the States." James Guthrie argued that if the practice of using the national government to extend rights of state-chartered corporations were accepted, there would be no telling where it would end. "I think," he continued, "this Government has quite enough to
do to manage the national affairs, without interfering with the internal affairs of the States . . ." Compared to this position, Sherman had edged significantly forward.

These expressions of congressional distrust of government's power were larger cultural values which Senators and Representatives were reflecting. In discussing railroads a writer for the North American Review asked, in relation to rapid railroad expansion, "Who is to take care of the giant when you get him out of his leading strings?" He rejected Josiah Quincy's suggestion that Massachusetts purchase and operate a railroad from Boston to Albany. "It is rapidly becoming throughout the world," he insisted, "a cardinal principle of polity, that the more the functions of government can be reduced, the better." He admitted that "great interests" were involved, but that did not justify government's becoming involved. No one knew the solution yet to corporate economic power, he observed, and concluded "The only way to arrive at a satisfactory result is through discussion and reflection . . ."

Warner M. Bateman, an Ohio legislator and frequent correspondent of Sherman, confessed, "I have constantly regarded Federal interference . . . with so much jealousy that I have been unwilling to accept the obvious benefits of
general legislation in the dread of the tendency growing out of the war to transfer the powers of strictly local legislation to the General Government."

Charles Francis Adams, Jr. argued that the fundamental principle of our political system, particularly the national level, was noninterference. It originated, he said, in a protest against a doctrine once common on this continent that government was best which governed most. However, he continued, that principle had been overturned, and consequently the entire political tradition was based on limited governmental functions. Government's difficulty in coping with growing corporate power, he concluded, arose from the development of a "combination of powers, in our social organism which our political system was not calculated to deal with. At the time the framework of our government was put together, a system of necessary monopolies was the very last thing which was expected to present itself on this continent . . . Our whole machinery looked to dealing with individuals . . ."

Adams accurately defined the problem confronting government in coping with economic aggregations. The government was geared to individuals. A corporation, in legal mythology, was a fictitious person. Congressmen had not yet shifted
their views to accommodate fictitious aspects of corporations. They were immortal, immune from the rise and decline of individual economic endeavors. The alternatives Congress suggested were the same its predecessors would have offered for regulating the economy decades earlier--either natural regulation through competition or complete government control, such as the post office. Men in Congress had not envisioned a middle position. Government regulation as distinct from government operation was not yet an alternative. And in the end, by accepting Sherman's amended bill, they accepted the two polar positions: at the end of five years the government could regulate telegraphing by purchasing the entire system, but until that time, competition, free of government influence, would prevail. Although the Senators tried to strengthen the spring of government, one through sponsorship of a private company, the other through direct government involvement, the alternatives they presented were relevant not to the modern economic world they were confronting, but to the pre-Civil War world they had known. It was as though they had been debating problems of controlling village merchants dealing in foodstuffs, or peddlers operating along the frontier.
FOOTNOTES

1 Democracy and the Organization of Political Parties (2 vols., New York and London, 1922), II, 550. This work was copyrighted in 1902 and subsequently translated from the French and published in 1922 in English.

2 Ibid.


4 Act of June 16, 1860. Congressional Globe, 36 Congress, 1 Session, 481; hereafter cited as C.G., 36 C., 1 S.


6 C.G., 39 C., 1 S., 979-80 (February 23, 1866).

7 Ibid., 1773 (April 5, 1866).

8 In 1845 Congress passed legislation providing for uniform postage. Inspiration for the act stemmed in large part from reforms Sir Rowland Hill had sponsored in England, where they proved successful. His idea was simple: if the government made postage rates sufficiently low and service attractive and accessible, the public would respond through increased use of the facilities. Eventually, he thought,
postal revenue would increase, and produce more than the higher rates. Thus the department would enjoy increased income, while promoting the overall welfare of the nation. The act of 1845 accomplished the same ends in this country. Within two years it was successful. Gerald Cullinan, *The Post Office Department* (New York, 1968), 58.

9 *C.G.*, 39 C., 1 S., 980 (February 23, 1866).

10 Ibid., 979-80.


12 For example, when Western Union and United States Telegraph merged early in 1866, one-third of the employees of each company were dismissed. A committee appointed by the officers of both companies selected the best men to work the lines of the consolidated company. Thompson, *Wiring A Continent*, 422.

13 U.S. Congress, Senate, *Letter from the Postmaster General, in Answer to a Resolution of the Senate of February 23, Relative to the Establishment of a Telegraph in Connexion with the Postal System*, June 2, 1866, Senate Executive Document 49, 39 C., 1 S., 2.

14 Dennison sought information on a number of matters—construction costs, the costs of apparatus needed per mile of line, maintenance costs, the ability of post offices to handle telegraph business, the capital value of the respective companies, gross receipts of each company in 1865, the cost of the respective lines if the government were to buy them, the amount companies had payed for mistakes in transmission of messages. Dennison to Theodore Adams (joint agent for American and Western Union), April 16, 1866, Letter Book, Post Office Department, Book 7, RG 28, NA.

16 C.G., 39 C., 1 S., 980 (February 23, 1866).

17 J.S. Congress, Senate, Senate Executive Document 49, 7.

18 Ibid., 2-3.

19 Ibid., 2; C.G., 39 C., 1 S., 980 (February 23, 1866).


21 C.G., 39 C., 1 S., 3428 (June 27, 1866).

22 Ibid., 3428-29.

23 Ibid., 3429.


25 In addition to Sherman the committee consisted of Daniel Clark, New Hampshire, Ira Harris, New York, B. Gratz Brown, Missouri, and James W. Nesmith, Oregon. C.G., 39 C., 1 S., 1843 (April 9, 1866).

26 Sherman to Jay Cooke, June 15, 1866, Jay Cooke Collections, Pennsylvania State Historical Society.

27 Original Senate Bills, Senate Legislative Records, Senate 39A-B1, RG 46, NA. The bill was read June 7, 1866. Also in C.G., 39 C., 1 S., 3007 (June 7, 1866).

28 C.G., 39 C., 1 S., 3428 (June 27, 1866).
29 Ibid.
30 Ibid.
31 Ibid., 3484 (June 29, 1866).
32 Ibid.
33 Ibid., 3428 (June 27, 1866).
34 The sixteen favoring it were all Republicans; four Democrats voted against it; three Republicans on the way to becoming Johnson Democrats opposed it, and six Radicals were against it.
35 Sherman had included the provision for government purchase of the National Telegraph Company in his original bill. Evaluation would be determined using the same method described in the bill's final form. After the Senate accepted the Grimes' amendment, Sherman amended the bill further, requiring all companies who took advantage of the bill to accept its provisions allowing the Postmaster General to fix rates. The five year provision was included in an amendment which the Senate accepted without debate. It was not in the original bill the select committee reported June 7.
36 Act passed July 24, 1866, C.G., 39 C., 1 S., Appendix, 382.
37 C.G., 39 C., 1 S., 3481 (June 29, 1866).
38 Ibid., 980 (February 23, 1866).
39 U.S. Congress, Senate, Senate Executive Document 49, 32.
40 Prospectus of the National Telegraph Company (np, nd).
41 C.G., 39 C., 1 S., 3429 (June 27, 1866).

42 Thompson, Wiring a Continent, 42. Thompson has appended the Articles of Association of the Magnetic Telegraph Company to his work, pages 447-51.


44 Thompson, Wiring a Continent, 259-88.


46 C.G., 39 C., 1 S., 980 (February 23, 1866).

47 Ibid., 3486 (June 29, 1866).

48 Ibid.

49 W. D. Snow to Sherman, April 7, 1866, Sherman Papers, Library of Congress.


51 C.G., 39 C., 1 S., 3482 (June 29, 1866).

52 An example is a circular the Society for Protection of American Industry sent him. "Our people," it stated, "have just emerged from an immense war, burdened with debt, and borne down by taxation. Our immediate wants are payment of the one, and relief from the other . . . To effect these
we must cut down expenses and abandon extravagance."
August 10, 1865, Sherman Papers, LC.


54 C.G., 24 C., 2 S., 1837 (February 14, 1837); C.G.,
25 C., 2 S., 305 (April 13, 1838); U.S. Congress, House,
Letter from the Secretary of the Treasury, Transmitting a
Letter from Professor Morse, Relative to the Magnetic
Telegraph, December 23, 1844, House Report Document 24, 28 C,
2 S.; U.S. Congress, House, Report on Telegraph from Baltimore
U.S. Congress, Senate, Report of the Postmaster General,
December 1, 1845, Senate Document 1, 29 C., 1 S.

55 U.S. Congress, House, Regulation and Control of

56 Ibid., 8.

57 U.S. Congress, Senate, Report of the Select Committee
on Transportation Routes to the Seaboard, April 24, 1874,
Senate Report 307 Part I, 43 C., 1 S., 8.

58 Ibid., 241.

59 "The Government and the Railroad Corporations,"

60 "Political-Social Functions," from The Nation Trans-
formed: The Creation of an Industrial Society, ed. by
Sigmund Diamond (New York, 1963), 499.

61 Guthrie, Doolittle, Hendricks objected in the Senate
and were supported by Finck and Hale in the House.

62 C.G., 39 C., 1 S., 3488 (June 29, 1866).
63 Ibid., 3429 (June 27, 1866).


65 Ibid., 510.

66 Bateman to Sherman, December 7, 1866, Sherman Papers, LC. In this letter Bateman was discussing railroad questions.


CHAPTER III

COMPETITION—AGAIN, AND THE EMERGENCE OF A FORMIDABLE OPPONENT

Ostrogorski had noted that governmental inability to respond appropriately to new conditions prompted a growth of private institutional agencies, to fill the need for government. In the Thirty-ninth Congress Senators Brown and Sherman contended that the government was overlooking the need for telegraph legislation. Sherman sponsored a bill for a private company, and thought that it would compensate for government's inattention; Brown sought to bend the government directly into a controlling agency. Neither reform proposal enjoyed success, although Sherman's bill passed.

Instead of success Congress's consideration of telegraph proposals had alerted Western Union's managers to the need for creating machinery to resist Congressional agitation. When the Senate gave its approval to the Brown resolution in February 1866, the Postmaster General had to apply directly to Western Union for telegraph information since no other institutions existed capable of supplying the data
in question. In soliciting the information and asking for an evaluation of Brown's Senate speech, Congress jarred Western Union's perspective from concentrating on internal problems of the telegraph industry, to the larger, more potential threat of Congressional meddling. Up to then, Western Union had enjoyed close relations with the government in assisting in the war effort. But the Brown resolution and later the Sherman telegraph bill destroyed those close relations.

One of Western Union's gravest problems since its incorporation in 1851 had been that of maintaining the company's stability in the face of chaotic conditions in the industry generally. Its managers had been conscious of the upheavals in telegraphing in the past two decades. They accepted unsettled conditions as a necessity in their industry's growth. Now, however, in 1866 they felt an artificial, needless threat had arisen, threatening to reintroduce confusion where order and calculation had been created. Edward Kirkland observed recently that the business mind in the nineteenth century was suspicious of government involvement in economic activities. Businessmen feared that government through politicians' machinations and creation of fictitious issues induced uncertainty into their operations.
This they feared was precisely what the Brown resolution and the Sherman bill did. Had the government acted on the terms Brown suggested in the Senate, Western Union would have been ruined, just as it had established itself as a well-organized, effectively managed company. And Sherman's bill sought to reintroduce artificially the very competition which had played havoc in the industry for two decades. To protect their gains company managers were forced by governmental interference to respond defensively. Ostrogorski's contention that private initiatives would compensate for governmental vacuums was probably valid, but Western Union officials were just as determined to prove that no vacuum existed. Thus, while proponents of legislation would try to create demands for reform, Western Union's managers worked equally hard to negate that attempt.

The results of Congress's consideration of telegraph matters in 1866 was an act which proved ineffective in promoting telegraph competition, but resulted in a government document publicizing Western Union's position. The Postmaster General passed on to the Senate as a public document Western Union's statement responding to Brown's resolution. Consequently, Western Union enjoyed free publication and distribution of its counter arguments. However, company officials
realized that "pamphlets are rather a drug in Washington," and responded to threats of government interference in their industry by forming effective internal company institutions to oppose menacing bills. They created an effective lobby, used franks extensively, and in 1867 began publication of the *Journal of the Telegraph*. The industry's private organizational responses thus kept pace with challenges confronting it, whether from internal anarchy or externally from Congressional activity. And like its consolidation successes, Western Union's accomplishment in creating institutions opposing legislation outdistanced development of comparable public institutions and responses.

Although would-be reformers might be outflanked, Western Union activities did not halt new attempts at telegraph legislation. Two telegraph reform bills were introduced in the Fortieth Congress. Elihu B. Washburne, Illinois Republican, introduced a bill in the House in May 1868 providing for construction of an experimental telegraph line between New York and Washington. John F. Farnsworth, also an Illinois Republican, introduced a bill two months later for Gardiner G. Hubbard to grant national incorporation to a private company, the United States Postal Telegraph Company. Hubbard, a resident of Boston, graduated
from Harvard Law School and practiced law in Massachusetts from 1843 to the middle of the 1860's. However, he was attracted to the business world more than to law. He introduced illuminating gas into Cambridge by 1857 and built one of the nation's earliest street-car lines between Cambridge and Boston. In the late sixties his interest turned to telegraphy. He was a capitalist in search of a larger operating field.

Both the Washburne and Hubbard bills contained provisions establishing rates, but used indirect, awkward approaches. Neither received favorable committee report. Supporters of the bills encountered a Congress reluctant to involve government in private economic enterprises. And in trying to overcome Congress's disinclination to regulate the telegraph, they were woefully weak. They were ignorant of telegraphing, and they were challenging a company with a growing competence in legislative maneuvering. In addition they obscured real issues with rhetorical flourishes of monopoly versus competition rather than directing attention to the larger problems of growing corporate power in the nation's economic life.

Both Washburne and Hubbard acknowledged the telegraph business to be a national economic institution. They argued
that telegrams were analogous to letters subject to national authority through the Constitution's post office clause. They contended that capitalization of the American telegraph system was unduly inflated from "watered stock," requiring dividend payments on unproductive capital. This caused inflated rates, preventing large groups of Americans from sending telegrams. The ostensible object of regulation, then, was rate reduction, making telegraphing accessible to all segments of the population. Thus their arguments for regulation hinged on the twin points of the Constitution's post office clause and high Western Union rates.

However, both keyed their bills and arguments to the economic issue of excessive rates. They implied that high rates activated the potential for regulation in the postal clause. Each had an ingenious solution to the telegraph monopoly. Either bill supposedly would solve the problem of rate regulation, over-capitalization and dividend payments, without increasing governmental expenses. However, their proposals created more problems than they solved and in the end prompted arguments from Western Union and the House postal committee which proponents of national telegraph legislation would never circumvent.
In coming to the conclusion that American telegraph rates were too high, both rejected knowledge gained from American telegraph companies, assuming it valid to import European examples as guides for informing American policy and legislation. They realized poignantly that government officials depending on American telegraph data were depending on Western Union. In the Thirty-ninth Congress Brown had been appalled by this fact; in the Fortieth Washburne was. Referring to William Dennison's earlier report, Washburne insisted unequivocally that the "'information'" supplied by Western Union had been compiled with "an intent to mislead." He disdainfully claimed it was difficult to procure reliable data on telegraph construction costs. "There are few questions apparently so simple upon which so many conflicting opinions have been printed," he insisted. Disagreement even existed on the charge for setting a pole, including its price, he complained. Since no government agencies existed to supply or collect telegraph data, he sought to dodge that difficulty by relying on European telegraph information to support his bill.

Before introducing his bill Washburne secured information directly from European telegraph officials. He adapted this information to support his bill. In the United
States, Washburne claimed, service was inefficient and expensive; in Europe speedy, efficient, and inexpensive. Subsequent to government ownership in European countries, he continued, rates were lowered making telegraph service available to the mass of people. It was used more extensively, and in the end paid its own way, he claimed. Consequently it did not increase government debt.

If this were possible in poorer European nations, Washburne thought, it should work here. He was specially impressed with the English example. For twenty years the English had a competitive system based on private corporations, but at the time he introduced his bill, the English were debating switching over to government owned telegraphs. This change, if it came Washburne said, would result from complaints and petitions which Parliament had received, praying for lower rates and better service. Complaints of delays and faulty message transmission were most common of the complaints made against the English system, Washburne averred. Chambers of commerce had been especially vocal in making these demands, he indicated. He had no doubt of the "superiority of the continental system over every other," and was confident that European superiority sprang from its
being "a government institution, while in this country it is left to private enterprise." Private domestic companies had effected many advances, he observed, but they had not overcome confusion, lack of responsibility, waste of labor, concern for dividends. "It would be folly," he insisted, "to shut our eyes to the inherent weakness of all joint stock enterprises." Confident that American telegraphers provided unreliable data and accepting the European systems without question, he concluded, "There is not an argument in favor of the judicious systems so successfully adopted in the countries named [England, Belgium, Switzerland, Prussia, Austria] which does not apply with even greater force in favor of the adoption of the same system in this country."

Like Washburne, Hubbard frequently used foreign examples in supporting his bill. Competition, he said, could not be a proper regulator since it forced construction of duplicate lines, making rates artificially high. And after consolidation, he claimed, Western Union kept them high. This put the telegraph beyond the reach of the poor. He insisted that in Belgium and Switzerland lowered rates meant increased business. Consequently, he concluded, in those countries, "the great masses of the people . . . are the best customers of the telegraph."
Although both used foreign examples to "prove" that domestic rates could be lowered, they knew the government had no direct regulatory powers over Western Union. Their bills sought to create that power. Washburne sought rate regulation through construction of a government telegraph line between New York and Washington. Rates would be established in this bill. They would be uniform, lower than Western Union's, and subject to change by the Postmaster General. The line would be opened to public use at established rates; the government would have free use of the line. Seventy-five thousand dollars would be appropriated for construction purposes. Since he thought the telegraph should be "an auxiliary to the postal system" the line would be declared a mail route subject to all applicable laws relating to postal routes and placed under the Postmaster General's authority.

Hubbard, in contrast to Washburne, proposed a more unique regulation plan. He argued that since transmitting correspondence was an exclusive government function, telegraphing rightfully belonged under its regulation. He had no doubts about employing governmental authority to incorporate the company he sponsored. His bill provided that the postal telegraph company could construct lines along the
nation's railroads and post roads. This provision created no problems—it was only exploiting the 1866 legislation. The postal telegraph company would contract with the Post Office Department for sending telegrams over its wires, at stipulated rates. The company would be a delivery agency only, sending telegrams between specific points, with the postal department accepting and delivering telegrams. The plan was modeled on the mail system where contracts were let out for delivery of mail between post offices. Postal telegraph stations would be established in post offices and substations in every city over five thousand inhabitants. These stations would have both mail service and a telegraph station. Messages could be delivered to postal telegraph stations and sent direct or mailed at smaller post offices where they would be mailed to the nearest postal telegraph station and then wired.

All private telegraph companies could bid for contracts with the postal department for transmitting telegrams. Companies receiving a contract would enjoy it for ten years, then new bids would be accepted and new contractual agreements concluded. Rate provisions would be included in every contract. Through these contracts public regulation of the telegraph would be effected. The periodic
renewal of agreements allowed the post office department to review rates every few years, permitting flexibility in setting them.

Like Brown and Sherman before them, Washburne and Hubbard predicated their regulatory provisions on a reform in telegraph capitalization. Washburne sought to solve capitalization problems in one of two ways; only low bids would be accepted for constructing his proposed line. Or, the government would purchase an existing line between New York and Washington, D.C. if its owner would sell for twenty-five per cent less the lowest construction bid. He implied that current line values were artificially inflated. His bill corrected that with the twenty-five per cent discount. With controlled, unwatered stock, lower rates were possible, he believed. Thus rate regulation would be based on government control of capitalization. The two were inseparable. And since the line would be publicly owned and controlled no dividends would be paid. Consequently, his proposed bill offered solutions to rate controls, capitalization and dividend problems—all of this at no cost to the government. Rather regulation would be a profitable undertaking for the government.

Washburne's proposed solution to the telegraph problem
had great potential value. Although he uncritically placed credence in the validity of using European telegraphs as models for this country to emulate, he did not rely entirely on Europe for reliable telegraphic statistics. His bill would supply that lack; European examples would only be used as a starting point. His proposed line would have been united with the post office department and operated under its authority. With the government operating the line, it would have the opportunity to collect its own data and become informed on practical telegraph operations. This would have created institutional means to compensate for the government's total ignorance of telegraphy.

Washburne was not proposing that great strides be taken in bureaucratization. His proposal envisioned no new agency or bureau. Instead it exploited preexisting institutions. It was logical that he chose to work through the post office, since his bill was based on an assumed analogy of letters and telegrams. He did provide for a general telegraph superintendent, "who shall be a practical telegrapher," to be under the Postmaster General. Employees operating the telegraph would be "as far as practicable, the employees of the post office . . ." However, special telegraph clerks could be employed when necessary.
Although he did not plan to increase governing personnel or agencies by his bill, his bill could have induced significant change in either creating a sub-department in the postal department, or an independent telegraph bureau. Washburne was seeking governmental operation of the nation's entire telegraph system. However, he explained, "in the present position of the finances of the country, it would hardly be wise to enter upon an extended experiment. It should be tried at first on a limited scale . . . If it proves successful . . . it ought to be, and doubtless will be extended." Had the experimental line been built, Congress or the Postmaster General possibly would have realized the necessity to enlarge the bureau governing its operations. Even as it stood, however, it had value. The experimental line would provide practical information which future Congresses could use. This would circumvent the government's dependence on Western Union. The experience and information thus gained could have helped formulate future telegraph policy.

For example the government, by authorization of the 1866 act, could purchase the nation's entire telegraph system after July 1871. The price would be determined by a board of five arbiters as the act provided. However, by itself
the act of 1866 was clearly inadequate. Washburne must have realized that translating the act's authority into practice would be difficult. The government had no telegraph experts to participate in purchase negotiations. Worse, it had no agencies to accumulate information on which to calculate a fair purchase price. Washburne's bill would have created the beginning of such an agency three years before the government could purchase the lines. Thus at the end of three years the government could have collected information indispensable for evaluation purposes. Knowledge from the experimental line, complementing that collected from European experiences would then offset or correct the "misleading" data Western Union officials presumably would use in negotiations if the government acted on the 1866 legislation. In addition governmental telegraph officials managing the experimental line would have gained the practical experience essential for operating telegraph business. They would have gained and created institutional means necessary for administering extended government lines.

Washburne explicitly accepted Senator Brown's theory that adequate authority existed for telegraph regulation. But unlike Brown he was sensitive to the insufficiency of government bureaus to accomplish that objective. He sought
Brown's goal--regulation through national ownership of lines--but avoided its rashness. He was less dogmatic about rates, and generally offered a more flexible approach. He offered a moderate means to the same radical end--regulation would proceed slowly on an experimental basis until the government gained sufficient capability to regulate the entire industry. Regulation would be based on growing competence, not instant improvisation or concoction. And it would be regulation on a national basis, but not until the government was ready for that awesome task.

Hubbard proposed instead to limit capitalization by fixing maximum investments in his company from three to five hundred dollars per mile of line, depending on the portion of the nation involved. Dividends, based on that investment, would be limited to ten per cent. However, his bill provided that the ten per cent would be a guaranteed return. Should the company's earnings fall below a level paying ten per cent on investments the Postmaster General was required to pay the company the difference. Washburne had sought to reduce rates by capitalization control and elimination of dividends; Hubbard wanted the same capitalization controls but sought a guaranteed dividend in return.

Washburne may not have given enough consideration to
governmental agencies needed to fulfill provisions of his bill. He would have used existing institutions with very few personnel being added. Contrasted to Hubbard, however, Washburne was bureaucratic-minded. Hubbard was totally insensitive to the need for adequate public agencies for telegraph regulation. His bill was very complex, adding considerably to the Postmaster General's work. Yet no provisions were made to create new offices within the department for telegraph purposes as Washburne had. The government would remain ignorant of the business and practical side of telegraphy under his plan. His proposed company would do the telegraphing. The post office department would conclude contracts, keep records of the number of telegrams sent, publish rate agreements for public information, supply office space for the postal telegraph company, and deliver telegrams, but little else. Unless it created agencies independently of his bill, the government would not enjoy improved means for collecting data. Its only regulatory function would be to choose among bids for contracts which might be submitted. In short, the post office department would remain the country's postal agency only. It would have no direct connection with the telegraph.

Both were striving to achieve an unfamiliar goal—
national telegraph regulation. Neither Washburne nor Hubbard had useful precedents they could use as guides. Neither had clear ideas of how to achieve their objective. Both of their bills failed to provide governmental machinery to win the controls they desired. Instead of creating adequate machinery they both outlined in extended detail procedural methods by which contracts would be let, either for constructing the experimental line or for transmitting messages.

Their bills devoted considerable attention to familiar procedures for advertising and receiving contractual bidders. These routine, well-established procedural matters simply overshadowed all other considerations. On one level, their bills showed a marked inability to suggest innovative ideas for regulation. Rather they depended on practices which the slow-moving post office had used for decades. They were impressed more with the superficial similarities between letters and telegrams than the greater dissimilarities. Thus they made wholesale use of practices which proved satisfactory for the nation's oldest public institution, and tried vainly, to apply them to a private company built on the newest technology.

On another level, however, their bills enjoyed an integrity built on alternatives which Americans of their
generation could accept. They agreed on the need to drain the water from the overcapitalized Western Union before rates could be reduced. And they agreed this would not be done without government regulation. Yet they knew that Congress would not accept regulation not founded on competition. The contracts provided that competition. Washburne's bill provided for competition in constructing the experimental line. Implied in this approach was the concept that Western Union's construction had been unduly inflated. Construction figures it provided, Washburne suggested, were unreliable. To correct that unreliability it was necessary to create conditions which promoted competition in telegraph construction. This would provide the fair price of line construction. It dodged the overcapitalization issue by recreating competitive conditions; thus supplying valid telegraph data. This information could then be used in evaluating other telegraph lines or in letting out more extensive contracts for line construction.

A similar competitive arrangement was the heart of Hubbard's bill. Hubbard did not think competition between companies could work in regulating the industry as Senator Sherman implied in his telegraph bill. Instead he thought it could be effective on the contractual level where it
would be controlled competition. Since it would be controlled, it would avoid recreating the drastic conditions of the 1850s. And by the government offering contracts to competing companies with limited capitalization, the entire industry would be regulated.

In the proper perspective Washburne's and Hubbard's concern for procedural details thus make sense. Neither thought his plan could be effective without the safeguards relating to the contracts involved. With regulation effected through them they did not envision any need for creating governmental bureaus. Both could claim that regulation could be accomplished by their bills without increasing government's costs, and from their perspective they could make the claim legitimately. Therefore, neither saw any wisdom in expending tax money for erecting controls, when they could be accomplished by restoring competition and increasing government revenues.

* * * * *

Having been alerted by previous Congressional agitation of telegraph questions, Western Union spokesmen were well prepared for the two bills. Responding quickly and effectively, they started preparing an article for their telegraph Journal opposing Washburne's bill within two weeks
of its introduction, and planned to place a copy "in the hands of each member of Congress." Later they extended it to include criticism of Hubbard's bill. And still later the company published a long pamphlet in January 1869 challenging the bills. Its writers accepted Washburne's and Hubbard's categories as the basis for their response--comparative rates, validity of European examples, and capitalization questions. The pamphlet dealt mainly with statistics and consequently was a rambling, tendentious, dull document, full of tables purporting to prove the "errors" of the opposition. However, it gave some consideration to the larger issue of government regulation.

The pamphlet was important more for its possible impact on the House postal committee than for the information it contained. Although the company placed a copy of its document on the desks of House members, Western Union managers depended more on its lobbyists to defeat the bills than on the pamphlet. The document would offer printed proof or give verification of lobbyists' arguments to individual House members, but the lobbyists were the key consideration. Uriah Hunt Painter and George Walker were the two most important Western Union lobbyists in the Capitol. William Orton considered Painter, a former telegraph contractor,
the "pivotal point" of the company's lobby. From Western Union's point of view Painter was in a crucial position in Washington. In 1869 he was clerk to the House postal committee--the committee which considered telegraph bills. Walker was a Western Union director.

Being the postal committee's clerk, Painter was in an ideal position to keep in close touch with committee members. Early in January 1869, shortly after Western Union's statement challenging the two bills was printed, but prior to the House postal committee's report on them, Orton wrote Painter, "If your Committee will decide after . . . an examination of our paper, to report adversely upon all the pending [telegraph] schemes, I think Walker can write a report which would do them great credit." In addition, Orton himself devoted most of his efforts in January and February to securing an adverse report.

Privately neither bill frightened Orton. He was confident neither would make any headway. However, an adverse report by the postal committee was still important. Western Union stock prices had fallen the last months of 1868. Orton was confident he knew why--telegraph agitation in Congress. "If we can have a report from the Post Office Committee declaring that in their judgment it is impolitic either for
the government to build new lines, or to become in any manner connected with the management of the lines, I believe the effect would be to advance our stock five per cent," he said. And that report should condemn both bills.

Western Union managers supplemented their legislative maneuvering by distributing telegraph franks. The company's franking policy was by no means clear to company representatives in early 1869. "We have no intention of making ourselves liable to the charge of seeking to ingratiate ourselves with Congress by the indiscriminate and unsolicited issue of franks," Orton wrote Western Union's Washington manager. "I make this statement, so that you may know our policy and make suggestions from time to time in accordance therewith." These instructions may have resulted from Painter's request a week earlier for twelve to thirteen hundred franks. "We would be glad to give them out to any House member who desires it, but we want them to apply for them," Orton responded. Yet the company had sent some unsolicited franks. Washburne and Ben Butler returned franks they had received.

Clearly franks were used to help persuade Congressmen and possibly without being solicited. To John P. Stockton, Senator from New Jersey, Orton wrote, "We are not unmindful
of your past friendship, and rely confidently upon your future efforts to restrain the Government from overstepping the proper boundary which divides its functions from the domain of private enterprise." Overall the company widely extended franking privileges. Orton complained that "our free business is so great as to sometimes seriously interfere with that for which we receive pay . . . While we intend to be liberal toward our friends," he continued, "we ask them to keep the fact as quiet as possible, in order to repress demands from sources not entitled, and yet sometimes difficult to resist."

Western Union's blocking efforts were successful. The last week of February 1869 the House postal committee adversely reported the two bills. Western Union's position was built on solid strength, resulting from its internal capability to fight hostile legislation, thus its ability to influence Congress, and from the fact that its position was more in accord with public sentiment than either bill it opposed.

The House report was printed a month and a half after the Western Union pamphlet. The committee directly employed limited amounts of the pamphlet's rate information in its adverse report. In addition the committee greatly expanded
Western Union's discussion of constitutional and regulatory issues. Thus Western Union enjoyed unmitigated success in deflecting legislative proposals potentially detrimental to its interests.

James Parton noted in the late 1860s that it was easy to assume lobbies had unlimited power to influence legislation. Instead, he insisted they "won signal triumphs in Washington only when [they had] been supported by a strong and wide-spread feeling out of doors." This evaluation accurately described the case of the telegraph bills. Washburne and Hubbard had been totally unable to create political support for their bills. Both had offered their bills as antimonopoly measures in behalf of the public. For example, Washburne claimed that "the popular verdict of the people of this country, if it could be heard, would be that the telegraphic system, in view of what it is in other countries and might become in this, is practically a failure."

The same lack of support was true for Hubbard. Neither had support they offered for their bills other than the same mythical demand by the mass of Americans which Brown had alluded to. It was an inarticulate mass support they were claiming.

The postal committee thought support should be better
articulated before it could approve the bills. Telegraph legislation had been agitated for three years it noted. "If, therefore, the people desired to make the change, that desire would naturally show itself in the form of petitions to Congress, or in the resolutions of State legislatures; but no such petitions or legislative resolutions have been received from any quarter," it reported. Telegraph proposals came either from individual Congressmen with no support or parties seeking special legislation, the committee declared. The two largest patrons of the telegraph, the press and business classes never petitioned for change. The opposite was true of the business classes, the committee maintained. A recent convention of the national board of trade at Cincinnati "representing the boards of trade and chambers of commerce of all the northern cities" pronounced against the postal telegraph scheme.

By way of contrast Western Union included opposing articles and editorials from several newspapers in its 1869 pamphlet. These articles and other press items betrayed a strong opposition to the bills. Government regulation, they suspected, meant government monopoly. Although the Washburne and Hubbard bills were based on competition, they did not employ competition in traditional terms. Government
involvement in the economy was a concomitant of that competition. This provoked more fears than support. Hunt's Merchant Magazine thought a "temporary corporate form" of monopoly preferable to a "grand monopoly" not subject to any "of the natural laws controlling commerce . . ." Other newspapers expressed the same fear. Government regulation, they feared, meant a government telegraph.

And if government created a monopoly in one industry it could in others. Once its powers were unshackled, editors apparently felt, no way existed to check its expanding growth. If the government took over the telegraph, the New York Post insisted, it could also take over the press business. "In the same way," it continued, "as the Secretary of Interior surveys and sells the public lands, would it not be well to have him also fence them, plough them, plant them . . . ."

The Chicago Evening Post accepted the same logic, noting that government telegraphs could also mean ownership of railroads, since both were agents of commerce. It acknowledged the need for reform, but proposed a reform based on the "American idea." The sphere of government should not be enlarged, it argued. "Instead of clothing government with new powers, let us take from what it has." And the New York Tribune wondered if concern for regulation concentrated
on the right issue. There was more demand for cheap or free potatoes, it noted, than cheaper telegraph service. "Where one wants cheap messagers, many would be benefited by having a sure and ample supply of cheap potatoes."

Charles Francis Adams, Jr. noted that the fundamental principle of our political system, particularly the national one, was non-interference. Our whole political tradition was based on limited governmental functions. Like the journalists, the House postal committee, and Western Union spokesmen, he too failed to see any possible middle position between government ownership of economic enterprises and regulation. "It is unnecessary to maintain that our political system is the best; perhaps, after all, we were wrong, and the French, or the Belgian, or the Russian system is better than ours," he wrote. However, he continued, if we accept foreign models of governmental functions, "if our fundamental principle is to be violated, and the government become a common carrier to please one class of reformers, it will also become a banker to please another, an expressman to gratify a third, and a telegraph-operator to supplement its other duties as postman." To numerous Americans in the late 1860s government regulation evidently meant government control. And that meant a fundamental repudiation
of the American political tradition. This the first post-
Civil War generation of Americans refused to consider.

Another commonly expressed fear was that government
telegraph meant party control. Telegraph service, editors
feared, would become a patronage plum for the party in
power. Editors seemed inclined to accept Western Union's
position on this point. Western Union managers had suggested
that instead of being popularly received, government tele-
graphs in Europe were bitterly disliked because of the cen-
sorship imposed. "In France, in Spain, and in other countries
the abuse of this power is notorious," Western Union editors
said. That censorship would be equally odious in this
country, especially in times of political excitement. The
"political element" would "infest" every telegraph station
preventing the free use of it by political opponents. The
telegraph, they continued, would be dominated by the "Ku
Kluxes of the reigning party . . ."

Hunt's noted that the English plan to unite the tele-
graph and post office system was probably done so for politi-
cal considerations. ". . . the Fenian, bread, and reform
questions," it noted were exciting uneasiness in England,
"and the Government may desire to place itself in a position
to control the entire news of the kingdom in case of
trouble." The Tribune argued that in free countries government was largely an affair of parties. It thought it ill-advised to have the telegraph under party control in excited presidential elections. "Could the people implicitly trust it? Remember how the mails were rifled under Jackson, with the tacit approval of Postmaster-General Kendall, on the assumption that it was right to take and burn Abolition documents if circulated in the Slave States," the Tribune cautioned.

Finally, editors accepted Western Union's contention that government telegraph after becoming part of the spoils system would render inefficient service. Hunt's argued that government telegraph promised little else than an increase of government power and patronage for political purposes. It would not be interested in good public service, an indis-pensable element for private companies. The New York Post asked sarcastically, "Are government patronage and office-seeking so excellent and elevating that it is useful to increase both enormously by adding largely to the number of men employed by the government?" It thought not.

The country had a post office the Post observed but anybody in a hurry employed a special messenger or private despatch for delivery. It doubted that a government telegraph
would be different. Thus Western Union enjoyed what Parton had termed "a strong and wide-spread feeling out of doors."

The adverse House report of February 1869 reflected that feeling and Western Union's lobbying activity, also revealed questionable aspects of Washburne's and Hubbard's ill-conceived bills. The government, it said, rejected regulation in the 1840s "in a formal and decisive manner" when it refused to purchase Morse's patent. Subsequently, telegraph companies developed by state-chartered private companies. In 1866, Congress passed a national telegraph act. The Washburne and Hubbard bills, the committee reported, infringed on provisions of the 1866 act. That act imposed stipulations on telegraph companies with assurances that the government could purchase the lines five years after a fair evaluation. The committee viewed the act as a "solemn compact between the government and these corporations" which accepted it. Telegraph legislation passed prior to its five-year expiration would be a breach of that compact, and "hostile to the spirit of the contract into which the companies have entered by [the government's] invitation."

Thus, the postal committee took earlier telegraph reform legislation, which failed to accomplish its purpose, and
used it to frustrate further legislation. The committee evidently did not consider it essential to increase the government's institutional regulatory mechanisms. Committee members seemed to imply that after the five-year period the government could purchase the telegraph without previous experience and operate it successfully. They rejected Washburne's implication that preparation in anticipation of that task should precede actual government purchase of the lines or, perhaps, they were simply unconcerned. Very possibly they were rejecting Washburne's basic premise that the government should buy the lines when the chance came.

Equally significant the report contained items which Western Union had discussed, but gave them a clearer, more forceful meaning. It was the House committee, which interpreted the two bills as hostile to the 1866 act. Western Union may have influenced the House committee. However, the committee's predilections were in accord with Western Union's position at the outset. The end result was probably a better report than either independently would have produced.

The committee rejected the Washburne-Hubbard contention that telegraph and postal communications were analogous.

"... the telegraph is altogether a different matter," it said. Their contention that the two services were analogous
were vitally important to their bills. It formed a minor portion of their argument, but it connected their major economic arguments to constitutional provisions. Without the connection they had no basis for action; and on this, like Brown in 1866, they stumbled. What should have been their strongest argument was a tenuous, specious claim.

This dependence on argument by analogy was their undoing. In reference to this approach Perry Miller noted recently that the legal profession rose from a chaotic condition around 1790 to a position of political and intellectual domination before the Civil War. John Marshall, he continued, had been an important factor in the professions' amazing rise to prominence. And Marshall, Miller noted, quoting Horace Binney with approval, never "made 'analogy' the principal support of his arguments." Washburne and Hubbard had used questionable analogous reasoning to tie their proposals to the Constitution, but failed to provide convincing proof. Consequently they placed themselves in the awkward position of supporting the radical proposition of direct national regulation of telegraph service, without adequately tying that regulation to the Constitution.

Years earlier lawyers had realized that telegraphing introduced unique legal problems setting the telegraph aside
from easy comparisons with existing legal practice. In 1865, Theodore Dwight Weld, noted that "The right to reason by analogy from things which are settled in order to establish principles to govern things which are unsettled, can never be abandoned in any well-sustained system of law." However, he continued, "The greatest care is to be taken in these new subjects not to press the argument from analogy too far . . . In a subject so entirely new [as the telegraph], the analogies must necessarily be remote and difficult of apprehension." Like the lawyers, the House postal committee was more impressed with telegraphy's newness instead of its similarities to either the post office or other existing institutions.

The committee also discounted the bills' economic arguments and implicitly gave its sanction to telegraphers' solution of capitalization challenges, observing that "Every dollar which they expend in the enlargement or improvement of their property must be judiciously expended if they would escape a loss . . ." "Watered stock" was not an issue, the committee inferred. In this matter too, the committee went a step further than Western Union representatives had yet ventured in their public statements. If the government decided to buy the lines, appraisal should be
based on the value of the telegraph system, not its construction or reproduction costs. The purchase price should consider earning potentials of lines, not merely the cost of wires and poles. The committee thus accepted entrepreneurs' insistence that past telegraph mergers were valid economically, and agreed with Western Union's contention that earning potential, business relationships, a good name, and a national market could be capitalized.

The committee found other specific weaknesses in the Washburne bill. The Bankers and Brokers' Telegraph Company had organized several years earlier with an initial capital stock of $750,000—ten times the amount Washburne proposed. The Bankers and Brokers' Telegraph Company used the capital to construct a line between New York and Washington. The line had been in operation five years, it had good efficient management, yet it "has never been able to do more than pay its operating expenses, without allowing anything by way of dividend or interest on capital." Washburne's projected line capitalized at $75,000 would be a complete failure, the report confidently asserted. Rather than making a profit as Washburne argued, losses would result and increase the postal debt.

The committee rejected Washburne's attempt to use
European models to justify his bill. In Europe, it noted, governments owned railroads and express companies as well as telegraphs. European countries were smaller, more densely populated. Lines were shorter and carried a greater volume of business. Labor costs—sixty per cent of telegraph expenses—were higher in the United States. For these reasons it was impossible to use European examples as guides to American telegraph policy, the committee said. However, it accepted Western Union's rate comparisons and noted that despite the obvious advantages European telegraphs enjoyed, in many cases domestic rates were lower than comparable European charges. European telegraphs "can furnish neither guide nor precedent for the United States," it concluded.

The House committee reserved its greatest criticism for Hubbard's bill. "Mr. Hubbard . . . ask[s] for a charter bestowing . . . special privileges, from the enjoyment of which he frankly avows that he expects to realize a large profit . . ." the committee tartly noted. It used Congress's rejection of Sherman's plea for national incorporation of the National Telegraph Company as precedent in responding to Hubbard's bill. The committee was satisfied that Congressional refusal in 1866 to grant special privileges
or national chartering to private companies, served as precedent to refuse Hubbard's request. A principle of prime importance which the 1866 act settled, the committee concluded, was the federal issue of national non-interference with state matters.

Committee members were particularly impatient with Hubbard's glib dismissal of federal issues. Hubbard had argued "there was no such thing as vested rights or interests . . ." A state, he said, granted rights to companies, but that did not prevent other companies from obtaining similar charters. A state could at any time, "without any provision for compensation" grant charters for other corporations to engage in the same business. If a state could grant such charters "which may destroy the value of that possessed by the telegraph companies, much more can they perform the duty themselves," he concluded. Either he was not troubled by or he chose to overlook the important fact that his bill would not result in states performing telegraphing. Rather he sought national incorporation for a private company. And it would be a private company guaranteed a ten per cent return. He was, in short, glossing over federal boundaries. The committee did not accept the gloss in Hubbard's proposed legislation. "Even if [its]
constitutionality were unquestioned, it would inevitably lead to an unjust and embarrassing conflict between the State and general governments," the postal committee confidently maintained. The report continued, as if lecturing Hubbard, that he could use the same expedient which National Telegraph had been forced to resort to--organize under state laws. That way, it noted, Hubbard could "enjoy all the rights which are enjoyed by any existing company." And compared to the mid-1840s when the government turned down pleas for assistance in telegraph development, "it is certainly much more easy to procure capital . . . now than it was for Professor Morse and his coadjutors . . ."

The committee accepted Hubbard's argument that governmental functions were exclusive. However, it noted that his bill left telegraphing to private parties. Worse, committee members feared, Hubbard's bill created a division in telegraphing between private and public authority without adequate definition of responsibilities. "With this divided control and divided responsibility what chance has the public of being well served?" the committee asked. Instead of giving government exclusive control over telegraphing, the postal committee feared that Hubbard's bill would divide control and make it practically impossible to sue for damages
when errors were made transmitting telegrams.

Its criticism also extended to Hubbard's contract plan. No real analogy existed between mail contract service and contracts Hubbard contemplated, the postal committee averred. Steamboats, railroads and coaches carried mail, but these contracts represented "a small and altogether subordinate part of their business." The telegraph offered communication service exclusively; it could not be cheapened by alliance with something else. Telegraph systems had no employment other than sending messages. Unlike railroads and other agencies transmitting mails, the telegraph had to pay its entire costs. And if a contracting company lost its contract, under Hubbard's system, it would lose its entire income and be left with a worthless line; a railroad losing a contract would lose but a fraction of its income. Moreover it was necessary to have mail contracts with railroads since their high cost prevented government ownership of them. If government intervention were essential in the telegraph industry, its costs were low enough to allow government purchase and operation of the lines on the basis of the 1866 act, the committee concluded.

Finally the committee reported Hubbard's plan to be regressive rather than offering improved service, as he
claimed. Hubbard's bill provided for postal telegraph
stations in towns over 5,000 population. The census of 1860
showed 313 such towns, which represented less than a tenth
of the towns then served by private telegraph companies.
The report concluded with the remark that "the more the con-
ditions of Hubbard's anomalous arrangement are considered,
the greater do its difficulties become."

The House report succinctly accorded Congressional
sanction to Western Union's position. It was a repetition of
1866 when Dennison's report had done the same. Only now, in
1869, that sanction was updated and included considerations
of European telegraph. The House committee accepted Western
Union's position that this was a "land of freedom and busi-
ness competition, [where] we shall probably do better . . .
[by] confining the functions of Government rigidly within
their narrowest limits."

It supported Orton's contention that the greatest
menace to the American people was governmental interference
with private affairs. It agreed with Orton's position
that Hubbard's bill represented nobody but himself and his
associates ". . . actuated by no motive except of making
[a] profit . . .". And it concurred in Orton's argument
that after the continuous losses telegraph investors suffered
in the past two decades, government action should not now threaten those investments.

The committee's conclusions served Western Union in an even more important manner. The company received, through government sources, a strong statement opposing major legislative alternatives. With its publication Western Union had two pamphlets for the price of one—the government printed and distributed the report; Western Union distributed its January pamphlet. In the future Congressmen opposed to telegraph legislation would be well supplied with materials on which to build their opposition. The two documents together presented arguments which advocates of telegraph reform would not be able to circumvent.

Congressmen were thus unable to expand traditional governmental power and authority to create counterweights to Western Union's expanded economic power. Whether it was Sherman's sponsorship of a private company, or Brown's attempt to enlarge government's power, neither public nor private initiatives to fill the lack in governing authority which had impressed Ostrogorski succeeded. Instead, adroit telegraph representatives exploited familiar Congressional practices and procedures to destroy pending telegraph legislation. Instead of being used to impose limitations on the
communications monopoly, Congressional institutions were bent to buttress their freedom from national restraints.

Within three years Congressional activities relating to telegraph regulation had come full circle. Initially, two Senators had put Western Union on the alert with their arguments and proposals. Western Union responded by creating its lobby and in 1869, the House postal committee improved on the arguments the lobby used to frustrate telegraph legislation. The Senate prompted creation of the lobby by their agitation of telegraph issues; the House helped perfect the position the lobby held. It appeared that the more Congressional agitation there was, the stronger Western Union's position became.
FOOTNOTES


3 U.S. Congress, Senate, Letter from the Postmaster General in Answer to a Resolution of the Senate of February 23 [1866], Relative to the Establishment of a Telegraph in Connexion with the Postal System, June 4, 1866, Senate Executive Document 49, 39 C., 1 S.

4 The phrase is from James Parton, "The Pressure Upon Congress," Atlantic Monthly, XXV (February 1870), 148.

5 The Journal was not started until the second half of 1867. It served the dual purpose of exposing weaknesses of telegraph bills and informing its subscribers of the latest scientific developments in telegraphy. Every Western Union office received it.

6 March 4, 1867-March 3, 1869.

7 The term "Hubbard bill" will refer to bills that would be introduced the next few years on behalf of Gardiner G. Hubbard of Boston. Although never a Congressman, Hubbard had several individuals from both branches of Congress sponsor his bills. To distinguish between the various bills introduced for him, all of which were similar, and other telegraph proposals, the writer shall refer to his bills as a "Hubbard bill" regardless of the individual who sponsored
it. Farnsworth introduced his first bill, but as it turned out Farnsworth became a staunch Western Union supporter in the House, and opposed Hubbard's bill after having introduced the initial Hubbard proposal.


9 The Interstate Commerce Act was not telegraph legislation as such. It was a general act which was amended in 1910 to include telegraphing. The approach to regulation through that act was entirely different from telegraph legislation Washburne and Hubbard were proposing. It did not attempt, through legislation, to set telegraph rates, as Washburne and Hubbard proposed.


11 Ibid., 7.

12 F. F. Mosse to Washburne, March 31, 1868, Elihu B. Washburne Papers, Library of Congress. Mosse was attached to the U.S. Consulate in London.

13 Like the post office the telegraph should be available to the great masses "without regard to the pecuniary profit to be secure . . ." Washburne argued. U.S. Congress, House, Paper on the Union of the Telegraph and Postal Service.

14 Ibid., 1-4.

15 Ibid., 4.

16 Ibid., 4. About half of his paper consisted of charts trying to prove that the European systems resulted in lower rates.

18 In December 1866 he had introduced a similar measure, but the House did not act on it. *C.G.*, 39 C., 2 S., 133 (December 14, 1866).

19 One cent for each word plus a three cent postage stamp at the dispatching end and two cents for delivery, were the rates in his bill. If private companies lowered their rates, the Postmaster General could reduce rates established by the bill.

20 U.S. Congress, House, *Paper on the Union of the Telegraph and Postal System*, 1-2. Washburne insisted that telegraphs were "open letters" forwarded by a "speedier means." *Ibid.*, 2. Contracts for constructing the line would be submitted to the Postmaster General and "opened at the department in the same manner as proposals for carrying the mail are now received and opened . . . ." *H.R.* 1083. House Legislative Records, HR 40-B1, May 18, 1868, RG 233, NA.


22 The bill is appended to *Ibid.*, 34-41.


29. Orton to George B. Prescott, June 1, 1868, Western Union's President's Letter Book, III, hereafter cited as WU III.


31. Orton to Painter, January 11, 1869, WU V.

32. Painter was the clerk at least as early as November 1867 and as late as April 1871. This information is contained in a letter to the writer from Mark G. Eckhoff, Director of the National Archives Legislative, Judicial and Diplomatic Records Division, July 2, 1970. Mr. Eckhoff secured his information from House expenditure vouchers and House clerk's ledgers.

33. Orton to Painter, Jan. 11, 1869, WU, V.

34. Norvin Green to Mrs. Green, January 30, 1869, Norvin Green Family Papers, University of Kentucky [Microfilm].

35. Orton to Painter, January 11, 1869, WU V.

36. Orton to Charles A. Tinker, January 13, 1869, WU V.

37. Orton to Painter, January 11, 1869, WU V.

38. Ibid.
Orton to Stockton, March 16, 1869, WU V.

Orton to James G. Blaine, July 6, 1868, WU IV. In this same letter to Blaine Orton confessed that the company's free business "is now at the rate of about eight hundred thousand dollars per annum, equal to a two per cent dividend upon our entire capital." Congressmen did not receive all the free business. The company felt constrained to offer free passes to state government officials and railroad representatives, and in many cases to railroad companies in return for use of their rights of way. For example, a contract between Western Union's predecessor, the New York and Mississippi Valley Printing Telegraph Company and a mid-western railroad contained a provision providing for free use of the lines by the railroad for its official business. This was a typical provision of many telegraph-railroad contracts. Robert L. Thompson, Wiring a Continent: The History of the Telegraph Industry in the United States, 1832-1866 (Princeton, 1947), 213.

"Log-Rolling at Washington," Atlantic Monthly, XXIV (September 1869), 374-75.


Ibid.

Western Union Telegraph Company, The Proposed Union, 128-35.

XLVII (June 1868), 441-43.

May 20, 1868.
Western Union Telegraph Company, *The Proposed Union*, reprinted, 125.

Ibid., 128.

Ibid., 128.


Ibid., 148.

*Journal of the Telegraph*, I (May 22, 1868), 5.

Ibid., II (September 15, 1868), 4.


CVIII (June 1868), 442.

*New York Post*, May 20, 1868.

Ibid. The *Nation* did not comment on the bills.


62 Ibid.

63 Ibid., 14.

64 Perry Miller, *The Life of the Mind in America From the Revolution to the Civil War* (New York, 1965), 109, 120.


67 Ibid., 8.

68 Ibid., 9-11. These rates were based on information in Western Union Telegraph Company, *The Proposed Union*, 7-8. The House document simply copied a portion of the Western Union statement in this case.


70 Ibid., 11.


72 Ibid., 28.


74 Ibid., 14. "The scientific work of transmitting messages would be done by contractors," the committee noted, yet committee members felt that "responsibility would not be felt by the servants of a contractor . . ." Ibid., 14.
Ibid., 13.

Ibid., 15. The House committee took this information directly from Western Union Telegraph Company, The Proposed Union, 119.

U.S. Congress, House, Report from the Committee on the Post Office and Post Roads, 16.

Journal of the Telegraph, I (December 2, 1867), 21.

Orton to Robert S. Hale, July 18, 1866, WU I.

Orton to E. D. Morgan, February 11, 1869, WU, VI: also to Alexander Ramsey, February 11, 1869, WU VI and to George Walker, November 18, 1868, WU IV.

Orton to A. Watson, December 7, 1868, WU V.
CHAPTER IV

REFORMERS' INEPTITUDES--AN ALTERNATIVE

Ostrogorski was impressed more with private efforts to overcome governmental inadequacies than with attempts to bolster government's power. Reviewing the post-war period he noted that "To obtain more durable and more regular effect than could be achieved by these spasmodic [private] efforts attempts were made to straighten the relaxed governmental spring by main force . . .," but he realized those attempts failed. Where the Russian observer argued that party organization and concern for material well-being were destructive of effective government, Charles Francis Adams, Jr. contended that governmental structure was a chief difficulty. He observed that the nation's legislative bodies increasingly "found themselves . . . crushed down by the ever-increasing volume of public and private business." Consequently, he continued, the real legislative work and decisions occurred in committee chambers. But, he complained, "Those committees are eternally fluctuating, are not peculiarly well-informed, judiciously selected, or free
from bias." Due to those fluctuations, he thought, "Knowledge cannot possibly creep into the legislature, because no one remains in [it] long enough to learn."

Adams defined a serious problem in his analysis of Congressional committee structure. He thought a possible solution was creation of bureaus or boards of commissioners, state and national, having charge of questions relating to major economic enterprises. Through such bureaus, he concluded, "reliable statistics could be collected, and these problems could be studied out and reduced to well-considered legislation . . . ."

Adams' recommendation would not augment government's power. The boards he envisioned would be information-gathering bodies only. They would not begin to strengthen government's spring as Ostrogorski implied needed doing. Lobbies, Adams complained, instead of fulfilling Congress's need for "well-considered legislation" afforded opportunities for corruption and resulted in "poorly conceived, unsystematic, unprincipled legislation." But there was no assurance that governmental information agencies could be more effective in collecting information than private agencies or companies.

The observations Ostrogorski and Adams made concerning
American public life have a partial validity for the telegraph question. In particular Adams had hit upon a crucial problem for legislators. When the Forty-First Congress convened in March 1869, of the three Congressmen who had been concerned with telegraph reform, two, Brown and Elihu Washburne, were gone and Sherman was no longer interested. Adams' contemporaries were sensitive to the extreme oscillations of Congresses' composition also. Within a few days after the new Congress convened, William Orton wrote his chief lobbyist, clerk of the House postal committee, Uriah Hunt Painter, "Six new members out of nine may make a decided revolution."

However, the structure of government in post-war America only partially accounts for government's weaknesses. Committees might fluctuate but chairmen usually enjoyed long tenures, and interested parties could work through a chairman. Fluctuations of more important committees was much less than for postal committees. As a result of the war Congressmen had learned the value of joint committees. In crisis times they had demonstrated the national legislature was flexible and could be employed for exerting national power. The problem, then, was not entirely government's weakness. Another issue was also involved--government might
be weak, but its weakness could be partially overcome through exploiting fully existing machinery.

The history of telegraph reform suggests an alternative to the complaints Ostrogorski and Adams registered. Two distinct approaches to telegraph regulation emerged by the middle of 1866. Regulatory bills sponsored by financially disinterested persons were balanced by similar bills sponsored by financially interested private parties. Advocates of bills for private purposes were sensitive to inherent potentials of existing governmental structures for securing legislation. Sherman, for example, enjoyed success in passing the telegraph act of 1866 on behalf of the National Telegraph Company. Even Gardiner Hubbard, seeking passage of a bill incorporating the company he sponsored, made impressive gains. The continuing failures of reformers seeking public telegraph regulation was striking compared to success for private regulation. Possibly those sponsoring public regulation were learning from their mistakes and failures.

But Cadwallader C. Washburn, a House member from

*Elihu and Cadwallader Washburn were brothers. However, the Illinois brother, Elihu, spelled his name with an "e." Cadwallader dropped the "e," so his name appears throughout this paper as "Washburn."
Wisconsin, continuing the efforts of his brother, Elihu, proved beyond doubt that amassed learning was an illusion. He introduced a bill providing for government purchase of the entire system of lines by the middle of 1872. Instead of building on successes and avoiding the mistakes of his predecessors sponsoring public relation, Washburn exaggerated their mistakes and the unattractive, disreputable aspects of their earlier proposals.

Brown, and Washburn's brother, Elihu, had been disgruntled with Western Union. Neither had a financial interest in the measures they sponsored. Purportedly they wanted telegraph regulation; in reality, they used Congress for attacks on Western Union. Discredit the telegraph monopoly, they implied, and the public will demand change. Alleged injustices against the public by Western Union, Brown and Washburne asserted, should be remedied by bold intrusions of governmental authority into that company's operations, despite the fact that they could generate no political support for their measures. And where no governing authority existed to correct telegraphing "evils" they disclosed, that lack should be corrected by government on the offensive; strong direct anti-Western Union actions should be taken, the two members of Congress implied. They were
unable to find an acceptable mean between the two extremes of private control and government operation of telegraph lines. If they could not have government regulation, they wanted government coercion.

In supporting his bill for government purchase of the nation's telegraph system, Cadwallader Washburn continued this anti-Western Union trend of his predecessors, but where they had shown only sporadic interest in telegraph legislation, he was persistent. It was as though he wanted to make national policy out of the opportunism which some editors exploited in response to his brother's bill of the previous Congress. In the last months of 1868 and into 1869 some members of the Western Press Association had supported Washburne's bill. "It is to the interest of the press to advocate the passage of the bill even if it never becomes a law," a correspondent informed William Henry Smith, editor of the Cincinnati Chronicle. "The Western Union Company are opposed to the bill, and if they once see that there is a strong movement throughout the Country in its favor—a reduction of rates will follow—and that is just what the Chronicle needs," he concluded. The editors who supported this plan saw that government attack was one method to achieve a kind of regulation. Throughout the period from
December 1869 through July 1870, Washburn adopted this strategy for his own. But by accepting the seamy side of reform agitation, by accepting the method of attack implicit in his predecessors' strategy and endowing it with a greater measure of personal bitterness, he discredited himself through misusing, even abusing existing governing institutions.

Washburn introduced his bill in January 1870. It was based on the 1866 telegraph act authorizing the government to purchase the nation's telegraph lines after 1871 if Congress passed enabling legislation. Washburn's bill provided that after July 1872 it would be illegal for private parties to send telegrams for hire. All lines would be government operated after that date. Between May and December 1871 appraisers from private companies and government would evaluate private lines by three methods: their reproduction value, their value as a means of earning dividends, and their value based on stock prices the twelve previous months. The average of the three figures would be the "true basis of value" for purchasing the telegraph system, the bill declared.

The Wisconsin Representative knew the issues involved, the objections to previous bills, and the nature of the opposition he faced. He had been in Congress the previous
session when the postal committee rejected pending tele-
graph bills, and had access to all documents relating to
those bills. And since his bill was only an extended version
of his brother's earlier bill, that bill's failure should
have been instructive. In short, Washburn had access to the
nation's accumulated experience in considering telegraph
legislation.

However, Washburn was humorless in approaching telegraph
regulation and with frightful consistency turned every asset
or potential asset into a liability. He relentlessly, per-
haps inadvertently, disqualified himself from effectively
promoting the bill and objective he sought. Instead of
avoiding mistakes of his predecessors, he responded robot-
like, as if he had been programmed with their every mistake,
weakness, and false argument. From the outset, he constructed
needless stumbling blocks to successful passage of his bill.

Washburn's analysis of telegraph problems paralleled
that of earlier proponents of regulation. In terms of this
analysis and his proposed solution, like his predecessors,
he constructed a solid theoretical structure. But by his
time it had become clear that any correlation of this model
to the real world was fortuitous. The key points of his
December speech were the very ones the House postal committee
had only recently rejected. He stridently insisted that
telegrams and letters were analogous, that foreign tele-
graph statistics had great value in guiding legislation
governing domestic telegraphs, and he rejected the postal
committee's contention that Western Union's capitalization
methods had been a necessity growing out of particular prob-
lems it confronted. In accepting and monotonously repeating
these tiresome arguments, Washburn demonstrated his inability
to suggest new approaches to telegraph regulation.

At one point, however, Washburn appeared to be on his
way in promoting his bill. After introducing it he asked
for and was granted a select committee. If he hoped to
achieve any results at all, this maneuver was imperative
since Western Union had the ear of the postal committee.
Washburn thus avoided successfully the postal committee which
would have blocked his bill had it gone there. He had rightly
based his bill on the 1866 legislation. Justification for
his measure thus pre-existed, but in doggedly retaining the
old, discarded categories Congress had rejected, in
supporting his bill with flimsy, lifeless, discredited argu-
ments, he guaranteed the practical impossibility of securing
legislation. He should have used the postal committee's
adverse report as a warning, not as a guidebook.
In his December speech Washburn impugned the integrity of the postal committee and indirectly the House. He caustically accused the postal committee's chairman of using inappropriately Western Union's pamphlet published shortly before the committee's report. And he chided his House colleagues for needlessly wasting ten million dollars on Alaska, when a lesser sum, he claimed, could legitimately purchase Western Union's entire system of lines.

From the outset it was obvious that Washburn was not interested in passing enabling legislation based on the 1866 telegraph act. Instead he tried to bend his select committee to his personal desire of expressing animosity toward Western Union. He did not use it to examine the expediency of purchasing the nation's telegraph system, as provided by the 1866 legislation. In effect, he asked his committee and House colleagues to forego their role in determining that question. The answer to that issue was that obviously it should. There could be no legitimate doubts on that point he persistently implied, in both his House speech and by his activities as chairman of the select committee. Instead of considering the expediency of purchasing telegraph lines, he tried to impose standards of evaluation and vehemently insisted on setting an upper limit.
for a purchase price. He simply bypassed the very reason
for which the committee had been created. It was as though
he were operating on the premise that if his committee could
force a good bargain Congress would buy.

"The true basis of calculation," he wrote in the
committee's report, "is to ascertain the cost of erecting a
mile of poles with a single wire, and multiply it by the
number of miles of poles . . ." In the final evaluation,
he asserted, the government would be concerned only with the
company's lines. Its franchises, real estate, and other
collateral, its relationships with stock and produce
exchanges, banks, press associations and railroads, all of
which had wire service to their offices and branch offices,
were of no concern to the government, he claimed.

Western Union, on the other hand, insisted that fran-
chises and other collateral property had to be taken into
account. Its managers refused to accept the primitive con-
cept that capitalization should merely reflect the value of
its physical property. Property had taken on new forms--
patents, franchises, relationships, were all property. For
example, in an interchange between Orton and Washburn during
committee hearings, Washburn asked for the actual cost of
telegraph lines. Washburn was searching for a specific
figure, but Orton observed that "there is a good deal of expense that does not appear" in actual construction costs. "A corporation starting anew and building its line before commencing to do business, would have all the expense of superintendence and executive control, in addition to the actual cost of putting up the poles and wires . . . [W]hile we have accepted the provisions of the law of 1866 . . . we do not propose to be a party to a sale of our lines upon a basis which estimates the value of our property simply by so many thousand poles, and so many tons of wire. I do not admit," he continued, "that the cost of our lines or the value of our property is a proper subject of investigation by this committee. Whenever Congress decides to purchase, we are entitled to select half the jury which is to decide the question of value. When that time arrives we shall claim that all our facilities, contracts, and franchises, as well as our poles, wire, and apparatus, shall be treated as property, and valued with reference to their united capacity to earn money. The question of cost need not be raised at all," he rightly concluded.

Orton was correct when he complained to Noah Davis, a committee member, that "It would be decidedly unfair for your committee, which has nothing to do with the question of
the value of our property to enter upon an *ex parte* investigation of this subject." The purpose of the committee, he continued, was to investigate the policy or expediency of government purchase of telegraph companies, not evaluation. A year later, James Beck of Kentucky, another select committee member, informed his House colleagues that "I do not think the bill before the select committee even approached compliance with the terms of [the 1866 telegraph] law. It undertook to determine in advance the basis of value, in which the value of the franchises granted by the several States, and the . . . certain future increase in value of the lines are ignored." The House postal committee had only recently rejected the telegraph bills of the previous Congress with the observation that they were hostile to the spirit of the 1866 act. Washburn's bill would have rewritten completely the 1866 legislation.

He may have been within his rights trying to impose conditions limiting evaluation, but he simply tried to accomplish too much in a single bill. He injected unnecessary concerns into his bill, thus making it too complicated for Congress to consider. It would have been difficult enough to get Congressional approval for an enabling bill alone. But by redirecting his committee's work to concentrate on
evaluation, he made Congressional passage of his bill impossible.

In shunning the narrower, but complex question of exploiting the 1866 act, he sought a new government telegraph bureau and an appropriations of at least eleven million dollars. In addition, inclusion of his evaluation guides would mean that government economic policy would be drastically redirected. Instead of promoting justice, government would have been transformed into an agency attacking successful private economic endeavor. Any one of these objectives was hard enough; collectively they must have appeared as a hoax to Washburn's contemporaries. Washburn was asking for the ludicrous.

He tried to accomplish too much by introducing needless issues, but worse, by introducing those issues, he assured that Congress could not discuss his bill even if it were inclined. He had been responsible for introducing the question of evaluation, and Congress would have had no choice but discuss it. But such a discussion was impossible on the House floor. Congressmen simply did not have the technical information to consider the issues Washburn raised. There was only one place for the discussions he tried to force to the floor--to have given evaluation considerations
adequate treatment, several select committees working several months, perhaps years, would have been required.

Washburn had been enthusiastic about actions taken by the English government which was in the process of purchasing that nation's telegraph system. But he could not follow its example when it came to practical considerations of how to effect the change in ownership. Instead of the dubious ethic of attacking private telegraph companies, the English government paid private companies the value of their lines, offices, plus an additional amount based on the companies' net profits for the past twenty years. In the case of one recently established company, compensation was based on the loss of prospective profits. Thus, the English government clearly allowed considerable sums for the risks companies had taken and considered the earning power of the different companies. And instead of Washburn's impatience the English took four years of investigation and legislative activity before purchasing private companies.

Washburn revealed an additional questionable tactic in securing support for his bill's passage. The postal committee's adverse report of the earlier session had stated that one reason for rejecting pending bills was that none had any popular support; no petitions or memorials had been
presented in their behalf. Evidently Washburn was insensitive to that criticism. The committee's hint of generating political support eluded him. Instead he busily collected documents from foreign governments and appended them to his House speech and stuffed his committee's report with them, but had little other support. It was as if he were making a study of comparative telegraph systems; not supporting a bill in the United States Congress.

However, he made at least one tardy effort to secure domestic support. He asked Wisconsin's governor, Lucius Fairchild, to mention his telegraph bill in the annual message to the state legislature, hoping to get a petition of support from it. Fairchild replied that the request arrived too late, and, he said, "From my utter ignorance on the important matter I could not make any allusion to the matter." The governor observed that "Few men are posted on the question." Thus, Washburn failed to secure support of his state's legislature because of his bumbling efforts. He had been more concerned with securing piles of documents from European nations rather than support from his own constituency. Otherwise his only support came from his brother Elihu, in Paris, who sent French telegraph information, and B. Gratz Brown who thought he could get the Missouri General
Assembly to petition favorably for his bill. Brown's support came, but several months late. A year later, Beck observed in the House, "Our committee was organized nearly a year, and I am not aware that a single petition was ever laid before us, or a single request made by any citizen who patronizes the telegraph, asking for a change in the existing system. Our people," he continued, "are not generally backward in making their grievances known and if any serious mismanagement existed, or if any grievous extortion or favoritism was practiced or resorted to, we would certainly have heard of it." Little wonder Washburn made no headway.

* * * * *

Adams and Ostrogorski might well complain of governmental inadequacy with men like Washburn representing the government. Washburn succeeded only in discrediting government reform. He consistently failed to employ existing governmental institutions effectively. Gardiner Hubbard, contrasted to Washburn's fumbling and political insensitivity demonstrated that an alternative approach to telegraph legislation existed. He made considerable progress gaining support for his postal telegraph bill.

By the spring of 1869 it was clear that Hubbard was playing a role which impressed his contemporary, James Parton,
as being essential and necessary for government. Lobbying, Parton argued, was as ancient and as legitimate as governing, "since the governing power is in need of the special knowledge which it is the proper office of a lobby to supply." Western Union had filled this role in 1866, responding directly to the Postmaster General's inquiry. Subsequently, it supplied information without governmental requests. By 1869, however, Hubbard was competing with Western Union, claiming to be a legitimate source of telegraph information. And concomitantly, he was trying to generate support for postal telegraphy from House and Senate members.

Hubbard had started securing support for his bill in 1868, knowing practically nothing about telegraph operations. He knew little of Congressional operations and few if any Congressmen. However, from 1868 and into the '70s he worked assiduously and developed knowledge of telegraphy and Congressional operations. He started by securing information on telegraph wire and letters of introduction to Congressmen from Abram S. Hewitt. Hubbard had thus decided on a two-sided approach. He would secure backing from Congressmen and Senators where possible, and to give his case credibility he would collect information with the objective of offering Congress an alternative source of telegraph data.
When the Forty-First Congress convened Hubbard enjoyed no special advantage over Washburn. His bill had only recently been adversely reported by the House postal committee which simultaneously rejected the bill Washburn's brother had proposed. Instead of a defeat, that adverse report caused Hubbard to seek alternative approaches to Congress. Realizing that Western Union had the House committee's ear, Hubbard turned to the Senate postal committee, and succeeded in getting his bill reported. In addition he received the endorsement of Postmaster General Alexander Randall, who replaced Dennison in July 1866. Randall accepted Hubbard's position without reservations, and informed the House postal committee, in Hubbard's behalf, that the bill combined "the advantages of private enterprise and governmental control . . . while the principle defects of each are avoided."

Although these were victories for Hubbard, they were only minor successes. Postmasters General had encumbrances as tenuous as House members. And the bill the Senate reported was little less than a moral victory for Hubbard. It did not have provisions for incorporating a postal telegraph company, and a new Congress would convene in a few days. Thus the Hubbard bill could not receive Senate consideration. Significantly, however, Hubbard had the
capacity to build on his past successes and failures.

During the remainder of the Fortieth Congress and the short session of the next one, Hubbard intensified his lobbying activities. His successes were less impressive than Western Union's, but his influence grew and his lobbying competence increased appreciably. His failure to get a favorable House report on his postal telegraph bill could not stop him. Time, he realized, was his ally since he enjoyed exemption from dangers of election defeat. Hubbard had won an important ally in the Senate postal committee and would continue to exploit that alliance to its full extent. Alexander Ramsey, Minnesota Republican, was chairman of the postal committee. Less than two weeks after the new Congress met, Ramsey introduced another postal telegraph bill for Hubbard. Hubbard had thus gained the confidence of one postal committee, to balance Western Union's hold on the other. He also sought to gain support from the new Postmaster General, John A. J. Creswell. He asked Creswell for an interview to discuss telegraph matters. He rightly pointed out that the last Senate postal committee had supported his measure. Judge Hoar, Secretary Boutwell, and Senator Charles Sumner, he told Creswell, "would undoubtedly allow me to refer to them . . .". His hope of winning
Creswell's support proved to be a false one since the Postmaster General opposed his plan. However, Hubbard's effort indicated that he was as thorough in his lobbying as he could be.

Hubbard suffered the disadvantage of depending on foreign telegraph data. Unlike Washburn he did not have the opportunity of enlisting government resources to gather telegraph information. Washburn had been right in insisting that the government did not have adequate information to evaluate the nation's lines. He was also correct in implying that the 1866 telegraph act had not considered practical problems of purchasing the nation's telegraph system; evaluation standards would have to be set. But instead of creating a bureau or commission to gather data over a period of time and establish evaluation standards, Washburn tried to force those critical issues aside through a simplistic dependence on foreign statistics.

Compared to Washburn, Hubbard had no chance of exploiting governmental institutions to gather telegraph data, but he tried to create a private telegraph bureau, as it were. In 1868 he had asked Hewitt for information on telegraph wire, but like the Postmaster General in 1866, Hewitt replied that the only reliable source was Western Union. He next
applied to Western Union directly, asking the company to submit copies of statistical reports to the two postal committees. Orton rejected Hubbard's overtures, with the observation that if Congress thought the information was vital as he implied, it could apply directly.

Subsequently, Hubbard secured the assistance of a former Western Union official, E. D. L. Sweet. Early in 1869 Orton confessed to his most trusted assistant that he was "greatly surprised" to learn that Sweet "was in Washington working against us. Sweet is still there acting as a clerk to Hubbard," Orton wrote, "and posting him so far as his limited knowledge enables him to do so concerning our affairs." Sweet had only recently retired from Western Union after twenty years of service. He evidently performed satisfactorily since the company gave him a surprise testimonial retirement dinner and table service worth a thousand dollars. Within a short time of his retirement, Hubbard had secured his service.

When Hubbard tried to gain Creswell's support, he rightly informed the Postmaster General "I have spent a year of steady labor upon this subject and have obtained very many facts and statistics of importance . . ." There is little question but that Hubbard expended every energy to overcome
the disadvantage of inadequate telegraph statistics.

It was obvious by the spring of 1869 that Hubbard had become an able competitor to Western Union in telegraph lobbying. It was equally obvious that Western Union managers were sensitive to his growing influence. They knew Hubbard used European statistics as evidence supporting his telegraph bill. To offset possible impacts of that information, the company sent "a practical man abroad to gather information by actual observation as well as by conference with managers of foreign lines . . ." It was largely Hubbard's threat which impelled Western Union's officers to send a representative to Europe. Brown and Elihu Washburn were no longer members of Congress, and Cadwallader Washburn had not yet broached his proposal.

After Ramsey introduced the new postal telegraph bill in the Forty-First Congress, Orton observed that Hubbard was "still pushing his scheme; and although nothing will be done at the present session in respect to it, he is entering his wedges with the intention of beginning to drive sharply next winter." He feared that Hubbard's opposition would "prove more formidable than anything heretofore."

Hubbard's lobbying activities and successes evoked admiration from the Boston Daily Advertiser. It reported
that Hubbard was "well satisfied with his winter's work in postal telegraph matters," and was confident that he made an impressive beginning in telegraph reform. "The friends of cheap telegraphy will continue to agitate the subject through the press and political meetings . . ." it continued. Within two years, the Advertiser confidently concluded, the system will be adopted.

In the summer of 1869 Hubbard added a new element in laboring to secure passage of his bill. The postal committee's adverse report pointed to the lack of supporting petitions and memorials for the telegraph bills it had under consideration. Hubbard took this hint, and throughout the summer of 1869 made trips to major cities and trade conventions trying to generate support for his telegraph bill.

While Hubbard made these trips and speeches, Washburn began collecting information from European nations.

Hubbard failed to create the wider public support he needed, but at least he had tried. When Congress met in the winter of 1869, he was back in Washington working for his bill's passage. He continued energetically and sensibly to support his bill. Unlike Washburn, Hubbard had little choice but to justify his bill with the arguments the postal committee had rejected only a few months earlier. His
projected company was based on the ideas the committee rejected. He had no alternative such as Washburn enjoyed of working through a select committee, or having a pre-existing bill on which to base his act. But rather than attack the postal committee or Congress he played down the committee's report.

Where Washburn challenged the postal committee's integrity, accusing it of inappropriately using Western Union's January 1869 pamphlet as the basis of its report, Hubbard remained silent about the report. To do otherwise could only hurt his cause. Publicizing the postal committee's work would publicize arguments which he knew were difficult to refute. Washburn's attack on the committee's work and his castigation of Congress generally for the Alaska expenditures, probably weakened Washburn's government telegraph cause. Certainly it was not good strategy to alienate Congress when its approval was necessary for passage of his bill. Yet that was Washburn's tactic. Hubbard had to be particularly careful since any telegraph bill the Senate might pass would probably be referred to the House postal committee. Sensibly enough, he avoided throwing aspersions on that committee's work. His silence concerning the committee's work irritated Orton, who later wrote James Beck,
a member of Washburn's select committee, "I am struck with [Hubbard's] great capacity for silence in respect of the fact that the House committee on Post Offices had this subject under consideration during two Sessions . . . and made an able and exhaustive report condemning the whole scheme of Governmental interference . . ." 47

Hubbard maintained the lobbying pace he had established. Where Washburn evidently placed reliance upon documents, Hubbard hoped to discount documents and arguments and rely on votes to secure his bill's passage. Later in the session Orton complained to Painter that Hubbard "vibrates from one end of the Capital to the other and between one committee and another so regularly that he may by and by be looked upon as a part of the Congressional clock-work. . . . I am inclined to believe that a little of Sheridan's Indian policy would be good for him," he continued, "and if not scalped he should doubtless have his head shaved at the earliest opportunity.--Pray keep this to yourself," he concluded, "and drop the hint when and where you think it will do the most good." 48

Orton never expressed a similar concern about Washburn's activities. Instead he confidently dismissed Washburn's efforts. "Members of the House assure me that it is
of no consequence what his committee reports . . . ," Orton wrote his Chicago manager. Congress "will not now entertain a proposition to buy telegraph lines and embark in the business on any terms."

Western Union's only obvious anti-Washburn move was in obtaining an editorial in the New York Tribune evaluating the English telegraph system a month after the government took over its operation. The Tribune's correspondent, G. W. Smalley, writing from London, noted that the experiment had been a "disastrous failure . . . [T]he English Telegraph has been one of the best in Europe," he observed, but "now, is the worst." Service was erratic, unreliable, messages were garbled, and frequently copies of telegrams arrived by mail quicker than wired messages. An English Press Association, he continued, had despaired of the telegraph and used carrier-pigeons to report racing news. He described an overall picture of confusion, and injury to press services and to business enterprises from the poor service.

Smalley's evaluation described a situation reminiscent of conditions in this country in the late 1840s and early fifties, where "Inexperienced telegraph operators, inadequate facilities, lack of coordination . . . and ruthless
competition for telegraphic service among rival papers" made for great confusion and general dissatisfaction on the part of telegraph companies and newspapers alike.

Smalley's article inferred that the English were suffering in 1870 what Americans had experienced prior to Western Union's consolidation. In responding to the Postmaster General's 1866 request for telegraph information, Western Union managers had noted that an important reason for consolidation had been the improved service a unified system offered. A fact of great importance for businessmen was the great reduction of errors, their response indicated. It noted that previously businessmen smarted under losses of errors by which sales were made instead of stopped, or purchases made on false quotations. By uniting fragmentary lines into one vigorous organization, repetition, delays, and divided jurisdictions were avoided.

The Tribune article implied that the English had needlessly induced confusion into that nation's telegraph service. Through its action it had created the chaos which private initiative earlier had corrected in this country. In the forties and fifties American press managers had used carrier pigeons as adjuncts to inadequate but rapidly expanding telegraph facilities, not as a substitute for
artificially created confusion. Little wonder that Orton expressed only minor concern with Washburn's bill. Orton was probably right when he informed a company director that "this [editorial] will complete the demoralization of Washburne [sic]."

Evidently Orton had worked with the Tribune in getting an article on the English system. The day it appeared he informed Whitelaw Reid of the Tribune staff that it "more than realizes all my expectations. . . . In this connection," he continued, "let me record my thanks for the prompt and efficient support which the Tribune has given, and please say to Mr. Greeley how grateful I am for the generous response he has always made to every request of mine. . . . I trust," he concluded, "you will not be slow to advise me whenever occasion arises for me to render yourself, or the Tribune, a service." And since Orton had such an excellent editorial he exploited it for its political impact. He sent five hundred copies to his Washington manager with instructions that "a copy be laid on the desk of each Senator and Representative. Please have this carefully attended to . . ." Orton cautioned him.

In reality Washburn had few alternatives open to him, and his approach had one element of rationality about it.
From the standpoint of economy his insistence on imposing strict evaluation limitations was understandable. It was essential, he must have reasoned, in an economy-minded Congress. Even Washburn's brother Elihu, who supported his telegraph bill, displayed a greater fervor in admonishing his brother of his duties as a member of the appropriations committee to "put the knife to the throats of every appropriation not absolutely necessary." Orton rightly observed that Washburn's difficulty was "that Congress dare not at this time saddle upon the country the additional burden which would be necessary for the purchase of the telegraph." Henry L. Dawes, chairman of the appropriations committee and member of Washburn's select committee received numerous letters insisting on retrenchment in government expenditures, but nothing relating to government telegraphs. Beck, a member of both the select committee and appropriations committee, said that he knew from experience that the members of the appropriations committee "look with care, I must say with suspicion, on any proposition which takes money out of the Treasury . . . ."

Yet realizing this fact, Washburn did not respond appropriately. Regardless of the method of evaluation, any final purchase price would have been too high for Congress
to accept. But he completely overlooked another possibility. Members of Congress, especially those interested in telegraph legislation, knew the impossibility of obtaining impartial information. Conceivably Washburn could have used his select committee to correct that lack, and at relatively little expense, by proposing creation of a telegraph bureau. He could have created a government bureau operating in competition with Western Union and Hubbard. It would have been a logical starting point, especially given his desire to promote government ownership of the entire system. It was an essential starting point.

When Dennison applied directly to Western Union in 1866 in response to Brown's resolution one of his questions was "In case the government should want to buy out the Western Union . . . what would, approximately, be the price?"

Western Union responded in a one-sentence answer, noting rightly: "Acting as the trustees of our stockholders, we cannot affix a selling price to their property, which is in our charge merely to be managed for their benefit." And when Washburn brought up this same subject in his select committee hearings, Orton could again respond, rightly, that "while we have accepted the provisions of the law of 1866 . . . we do not propose to be a party to a sale of our
lines upon a basis which estimates the value of our property simply by so many thousand poles, and so many tons of wire. I do not admit that the cost of our lines or the value of our property is a proper subject of investigation by this committee. Whenever Congress decides to purchase, we are entitled to select half the jury which is to decide the question of value. . . . The question of cost need not be raised at all."

In 1866 Dennison had no choice but to ask Western Union for an evaluation figure if the likelihood ever arose that the government might purchase its lines. However, in 1870 Washburn enjoyed the authority of the 1866 telegraph act, and under its authorization could have created a telegraph bureau for the purpose of collecting information and setting standards of evaluation for government arbiters to follow should purchase negotiations ever be undertaken. His telegraph bill had provided for a general telegraph director with five divisional superintendents throughout the nation with their annual salary amounting to $31,000. Had he worked for a telegraph bureau that sum might have staffed it. Then enjoying full authorization, the bureau could have undertaken the task he mistakenly set for himself. The government would then have been in a position to collect
evaluation information. However, both before and after Washburn's select committee, the government could only offensively intrude into Western Union's business.

Governmental overtures to Western Union seemed to lack good faith—to be, in the words of Orton, ex parte investigations. Western Union enjoyed a moral edge because of this. Had Washburn labored for a bureau to begin implementation of the 1866 act, the moral edge might have shifted to the government's advantage. Instead, he created inadvertently a condition that the Windom committee would complain of a few years later relative to the nation's internal commerce. Windom's committee would note, in 1874, that the government had more detailed information relating to foreign commerce than to its own internal trade. His committee then recommended creation of a bureau of commerce to collect the data it realized the government did not have. But Washburn accepted the alternative Windom's committee rejected—foreign data, he insisted, sufficed in lieu of accurate domestic knowledge. Foreign institutional adequacies, he implied, compensated for domestic inadequacies.

Hubbard's activities indicated that alternatives to Adams' gloom about governmental structure and Ostrogorski's concern for government's weakened spring existed. Governmental
difficulties were not entirely a structural fault; instead Washburn's approach suggests that augmentations of reform ineptitude undermined legislative successes. Western Union enjoyed unquestioned influence with men in Congress, but Hubbard's growing successes indicate that the influence could have been diluted. It would require patience, and hard work but it might be done. However, Washburn never gave himself the chance.

His zeal for reform blinded him to the realities of legislative and modern economic development. He was so artless in his attempt to pass legislation that if he were plotted on a scale with Western Union and Hubbard, indicating relative degrees of influence over Congress, Western Union would appear at the top, Hubbard in the lower half, but Washburn would not register. Instead of exploiting existing possibilities he attacked entrepreneurial solutions to problems of economic development, which he thought were an affront to the public. In effect he rejected the modern economic world with its uncertainties, complex dealing, and new, intangible forms of property. Large nationwide corporations evidently loomed as a vicious threat before him. Yet rhetorical flourishes or descriptions of unmitigated evil could not effect the regulation he so fervently desired.
In a political economy with government geared to releasing economic energy this strategy was hopelessly misdirected. He was arguing, in effect, that government must punish the very success it championed. And in the end, Western Union more effectively "restrain[ed] the Government from over-stepping the proper boundary which divide[d] its functions from the domain of private enterprise," because of his awkward, bumbling efforts than through corruption or connivance with Congressmen or Senators.
FOOTNOTES


4 Ibid., 163-64.

5 "Boston," 17; "Railroad Inflation," 163.

6 Orton to Painter, March 16, 1869, Western Union's President's Letter Book, V, hereafter cited as WU V.

7 William Scott Smith to William Henry Smith, January 16, 1869, William Henry Smith Collection, Indiana Historical Library. Smith informed the Chronicle editor that the New York Post, Boston Traveller, and Chicago Post had already come out with articles favoring Washburne's bill. He also admitted that the Cincinnati Gazette had "taken a bold stand against the bill." Ibid. The writer thanks Mr. Les Benedict for this document.

9 See Chapter II, 44-48, 53-57, and III, 88-91, 93-104.


11 C.G., 41 C., 2 S., (Appendix), 1-7 (December 22, 1869).

12 Ibid., 709 (January 24, 1870). In addition to himself, William Lawrence, Ohio Republican, Henry L. Dawes, Massachusetts Republican, Noah Davis, New York Republican, Frank Palmer, Iowa Republican, George Woodward, Pennsylvania, and James B. Beck, Kentucky Democrat were the members of the committee. Ibid., 824.


14 C.G., 41 C., 2 S., (Appendix), 7 (December 22, 1869).


16 Ibid., 40.

17 Ibid., 25.

18 Orton to Davis, February 16, 1870, WU VII.

19 C.G., 42 C., 2 S., 640 (January 27, 1872).

20 In the committee's report, Washburn indicated that the committee calculated that the present value of a telegraph line of a first-class system "if [it] were to be constructed at contemporary prices would be worth an average of $11,500,000." U.S. Congress, House, Report on Postal Telegraph, 40.

22 In justifying his position to the House he attached charts and information from fifteen European nations showing rates, regulations, number of messages sent, gross receipts, expenditures and profits, to his House speech. C.G., 41 C., 2 S., (Appendix), 8-14 (December 22, 1869). In his select committee report, U.S. Congress, House, Report on Postal Telegraph, 55-67, 73-84, 87-91 were documents and tables from foreign nations. The report itself was fifty-five pages, sprinkled heavily with charts, letters and comparative examples of United States and European telegraph systems. Pages 91-150 contain testimony of Orton and Hubbard before the select committee. Three petitions from two states and a labor group were presented to Congress in behalf of the postal telegraph bill. None of the three are clear indications of support for Washburn. The one from the labor group was referred to the Senate postal committee, the committee favoring Hubbard's bill. Its stated purpose was support of a postal telegraph bill to break the Associated Press Control on newspapers. Senate Miscellaneous Document 13, 41 C., 2 S., January 10, 1870. A petition from the Nebraska legislature was the clearest indication of support for Washburn. The petition was referred to the select committee, May 2, 1870, but was vaguely worded. If it was support for Washburn, it used Hubbard's terminology, perhaps because his wording was more commonly known. "Postal telegraphy" was a phrase Hubbard had introduced earlier. If Washburn was behind the petition, he may have been trying to exploit any existing familiarity with government telegraphy. However, the petition was vague in another manner. It referred to a bill "introduced into the Congress." Several had been introduced. This fact alone suggests that either Washburn or one of his supporters might have sponsored the petition. Hubbard was usually more careful in his work. House Miscellaneous Document 133, 41 C., 2 S., May 2, 1870. The third petition came from the State of Alabama, and shared the characteristics of the one from Nebraska. Senate Miscellaneous Document 45, 41 C., 2 S., February 8, 1870.

23 Washburn to Fairchild, January 2, 1870, Box 27, Lucius Fairchild Papers, Wisconsin State Historical Society.
24. Fairchild to Washburn, January 12, 1870, Box 2, Cadwallader C. Washburn Papers, Wisconsin State Historical Society.

25. E. B. Washburne to C. C. Washburn, January 19, February 5, February 11, 1870, Box 2, Washburn Papers; Brown to Washburn, December 19, 1870, Box 2, Washburn Papers.


28. Hewitt to Hubbard, July 30, 1868, Gardiner G. Hubbard Papers, Hubbard Drawer, Bell Room, National Geographic. No other known Hubbard correspondence exists for the next three and a half years, except stray letters in other collections. Those stray letters plus Western Union's comments on Hubbard's activities form the basis for the subsequent discussion of Hubbard's Congressional endeavors.

29. C.G., 40 C., 3 S., 1651 (February 27, 1869).


31. C.G., 41 C., 1 S., 86 (March 16, 1869).


33. Hewitt to Hubbard, July 30, 1869, Hubbard Papers.

34. Orton to Hubbard, January 4, 1869, WU V.
Orton to Anson Stager, February 8, 1869, WU V.

Journal of the Telegraph VIII (December 1, 1868), 10. Sweet retired from Western Union July 1, 1868.

Hubbard to Creswell, May 13, 1869, Creswell Papers.

Orton to Prescott, May 4, 1869, WU VI.

During the hearings by Washburn's committee, Hubbard would complain that Orton "has ransacked Europe high and low for statistics . . ." U.S. Congress, House, Report on Postal Telegraph, 145.

Orton to Charles A. Tinker, March 20, 1869, WU V.

Orton to Prescott, May 4, 1869, WU VI.

March 20, 1869.

These trips included San Francisco, Philadelphia, Boston, Chicago, and New Orleans, and possibly other cities. Letter of introduction from William Claflin, Governor of Massachusetts to his friends in San Francisco, August 31, 1869, Hubbard Papers; Orton to Hubbard, November 25, 1869, WU VII; Hubbard, The Postal Telegraph, the only means by which the Telegraph can be made the Ordinary Method of Communication: An Address Before the Board of Trade and Commercial Exchange, Philadelphia, November 25, 1869, (Boston, 1869).

Washburn to Frank Scudamore, September 3, 1869. A copy of the letter is in Box 2, Washburn Papers.

The only evidence of support is a petition from the Massachusetts Legislature supporting his postal telegraph bill. House Miscellaneous Document, April 11, 1870, 41 C., 2 S.

Orton to Beck, January 27, 1872, WU IX.

Orton to Painter, May 25, 1870, WU VII.

Orton to Anson Stager, February 15, May 16, 1870, WU VII.

Smalley gave an example of a garbled message the Manchester Courier received under the heading of "Traffic": "Land and York's increase 0531 Bright's temporary retirement caused by tendency blood to head."


U.S. Congress, Senate, Letter from the Postmaster General, in Answer to a Resolution of the Senate of February 23, Relative to the Establishment of a Telegraph in Connexion with the Postal System, June 2, 1866, Senate Executive Document 49, 39 C., 1 S., 17-18.

Thompson, Wiring a Continent, 226.

Orton to George Walker, February 28, 1870, WU VII.

Orton to Reid, February 28, 1870, WU VII.
Orton to Charles A. Tinker, March 11, 1870, WU VII. In response to Washburn's committee report of July 1870, Smalley wrote another evaluation of the English telegraph system. Messages were still subject to delay, Smalley noted, and were accepted at the risk of the sender. He observed that there was no recourse for messages the government did not send. "The Post-Office has got your money and knows how to keep it," he claimed. He further indicated that when a postal official "was asked some time ago in Parliament whether money was not returned in such cases, he treated it as a joke, saying in substance that if the public chose to pay, after being notified of a probable delay, they had no ground for complaint." Smalley sent the article from London July 14, 1870. The Journal of the Telegraph reprinted it in Vol. III, August 1, 1870, 201.

Smalley continued by giving a personal example of the new system's inefficiency. A correspondent sent him a telegram from Paris, indicating he could do a certain task for a hundred francs. However, Smalley complained, "In the London office they seem never to have heard of French currency, and in the dispatch as it reached me, pounds was substituted for francs. The blunder cost me a trip to Paris." Ibid.

E. B. Washburne to C. C. Washburn, February 5, 1870, Box 2, Washburn Papers. Earlier Elihu had advised his brother, "Don't be so faint-hearted but when you see a foul scheme knock it." Ibid., January 19, 1870.

Orton to Thomas H. Willson, February 28, 1870 and Orton to Hugh Allen, March 10, 1870, WU VII.

For example, from an individual living in Bangor, Maine, Dawes received the observation that "we have borne the heavy taxes up to this time nobly." The writer thanked Dawes for resisting new taxes. "You have done the right thing for the country and have the hearty God bless you from all good men." Letter to Dawes, February 3, 1870, Box 20, Henry L. Dawes Papers, Library of Congress. The Dawes' correspondence for the 1870-'71 period contain similar letters.
61 C.G., 42 C., 2 S., 641 (January 27, 1872).

62 U.S. Congress, Senate, Letter from the Postmaster General, 22.

63 Western Union, Hearings on Government Telegraphs. Argument of William Orton, President of the Western Union Telegraph Company, on the bill to Establish Postal Telegraph Lines, Delivered Before the Select Committee of the United States House of Representatives (New York, 1870), 25.

64 Sections 12 and 13 of his bill, which is appended to U.S. Congress, House, Report on the Postal Telegraph, 158-60.

65 U.S. Congress, Senate, Report of the Select Committee on Transportation-Routes to the Seaboard, April 24, 1874, Senate Report 307 Part 1, 43 C., 1 S., 8, 241.

66 The phrase is in a letter from Orton to John P. Stockton, U.S. Senator from New Jersey, March 16, 1869, WU V.
CHAPTER V

TELEGRAPH REFORM AND LOBBYING

Gardiner Hubbard energetically continued his drive to secure a national charter for the postal telegraph company. In the summer and fall of 1869 he had tried to create domestic support from state legislatures and boards of trade, but with little success. He spent the following fall in Europe gathering telegraph data to support his position.

"I made inquiries in regard to the working of the Telegraph in Europe & heard but one report that it was working with the entire satisfaction of the public ... There was much delay and many complaints at first, but now everything is working well," he informed Henry Dawes.

More important, Hubbard succeeded in operating simultaneously through both branches of Congress. Initially he had worked through the House alone but its postal committee, under strong Western Union influence, blocked his proposal. He then secured the support of the Senate postal committee,
but could not get a bill to the Senate floor for discussion. In the Forty-Second Congress he worked through both branches, but avoided the hostile House postal committee by channeling his bill to the appropriations committee.

Hubbard had become an expert lobbyist by 1871. Orton did not exaggerate when he complained that Hubbard had become nearly a part of the Congressional clock-work. E. D. L. Sweet was still working closely with him. "We intend to see personally every Senator and explain our bill fully to them. I know a good many now," Hubbard informed a supporter, "and get those I know best to introduce me to others, and at the same time to speak a good word for me. Mr. Sweet," he continued, "has already had one interview with [Governor Reuben] Fenton and will see him again in a day or two. Yesterday we saw [Orris] Ferry [Connecticut Senator] and [Carl] Schurz of Mo. We had very satisfactory interviews with each of them, and I think they will vote for the bill."

He cautiously avoided alienating potential support by working through both parties. After his long stay in Washington during the winter and spring of 1871-'72, he could boast "I have made a great many friends this winter and no enemies." His key Senate backer, Alexander Ramsey,
was a Republican; in the House he could depend on another Republican, Francis Palmer, of Iowa. To balance politically Palmer's support, he won backing from Fernando Wood, who, Hubbard claimed, "can do more than most anyone in the House to help me as he had a great deal of influence with the Demo- 

However, the cumulative effects of Hubbard's continuous efforts to gain influence among Congressmen were of greatest importance. Immune to elections, devoted to his bill, and sensitive to Congressmen and Congress, by the Forty-Second Congress he was in a position to fulfill another aspect of James Parton's description of a lobbyist. A major tenet of the ancient art of lobbying, Parton noted, was the vote-trading mechanism of politics: "Help me to roll my log, and I'll help you to roll yours." This was the belief which motivated Hubbard. By the beginning of 1872 he had been in Washington four years, and in that time had built up considerable influence. In January 1872 he won backing from Thomas Scott of the Pennsylvania Railroad. Scott had two bills he wanted passed, and agreed to back Hubbard financially for Hubbard's support. It is impossible to know the exact amount of aid he received from the railroad executive, but at one point Hubbard indicated it might be from "one to
two hundred thousand dollars."

Shortly later he boasted "I had one of the most prominent candidates to see me last evening, Senator Trumbull. He thinks I have influence and he wants, therefore, my aid..." Harper's Publishing Company exploited his influence by retaining him to work at defeating an international copyright law and Cunard Stammers used his services in trying to get a mail contract between the United States and England. With the support from Scott, Harper's and Cunard he formed even more favorable contacts among Congressmen.

Throughout 1872 and early 1873 Hubbard was optimistic about the prospects for his telegraph bill. He was obviously gaining support and effectively worked the influence nexus. Dawes informed him that with Scott's backing the postal telegraph bill should pass. "It looks very hopeful," Hubbard observed, commenting on Dawes' evaluation. Later Hubbard optimistically informed one of his supporters that Orton, contending that the postal telegraph bill had little chance of passage was "nearer heaven than he anticipated. We have the unanimous report of the Committee of the Senate in our favor, which goes a good ways with many Senators. We have seen a majority of the Senate," he continued, "and they have
expressed themselves as favorable to the bill. . . . We have also several Senators engaged to speak in our behalf, among them are Senators [Alexander] Ramsey, [Charles] Sumner, [Hannibal] Hamlin, and [George] Spencer." In addition, he continued, Iowa and Alabama had passed resolutions favoring his bill and others were pending in Wisconsin, Minnesota, Maine, and California.

Hubbard was optimistic to the end, but in the concluding weeks of the Forty-Second Congress he realized that time was against him. "My combinations are now about made and I have only one obstacle to success, and that is the important elements of time," he noted. Time ran out; he failed. Congress adjourned in the spring of 1873 without considering his bill. His momentum had been building for several years and he feared rightly it might not regain the height it attained during 1872-'73. When he failed to get his bill considered in the spring of 1872 that caused no problem. It was only a delay since the same Congress would reassemble the following winter. But when he failed to get a vote on his bill before March 1873, the Forty-Second Congress adjourned destroying his hope for his bill's passage.

Hubbard's failure is not surprising. Other than his own intense drive, his ability to learn and his sensitivity
to Congressional maneuvering, he had little else in his favor. He exploited his assets to their fullest; his behind-the-scenes efforts in Washington were a model for any lobbyist. But he could not cancel obstacles composed of the built-in liabilities inherent in the bill he proposed.

Hubbard was behind from the outset. He started his campaign for the postal telegraph after Western Union had its lobby functioning and its Journal circulating. From the beginning then, he had to conduct a catch-up campaign; he never enjoyed an edge in a single important aspect of passing legislation. He won support from the Senate postal committee only after the House postal committee strongly rejected his bill. From that point on, although he enjoyed minor successes, he never caught up. Compared to sponsors of government telegraph bills he enjoyed tremendous success; compared to Western Union he lagged behind continuously.

Since Hubbard was not an elected official he was free from election defeats and could spend as much time in the nation's Capital as he desired. However, his primary opponent--Western Union--enjoyed the same immunity to election setbacks. In addition its spokesmen and lobbyists had access to immensely larger resources than Hubbard enjoyed. To this great imbalance in resources was the
added disadvantage that Hubbard had to pass a bill requiring
majority approval in both branches of Congress. Western
Union's task, on the other hand, was the simpler one of
blocking legislation in one branch.

Western Union had the added benefit of a Congressional
committee structure which could be more easily exploited to
block legislation than to pass it. By the nature of his
bill— premised on the close relationship of telegrams and
letters— Hubbard was forced to work through postal committees.
This dependence on the postal committee hurt him relative
to that committee's structure. Membership fluctuations were
very high for postal committees. Orton realized this in
March 1869 when he learned that six of nine of the House
postal committee were new. This high membership turnover
worked to Western Union's advantage. The postal committee's
chairmanship did not suffer the same extreme turnover
characteristic of its other members. And since the chair-
man appointed the committee's clerk, it was possible for
the chairman and clerk to enjoy a tenure much longer than
other members. Thus, they were likely to exert a pre-
dominating influence in the committee's work and its
decisions. This was precisely the potential Western Union
exploited effectively in blocking telegraph bills. Throughout
the period when Hubbard's strength grew, peaked, and waned, Western Union had the confidence of John F. Parnsworth, chairman of the House postal committee, and its clerk, Uriah Hunt Painter, Western Union's chief lobbyist. Parnsworth and Painter would have been formidable obstacles to junior members favoring Hubbard's bill.

Working through the postal committee was a handicap to Hubbard in another manner. The postal committee were not influential, nor were they a proper institution for reform. Their main concerns were routine postal matters. Even in areas unquestionably under postal jurisdiction, the committees found difficulty securing the floor for action on its bills. A bill from Ramsey's Senate postal committee involving changes in money order fees and creating a few new positions passed the Senate with only twelve members attending, although the record indicated a quorum was present. After the bill went to the House, Senator Edwin Morgan of New York asked the Senate to reconsider it, insisting that the Senate had been "too thin" to act on the bill when it did. William Fessenden of Maine agreed with Morgan.

Ramsey and John Conness, both members of the committee defended Ramsey's action of bringing the bill to the Senate
floor with so few present. Conness was angered by the Senate practice of not giving the postal committee adequate opportunity to place its bills for floor discussion. The only recourse, he thought, was passing the bill at an odd time when few were attending. He complained that the postal committee "is not composed of Senators that can get the ear of the Senate." Contrasting his committee with the finance committee, Conness noted that when Fessenden brought a bill to the floor "the Senate bows before him . . . and any day the Senator claims is the day of the Finance Committee, any hour that the Senator claims is the hour of the Finance Committee." Bills for military affairs, for the judiciary, for the District of Columbia, for bankruptcy and the Niagara ship-canal were considered, he protested, but "not an instant of time can be obtained by the chairman of the Post Office Committee . . . ."

Ramsey found it difficult to secure the floor for postal bills; it was even a greater struggle to get the floor for telegraph bills. Hubbard had secured Ramsey's confidence by early 1869. However, it took three years for him to bring the postal telegraph bill to the Senate floor. In April 1872 he explained the bill to the Senate without any debate being devoted to it. The following month, in
an evening session, he secured the floor for debate. Ramsey's strategy of using a night session to present the bill evoked harsh criticism from Senators favorable to Western Union. Roscoe Conkling suspected "that somebody, not in the Senate, of course, hoped that the bill might slip through in a little narrow isthmus of time between to-day and to-morrow, when half the Senate is away." After a two hour discussion he secured adjournment of Congress without another day being indicated for future debate. Thus Hubbard's postal telegraph bill did not receive lengthy House or Senate discussion other than in committee hearings, nor did it even come up for a vote.

Hubbard was partially responsible for this inability to secure floor discussion. His bill was very complex. It was probably impossible for him to simplify it and secure the company he sought. This was a built-in handicap which frustrated his efforts of securing a national charter. Abram Hewitt had supported Hubbard's hopes of effecting telegraph regulation, but he informed Hubbard that his bill was objectionable since it included "two totally different subjects . . . the charter of a company, and direction to the Postmaster General to make a contract." He advised Hubbard that Congress would react more favorably to his
bill if it were divided into two bills.

On the one occasion that Ramsey brought the bill up for Senate discussion, William Nye of Nevada observed caustically that "There is so much legislation in this bill that it makes me giddy to read it. I see nothing left to be done on the face of God's earth that the Postmaster General is not competent to take in hand, according to this bill." Nye slightly overstated the case, but essentially his criticism was valid. Conkling had been equally antagonistic to the bill for the same reason. If the Senate were adequately to consider it, Conkling insisted, a week's debate would be essential.

However, lengthy debates on telegraph bills were ruled out for practical purposes. The postal committees were busy with necessary postal matters the first months of each session. Postal committee document files in the National Archives for this period are full of materials relating to extending post roads and creation of new post offices. By the time these essential chores were disposed of, little time remained for telegraph considerations, and when telegraph bills were reported, a good portion of the session had passed. This did not allow much time to consider complex telegraph bills.
The time factor had also become involved in December 1871 when Henry Dawes of Massachusetts moved to establish a select committee to consider telegraph matters. President Grant, in his annual message, had recommended "favorable consideration of the plan for uniting the telegraphic system . . . with the postal system."

The Dawes motion came in response to that recommendation. James Beck of Kentucky and John Farnsworth successfully challenged Dawes and shunted the bill to the appropriations committee, chaired by James Garfield. Garfield, having a better comprehension of the time needed for considering telegraph legislation opposed Beck and Farnsworth, arguing that telegraph reform "concerns a great topic lying off in a field by itself, which ought to be examined, surveyed, and reported upon. And when the subject in its several aspects is ready to go before the various committees, they ought to have their say on it at the proper time."

Solid telegraph legislation, in his view, required work of a select committee, and then additional labor of existing "various committees," including appropriations, foreign relations, judiciary and postal committees: it could not be accomplished, he implied, in a short debate toward the end of a session.

Hubbard also suffered from being unable to secure good
leadership for his bill. Ramsey took up Hubbard's cause quite early—by March 1869. Evidently, however, he did not give it his full attention—at least he failed to demonstrate full commitment to Hubbard's telegraph proposals. Three years after Ramsey first reported a bill favorably for him, Hubbard confessed that he had to spend four hours with the Minnesota Senator, "preparing him for a speech on Postal Telegraph ... I had to write the speech and then explain it to him. I think he is pretty well posted now," he continued, "both in regard to the bill and his speech." Hubbard's admission is hard to believe. Ramsey had reported several bills for Hubbard in the past three years and supporting arguments in earlier reports were remarkably similar to those Ramsey used in the Senate speech Hubbard prepared for him.

Hubbard probably wrote the reports or major portions of them for Ramsey, which is understandable. Western Union evidently wrote an adverse report for the House committee; also understandable. The surprising thing is that evidently Ramsey did not devote effort to studying and understanding the arguments Hubbard used. Instead he required special tutoring when the time came for him to speak in Hubbard's behalf. Even then before his bill came up for
Senate discussion, Hubbard asked Thomas Ferry of Michigan to take charge of it since "He has much more influence and is a much better debater than my old friend, Gov. Ramsey." Ramsey was evidently Hubbard's reluctant second choice.

James Beck, an ardent Western Union supporter in the House, stood in sharp contrast to Ramsey. He required no special tutoring. Instead he took the initiative by writing Orton directly for information to use in opposing telegraph bills. The information he received appeared unchanged in a speech in January 1872 opposing all proposed telegraph legislation, and even earlier bills no longer pending.

Hubbard failed to assess accurately existing divisions among advocates of telegraph legislation. He optimistically informed his wife that his bill had a good chance of passing in 1872 or the next year since Washburn was no longer in Congress. "He is now away and his plan has no friends," Hubbard wrote. Reality was somewhat different. Grant's Postmaster General, John A. J. Creswell supported Washburn's plan, although he had no backing from Congress, and thus did not get a bill introduced. However, Creswell's support of government telegraph weakened the likelihood of Hubbard's bill gaining Senate approval.

Elihu Washburne had accused Creswell of being
"tender-footed" on the telegraph question. Defending himself Creswell claimed that before telegraph legislation he wanted should be passed, "the franking privilege must be abolished . . . What can I, or any other man, do with a telegraphic system, if telegrams may be franked as mail matter now is," he asked Washburne, or if the mails may be blocked every few days with mountains of worthless public documents and fraudulent franks?" He noted that his brother's bill was fine only if "we can first repeal the franking privilege." 33 In his annual report for 1871 Creswell insisted 34 that the franking privilege had to be repealed.

Contrasted to his apparently timid acceptance of Hubbard's postal telegraph Ramsey fervently supported Creswell's efforts to abolish franking privileges. He worked hard and persistently challenged hostile Senators in advocating Creswell's reform proposal. He took much abuse and ridicule on the Senate floor for championing an unpopular bill, but his labors were rewarded in an act abolishing free mail.

However, in securing the franking reform Ramsey reduced the likelihood of being able effectively to support Hubbard's bill. His energies were diverted to the franking bill, he alienated some Senators in supporting it, and
whatever vote-trading power he had was diluted by the log-
rolling necessary to pass the postal reform bill. Ironic-
ically then, by supporting abolition of the frank, a pre-
requisite Creswell thought essential for government tele-
graph, Ramsey supported a reform preparatory to a telegraph
bill he opposed and reduced his ability to promote tele-
graph reform he advocated.

Hubbard's buoyant optimism was unfounded by still
another harsh fact which intruded into his hopes. Although
Cadwallader Washburn's bill only had few friends, and evi-
dently none in Congress, Washburn's objections to postal
telegraphy were yet alive. "I could never get around his
objections," Hubbard noted referring to Washburn's comments
in committee hearings in the spring of 1870. However, in
1872-73 those same objections confronted him more frequently
than when Washburn was in Congress.

Washburn had agreed with the House postal committee
that postal telegraphy was premised on Hubbard's self-
interest, that it represented personal gain to him primarily
and that any larger public benefits were incidental. That
committee had rejected Hubbard's bill in February 1869 par-
tially because it thought the bill's sponsor sought through
"special privileges . . . to realize a large profit . . ."
But where the postal committee only asserted that Hubbard's self-interest was involved, Washburn in conducting his select committee hearings substantiated the charge by discovering Hubbard's motivation offering his bill. He also confirmed Orton's suspicion that Hubbard's attempt to influence Congress, "ostensibly in the public interest, [was] really in favor of the schemes of speculators . . ." During Washburn's hearings Orton indicated that Western Union owned approximately ninety per cent of the nation's telegraph lines. Several new companies had started since the Civil War ended, Orton said, and offered limited competition to Western Union. Hubbard became the spokesman for a portion of the remaining ten percent. He told the select committee that Western Union hoped "soon to possess all the existing telegraph lines in the country." As a result, he warned, "There will then be but one corporation upon which the entire country must depend for this service." He wanted to prevent that contingency, and he offered his bill as the method to retard what he thought was an inexorable movement to a complete monopolization of the industry.

Hubbard knew that effective telegraph regulation had to be national in scope. He planned to unite existing smaller companies into a major national system under the
postal telegraph company. "Combinations have been proposed to consolidate these companies into one large, strong opposition company," he told Washburn. The combination would reduce the companies' expenses and indirectly regulate Western Union through contractual arrangements with the government. Hubbard's co-worker, E. D. L. Sweet, asserted in December 1869 that most of the opposition telegraph companies were willing to come into a national system. He noted that "Hubbard is working hard and with good effect for his system."

Washburn had two objections to Hubbard's plan. First, he was concerned with evaluation standards for the companies Hubbard hoped to unite if the government purchased them, as he thought it should. During his hearings, Washburn asked Hubbard what criterion should be used in fixing evaluation on lines other than Western Union's. Orton had testified that the smaller lines were losing money fighting among themselves and with Western Union. Hubbard agreed they were losing money, but argued that if the government purchased them, their earning potentials had to be considered. He mentioned several small companies, some of which had only recently formed, and insisted that stockholders had invested in those companies to reduce telegraph rates and
with hopes of future profits. It would be unfair, he argued, for the government to pay the companies reproduction costs only or their current values after they bore losses competing with Western Union. Hubbard insisted that government purchase of the lines should be based on their future earning potential. Hubbard had emphasized this aspect of his plan in his summer speaking tour of 1869. He told a Philadelphia audience that existing companies had the right under his bill to sell their lines "to the contracting company, at prices above their market value . . . ."

Washburn had hard enough time accepting this type of evaluation method for Western Union, to say nothing of failing companies. Hubbard, he said, argued that government purchase should be based on the earning power of a future combination whose very success—whose very unification and enhanced earning power—was contingent upon a preceding government favor. In other words, Hubbard wanted the government artificially to boost the value of small companies before setting a price on them. Although capitalization would be limited to a range between $250-500 per mile of line, even that price represented a lot of water, Washburn implied, since some of the lines would be worthless without government's intervention through Hubbard's bill.
In the second place Washburn contended that Hubbard's rates were too low to pay operating costs and insure a ten percent dividend for Hubbard's proposed company. Addressing himself to Hubbard during his hearings, Washburn charged, "If you are losing money, you will not run the institution a great length of time, and the government will be compelled to take it. And if you are making money, and get more than it costs, you will keep it and go on with it. Yes, sir; certainly," Hubbard replied. Washburn concluded that it was "a one-sided operation; if it pays you run it, if it don't [sic] pay you throw it up." He concluded that if Hubbard's bill passed and the company succeeded its earning power "would be almost fabulous," but if it failed Hubbard would insist that the government must buy him out. The final result of Hubbard's plan, he thought, was "'Heads I win, 49 tails you lose.'"

Washburn probably oversimplified the issue somewhat since Hubbard's bill guaranteed the postal telegraph company a ten per cent return on its capitalization. Theoretically Hubbard might have been unconcerned whether the company was an economic success or not. Stockholders would receive dividend payments from the government if the company's income were too low to pay them. However, the important
fact was that Washburn's charge of one-sidedness stuck.

In December 1871 Beck, in opposing Dawes' motion to create a select committee to consider the portion of Grant's message relating to telegraph, quoted the lengthy portion of Washburn's report dealing with objectionable portions of Hubbard's proposal. On the basis of that report, Beck concluded that Hubbard's bill was "a swindling scheme," and used that argument for insisting that consideration of telegraph matters should go to the appropriations committee, since he thought it was "least likely to favor" telegraph legislation. And the following month, in a major speech to the House, he referred to Hubbard's bill as a scheme "to save a few weak and failing companies, which are now losing money by keeping up an unequal contest with the Western Union Company . . ." It was, Beck said, "only a desperate effort to save these struggling, dying, insolvent companies from the fate of all others, and subsidize the people of the country not only to save [Hubbard's] friends from ruin, but to make their now worthless stock not only pay them ten percent on its cost, but force the Government to buy the lines greatly exceeding what they paid for them . . ."

Beck was not alone in reviving Washburn's criticisms of Hubbard's bill. In conducting his appropriations committee
hearings on telegraph matters, Garfield heard testimony from R. B. Lines, a government clerk, hired by Postmaster General Creswell to collect telegraph data, which agreed with the charges Beck and Washburn enunciated earlier. Lines noted that as long as Hubbard's bill had any chance of passing, opposition companies would not sell their telegraph lines to Western Union at the usual low prices it paid for unproductive property. He thought it was "a very high proof of [Hubbard's] energy and talent that he has succeeded in inspiring and so long sustaining" hopes of opposition companies that they could be united into a single unified company paying a handsome profit. And when Ramsey finally got Hubbard's bill to the Senate floor, the first reaction to it was from William Nye of Nevada, who observed, "I can see an outlay of millions in it." Ramsey tried vainly to reassure the Senate that "The Government lays out nothing . . . ," but Nye noted that "There is a provision that the Government shall step in and take it if it is necessary. I understand that perfectly well," he continued. "It means a great scheme without anything under it." Nye opposed the bill on grounds similar to Washburn's and Beck's objections.

As a result of Washburn's work it was obvious to Congressmen that Hubbard's lobbying objectives were less noble
than they appeared on the surface. It was as if Washburn had openly exposed the least desirable side of lobbying.

*     *     *     *

James Parton had been favorably impressed with one important aspect of lobbying—it filled an ancient need of government, he said, by supplying special knowledge. But, Parton continued, "Every one knows that the hard labor of Congress is done in committee-rooms and in the private offices of members." To those committee-rooms and individual committee members went various types of schemers pushing their projects. "Nearly all these enterprises are either in themselves absurd, or else they are beyond the range of legislation," Parton continued. A large number of people, he said, thought Congress could be asked to undertake anything desirable but beyond their own financial capabilities, "from the construction of a whole system of railroads to making an experimental balloon. There are those who want Congress to buy all the telegraphic lines, and others who think that all the railroads should be public property. . . But," he noted shrewdly, "no one knows how far Congress will go, and this uncertainty lures to the capital many an expensive lobby, who wear out their hearts in waiting, and who waste at Washington the money and the
energy that might have started their enterprise." Lobbyists persisted, he thought, since "Some of these mysterious waiters upon Providence explain their object at last by walking off with something valuable for themselves, or something for their dependents,—a contract, a consulate, or a cadetship." But in some instances, Parton noted, log-rolling involved efforts of "making honest and patriotic men vote for measures of which they violently disapproved."

Hubbard did not know how far Congress might go until March 1873 when the Forty-Second Congress adjourned. After that date, however, the lure of uncertainty was destroyed; it was apparent that Congress would not go as far as he wanted it to. Washburn seemed to prove that Hubbard's bill was too objectionable even for an excellent, experienced lobbyist to overcome. He proved that Hubbard did not deserve to win a charter.

Hubbard's family remained in Boston the months he spent in Washington pushing his bill. In April 1872, when he was enthusiastically optimistic about his bill's chance of passage, he informed his wife that if he had to start again he doubted he would do it. The spring of 1873 was a turning point—Hubbard had either to quit or begin anew. If he chose to start over, he would have to devise a new
plan. It was impossible to overcome the opportunistic aspects of his bill. Essentially he gave up postal telegraph after his failure in 1873.

Congress had been correct in rejecting Hubbard's bill. It was an opportunistic as Washburn, Beck and Lines argued. During his stays in Washington, Hubbard corresponded with his wife, keeping her posted on his bill's progress. On occasion he alluded to problems if the bill did not pass. "If we can carry our Postal Telegraph Bill," he informed her late in the spring of 1872, "we can keep our place, if we cannot it is very doubtful." On an earlier occasion he confided that "The thought of one day giving you an abundance of the good things of this world keeps up my courage. If [postal telegraph] should happen to pass what a difference it would make in all our plans, how many heavy loads it would lighten." And on another occasion, when he was especially optimistic about the bill's prospects, he assured her "you need not fear that others will reap all the benefits of my labors. My own dear wife shall yet have her share, for a good time is yet coming."

There were other, better reasons why postal telegraphy should not have passed in addition to its blatant opportunism. On one hand, Hubbard had insisted that competition could
not work in the telegraph industry. Competition, he insisted, resulted in high rates, due to duplication of 63 facilities. However, after Washburn's hearings it was obvious that he was not opposed to competition—he was opposed only to free competition. Instead of that, he wanted competition which received government favors and assurances of a fine dividend without risks attending normal competitive endeavors.

In 1866 John Sherman had sought a special grant for the National Telegraph Company, but he assumed the company would accept normal risks if it should take advantage of the grant. Sherman's plan was based on the traditional practice of government assistance to economic development, but leaving risks to entrepreneurs. By contrast Hubbard wanted a special grant, with a guaranteed dividend, and a guaranteed government purchase if the company failed to promote an industry which had reached maturity. Any benefits went to him and his associates; all risks, he hoped would be assumed legislatively by the government. It was a particularly ludicrous plan.

Not even his would-be associates would accept Hubbard's proposal, to say nothing of Congress. During testimony before Washburn's select committee, Hubbard intimated that
he spoke for several other telegraph companies. However, managers of those companies rejected Hubbard's bill. It offered no acceptable approach to telegraph regulation, they agreed. William Thurston, president of the Pacific and Atlantic Telegraph Company, testifying before the appropriations committee, said his company accepted the 1866 act as fair and just, but looked upon Hubbard's bill as a "decided wrong" since it involved government attack of private enterprise by giving Hubbard's proposed company such extensive privileges. And he indicated that his company would underbid Hubbard's ten per cent, being satisfied with a six per cent return.

James W. Brown, president of Franklin Telegraph Company, said his company, which had started in 1866, the year of Western Union's great consolidations, had struggled along six years, and only had a profit in 1872. Testifying before Garfield's committee in December 1872 he noted that now that the slightest possibility existed that Congress might pass the Hubbard bill, his company was very concerned about it. Passage of the Hubbard bill, he insisted, would cause his company to "lose its reward." And in conclusion, Brown observed that rates the Franklin Company charged, were similar to the rates in Hubbard's bill, but that unlike
Hubbard's proposed company, his company did not have free use of government office-rooms, stations, clerks, and messengers. Hubbard's bill, Brown inferred, would destroy existing smaller companies, not unite and strengthen them as Hubbard implied.

Hubbard's bill did not deserve passing for another reason. The system he proposed was far from being a national system. The companies he hoped to unite had several major lines in the east, connecting a dozen major cities, but had few branch lines. Worse, it had but one line to the Pacific coast, meaning that the company he proposed as an alternative to Western Union had a system of lines comparable in some measure to Western Union's coverage in 1861 when the trans-continental telegraph line was finished. His projected system east of the Mississippi was much less extensive than Western Union's eastern connections in the early 1860s. In other words, Hubbard had a good shell if the smaller companies would unite under his leadership, but he did not have a fully-matured system. He hoped the government would provide protection as his system grew. To have done so, the government would have been forced to pay extensive subsidies to the postal telegraph company during its expansion period.

As early as 1866 Sherman had realized that effective
competition had to be nationally based. Otherwise, Western Union could reduce its rates below that of a competitor and drive it out of business. Given the ten per cent guarantee provision of his bill, Hubbard's company would have stayed in business only through liberal payments by the Postmaster General. It would have been a long time before it became an able, self-sufficing competitor to Western Union. And for that to have happened, the government would be forced to play nursemaid to a particular company over an extended period of time while concomitantly taking a hostile posture in relation to another particular company. Hubbard was asking for a double measure of special legislation. His bill did not even deserve the consideration it received to say anything of passing. The only way, Lines informed Garfield's committee, for the government to accept Hubbard's bill without being forced to subsidize him extensively, was for Western Union to come in with his scheme. But, he continued, if they did, it would be "the frog swallowing the anaconda," and the same problem over again.

Telegraph reform had come full circle by spring 1873. Sherman and later the Washburn brothers and Hubbard had tried to exploit existing antimonopoly feeling to pass
legislation they desired. It was easiest for Sherman. His bill diverged little from acceptable practices. His success might well have provided the impetus behind the other telegraph bills introduced in Congress. But compared to Sherman's bill of 1866 the ones introduced by the Washburns and by Hubbard were all opportunistic--either in trying to get a bargain for the government or trying to secure unprecedented guarantees for private individuals as was true of Hubbard's bill.
FOOTNOTES

1 Hubbard to Dawes, November 15, 1870, Box 20, Henry L. Dawes Papers, Library of Congress. Hubbard's findings are printed in U.S. Congress, House, Letters on the Postal Telegraph System in Europe, November 19, 1870, House Miscellaneous Document 36, 41 C., 3 S.

2 March 4, 1871–March 3, 1873.

3 Francis Palmer, Iowa Republican introduced a bill for him March 11, 1872 which went to the appropriations committee. C.G., 42 C., 2 S., 1579 (March 11, 1872).

4 Hubbard to Robert McCurdy, February 20, 1873, Gardiner G. Hubbard Papers, Hubbard Drawer, Bell Room, National Geographic Society. The bill never received a vote in either the House or Senate.

5 Hubbard to Mrs. Hubbard, April 17, 1872, Hubbard Papers.

6 Ibid., January 16, 1872.

7 "Log-Rolling at Washington," Atlantic Monthly, XXIV (September 1869), 365.

8 Hubbard to Mrs. Hubbard, January 8, April 17, 1872, Hubbard Papers.

9 Ibid., March 4, 1872.
10. Ibid., January 6, February 5, 1872.

11. His favorite method of cementing relationships with influential people was entertaining them with large dinners. In his correspondence for the first half of 1872 he noted that Henry L. Dawes, James A. Garfield, William Belknap, Thomas Nast, Oliver Morton, Lot Morrill, John Sherman, Lyman Trumbull, John Farnsworth and Sunset Cox had come to his place for dinner.

12. Hubbard to Mrs. Hubbard, April 27, 1872, Hubbard Papers.


15. Hubbard to McCurdy, January 22, 1873 and to Mrs. Hubbard, May 24, 28, 1872, Hubbard Papers.

16. He spent most of the winters and springs in Washington from 1869-1873. His work with Senator Alexander Ramsey was evidently all done by personal contact. The Ramsey papers in the Minnesota Historical Society have no papers or correspondence dealing with Hubbard, and nothing about postal telegraph except a couple of Ramsey's Senate speeches and Senate postal committee reports.


Ibid., 3560 (May 16, 1872).

Ibid., 3562.

Hewitt to Hubbard, July 30, 1868, Hubbard Papers.

C.G., 42 C., 2 S., 3554 (May 16, 1872).

Ibid., 3560.

C.G., 42 C., 2 S., 16, (December 5, 1871).


C.G., 42 C., 2 S., 16 (December 5, 1871).

Hubbard to Mrs. Hubbard, April 9, 1872 and to Robert McCurdy, February 20, 1872, Hubbard Papers.

C.G., 40 C., 3 S., 1651 (February 27, 1869); C.G., 41 C., 1 S., 86 (March 16, 1869); U.S. Congress, Senate, Report on the Reduction of Telegraph Rates, January 22, 1872, Senate Report 20, 42 C., 2 S.; C.G., 42 C., 2 S., 2830-33 (April 27, 1872) and 3554-62 (May 16, 1872).

See Chapter III, pgs. 107-125.

Hubbard to Robert McCurdy, February 13, 1872, Hubbard Papers.

A basic reason he gave for opposing telegraph bills was his fear of increasing government's patronage power. He was mainly concerned with the increase of government employees required to operate a government telegraph such as Cadwallader Washburn had sought to create. Although no
such bill was pending, he wanted to be prepared for it, if one were introduced. Orton, replying to a letter from Beck, informed the Kentucky legislator that "twenty thousand employees might do the business . . ." Orton to Beck, January 10, 1871, WU VIII. A year later in a speech opposing government telegraph Beck informed his House colleagues that government telegraphs would necessitate "vast additional armies of Government officials . . . From the best information I can obtain (and I have taken pains to inquire carefully) I am satisfied that it would require not less than twenty-five thousand additional Government officials to manage and control the telegraph system . . . and the number would increase every year." C.G., 42 C., 2 S., 636 (January 27, 1872).

32 Hubbard to Mrs. Hubbard, April 18, 1872, Hubbard Papers.

33 Creswell to Washburne, January 8, 1870, Elihu B. Washburne Papers, Library of Congress.


35 Gerald Cullinan, The Post Office Department (New York, 1968), 86; Haugland, Alexander Ramsey, 252-55, 282-83. Haugland noted that in supporting the franking bill Ramsey "marked himself as a fighter . . .," a quality he did not exemplify in supporting Hubbard's bill. Ibid., 254.

36 Although Elihu and Cadwallader were brothers, the Illinois legislator, Elihu, added an "e" to the end of his last name; Cadwallader used the shorter form, eliminating the "e." This results in confusion when considering both of them as brothers. However, to minimize that confusion, Elihu will always have an "e" ending his name in this paper.

37 Hubbard to Mrs. Hubbard, April 17, 1872, Hubbard Papers.

Orton to George Walter, November 18, 1868, WU IV.

Western Union, Government Telegraphs. Arguments of William Orton, President of the Western Union Telegraph Company, on the Bill to Establish Postal Telegraph Lines, Delivered Before the Select Committee of the United States House of Representatives (New York, 1970), 30.


Ibid., 154-55.

Sweet to Washburne, December 12, 1869, Washburne Papers.

Hubbard mentioned the Franklin Company, with lines from Boston to Washington, Atlantic and Pacific Telegraph, with lines from New York to Chicago, and with a line only recently added to the Pacific coast. Another line, the Pacific and Atlantic connected New York, Baltimore, Pittsburgh, Cincinnati, St. Louis, Nashville, and Memphis. U.S. Congress, House, Report on the Postal Telegraph, July 5, 1870, 155.

Ibid.

Hubbard, The Postal Telegraph, the only Means by which the Telegraph can be Made the Ordinary Method of Communication: An Address Before the Board of Trade and Commercial Exchange, Philadelphia, November 25, 1869 (Boston, 1869), 13.


Ibid., 153.
49. Ibid., 51-52.

50. C.G., 42 C., 2 S., 18-19 (December 8, 1871).

51. Ibid., 637 (January 27, 1872).

52. A continuing difficulty in considering telegraph bills had been the government's lack of access to telegraph data. Creswell tried to overcome this by hiring Lines, a former telegrapher, to collect data for the government. Creswell told the appropriations committee, "I have not had one dollar of public money at my disposal except that which I can use by the assignment of a single clerk in the department to gather information." Proceedings printed in David A. Wells, The Relation of the Government to the Telegraph: or a Review of the two Propositions Now Pending Before Congress for Changing the Telegraphic Service of the Country (New York, 1873), 138.

53. In the Matter of the Postal-Telegraph Bill. Arguments before the House Committee on Appropriations considering the Postal Telegraph bill, April 22, 1872, 16. This document is a pamphlet printed for committee use. A copy of it is in Western Union Secretary's office.

54. C.G., 42 C., 2 S., 3554 (May 16, 1872).


58. Hubbard to Mrs. Hubbard, April 9, 1872, Hubbard Papers.
Ramsey introduced one more bill for him, December 9, 1873, but that was it, until 1883 when Henry L. Dawes introduced one for him in response to a merger between Western Union and Jay Gould's American Union Telegraph Company which caused a large public outcry against telegraph stock manipulations.

Hubbard to Mrs. Hubbard, May 24, 1872, Hubbard Papers.

Ibid., April 9, 1872.

Ibid., March 8, 1872.

Hubbard, The Postal Telegraph, 6-8.


Ibid., 8, 7-10.

Arguments before the Committee on Appropriations, April 23, 1872, 38. The House postal committee had been correct in 1869 when it concluded that "the more the conditions of [Hubbard's] anomalous arrangement are considered, the greater do its difficulties become." U.S. Congress, House, Report on the Postal Telegraph, February 24, 1869, 16.
CHAPTER VI
WESTERN UNION STRIKES DOWN A "TELEGRAPH MONOPOLY"

Concepts of monopoly had different connotations in different periods of American history, and the confusion of meanings became clear in judicial decisions relating to the 1866 telegraph act. Jacksonians had focused their anti-monopoly hostility on privileged grants, such as to the Bank of the United States. To post-Civil War Americans antimonopoly sentiment came to mean something else: increasingly it became expressed hostility directed at any large economic enterprise dominating a particular industry, whether express companies, railroads, or telegraph communications. In practical terms monopolistic organization had changed from legally created to de facto monopolies, yet antimonopoly rhetoric and sentiment had not taken cognizance of that change. Although Western Union never enjoyed an exclusive grant from a legislative body, clearly it dominated telegraphic communications after 1866.

John Sherman, B. Gratz Brown, Elihu and Cadwallader Washburn and Gardiner Hubbard based their telegraph proposals
on the need to limit Western Union's monopolistic power. However, the only apparent result of the agitation of telegraph legislation was that Western Union emerged from it stronger than ever. Its ability to block hostile legislation remained unimpaired. No bill other than Sherman's ineffectual act ever received serious House or Senate consideration or a Congressional vote. And subsequent to Sherman's bill, Western Union lawyers exploited it to weaken opposition companies and for authority to extend its lines into otherwise forbidden areas. Clearly, the solution to monopoly power did not lie in facile employment of time-worn phrases, which described feelings and forebodings, but did not accurately reflect economic realities.

In 1866 when Sherman's bill was debated, both House and Senate members objected that it unconstitutionally permitted the national government to extend the rights of state-chartered corporations. Senator Thomas Hendricks, Democrat from Indiana, argued that the Thirty-Ninth Congress "has been characterized to some extent by the number of propositions for the exercise of extraordinary powers heretofore conceded to belong to the States and now," he complained, "the proposition is that Congress shall undertake to control the telegraph system through the States." He objected to the
bill, rightly fearing that it authorized "a corporation of one State to exercise its powers in another State, with or without the consent of that State."

Sherman's bill was silent on the point Hendricks raised, but the question Hendricks posed caused James Grimes of Iowa no trouble. He solved it quickly. The rights any corporation would have under the proposed bill, he said, would be "settled by subsequent judicial decision."

William Finck of Ohio and Robert Hale of New York, both House members, objected to Grimes' easy solution of constitutional questions. John B. Alley of Massachusetts, who managed the bill in the House, admitted that amendments could profitably be made to it, but he refused to consider any amendments since they would necessitate reconsideration by the Senate. And that, he knew, was virtually impossible due to the late date of the session. Finck opposed the lack of specific procedures in Sherman's bill for taking property. "Everyone knows," he told the House, "that private property cannot be taken without just compensation." He thought Congress should perfect the bill rather than leaving it to judicial decision later. The bill was not "perfected."

In 1874 the Circuit Court for the Northern District of Illinois ruled on the act and quieted fears which Hale and
Finck had raised. The Atlantic and Pacific Telegraph Company had sought to construct a line between Chicago and Omaha. To do this it tried to use the right of way of the Chicago, Rock Island and Pacific Railroad Company, but the railroad company blocked the efforts of the telegraph company. Atlantic and Pacific Telegraph then sought an injunction against the railroad's blocking action, arguing that the 1866 act gave them authority to construct the line.

The court ruled that the 1866 act did not authorize telegraph companies to construct along railroad rights of way without compensation to the railroad company. The court agreed with Hale and Finck that private property could not be taken without compensation. It was true, the court continued, that the railroad had public uses, that private property was condemned for railroad construction, but, after condemnation, it became private property. The right to construct a telegraph line would imply the right to construct an additional railroad or to add indefinitely to the number of telegraph lines that could be constructed along the railroad's right of way, it said. The court concluded that the right to construct a telegraph line without the railroad's permission and without compensation "interferes with the absolute right of the railroad to its right of way."
The court went one step further. It interpreted the 1866 act as being permissive only with reference to taking railroad right of ways. The act did not empower a corporation of one state to condemn private property in another. The court ruled that the Atlantic and Pacific Telegraph Company, a New York-based corporation, could not exploit an Illinois statute providing for condemnation of private property for telegraph construction in Illinois. The Illinois law, the court maintained, could be employed only by telegraph companies chartered in Illinois. In 1877 the Supreme Court agreed with this ruling when it concluded that "If private property is required, it must be obtained by private arrangement with its owner. No compulsory proceedings are authorized. State sovereignty under the Constitution is not interfered with."

With reference to condemning railroad rights of way then, the act of 1866, as interpreted by the courts, inadvertently upheld Western Union's dominant, and seemingly unchallengeable position. Atlantic and Pacific managers had hoped to construct a national telegraph system capable of offering effective competition to Western Union. The company had organized in 1865 with the objective of building a line from New York to San Francisco. It gradually
extended its lines westward from New York, and planned to use the right of way of the Rock Island Railroad to extend its line from Chicago to Omaha. The Circuit Court decision blocked that projected move, however.

Although the Circuit Court eventually sustained Finck and Hale, the two House members had sufficient grounds for voicing their fears when Sherman introduced his bill. In supporting his telegraph bill before the Senate, Sherman had noted that prospective telegraph companies would need special grants if they hoped to compete successfully with Western Union due to that company's "arrangements made with the railroad companies throughout the United States . . ." Western Union enjoyed contracts with the nation's major railroads giving it the exclusive right to construct telegraph lines along the railroad's right of way. Sherman implied that these exclusive contracts would have to be broken before competing companies could start operating. To have had the impact which Sherman evidently hoped to achieve through his bill, the Hale-Finck interpretation would have been essential.

Sherman's experience as an Ohio Lawyer suggest that he might have hoped for a judicial interpretation of his bill other than the one the courts accepted. As a lawyer in Ohio
he had represented several railroad companies prior to the Civil War. He "thought it a grievous injustice" that a railroad company had been forced to pay two thousand dollars for a twenty-mile right of way through Ohio farm land. He recognized the importance of railroad expansion in developing his state and nation, and objected to unnecessary impediments to railroad growth. In the twenty-year period which ended with the conclusion of the Civil War, several railroads had been built across Ohio, and at the end of those decades "the rates of travel and transportation" had been reduced "to less than one-half the former rates." He observed that Ohio had "free competition and plenty of [rail] roads," so there was no railroad monopoly problem such as Maryland and the Capital confronted in depending on the Baltimore and Ohio Railroad.

It is impossible to know if Sherman's railroad experience influenced his telegraph bill, but the bill his select committee reported stated that the National Telegraph Company "shall have the right to construct, maintain, and operate lines of telegraph . . . over and along any of the military or post roads of the United States." The bill which passed contained the same provision. Given the language of his bill, it is possible that Sherman had hoped
to strike the telegraph monopoly at its very heart by weakening its strong ties with the nation's railroads. He may have been trying to break Western Union's hold on telegraphing by reopening opportunities for entry in the industry by allowing free competition without the encumbering problem of securing right of ways.

An essential feature of the free enterprise system, Stuart Bruchey noted recently, was freedom of entry into a business. Sherman may have been trying to create an environment recreating freedom of entry in the telegraph business, or he may have hoped his act would be interpreted by the courts in such a way as to enable foreign corporations to exploit existing state laws for condemning private property for public uses. Either interpretation would have broken Western Union's tie with the railroads and opened the way for competing to construct their lines; either would have nullified Western Union's exclusive contracts with the railroads.

At the time of Senate debate on Sherman's bill, the telegraph companies had not completed final consolidation arrangements. Their managerial energies were still devoted mainly to consolidation problems, and consequently, they presented only slight opposition to the telegraph bill.
However, Orton opposed the bill on the same grounds that Hale and Finck had. He informed Senator Edwin Morgan of New York that it was "not equitable for Congress to take the part of a competing company--organized under state laws--and give to it rights which have cost us years of labor--and large sums of money." His company, he explained, had been required to pay for the privilege of building along railways in many states. He insisted that Congress could not "give" other companies "rights in the State of New York--whose laws have required us to pay for such rights--and still require us to do so."

Orton's fears were ungrounded, as it turned out. Western Union's exclusive contracts stood intact. It had such a contract with the Rock Island Railroad, which blocked expansion initiatives of the Atlantic and Pacific Telegraph Company. To protect that contract Western Union took an active part in the legal proceedings leading to the favorable decision. "The real defendant is the Western Union Telegraph Company," Orton explained, "and the case was conducted in their behalf by their Western attorneys . . . of Chicago." As a result of Western Union's cooperation with Rock Island Road, Western Union's exclusive contracts stood unimpaired, and apparently, unimpeachable.
In terms of securing rights of way, then, Congress's 1866 act was not an instrument a telegraph company could use to intrude into intrastate areas over which Western Union exerted its control. On the other hand, however, it proved to be an effective instrument Western Union could wield in extending its lines into an otherwise forbidding area.

In December 1866 the State of Florida granted the Pensacola Telegraph Company a charter, giving the company "the sole and exclusive privilege and right of establishing and maintaining lines of electric Telegraph" in the two northern counties of Florida, between Pensacola and the Florida-Alabama border. The Pensacola company constructed a line, forty-seven miles long, and until 1874 enjoyed undisputed monopoly rights over telegraph communications in northern Florida.

In June 1874, the Pensacola and Louisville Railroad granted Western Union the right to erect a telegraph line on its right of way, between Pensacola and the Alabama border, closely paralleling the lines of the Pensacola Telegraph Company. Western Union began immediate construction of the line, but in July the Pensacola Telegraph sought to enjoin construction and use of the line, insisting that the 1866 exclusive grant by the state legislature prevented all
companies from building competing lines.

The United States district court for north Florida decided in favor of Western Union. Later a Circuit court's decision of March 1875 disappointed the Pensacola Company's hopes of overturning the district court's opinion. Two years later the Supreme Court sustained both of the lower court decisions.

In both the Circuit and Supreme Courts, Charles W. Jones, United States Senator from Florida, argued the case for the Pensacola company. In the Circuit court Jones argued that there had been little inducement for the line until the Florida legislature passed the act giving the Pensacola company an exclusive grant. The company, he said, built the line at great expense, but with Western Union's construction of a competing line the company's lines would become "valueless," losing "all the benefit of the franchises conferred upon it by its charter," which constituted "the sole inducement to the investment of the capital and of its corporators" in erecting the line.

Grosvenor P. Lowrey and Perry Belmont answered for Western Union. They insisted that the act of the Florida legislature was not a prerequisite to construction of lines in northern Florida, and that the investments made by the
Pensacola company were not extensive, as Jones contended. They also discounted Jones' argument that there was no interest by other companies in constructing lines in that part of Florida until the state legislature passed its December 1866 grant. Western Union, they noted, had tried to purchase the Pensacola line for several years, but the company refused "except at the most exorbitant and unreasonable price. [O]ther lines would long since have been constructed to Pensacola," they continued, "but for the pretended exclusive rights claimed by the [Pensacola Company] and the indisposition of parties to engage in litigation. . . ."

Moreover, they insisted, the Pensacola company was a monopoly, operating at the expense of telegraph users of northern Florida. They thought its charges for telegraph service was exorbitant and oppressive, in "excess of any just return for the capital employed accounting to more than one hundred per cent annually upon the capital invested."

Orton, in an affidavit to the court, stressed the fact that the Pensacola and Louisville Railroad permitted Western Union the right to build along its right of way. And, he noted, there were no direct communications to the city of Pensacola through which representatives of the United States government could communicate with Army and Naval officers.
Jones changed his line of argument before the Supreme Court. Instead of insisting on the necessity of the privileged grant to prompt construction of a telegraph line in northern Florida, he devoted his argument to the issue of state authority over economic matters as compared to national authority. He argued that unless the Florida legislature was prohibited by the state constitution, it could grant exclusive privileges as it had to the telegraph company for lines entirely within the state's jurisdiction. The grant of December 1866, he insisted, was a contract with the State of Florida, which could neither be impaired nor modified without the company's consent. Western Union was a foreign corporation and could not establish competing telegraph lines unless specifically empowered by the state legislature, he continued. In the absence of that legislation, Western Union had no existence or rights beyond the limits of the state creating it.

The 1866 Sherman telegraph act, Jones contended, had no bearing on the case. That act related only to granting rights to telegraph companies in the public domain, such as permitting them to use wood or stone, or take land for depots. The act did not, he concluded, "enlarge the corporate powers of any company, or authorize it to exercise
them in a foreign jurisdiction. If it attempted to do so, it would . . . be clearly void, as an assumption of power which had been wisely and to the fullest extent lodged with the respective States."

Belmont, arguing for Western Union before the Supreme Court, identified telegraphy with interstate commerce. State regulations impeding it, he said, were unjust restrictions "contravening the Constitution of the United States." Belmont alluded only briefly to the 1866 telegraph act, noting that telegraph companies had to accept its provisions. He then passed over it. He insisted that the case in question was not one where it was necessary for the Court to decide the power of Congress "to enable a corporation to exercise its franchises in a State other than that which created it. . . ." For him the case turned on the question of whether after complying with the act of Congress and arranging for its internal connections, a corporation could exclude a foreign corporation. Belmont's emphasis was on the permission Western Union had obtained from the Pensacola and Louisville Railroad.

Belmont also had discounted the importance of the 1866 act in arguing before the Circuit Court. The same was true of Orton in his affidavit to the Circuit Court. They each
alluded briefly to it but passed quickly to their other arguments. Evidently they realized the act had potential interpretations which could be employed against Western Union in the future. In assessing the Rock Island Railroad injunction against the Atlantic and Pacific Telegraph Company in 1874, Orton had thought the decision "sustains in every particular the claim of the Western Union Company that the act of 1866 gives telegraph companies right of way only upon such military and post roads of the United States as are owned or exclusively controlled by the Government." Western Union spokesmen knew that if they relied on the 1866 act to invade jurisdiction of a competing telegraph company, another company might use the act to construct lines competing with Western Union. Thus they carefully accorded Sherman's telegraph bill a minor role in their arguments.

However, the decisions of the Circuit and Supreme Courts compensated for Western Union's reticence in employing the 1866 act. Both courts made it the basis for their decisions; the Circuit Court contending that in deciding the case, it was necessary only to "consider its provisions." And using that act they gave decisions emphasizing strongly the national character and importance of telegraphing.

Both courts found ample constitutional provisions to
sustain Sherman's telegraph act. They justified it under the commerce clause, the post office power, and the Circuit Court, as if taking a direct cue from Orton's statement in his affidavit, added an additional constitutional justification for the act—it was sustained by the power to raise and support armies. "The functions of the Government," the Circuit Court decided, "either in war or in peace could not now be carried on without its [telegraph's] use." Since laws made under the Constitution were the supreme law of the land, the courts further contended, the Florida grant of monopoly power to the Pensacola Telegraph Company was unconstitutional.

Chief Justice Waite, in particular, strongly asserted national authority in upholding the 1866 act and striking down the Florida legislation. He noted that since the Gibbons decision it had never been doubted that commercial intercourse came under Congressional authority. And that power was not confined to instrumentalities of commerce known or in use when the Constitution was adopted, but kept "pace with the progress of the country;" it was adaptable "to the new developments of time and circumstances," he affirmed. The telegraph, he continued, marked an epoch in progress, and in a quarter century changed the habits of the
commercial world and governmental operations. Under those circumstances, Waite thought, it could not be doubted that
"this powerful agency of commerce . . . comes within the controlling power of Congress, certainly as against hostile
State legislation." The United States government, he asserted, operated on every foot of territory under its
jurisdiction, and legislated for the entire nation unem-
barrassed by state lines. The Florida statute, he concluded, if sustained, excluded commercial intercourse between the
citizens of Florida and other states. This meant state
regulation of interstate commerce, which was clearly anti-
29

Justice Stephen Field, fearful of the centralizing
tendencies he discerned in the decision, dissented. "With all deference to my associates," Field said, "I cannot see
that the act of Congress has anything to do with the case
30
before us." Instead of using the 1866 telegraph act to
decide the case, he wanted to determine which of two Florida
acts were valid—the grant to the Pensacola Telegraph Com-
pany, he decided, took precedence over the later legislative
grant permitting the Pensacola and Louisville Railroad to
construct or assign the rights to erect a telegraph line
along its right of way. The grant to the railroad company,
Field concluded, using the Dartmouth College Case as authority, was void, since it impaired an earlier contract by the state with the telegraph company.

Field feared that the Court's opinion was an unwarranted invasion of state prerogative by the national government. Historically, states had the power to grant corporations privileges such as the Florida legislature granted to the Pensacola Telegraph Company, he affirmed. Up to this point, Field was on solid ground. However, the bulk of his dissent were expressions of unjustified fears. He raised questions which were not an issue in the case, and answered them with what he thought were implications from the Court's opinion. By creating fictitious issues, he enunciated irrelevant criticisms of his colleagues' opinion. "If Congress can authorize the corporations of one State, to construct telegraph lines and railways in another State, it must have the right to authorize them to condemn private property for that purpose. The power to grant implies a power to confer all the authority necessary to make the grant effectual," he argued. The Supreme Court, he insisted, had never concluded that the United States could enable a corporation of one state to condemn property in another state.

Waite rightly had pointed out that the act of 1866 did
not give a foreign corporation the right to use private property without the consent of its owner. The real issue, Waite indicated, was whether or not state legislation could impede construction of telegraph lines along railroad right of ways by foreign corporations which had obtained permission from the railroad. "No question arises as to the authority of Congress to provide for the appropriation of private property to the uses of the telegraph, for no such attempt has been made. . . . If private property is required, it must . . . be obtained by private arrangement with its owner. No compulsory proceedings are authorized. State sovereignty under the Constitution is not interfered with," Waite affirmed for the Court.

Field also feared that by permitting Western Union to build a line through northern Florida, Congress could "create such corporations for local business," a doctrine, he said, "pregnant with evil consequences." He feared that the Court's opinion allowed all foreign corporations engaged in commerce the right to enter other states without their consent. When this happened, he claimed, little would remain of the states' reserved rights, since the doctrine that Congress could authorize a foreign corporation to enter a state without its permission was "utterly subversive of our
Field identified his position with national patriotism. He observed that the late war had been conducted with great loss of life that the Union might be preserved, but cautioned that "unless the independence of the States within their proper spheres be also preserved, the Union is valueless. . . Disquiet can only arise from the exercise of ungranted powers."

Waite, on the other hand, concluded that in principles of comity, corporations of one state were permitted to do business in another, unless that business directly conflicted with the law or unjustly interfered with the rights of citizens of the state into which the foreign corporation went. When the public good required it, he said, the state could withdraw its assent from a corporation doing business in it. However, in this particular case, he concluded, the State of Florida "in effect, invited foreign telegraph corporations to come in," since it granted the Pensacola and Louisville Railroad the right to either construct telegraph lines along its right of way or assign that right to another company. Whether or not the grant to the Pensacola railroad would have been valid without the 1866 act, Waite said, "we need not decide" but with that grant and Western Union's securing a right of way through private arrangements with the
owner of the land, there could be no question but that Western Union could operate its own lines in northern Florida.

Evidently there were no sure restraints to Western Union's growing power. Congressional agitation of telegraph bills seemed only to bolster Western Union's position in Washington. And now, in the middle 1870's, judicial considerations of the 1866 telegraph act prevented the Atlantic and Pacific Company from expanding, while they sanctioned Western Union's expansion into an area previously closed to its lines. The original intent of the 1866 act had been to limit or regulate Western Union's scope of activities by encouraging formation of competing companies, or by opening the way for existing or new companies to expand easily. Ironically, however, the opposite occurred.

The Pensacola case poignantly demonstrated inherent dualities in antimonopoly sentiment of nineteenth-century America. For years agitators had charged Western Union with monopolistic practices but to no avail; in the Pensacola case Western Union turned successfully the argument on its head with little difficulty. Its success sprang from the simplicity of the case. The company had secured permission from the owner of the land it sought to use, and the owner
had a legislative grant from the state to assign those rights. There was no need for the national government to intrude boldly into Florida's affairs or to challenge its sovereignty in deciding for Western Union since the Court had the 1866 act to exploit. Even in relation to anti-monopoly rhetoric Western Union enjoyed an edge, since the Pensacola company was based on an exclusive grant.

During the Jacksonian period, reaction against such grants was so intense that most states passed general incorporation acts. Thus, in challenging the Pensacola company Western Union was exploiting antimonopoly sentiment from a generation earlier. Western Union's spokesmen especially were effective in showing the extent of the monopoly they battled. The Florida company's rates were not only high, but its president used his monopolistic control of the telegraph to improperly enhance his other business activities, including banking, ship brokeraging, owning and operating pilot boats, and insurance. Enjoying a monopoly on the telegraph, they told the Circuit Court, gave him a great advantage in these other businesses since "any information coming up by telegraph to any parties in these branches of business was known to the president or could be known to the president of the telegraph company as soon as it was known to the
Western Union thus tied antipathy against legally established monopolies to larger, illicit, or certainly questionable, practices springing from an exclusive legislative grant. In the end, sustained by the highest court, Western Union, the large, extensive de facto monopoly overshadowed the small, independently-operated company owning lines only forty-seven miles in length.
FOOTNOTES

1 Congressional Globe, 39 Congress, 1 Session, 3488 (June 29, 1866); hereafter cited as C.G., 39 C., 1 S., 3488 (June 29, 1866).

2 Ibid., 3481.

3 Ibid. The House and Senate consideration of constitutional problems in Sherman's bill was similar to their treatment of other constitutional issues in the Civil War period. Donald Morgan in Congress and the Constitution: A Study in Responsibility (Cambridge, 1966), 122-39, was impressed with the inattention Congress gave to constitutional questions. "The trend toward treating constitutionality as just another subject for experts had begun," during the years of the Civil War, he concluded. Ibid., 138. Congress's treatment of the telegraph bill underscores his conclusion. Morgan noted that the "mood of urgency" and importance of "war bills must have dampened efforts to raise and protract constitutional arguments." Ibid., 133. A similar urgent mood characterized those supporters of Sherman's bill.

4 The Atlantic and Pacific Telegraph Company v. The Chicago, Rock Island and Pacific Railroad Company, 6 Bissell 162.

5 Ibid.


7 James D. Reid, The Telegraph in America (New York, 1879), 578-90.
8 C.G., 39 C., 1 S., 3428 (June 27, 1866).

9 Robert L. Thompson, Wiring a Continent: The History of the Telegraph Industry in the United States, 1832-1866 (Princeton, 1947), 203-16, 482-90; Jeptha Homer Wade Papers, Western Reserve Historical Society. The Wade Papers contain numerous contracts between telegraph companies that had merged with Western Union by 1866 and railroads. An example is one between Western Union and the Michigan Central Railroad, concluded in April 1864. In this contract the tenth section stipulated that the railroad would not "permit or allow any other person or company to put a wire on the poles along said Rail Road without the consent of said Western Union Telegraph Company ...." Ibid., Container I.

10 John Sherman, Recollections of Forty Years in the House, Senate and Cabinet (2 vols., Chicago, 1895), I, 69, 61.

11 Ibid., 70.

12 Sherman to Warner M. Bateman, December 3, 1866, Warner M. Bateman Papers, Western Reserve Historical Society. The writer thanks Roger D. Bridges for this document.

13 Senate Legislative Records, RG 46 NA. Senate 39A-B1. The bill was reported June 7, 1866.


15 Orton to Morgan, June 12, 1866, Western Union's President's Letter Book, I; hereafter cited as WU I.

16 Orton to Editor, New York World, July 22, 1874, WU XIII.

17 Ibid.
18 The act of the Florida legislature is incorporated in Transcript of Proceedings, File No. 7342, The Pensacola Telegraph Company v. The Western Union Telegraph Company, 10-11, RG 267 NA.

19 Pensacola Telegraph v. Western Union, File No. 7342, 4.

20 Ibid., 14.

21 Ibid., 19.

22 Ibid., 22-23.

23 His argument is in Pensacola Telegraph v. Western Union, 96 U.S. 6-8. The quote is from 96 U.S. 7.

24 Ibid., 8.

25 Ibid.

26 Orton to Editor, New York World, July 22, 1874, WU XIII.

27 Pensacola Telegraph v. Western Union, File No. 7342, 122.

28 Ibid., 123.

29 Pensacola Telegraph v. Western Union, 96 U.S. 9-11.

30 Ibid., 16.

31 Ibid., 18.

32 The Circuit Court had made a similar statement: "It is not supposed nor is it claimed by defendant that the act
of Congress gives a telegraphic company the right to occupy the right of way owned by Rail Road Companies without their consent." Pensacola Telegraph v. Western Union, File No. 7342, 124.

33 Pensacola Telegraph v. Western Union, 96 U.S. 12.

34 Ibid., 20.

35 Ibid., 23.

36 Ibid.

37 Ibid., 13. Up to the Pensacola case, coming well after Western Union was an established corporation, the New York-based corporation had encountered no difficulties in extending its lines into other states than New York. From its outset Western Union had to secure permission of states and persons to pass its lines over their property. Articles of Association and Incorporation, New York and Mississippi Valley Telegraph Company, April 1, 1851, Section 3. This document is appended in Thompson, Wiring a Continent, 458-65. Western Union had not secured permission from the State of Florida for constructing its lines in the state, although a related company, the International Ocean Telegraph Company, in which Western Union owned majority stock, legally operated in Florida. Pensacola Telegraph v. Western Union, File No. 7342, 23-24.

Corporations were artificial persons, created by the state in which they were chartered. In any other state they were "alien," or "foreign," theoretically without the pale of law. An individual going into a neighboring state automatically enjoyed that state's legal protections; a foreign corporation, being artificially created, did not enjoy such automatic protection of out-of-state law. A corporation was endowed with rights only such as the state desired to confer, and those rights extended only to the border of the home state.

To operate in a neighboring state without its permission, a corporation took chances that its contracts might be unenforceable, that the state courts might be inaccessible
for litigation, that its debts might be uncollectible. To avoid these legal difficulties, foreign corporations secured permission from states in which they wished to operate. This was usually done under the concept of state comity. "Under certain limitations and subject to prescribed restrictions, a sort of State politeness allows the artificial citizens of each to enjoy rights similar to that the individual secured through the Bill of Rights." H. A. Haring, Corporations Doing Business in Other States: State Regulations and Requirements Regarding 'Foreign Corporations' (New York, 1927), 4.

Previously, states had not hindered foreign telegraph companies. In the decade following the Civil War, Western Union was pressed hard to make expansions to keep up with demands. States welcomed the service the New York company offered. In addition they welcomed the tax revenues Western Union provided. For these reasons, none had tried to block Western Union's entry into their boundaries. For example, Orton could boast to the Circuit Court of Florida that "we are the only company with lines into every state and foreign nations . . . We have long desired to establish routes in Florida." Through the arrangement with the Pensacola railroad, he continued, the company could now operate in Florida, as well as the rest of the states. Pensacola Telegraph v. Western Union, File No. 7342, 22.

Gerard Henderson in The Position of Foreign Corporations in American Constitutional Law (Cambridge, 1918), 116-31, concluded that the Pensacola Telegraph case represented a break in traditional theory of state regulation of foreign corporations. Until this case, he contended, a state had a right to exclude foreign corporations by admitting them on conditions. That right no longer existed after Western Union won the right to construct its lines in northern Florida. "Thenceforth, if the state was to regulate foreign corporations engaged in interstate commerce, it must be as a lawmaker with qualified legislative jurisdiction, not as a person making a bargain, who may exact whatever price he can get. . . . The traditional theory of foreign corporations, that a state could exact any price it pleased as a condition of the right to do business within the state, could not be invoked where the corporation was engaged in interstate commerce." Ibid., 116-122.
Felix Frankfurter has pointed out that Field was justified in his fear of national power intruding into some aspects of so-called local affairs. It took a full generation more, but in 1910 the Court finally decided that a state's power "to exclude a foreign corporation from doing business within its borders did not, in the case of a corporation engaged in interstate commerce, permit its exclusion even from purely local business where the interstate and intrastate business formed an organic enterprise." The Commerce Clause Under Marshall, Taney and Waite (Chapel Hill, 1937), 108. The case Frankfurter was discussing was Pullman Palace Car Co. v. Kansas, 216 U.S. 56 (1910).

38 Pensacola Telegraph v. Western Union, File No. 7342, 90.
CHAPTER VII

THE TENACITY OF OLD SOLUTIONS

By the end of 1873 the failure of telegraph regulation efforts was evident: Congressional agitation of telegraph regulatory proposals seemed only to strengthen Western Union's pre-eminence in countering the proposed bills. Judicial decisions bolstered further the company's dominant position in the communications field. The Supreme Court's Pensacola decision, interpreting the 1866 act, extended Western Union's firm grip on the industry into areas previously immune to that company's influence.

After the Pensacola case, however, two developments occurred which trimmed Western Union's domination of the industry. First, the courts, using the Pensacola case for justification, allowed other telegraph companies to construct lines along railroad rights of way in spite of exclusive contracts with Western Union. Prospective telegraph competitors needed only to fulfill two requirements to use railroad rights of way: they could not interfere with existing telegraph lines, and they needed the railroads' permission.
The second development was a Congressional measure attached as a rider to an Army appropriations bill in 1879, authorizing railroads to perform commercial telegraph business.

Between 1879 and the early months of 1881 Jay Gould adroitly exploited the Pensacola decision and the 1879 rider by building an impressive competing company—the American Union Telegraph Company—ending Western Union's seemingly unchallengeable position. Telegraph service was indispensable for railroad operations. However, railroad companies owned little telegraph property. Usually railroad managers found that they had enough problems without trying to master the telegraph business. Although competition for railroad telegraph contracts was open to all telegraph companies, Western Union had succeeded in cornering most of the railroad business. These contracts had been an important element in its continued domination of the industry.

In May 1879 Gould incorporated his telegraph company. Prior to forming American Union Gould had obtained control of the Wabash Railroad. Taking advantage of the recent Pensacola decision, he had the Wabash make a telegraph contract with his newly formed telegraph company. Western Union raced to the courts seeking an injunction against telegraph construction by Gould's company. Justice Harlan,
giving the decision for the U.S. Circuit Court in Indiana stated that he was "satisfied that the new line can be constructed and operated on the railroad's company right of way without interfering with ordinary travel thereon, and without substantially interfering with the successful operation of any lines which [Western Union] has erected or is likely to erect . . ." It might be true, Harlan observed, that the Wabash having granted Western Union an exclusive contract for telegraph service in 1870 violated the contracts' terms, but since the Wabash interposed no objection to American Union's telegraph lines, "the court cannot make that violation the basis of an injunction against the new company . . . [without] defeat[ing] the purposes of the act of 1866 . . . ."

In the months following this court victory over Western Union in the middle of 1879, Gould initiated a bold program of telegraph expansion, building lines along railroads over which he gained influence. His biographer noted that "As Gould kept adding to his railroad empire in 1880, the Western Union's monopolistic position, achieved by virtue of its railroad contracts, was steadily weakened." Using the 1879 legislation and the Supreme Court's interpretation of the 1866 act, he secured contracts with railroads which had
previously granted Western Union exclusive telegraph contracts. Norvin Green, Western Union's president, following Orton's death in 1877, complained that "The American Union Telegraph Co. have made a habit of bull-dozing railroads by exhibiting the act of Congress of 1866 . . . and claiming that this act of Congress gives them the right to build lines on any Railroad."

Whether it was shrewd entrepreneurship on Gould's part or "bull-dozing as Green claimed, Gould constructed an impressive telegraph system in a short time. At last the maneuvering of an energetic stock speculator had achieved a counterpoise to Western Union's monopoly of the telegraph industry: Gould had accomplished what Congress had failed to achieve. In creating effective competition he secured the objective sought by Sherman in 1866 as well as those sponsoring the 1879 appropriations rider.

In hearings relating to the telegraph rider, J. C. Reiff, an anti-Western Union telegrapher asserted that the proposal "furnished a plan for a sound, healthy, and vigorous competition which will not be absorbed, broken down, or controlled by the Western Union Telegraph Company."

Ben Butler ardently supported the 1879 telegraph measure. In 1875 Butler had tried to secure passage of a
bill declaring all telegraph lines to be post-roads with
the Postmaster General being authorized to make contracts
with companies for transmitting messages by the lowest
bidders. The avowed purpose of his bill was to re-establish
competition in the industry. There was general agreement
among House members that Butler was trying to authorize the
government to do too much in his bill.

In 1879 Butler gave his full support to the appropria-
tions rider. He gleefully noted that the telegraph pro-
posal was "in the Army bill, and the thing must be con-
sidered." He supported the bill because, he claimed, it
would "make a healthy competition . . ." in the industry.

The competition that American Union presented Western
Union was effective, but it was also short lived. The new
company Gould stated was not profitable by the end of 1880,
but its potential for profits was unquestioned. In spite
of this optimism about economic gain, the company merged
with Western Union in the early months of 1881. The Nation
announced that the plan of union included provisions to
raise the capital of the newly consolidated company to
eighty million dollars, "or four to five times the actual
cost of all the lines . . ." By the end of February 1881
the merger was completed with the capitalization increased
to eighty million as the Nation predicted.

Compared to earlier Western Union mergers, this one, caused widespread hostility in the commercial world. The Nation noted that "The opposition to the consolidation is great at all the commercial exchanges and among the other important customers of the telegraph companies, but it is calculated that this can be used later with great effect to induce the Government to make the telegraph business a part of the postal service." Unlike earlier advocates of government telegraph regulation those supporting national restraints in the period just after the 1881 merger enjoyed widespread support from the nation's newspapers. When Senator Nathaniel Hill of Colorado reported a government telegraph bill in 1884, he included excerpts from nearly a hundred newspapers from various portions of the nation as support for his bill. Most of the excerpts denounced the 1881 merger.

Although Congressmen enjoyed a wider support for telegraph legislation than earlier, none of them did anything to promote telegraph restraints until three years later. In 1883-1884 several telegraph bills were introduced, but none came close to passing; none received either a House or Senate vote. Each was modeled closely on previously
expressed ideas from bills introduced earlier. And like
the earlier bills none of the proposals of the early 1880s
contemplated increasing governing institutions or expenses.

Hill based his bill on arguments reminiscent of those
used by Brown in 1866 and the Washburn brothers in 1869-1870.
The success of the penny post in England, he thought, was
proof that a cheap government telegraph could work in this
country. He bolstered this argument by references to
foreign countries having government owned telegraphs, and
his clincher was the contention that water had to be drained
from the telegraph industry's highly overcapitalized stock.
Competition among telegraph companies, he argued rightly,
would not work. It led only to mergers. "That is the history
of the past, and will be the history of the future so long
as the telegraph remains solely in private hands," he
insisted. His solution was to construct a telegraph line
owned and operated by the government.

George Edmunds, Vermont Senator, introduced a similar
bill. If a Bank was deemed essential by Congress, he argued,
it was constitutional under the necessary and proper clause
to provide for one. The same logic held for construction
of government telegraphs, he contended. Like Hill, he knew
that competition in the industry could not work. There was
only one important telegraph company in the nation he noted, and "like Aaron's rod, it swallows up all the other rods that appear on the surface of the country . . ." With a government sponsored line, Western Union could not "squeeze" the government line out of business as it had done to smaller privately owned companies, "and that is just where the rub really is," he insisted.

Both the Hill and Edmunds bills had provisions for controlling telegraph rates by establishing low rates for the proposed government lines. Essentially they were proposing a type of "yardstick" control which would become identified with the Tennessee Valley Authority two generations later. But they were also only putting an idea in bill form which William Nye had expressed nearly two decades earlier. When the Sherman telegraph bill was being debated in 1866, Nye argued that the only effective method to regulate Western Union was to build a competing line, with rates on that line established by Congress. Shortly after Elihu Washburne introduced a measure somewhat similar in proposing a competing line between New York and Washington.

Senator Henry L. Dawes of Massachusetts introduced a postal telegraph bill for Hubbard, but the bill had even less support than Hubbard enjoyed earlier. Since 1879
Hubbard had been associated with Alexander Bell in telephone development. Consequently he had less time and inclination for lobbying for telegraph legislation.

As in the past Western Union secured talent superior to that of those sponsoring telegraph bills. William M. Evarts presented Western Union's case before the Senate postal committee. He insisted that all the bills shared the "common character of being tentative, irresolute, and stepping always consciously in the dark." Senator Edmunds had argued for a competing government line instead of purchasing Western Union on basis of the 1866 act since he thought the government would be forced to pay too much. Evarts agreed "that the price will be larger, fixed on the principles of justice, than it will be if it is fixed on the principles of force." He noted that all the bills were destructive of private property without just compensation, that none of them provided for a smooth transition from private service to government service, and closed with the argument which the House postal committee had used effectively over a decade earlier—the 1866 act was a contract with the telegraph companies, he indicated. All the bills under consideration violated the terms of that contract, he rightly concluded.
In reality the telegraph bills of 1883-1884 represented more a reaction to the Gould-Western Union merger than they did real efforts to create workable regulation. The measures proposed by Hill, Edmunds and Dawes were supported by the same flaccid arguments which earlier advocates of regulation had used to no avail; only the proponents of the bills had changed. By the middle 1880s, alternatives which Congressmen perceived to be employable by the national government for telegraph regulation had not advanced beyond what men had suggested twenty years earlier.

* * * *

The search for order in the telegraph industry began in the 1850s when telegraph entrepreneurs realized the need to reduce the hazards and uncertainties inherent in a fiercely competitive industry. Telegraph managers enjoyed remarkable success in their search for stability. Within a year of Appomattox they had eliminated essentially the problem of internal chaos in telegraphing by creating a nationally based and administered, unified organization under Western Union's control.

Where the response of telegraph leaders was bold, imaginative and above all, successful, the response of those seeking governmental restraints was fitful, hesitant,
sometimes imaginative and ingenious, but never practical, never suitable to the realities they confronted. Advocates of regulation rightly agreed on the need for national restraints. There were no state-centered movements aimed at telegraph regulation comparable to the Granger movement for railroad regulation in the late sixties and early seventies. However, beyond this accurate assessment of the desirability of national controls, proponents of telegraph regulation groped hopelessly in their search to create public telegraph restraints. The order for which they yearned—a government order to counterbalance the industry's self-created internal order—eluded them.

Workable alternatives would not emerge until a basic shift in attitudes toward government's purpose and role in the nation's life had occurred. Employing telegraph regulatory efforts as a case study, it is clear that despite the augmentation of national authority and power the government enjoyed in prosecuting the Civil War, that increased authority was not extended to regulating the economy in the early post-war decades. Hopes and aspirations for creating such restraints were frequently enunciated by those advocating regulation. However, with the exception of those sponsoring bills to promote government lines to compete with
Western Union, none of the suggested alternatives was
predicated on premises different from those a good Jack-
sonian would have accepted decades earlier. And with the
same exception, none of those working to create national
restraints sought to create basic shifts in attitudes toward
government's purpose and role in the nation's economic life.

All the telegraph bills, from Sherman's successful 1866
bill to those introduced by Dawes, Edmunds and Hill in 1883-
1884 were justified on grounds that they would not increase
government's cost. This was true even of Cadwallader Wash-
burn's 1870 proposal for government purchase of all private
telegraph lines. Usually as a corollary to this argument of
government economy, proponents of telegraph controls insisted
that instead of increasing government's cost, their bills
would increase government revenues. Those demanding regu-
lation wanted it at bargain prices.

The antipathy to increasing governing costs was closely
allied to an equally strong disinclination to creating addi-
tional governing agencies. Supporters of every telegraph
bill sought to use existing institutions, such as the post
office department, or to encourage formation of private com-
panies which would presumably "regulate" the industry through
competition. Without exception then, telegraph regulatory
bills in the two decades following the war were posited on the illusion of effecting workable national controls without increasing governing costs or governing institutions. Jacksonian attitudes prevailed. Twenty years of agitation had not produced any significant changes in attitudes toward the proper function of government in guiding the nation's economy.

Old economic ideas and values concerning economic regulation held sway. The reality of monopolistic economic power had changed significantly since the pre-war period, from de jure monopolies, to de facto, but in the two decades following the war none of those proposing telegraph bills accorded this change in monopolistic organization to its adequate weight. Whether it was Sherman, seeking government support for a group of Ohio and New York entrepreneurs hoping to start a new company, or Hubbard, imploring the government to accept his idea of contracting for telegraph services, or Elihu Washburne, Edmunds or Hill in promoting a competing government telegraph line, a majority of the telegraph bills were based on creating competition to Western Union. However, competition, an effective regulator in the pre-war years could not work in the post-war years.
Recreating competition in telegraphing would only have recreated the chaos which nearly ruined the industry in the 1850s. Telegraphers knew this, yet proponents of regulation could not see the inutility of their regulatory proposals.

Those insisting on regulation feared monopolies, suspecting that monopolistic enterprises preyed unjustly on the public, but they could not offer workable solutions to the monopoly problem. Their views of monopoly were determined more by Jacksonian antecedents and the certainty that free competition would break up monopolistic power than by the realities of the post-war economy.

The other alternative suggested for regulation--government ownership and operation of the lines--was equally unworkable. The idea of government ownership had virtually no support among Congressmen. The arguments that the telegraph and postal service were analogous, that examples of foreign telegraph systems could serve as models for the United States, undermined the cause of promoting effective telegraph restraints. Although both arguments were used as "solutions" to the telegraph monopoly neither gave adequate attention to private domestic institutional developments, nor to the impact of new technology in American economic and social life. There was no tradition in this country for
government taking over privately owned enterprises on such a grand scale. In most cases, European nations which operated a government telegraph also controlled railroads and other major economic functions. To have accepted the European model as a regulatory solution would have meant a total redirection of American governmental and economic development. The insistence of the close analogy of the telegraph and the post office was equally strained. The analogy between one of man's oldest public institutions--the post office--and the newest application of technology to communications--the telegraph--may have existed rhetorically, but in the real world, the differences between the two methods of communications were greater than their similarities. The speed of the telegram, the individual treatment given to it, set it apart from the sluggish movement of the mail. But worse, those supporting government ownership, such as Cadwallader Washburn and Postmaster General Creswell, allowed themselves to be beguiled into accepting simplified formulas, which they insisted, would solve regulatory problems. In accepting these simple formulas, those concerned most with telegraph regulation diverted their attention from other possibilities. This fitful searching for alternatives was understandable in the 1860s, but when it continued through
the seventies and eighties, it would seem that the apparent simplicity of the earlier possibilities continued to block creative thinking about the government and its relation to the economy.

Old economic ideas and values held away in another manner. Proponents of telegraph regulation were correct technically in charging Western Union with watering their stock. However, they were wrong in their moral evaluation of the practice Western Union used in capital accumulation. Telegraph managers had not watered their stock to bilk the public, as the sponsors of telegraph bills inferred. Instead entrepreneurs, including those in other economic endeavors, as well as the telegraph industry, had to hold out the hope of high returns for risky investments.

Even more important it was silly to insist that a company's value could be determined by the worth of its physical holdings. In using the watered-stock argument, those insisting on regulation were, in reality, rejecting the turn modern economic development was taking. Western Union enjoyed an advantage no other company had yet obtained--a national market--and had the capacity to serve that market with the greatest degree of efficiency and speed yet attained. The company had purchased valuable patent rights
and important competing lines. It had created important associations with leading railroads, news associations, banking institutions, and marketing exchanges. These were all important assets to the company. Without them other telegraph companies could have competed more successfully against Western Union; possibly even cornering the bulk of the telegraph business. Western Union had the most marketable telegraph service available, or ever available--its managers were correct in insisting that capitalization could include its patents, associations, and market potential. These Western Union assets do not rule out regulation, but they have to be accorded due weight in calculating what type of restraints to erect. Proclaiming them to be water does not do that.

None of the proposed bills except Sherman's 1866 measure passed. None deserved to. The model that New Left historians have constructed of aggressive entrepreneurs conniving with governing agencies to prevent effective, "democratic" regulation, does not hold in this case. Western Union had cooperated closely with the government during the Civil War. Within a few months, however, it was under attack from Congress for its monopolistic organization. First Sherman tried to pass a bill giving national privileges
to a specific telegraph company. Then Elihu Washburne tried to create a competing line between New York and Washington, subsidized by the government, forcing Western Union to compete with it. Third, Hubbard sought governmental approval of his company which minimized risks and maximized profits—legislatively. Cadwallader Washburn then tried to force a bargain for government purchase of Western Union. The aggression came from governmental agencies. Western Union's lobbying activities were initiated in response to the different telegraph bills proposed in Congress. It was not a case where a large economic enterprise sought to bend the government to secure otherwise unattainable goals.

* * *

The inability to propose workable alternatives to the telegraph monopoly points to a dilemma nineteenth century Americans faced. The prevailing concept of economic life was free and open competition with minimal government interference. Yet it was clear that competition was the evil which had prompted telegraph managers to seek order in their industry. Competition would not work—telegraphers rejected it for monopolistic organization. Yet Americans would not placidly accept monopolies, fearing, perhaps rightly that monopolies preyed unjustly on the public. From this
dilemma some type of government regulation--not government sponsored competition or ownership--appeared to be the only escape. However, the dilemma went unsolved for nearly half a century.

This inability to offer workable alternatives points to an important factor behind the Populist and Progressive movements. Unable to create appropriate governmental responses for regulating the nation's rapidly growing economy, Congress had to cope with a variety of economic regulatory problems after the Populists and Progressives had effected a change in attitude toward the proper functions of government. However, there was such a backlog of other pressing economic issues--railroads and the trusts of the 1890s and early twentieth century--that adequate telegraph restraints were not created on a national basis until 1910.

In 1910 Congress amended the 1877 Interstate Commerce Act with the Mann-Elkins legislation. This amendment brought telegraphing under the authority of the Interstate Commerce Commission. The initiative for rate setting remained with telegraph companies, but rates, the act stipulated, had to be reasonable. The Commission had authority to review rates and change them if it thought such action necessary. Even with its review authority established by law, the
Commission received few complaints after passage of the 1910 act.

The solution to telegraph regulation which Congress accepted in 1910 was modest, even timid, compared to the proposed telegraph bills from 1866 through 1884. A feature common to many of the earlier bills was strict rate stipulations, although the Postmaster General had some flexibility in changing established rates. By 1910, Congressmen had experienced the difficulty of setting railroad rates, and knew the general difficulties of government regulation of the economy. Consequently, they were less confident about their rate-setting knowledge and ability in 1910 as compared to the earlier decades. They were content to allow judges to pass upon whether or not rates were reasonable. It may well be that the Populist and Progressive periods tended to broaden men's imaginations about the powers and functions of government in solving economic and social problems, but evidently it also taught men in public life to be cautious lest they assign too much authority to government.
FOOTNOTES

1 Western Union Telegraph Company v. American Union Telegraph Company, 9 Bissell 72 (1879). Discussion of the telegraph rider can be found in the Congressional Record, 45 Congress, 3 Session, 1762-66 and 1809-20 (February 22, 24, 1879); hereafter cited as C.R., 45 C., 3 S.

2 Nation, XXVIII (February 27, 1879), 141. Discussion of the telegraph rider can be found in the C.R., 45 C., 3 S., 1762-66 and 1809-20 (February 22, 24, 1879).


5 Western Union v. American Union, 9 Bissell 74 (1879).


7 Green to George S. Hale, August 28, 1880, WU III. Green to George S. Hale, August 28, 1880, Western Union's President's Letter Book, Series II, III; hereafter cited as WU Ser. II, III.

8 U.S. Congress, Senate, Minutes of a Hearing Before the Committee on Railroads, United States Senate, February 13, 1879, 8. This is a committee report in the Secretary's Office, Western Union Telegraph Company.
C.R., 43 C., 2 S., 1420 (February 17, 1875). Butler's bill was not modeled on the Hubbard bill, nor did it create new companies itself. Butler at the time was a member of the House Judiciary Committee. He reported his bill February 4, 1875, but the House did not act on it. He justified his proposal under the Constitution's post office clause and the commerce clause. U.S. Congress, House, Telegraph Lines, February 4, 1875, 43 C., 2 S., House Report 125. A copy of the bill is appended to the report 13-14. The House rejected Butler's bill with harsh criticism. Clarkson Potter of New York noted that Butler talked against monopolies. "What are monopolies?" Potter asked. He said they were "men or associations of men who by law have special power or privileges not generally granted . . ." and noted further that Western Union had "Absolutely and exactly none" of those special powers or privileges. C.R., 43 C., 2 S., 1425 (February 17, 1875).

Ibid., 1425-29.

U.S. Congress, Senate, Minutes of a Hearing Before the Committee on Railroads, 31.

Ibid. The majority of the Senators opposing the rider did so, they said, because it unconstitutionally allowed the national government to extend the rights and privileges of state chartered corporations. This had formed the basis of much of the opposition to the Sherman bill of 1866. In opposing the rider, Thomas Bayard of Delaware argued that "the shadowy border-land between Federal and State authority" had been obscured by past issues, but predicted dourly that this rider would "rashly and rapidly" destroy the boundaries between state and national authority. C.R., 45 C., 3 S., 1813 (February 24, 1879).

Nation, XXXII (January 20, 1881), 35.

Although Gould was now the largest stockholder in the company after the merger, Norvin Green remained its president. For a fuller discussion of the merger see Grodinsky, Jay Gould, 269-85.
Nation, XXXII (January 20, 1881), 35. The first petition preserved in the committee files of either the House or Senate postal committees relating to telegraph problems is from the New York Board of Trade and Transportation, January 28, 1881, denouncing the proposed merger of the two telegraph companies. Petitions to the House Committee on Post Offices and Post Roads, House of Representatives, RG 233 NA, HR 46A-H19.2.


17 C.R., 48 C., 1 S., 379 (January 14, 1884).

18 Hill's arguments in support of his bill can be found in Ibid., 374-81, which is reproduced in Hill, Speeches and Papers on the Silver, Postal Telegraph, and Other Economic Questions (Colorado Springs, 1890), 198-235 and in U.S. Congress, Senate, Report of the Committee on Post-Offices and Post Roads, Senate Report 577, which is reproduced in Hill, Speeches and Papers, 167-197.

19 U.S. Congress, Remarks of Hon. George F. Edmunds on Postal Telegraph, Before the Committee on Post-Offices and Post Roads, January 17, 1884, 3. This is a committee report in the Secretary's Office, Western Union Telegraph Company.

20 C.G., 39 C., 1 S., 3483 (June 29, 1866).

21 See Chapter III.

22 N. R. Danielian, A. T. & T.: The Story of Industrial Conquest (New York, 1939), 8-9. This work shows how the Berle-Means thesis of a separation of corporate ownership and management applied specifically to the telephone industry in the 1930s. The first chapter, however, deals with the early history of the telephone industry.
U.S. Congress, Senate, Argument of Hon. William M. Evarts, on behalf of the Western Union Telegraph Company, on Postal Telegraph, Before the Committee on Post-Offices and Post-Roads, United States Senate, February 7, 1884, 6. This is a committee report in the Secretary's Office, Western Union Telegraph Company.

Ibid., 9.

Ibid., 21-22.

Robert Wiebe has noted that "pure government always meant parsimonious government" in this period of the nation's life. *The Search for Order, 1877-1920* (New York, 1967), 6. This observation is an especially apt description of the attitude of those sponsoring telegraph bills.

Leonard White observed that if Rip Van Winkle had fallen asleep soon after the Civil War and awoke in 1901 he would have found the nation's governing institutions similar, even though the two time periods were separated by nearly two generations. Leonard D. White, *The Republican Era: 1869-1901* (New York, 1958), 386. His contention certainly holds with reference to institutions for governing telegraph operations.

Frederic Jaher had argued recently that in part the Boston Brahmins retained their position of economic leadership in the decades after the War of 1812 because they were able to keep abreast of economic changes by switching from overseas trade to cotton manufacturing. However, in the post-Civil War years they lost their position of economic leadership. One factor in their decline, Jaher noted, was a loss of "inventive and speculative skills," and a blunting of "desire for material achievement. The former Boston elite," he contended, through the family firm "was committed to an institution that might stress security at the expense of innovation and expansion, that tended to limit investment to relatives, and that lent itself to making blood rather than merit the test for advancement." "The Boston Brahmins
in The Age of Industrial Capitalism," The Age of Industrialism in America: Essays in Social Structures and Cultural Values, ed. by Frederic C. Jaher (New York, London, 1968), 191-94, 228. The quote is from p. 228. The telegraph entrepreneurs of the 1850s and early post-Civil War period were related in attitude to the Boston elite of the early national period rather than to their contemporary Boston elites--the telegraphers exemplified the innovative spirit which characterized the Bostonians two generations earlier.

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