

# THE FIRST

By Michael A. Martorelli

# Activist Congress



Abraham Lincoln by William F. Cogswell, 1869. Located in the White House, Washington, DC.

OBSERVERS WHO MARVEL at the far-reaching nature of the legislation passed by the 111th Congress that met from January 2009 to December 2010 may be even more amazed at the ground-breaking actions of the 37th Congress. That group of representatives met in four separate sessions from March 1861 to March 1863, and passed several acts that profoundly changed the federal government's involvement in many aspects of the nation's business.

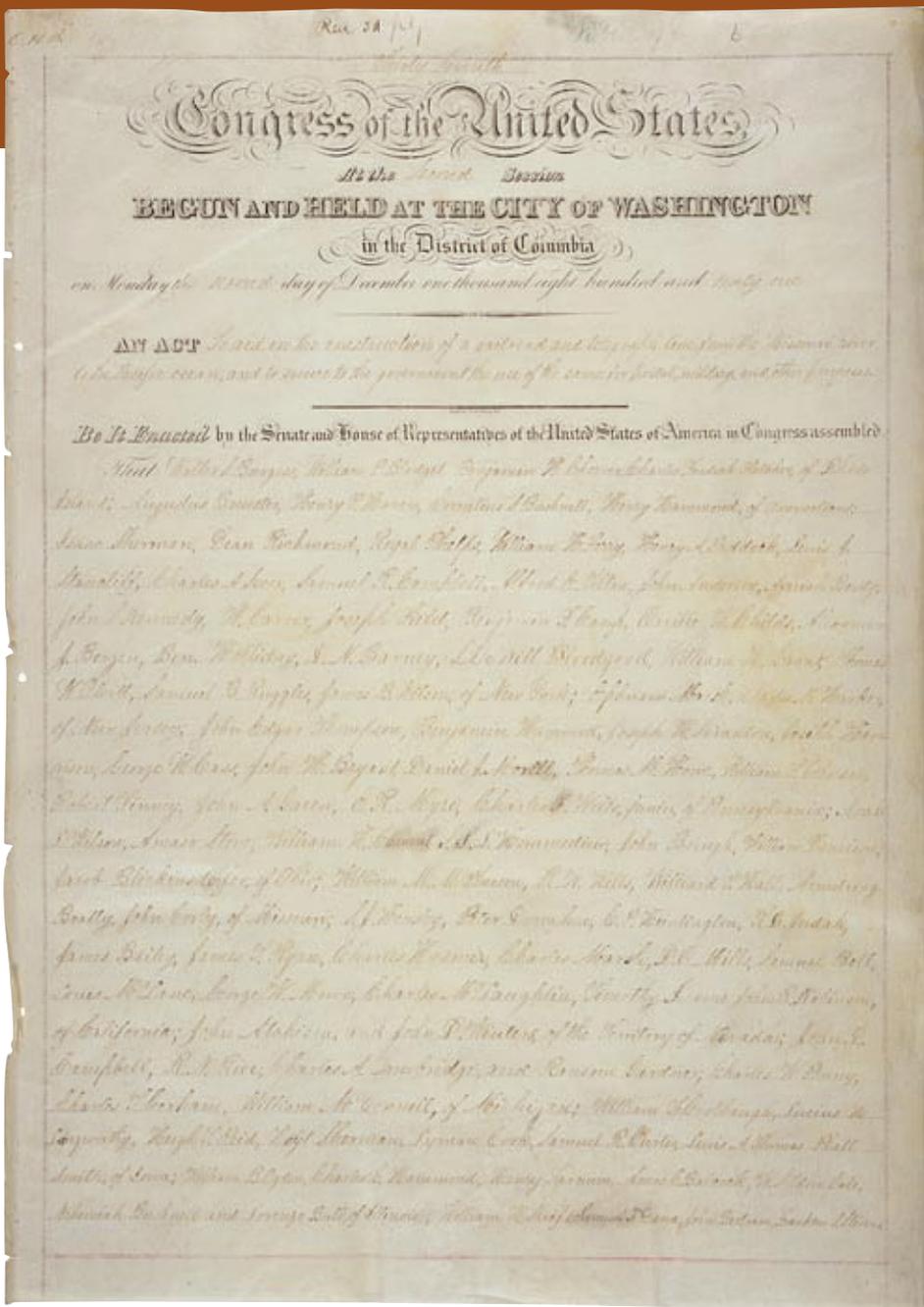
The 35th and 36th Congresses had passed 129 and 157 public acts and resolutions, respectively. The 37th Congress passed 428, while its successor extended or passed another 411. Many related not to contingencies of the on-going Civil War, but to unfinished Republican Party business left over from pre-war legislative sessions. Without representatives from 11 states that had seceded and formed the Confederate States of America (CSA), the 37th Congress passed landmark legislation such as the Revenue Act, Legal Tender Act, Homestead Act, Morrill Act, National Banking Act and Pacific Railway Act, creating what historian Leonard Curry has labeled "a blueprint for modern America" that is still visible some 150 years later.

## The Homestead Act

Congress began authorizing the sale of public lands as a revenue-raising measure in 1796. For the next 30 years, settlers, authors, congressmen and emigrant societies called for the free distribution of public land to individuals and families who would establish homesteads. In 1832, President Andrew Jackson suggested the federal government no longer needed to rely on the sale of federal lands to generate revenue; indeed, he believed they should be sold at greatly reduced prices or given free to the states.

Interest in homesteading grew steadily, prompting political leaders to consider the

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The first page of the Pacific Railway Act, 1862.

new idea of giving away federal lands to individuals who would promise to occupy and develop them. From 1841 to 1854, Congress passed laws giving squatters or settlers free land in Florida, Oregon and New Mexico; the laws required settlers to live on the land, fence-in much of it and bear arms to defend it. From 1844 to 1846, congressmen from four different states introduced different versions of a homesteading bill. None could generate enough interest to be brought to the floor of the House of Representatives or the Senate for a vote. In 1850, the five-man Senate Committee on Public Lands announced

its opposition to homesteading, and its preference for continuing to raise revenue by selling public lands. Southern legislators approved of that decision; they had long been opposed to a homestead law, fearing that men who received free land as they settled the West would not be slaveholders and would oppose the extension of slavery to that territory.

Congressmen from both parties put homesteading on the back burner throughout much of 1850, as they argued over the extension of slavery and debated the set of bills that made up the Compromise of 1850. Later, the supporters of homesteading

renewed their cause. In May 1852, the House approved a homestead bill by a vote of 107 to 56, split largely along sectional lines; the Senate took no action. That pattern of voting (large margins of approval in the House and no action in the Senate) was repeated in 1854, 1856 and 1859; nearly all Southern congressmen continued to vote against the bills.

In 1860, the House and Senate again considered homestead legislation, but did so in an atmosphere of unusual political dissonance. The argument over the extension of slavery into the territories had reached a critical stage. Republicans in both houses of Congress displayed heretofore unseen flexibility in approving compromise homestead legislation that incorporated many Southern-initiated elements they had refused to accept in previous years. In May, the House and Senate passed the same bill by large majorities; in June, Democratic President James Buchanan vetoed it. He called the bill unconstitutional (Congress had no power to give away land), unjust (it would devalue lands in older states) and discriminatory (unmarried citizens were not eligible for land grants but married immigrants were eligible). It was easy for contemporary political opponents to regard that action as one intended mainly to protect the political power of the slavocracy; if the President approved the bill, the anticipated influx of population in the Western territories would eventually reduce the importance of Southern legislators' votes in the House and the Senate.

The Republican Party made the passage of a homestead bill an important plank in its 1860 platform. In May 1862, both houses of Congress passed the Homestead Act after minimal debate, surprising no one. Soon after, President Abraham Lincoln signed it. The Act granted 160 acres of non-occupied and surveyed public land to individuals who promised to live on it for five years; those paying \$1.25 per acre (for 160 acres) or \$2.50 per acre (for 80 acres or less) could receive their title earlier. The Homestead Act had its critics, but it had its intended effect; individuals claimed and settled 285 million acres.

## The Pacific Railroad Acts

Railroads began spreading throughout the country in the 1840s. In 1845, New York merchant Asa Whitney presented Congress a plan for a transcontinental railroad, i.e. one connecting the eastern railroad terminuses at the Missouri River with the Pacific Ocean. He described a private business enterprise, but requested Congress sell his company 80 million acres of public land for only \$8 million. That same year, James Gadsden, president of the South Carolina Railroad Company, convinced a convention of Southern railroad promoters to support a transcontinental route from Memphis to San Diego by way of El Paso. Other groups of promoters proposed a northern route from the Great Lakes to the Columbia River, and a central route from St. Louis to San Francisco. For most of the next 15 years, sectional rivalries and financing issues tied up congressional legislators considering granting large areas of federal land for the construction of only one transcontinental railroad route.

In 1850, Congress first granted federal land in Illinois, Alabama and Mississippi for the construction of networks of railroads throughout those regions. Many Southerners were averse to that land-grant policy; moreover, those still championing a southern transcontinental route began squabbling over the Mississippi River port city selected as the eastern terminus, thus damaging their chances of obtaining congressional approval for their project. In 1855, Secretary of War Jefferson Davis conducted a congressionally mandated study of alternative transcontinental railroad routes. He concluded the southern route from Fulton, Arkansas to San Pedro, California was the shortest and most economical; most of the route lay over nearly level ground, and its highest peak was less than 6,000 feet compared to elevations as high as 10,000 feet for the central route.

Backers of the other routes suspected sectional favoritism; they were well aware that the territory along a southern route would be settled largely by Southern slaveholders intent on bringing that institution to the West. Indeed, that same year the Southern Commercial Convention meeting in Memphis stated that a southern rail route to the Pacific would be indispensable to the slave-holding states' prosperity. When those Southern states seceded from the Union and their representatives left

Congress, it became clear that the remaining members of that body recognized the potential danger in building such a road through Confederate territory.

The members of the 37th Congress vigorously debated the details of their preferred route from Omaha to Sacramento, the terms of land grants and financial support they would authorize and the nature of government oversight of the project. Finally, in May 1862, the House and Senate both passed the Pacific Railroad Act; President Lincoln signed it the following month. That bill was complicated, with provisions describing federal land grants, government loans and funds for mainte-



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Senator John Sherman, proponent of the National Bank Act.

nance to be granted to the Union Pacific and Central Pacific Railroads. It required both railroad companies to raise specific amounts of capital from investors before beginning construction, not an easy task in the midst of a war. Both accomplished that task, but it took time; the Central Pacific was not able to break ground until January 1863, and the Union Pacific had to wait until December 1863.

Building a railroad over thousands of miles of rough land proved to be a daunting task. The directors and commissioners of both railroads soon realized their organizations would need more funds than first anticipated; throughout 1864 they lobbied Congress for more government support. The legislators responded favorably, since they believed the Union needed a transcontinental railroad even more in 1864 than

it had in 1862. Both houses of Congress approved bills calling for more government support; in July, President Lincoln signed another Pacific Railroad Act. That law approximately doubled the federal government's contribution to the private businesses building the transcontinental railroad. More importantly, it cemented the presence of that government in directing the activities of a new type of private enterprise, one whose purpose might involve a public good, but one that also sought to make a profit for its own shareholders.

## The National Banking Acts

In the first half of the 19th century, the business of banking was loosely regulated; each state was free to create its own rules for opening and operating a bank. Most states allowed any group of individuals to establish a bank, providing they deposited a specific amount of state or federal bonds with the proper banking authority, and agreed to redeem their notes for specie upon demand. The bank could then issue a specific amount of notes, usually by making loans to borrowers, who would in turn use those notes as currency.

On the eve of the Civil War, the nation's circulating currency consisted largely of \$200 million worth of bank notes issued by more than 1,500 state banks. The somewhat creaky and not perfectly reliable system (or non-system) of independent state banks had its flaws, and could be unstable in times of economic distress. Historians are still arguing over its true effectiveness. Nonetheless, it seemed capable of handling the country's financial needs. Southerners who recognized the need for state banks had long been opponents of a national bank. They had not been able to stop the establishment of the First or Second National Bank in the early 1800s; but since Andrew Jackson signed the death knell of the latter in 1833, they had continued to resent and resist the federal government's intrusion on their freedom to manage their own finances.

In the summer of 1861, Secretary of the Treasury Salmon P. Chase tried to raise the revenue he believed necessary to prosecute the Civil War by selling government bonds to state banks; he soon realized the futility of that plan and began thinking of alternate sources of financing. In December, he proposed a uniform national currency and a national banking system. His system called for newly-chartered national

banks to purchase US government bonds, and deposit a specified percentage of them with the new Comptroller of the Currency; the banks would then receive national bank notes they could lend to borrowers.

The debate over this idea was long and vigorous. In December 1862, President Lincoln broke the legislative logjam by signaling his support for a national currency and a system of national banks. In January 1863, Senator John Sherman, sponsor of the National Bank Act in that chamber, confirmed the administration's desire to centralize and control the issuance of currency and public credit; more broadly, he signaled the federal government's intention of becoming more influential in numerous aspects of the nation's business. In the final days of discussions, Senator Sherman, Secretary Chase and President Lincoln each placed more emphasis on the bill as an expression of federal sovereignty than a tool for monetary control.

In February, Congress passed and President Lincoln signed the National Bank Act. The new national banking system had plenty of flaws. There were several provisions in the law that seemed to have little to do with the overall need for a national banking system. They appeared instead to reflect the federal government's desire to control that system. For example, the law placed a limit of \$300 million on the total amount of notes permitted to be issued by the new national banking system; it apportioned that amount to banks in accordance with population, bank capital and the business of each state. That provision made it hard for banks in sparsely populated areas in the South and West to satisfy their local demands for credit.

State banks did not respond favorably to the opportunity to affiliate themselves with the new national banking system. By November 1863, 133 new banks had applied for a national charter; only one state bank had applied for conversion. In addition to having concerns about certain financial and non-financial issues, state banks must have been apprehensive about the uncertain fate of the Union. Realizing those banks considered many provisions of the law quite onerous, Secretary Chase and Comptroller of the Currency Hugh McCulloch worked hard to shepherd a bill with many changes through the Congress; the President signed the new National Bank Act in June 1864.

By November 1864 there were 584 national banks; 168 represented



On May 20, 1862, President Abraham Lincoln signed the Homestead Act, giving 160 acre freehold farms from the public domain to citizens who would live on them for five years. Settlers, like the family shown here in Custer County, Nebraska, left the East to pioneer in frontier country. Between 1862 and 1900, approximately 400,000 families received cheap land from the government.

conversions from state charters. Nevertheless, more than 1,100 state banks still refused to switch to national status. Some banks were dissuaded by the more stringent reserve requirements mandated for national banks; others saw no need to be part of the national system. At the end of that year, in order to assert the prominence of the federal government in controlling the system, the new Secretary of the Treasury, William P. Fessenden, suggested that Congress should enact legislation to "...induce the withdrawal of all other circulation than that issued under national authority."

After a lively debate, Congress included a provision in the Revenue Act of March 1865 raising the tax on state bank notes to 10%, effective in July 1866. Whether justified or not, that provision had its intended effect. During 1865, another 731 state banks decided they would be unable to remain competitive and switched their charters to the national status. By the end of 1866, the national banking system had replaced the antebellum assortment of state banks as the prominent lender to American businesses. More than 1,630 national banks had notes worth \$276 million in circulation; the remaining 66 state banks had circulating notes worth \$20 million.

The Republicans who controlled Congress and the Presidency during the Civil War took many actions to confront the greatest national crisis since the country's founding. In describing the Republican

economic policies of that era, historian Heather Cox Richardson noted their desire to create "the greatest nation of the earth." This article has reviewed the evolution and impact of only a few laws enacted from 1861 to 1863 that inserted the federal government into new areas of the economy. Southerners who resigned from Congress in 1861 may not have realized the full impact of ceding the legislative ground to Northerners; Northerners who remained may not have realized the full extent of their power. There can be no doubt, however, that the Congress that met from March 1861 to March 1863 made a mark on history that no version of that body had made up until that time. \$

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