

# PIRATES, ROGUES, REVOLUTIONARIES, AND LOBBYISTS: A LEGISLATIVE HISTORY OF THE PANAMA CANAL PURCHASE ACT OF 1902

Graham Markiewicz\*

*Just three pages of legislative text was enough for the United States to embark on the one of the grandest engineering feats of all time. This Article examines the history, policies, and processes that led to the passage of the Panama Canal Purchase Act of 1902. Beginning and ending with civil wars in Latin America, this Article tells the story of how foreign affairs influence Washington, D.C., and vice versa. It follows closely a rotating cast of characters seeking fame and fortune who resorted to any lengths to achieve them. It winds through stories of revolutions, corruption, pirates, and cutthroat politics. In some ways, the passage of that law was as difficult as the engineering challenges faced by those tasked with constructing the canal. The Act itself faced a multitude of setbacks, referrals to committees, and calls for further study. Despite the intervening century, the final passage of this Act teaches us modern lessons for legislative design and advocacy.*

INTRODUCTION.....	272
I. THE POLITICAL AND PRACTICAL CHALLENGES OF A TRANS-ISTHMUS CANAL .....	274
A. <i>The Filibuster War and Early Surveys</i> .....	275
1. The Panamanian Overland Route: The Trans-continental Panamanian Railroad.....	277
2. The Nicaraguan Overland Route: The Accessory Transit Company .....	279
3. The Filibuster War.....	281
B. <i>Clayton-Bulwer and Treaty Negotiations</i> .....	284
II. CONGRESSIONAL DEBATES AND PERSPECTIVES.....	294
A. <i>Senator Morgan: The Father of the Isthmian Canal</i> .....	295
B. <i>Spanish America War: Making a National Security Case</i> .....	299
C. <i>The Fight for the Nicaraguan Route (1899–1902)</i> .....	303
D. <i>Panama Wins Out</i> .....	313

---

\* Mr. Graham Markiewicz, Esq. is a Defense Policy Advisor in the U.S. Senate. He previously served in the U.S. Army as an Infantry officer and in the U.S. House of Representatives as a Legislative Counsel. Graham holds a B.S. from the United States Military Academy at West Point and a J.D. from Boston College Law School. He thanks his wife, Katherine, for her boundless patience and support.

III. LEGACY OF THE BILL AND THE CANAL IT CREATED .....317

    A. *Continuing Controversy Post-bill Passage* .....317

    B. *Contemporary Lessons from a 120-Year-Old Bill*.....319

CONCLUSION .....320

INTRODUCTION

When the Panama Canal opened in 1914,<sup>1</sup> it was arguably humankind’s most remarkable engineering feat. Today it persists as one of the seven Modern World Wonders according to the American Society of Civil Engineers.<sup>2</sup> Every year, the Canal accommodates 340 million tons of goods in transit between the Atlantic and Pacific Oceans and shaves off up to 8,000 nautical miles and weeks of shipping time off the pre-Canal route around the southern coast of South America at Cape Horn.<sup>3</sup> Yet, despite the Canal’s economic efficiency, it almost did not exist. The Canal’s history shows that its completion was almost as likely as water flowing uphill.<sup>4</sup> In the 100 years since its completion, no transit route rivalling the Panama Canal has been built despite several attempts involving competing canals.<sup>5</sup>

The Panama Canal was made possible by one act of Congress: The Panama Canal Purchase Act of 1902.<sup>6</sup> Signed by President Theodore Roosevelt and authored by Senator John Spooner, the Act itself was quite simple and only three pages long. However, the history of how those words got onto those pages is much longer. It winds through stories of revolutions, corruption, pirates, and cutthroat politics.

In some ways, the passage of the Act was as challenging as the engineering challenges faced by the individuals who constructed the Canal. The Act faced multiple setbacks, referrals to committees, and calls for further study.<sup>7</sup> Potentially, the Canal never would have been constructed were it not for the stewardship of one lobbyist

---

1. DAVID MCCULLOUGH, *THE PATH BETWEEN THE SEAS: THE CREATION OF THE PANAMA CANAL 1870–1914*, at 609 (1977).

2. *Seven Wonders of Modern World are Named by ASCE*, CIVIL ENG’G, Jan. 1997, at 70.

3. See Costas Paris et al., *The Panama Canal Expands*, WALL ST. J., <https://www.wsj.com/articles/the-panama-canal-expands-1466378348> [<https://web.archive.org/web/20230223174445/https://www.wsj.com/articles/the-panama-canal-expands-1466378348>] (June 20, 2016, 2:40 PM); Azad Abdulhafedh, *The Panama Canal: A Man-Made Engineering Marvel*, 5 INT’L J. SOC. SCI. & HUMANS. RSCH. 318, 318 (2017).

4. John Donovan, *How the Panama Canal Makes Water Flow Uphill*, HOWSTUFFWORKS, <https://science.howstuffworks.com/engineering/structural/panama-canal.htm> [<https://perma.cc/TG3Z-M633>].

5. See Nicholas Muller, *Nicaragua’s Chinese-Financed Canal Project Still in Limbo*, THE DIPLOMAT (Aug. 20, 2019), <https://thediplomat.com/2019/08/nicaraguas-chinese-financed-canal-project-still-in-limbo/> [<https://perma.cc/L4BR-AKTN>]; Walt Boganich et al., *The New Panama Canal: A Risky Bet*, N.Y. TIMES (June 22, 2016), <https://www.nytimes.com/interactive/2016/06/22/world/americas/panama-canal.html> [<https://web.archive.org/web/20230417203632/https://www.nytimes.com/interactive/2016/06/22/world/americas/panama-canal.html>].

6. Panama Canal Purchase Act of 1902, ch. 1302, 32 Stat. 481 (1902).

7. See *infra* Section II.D.

who was said to be “more powerful than all the railroads in the country.”<sup>8</sup> That lobbyist, coupled with one influencer willing to violate French law, brought to life the legislative text in support of the Panama Canal.

The seedy history of the Panama Canal Purchase Act is colored dramatically by who is telling the story. Then former-President Theodore Roosevelt remarked, “The United States has many honorable chapters in its history, but no more honorable chapter than that which tells of the way in which our right to dig the Panama Canal was secured . . . .”<sup>9</sup> One analyst offered an alternative view of the Panama Canal in response, rhetorically asking, “Did any civilized representative of a superior power ever indulge in browbeating so pitiable and so pitiless?”<sup>10</sup>

This Article examines the historical context of the Panama Canal Purchase Act in three Parts. Part I examines the early political and practical challenges of a trans-isthmus canal. Part I also outlines some early surveys of potential canal routes and closely examines a significant regional conflict that set the stage culturally and in Congress for the Act’s passage. Additionally, Part I lays out some of the early bilateral treaties that limited legal operations in the Western Hemisphere.

Part II delves into congressional perspectives and debates that took place in Washington, D.C., concerning a trans-isthmus canal—including the all-important controversy over whether to endorse a canal route through Nicaragua or Panama—and the external pressures that influenced members of Congress’s views. Part II also explores the arguments made for and against Nicaraguan and Panamanian canal routes, including some blatantly false accusations. Last, Part II explains how Congress ultimately endorsed a Panamanian route in the text of the bill that became the Panama Canal Act, the so-called Hepburn Bill, and the path to passage that the Hepburn Bill took.

Part III adds context to the Panama Canal Act by looking at its near- and long-term impacts. Part III also explains some unfortunate and unrepeatable, or at least ill-advised, incidents that immediately followed the Act’s passage. However, Part III also puts the Act’s history in a contemporary context to suggest modern applications for successfully advocating for intractable legislation.

---

8. *The Story of Panama: Hearings on the Rainey Resolution Before the H. Comm. on Foreign Affs.*, 62d Cong., at 25 (1912) [hereinafter *The Story of Panama Vol. 1*] (statement of Rep. W.S. Goodwin, Member, H.R. Comm. on Foreign Affs.).

9. Theodore Roosevelt, Editorial, *How the United States Acquired the Right to Dig the Panama Canal*, 99 OUTLOOK 314, 318 (1911).

10. Leander T. Chamberlain, *A Chapter of National Dishonor*, 195 N. AM. REV. 145, 155–56 (1912).

## I. THE POLITICAL AND PRACTICAL CHALLENGES OF A TRANS-ISTHMUS CANAL

The dream of a canal through the narrowest part of the North American continent that would connect the Atlantic and Pacific Oceans existed as early as 1552, but no serious attempts were made to construct such a canal until more than three centuries later.<sup>11</sup> In 1791, the king of Spain was presented with an option of using Lake Nicaragua as a potential sea route across the American isthmus.<sup>12</sup> During the height of her colonial power, the United Kingdom explored canal construction in 1839.<sup>13</sup> Yet it was not until the French completed the Suez Canal that the first major attempt at a sister canal in Panama began in 1881.<sup>14</sup>

FIGURE 1: LAKE NICARAGUA AND THE PANAMA CANAL<sup>15</sup>



11. MCCULLOUGH, *supra* note 1, at 27–28. Spanish King Carlos I first ordered the Panama regional governor to explore a route through the Chagres River, though the required technology to physically build along that route did not exist at the time. Ricardo Caballero Vega, *The Marvel that Is Panama Canal, How It Works and Why It Is Important to Global Trade*, SHIPPING & FREIGHT RES. (Apr. 28, 2020), <https://www.shippingandfreightresource.com/panama-canal-how-it-works-and-why-it-is-important> [https://perma.cc/XXY9-W4C2].

12. 34 CONG. REC. 2249 (1901) (statement of Sen. Morgan).

13. See H.R. DOC. NO. 28-77 (1st Sess. 1844) (reprinting executive correspondences discussing the United Kingdom’s desire for a canal).

14. Harold Andrew Rasp, *United States Relations with Nicaragua Concerning an Interoceanic Canal 1850–1903*, at 93 (1969) (M.A. thesis, University of Arizona), [https://repository.arizona.edu/bitstream/handle/10150/318075/AZU\\_TD\\_BOX39\\_E9791\\_1969\\_26.pdf](https://repository.arizona.edu/bitstream/handle/10150/318075/AZU_TD_BOX39_E9791_1969_26.pdf) [https://perma.cc/AE3A-3NCE].

15. Figure 1 was created from *Physical Central America and the Caribbean* (illustration), in *World and Regional Maps*, CIA.GOV: THE WORLD FACTBOOK (Mar. 13, 2021), [https://www.cia.gov/the-world-factbook/static/9315cc9b83491c97a768aeea5a969585/arctic\\_pol.pdf](https://www.cia.gov/the-world-factbook/static/9315cc9b83491c97a768aeea5a969585/arctic_pol.pdf) [https://perma.cc/74PY-SBFQ]. Lake Nicaragua is indicated on Figure 1 as “Lago de Nicaragua.” Figure 1 also indicates the final location of the Panama Canal.

The ambition to connect the Atlantic and Pacific Oceans was evident to many. However, the specifics on the best way to do so led many to extreme events, including war. In the early part of this effort, rail-mounted ships and tunnels under mountains were as likely to have been constructed as a canal. Many expeditions were launched by private companies and nations to accurately map and measure every inch of the strip of land in question. Often, as more efforts were made to understand the problem, the political situation became more complex.

This Part looks at the initial political difficulties and implementation of building a canal across the isthmus. This Part also describes initial assessments of potential canal paths and some more in-depth surveys. This Part further delves into a major dispute in the region, known as the Filibuster War, that shaped cultural and legislative attitudes in Congress and affected the passage of relevant laws. Last, this Part covers early agreements between countries that restricted legal activity in the Americas.

### *A. The Filibuster War and Early Surveys*

The route to the Panama Canal Purchase Act went directly through Nicaragua. Nicaragua itself was an early adopter of the construction of an interoceanic canal across its territory.<sup>16</sup> In 1825, the government of newly-formed Nicaragua beseeched then-Secretary of State John Quincy Adams to encourage the United States to build such a canal.<sup>17</sup> The next Secretary of State, Henry Clay, instructed U.S. delegates to the 1826 Panama Congress to express interest in a trans-isthmus canal.<sup>18</sup>

On March 3, 1835, the Senate adopted a resolution that urged the United States to enter into an agreement with Central American states, including the Republic of New Granada (whose territory embraced the modern-day borders of the Republic of Colombia and the Republic of Panama<sup>19</sup>), to construct a canal across the Central American isthmus.<sup>20</sup> Pursuant to that resolution, the administration of President Andrew Jackson began making diplomatic inquiries.<sup>21</sup>

Exactly four years later, the House Committee on Roads and Canals reported on those investigations and concluded that “the nation which has the right to appropriate its exclusive use to itself, might lawfully control the richest commerce of the world.”<sup>22</sup> However, the Committee explored many of the geographic and climatic

---

16. See Rasp, *supra* note 14, at 1–2.

17. *Id.*

18. *Id.* at 2.

19. *Spanish and Portuguese America 1780* (illustration), in *Encyclopædia Britannica, Viceroyalty of New Granada*, BRITANNICA, <https://www.britannica.com/place/Viceroyalty-of-New-Granada> [<https://perma.cc/QFQ8-6W9E>] (May 1, 2023); *Viceroyalty of New Granada, supra* (“The name . . . Republic of New Granada . . . was adopted by Colombia in the period 1830–58.”).

20. S. JOURNAL, 23d Cong., 2d Sess. 238 (1835).

21. H.R. REP. NO. 30-145, at 3 (2d Sess. 1848).

22. H.R. REP. NO. 25-322, at 2 (3d Sess. 1839).

impediments of constructing a canal on the isthmus and hedged: “[T]he committee are very far from deciding that an enterprise of such incalculable importance . . . should be abandoned as impracticable, because a channel for such navigation has not yet been definitively traced across the isthmus between North and South America, nor the cost of its construction accurately determined.”<sup>23</sup> And with that, the House bounced responsibility back to the President.<sup>24</sup>

In 1849, when the United States reached the shores of the Pacific with the acquisition of the California and Oregon Territories, a trans-isthmus canal became even more important to the nation. A joint resolution introduced in the House called for additional surveys<sup>25</sup> and the House formed a select committee to examine the issue.<sup>26</sup> That select committee, the House Select Committee on a Canal or Railroad Between the Atlantic and Pacific Oceans, issued a 679-page report on February 20, 1849, which included route surveys across the isthmus at both Panama and Nicaragua, testimony from engineers, reports on trade, astronomical and statistical evaluations, and input from various states.<sup>27</sup> The report is an interesting historical and scientific look at potential trans-isthmus canals, but it failed to provide a clear path to a trans-isthmus canal for the United States to follow.

Still, pressure slowly built, and some progress was made. Matthew Fontaine Maury, nicknamed “Pathfinder of the Seas,” wrote in a letter to the chair of the House Select Committee on a Canal or Railroad that a railroad linking the Atlantic and Pacific coasts of Panama would quickly lead to a Panama canal “by showing to the world how immense this business is.”<sup>28</sup> Maury was correct that a trans-isthmus railroad would be incredibly profitable, but he was proven wrong in his prediction that a canal would follow soon after the construction of such a railroad.

---

23. *Id.* at 7.

24. *Id.*

25. H.R. J. Res. 42, 30th Cong., 2d Sess. (1849). It does not appear that the text of this resolution was printed in either the *Congressional Globe* or the *Journal of the House of Representatives*, but the resolution is discussed in H.R. REP. NO. 30-145.

26. CONG. GLOBE, 30th Cong., 2d Sess. 112 (1848).

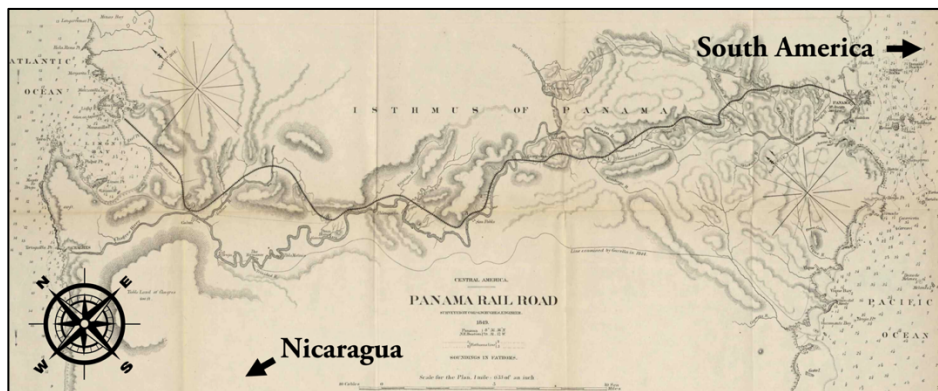
27. H.R. REP. NO. 30-145.

28. Letter from W.F. Maury to John A. Rockwell, Chairman, H.R. Select Comm. on Canal or R.R. Between the Atl. & Pac. Oceans (July 2, 1849), in H.R. REP. NO. 30-145, at 649, 661.

## 1. The Panamanian Overland Route: The Trans-continental Panamanian Railroad

In 1850, an American company began work on a trans-isthmus railroad across the region of Panama,<sup>29</sup> whose inhabitants had been granting varying degrees of autonomy by officials in Bogotá, the capitol of the Republic of New Granada.<sup>30</sup> That company, the Panama Railroad Company, was founded by William Henry Aspinwall and John Lloyd Stephens and its railroad provided the preferred way to travel from the east coast of the United States to the west (by ship from the western United States to the Pacific coast of Panama, rail across the Panamanian isthmus, and ship from the Atlantic coast of Panama to the eastern United States, or vice-versa) and was the world's first transcontinental railroad when it was completed in 1855.<sup>31</sup>

FIGURE 2: THE PANAMA RAILROAD COMPANY'S RAILWAY ACROSS PANAMA<sup>32</sup>



Thanks in part to the California Gold Rush, the railroad was a huge success.<sup>33</sup> Although construction costs were more than six times greater than estimated (\$8 million), the railroad produced over \$7 million in profit in its first six years.<sup>34</sup> As historian David McCullough noted, “[A]t \$295 a share, Panama Railroad was the highest-priced stock listed on the New York Exchange.”<sup>35</sup> Stephens had spent a significant amount of time in Central America, including Nicaragua, and he felt a canal was

29. MCCULLOUGH, *supra* note 1, at 35.

30. See 15 ROBERT W. AGUIRRE, INTERNATIONAL STRAITS OF THE WORLD: THE PANAMA CANAL 138 (Gerard J. Mangone ed., 2010).

31. MCCULLOUGH, *supra* note 1, at 35; Rasp, *supra* note 14, at 37.

32. Figure 2 was created from *Panama Rail Road* (map), in S. EXEC. DOC. NO. 39-62 (1866) (map number six), which is a map of the Panama Railroad Company's line through Panama.

33. *Id.*

34. *Id.*

35. *Id.*

possible there, but he ultimately focused on Panama.<sup>36</sup>

While a Panamanian canal route languished, interest in a Nicaraguan route grew. In June 1849, a U.S. Navy lieutenant formed a treaty with Nicaragua that would have granted the United States the sole right to construct a canal through Nicaragua.<sup>37</sup> Eventually, filibustering by one man on the ground in Nicaragua brought the issue of whether the United States should support the construction of a Nicaraguan canal to a head.<sup>38</sup>

Long before the filibuster became a feared tool used to stall legislation in the Senate, the word was used in an entirely different manner. In the early 1800s, *filibuster* meant an attempt by a private citizen to take over a country.<sup>39</sup> One of the most famous filibuster attempts was undertaken by an American citizen, William Walker, in Nicaragua.<sup>40</sup>

---

36. *Id.* at 32, 35.

37. Rasp, *supra* note 14, at 6–7.

38. *Id.* at 46.

39. See 1 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 849 (Philip B. Gove et al. eds., 1981) (defining *filibuster* as “an American who in the mid-19th century took part in fomenting revolutions and insurrections in a Latin American country”).

40. See Rasp, *supra* note 14, at 43–60.



## 2. The Nicaraguan Overland Route: The Accessory Transit Company

On August 26, 1849, Nicaragua granted the Accessory Transit Company, run by U.S. businessman Cornelius Vanderbilt, sole rights to construct a trade route across its territory.<sup>41</sup> Nicaragua also granted the Company the option to construct a canal route within twelve years.<sup>42</sup>

For the initial run of the contract, the Accessory Transit Company primarily operated a multi-leg journey across the isthmus, including rail-line and stagecoach overland and steamship across Lake Nicaragua.<sup>43</sup> Moving from east to west, a traveler would disembark their ship in the Caribbean at Greytown in southern Nicaragua and go over land and riverboat seventy miles to San Carlos on the shore of the lake.<sup>44</sup> From there, they would take a steamship across Lake Nicaragua to Virgin Bay, where only another ten miles of land separated them from San Juan Del Sur on the Pacific Ocean.<sup>45</sup> The size of the lake also meant it was commonly used for transportation within Nicaragua, especially to the northern part of the country where it offered quick access to Nicaragua's capital, Managua.<sup>46</sup>

FIGURE 3: ACCESSORY TRANSIT COMPANY ROUTE ACROSS NICARAGUA<sup>47</sup>



41. *Id.* at 35.

42. *Id.*

43. *Id.*

44. See William Oscar Scroggs, *William Walker and the Steamship Corporation in Nicaragua*, 10 AM. HIST. REV. 792, 796 (1905).

45. *See id.*

46. S. DOC. NO. 58-222, at 35 (1904).

47. Figure 3 was created from *Map of Nicaragua: Showing Explorations and Surveys* (map), in S. EXEC. DOC. NO. 43-57 (1874) (plate number one), which is a map created by surveyors commissioned to explore a Nicaraguan canal route.

The Accessory Transit Company also had the right to construct a canal across the isthmus through Nicaragua.<sup>48</sup> In 1851, the Company commissioned Colonel O. M. Childs to survey a potential canal route that would cover the whole distance.<sup>49</sup> Childs's survey took several years and was one of the most comprehensive of any surveys of the Nicaraguan isthmus to date.<sup>50</sup> The Company ran into trouble of its own, unrelated to the technical challenges posed by canal construction.

For a time, the Nicaragua route was a lucrative business for the Accessory Transit Company, in part because they underpaid operation fees to the government of Nicaragua.<sup>51</sup> Eventually, by 1853, the Nicaraguan government began pressing the Company to make good on its contractual obligations.<sup>52</sup> Rather than come to negotiated terms, the Company began to support a revolutionary faction within Nicaragua.<sup>53</sup> Under the auspices of transporting workers to help maintain the line or as passengers to California gold fields, the Company transported a large number of individuals to Nicaragua to join the revolutionary forces.<sup>54</sup>

---

48. Rasp, *supra* note 14, at 35.

49. S. REP. NO. 55-1417, at 1 (1898).

50. *Id.*; Rasp, *supra* note 14, at 37.

51. Rasp, *supra* note 14, at 44.

52. *Id.* at 39–40.

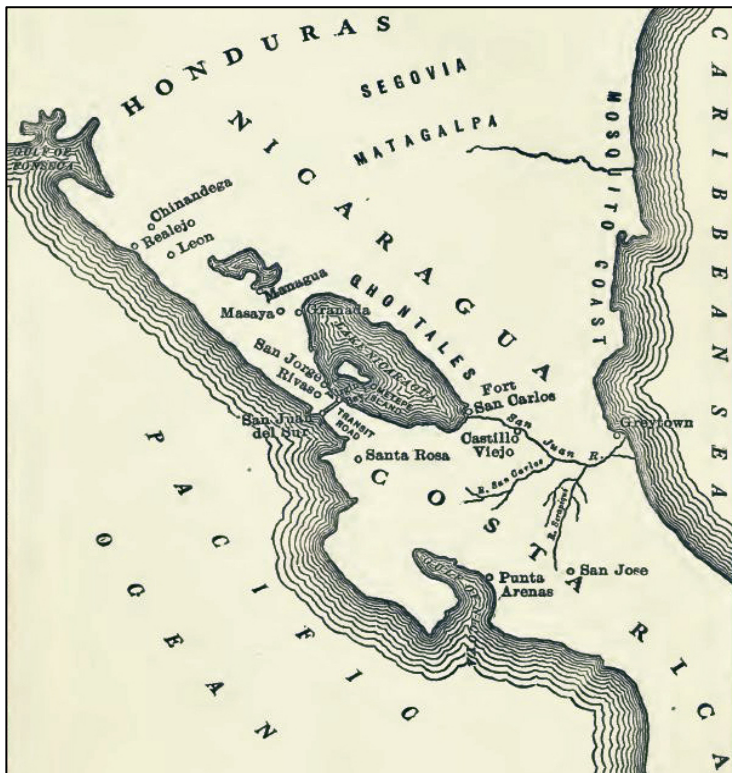
53. WILLIAM WALKER, THE WAR IN NICARAGUA 146 (N.Y.C., N.Y., S.H. Goetzel & Co. 1860); S. EXEC. DOC. NO. 45-3, at 2 (1879).

54. WALKER, *supra* note 53, at 146; S. EXEC. DOC. NO. 45-3, at 2 (3d Sess. 1879).

### 3. The Filibuster War

Of those individuals, one William Walker was hired as a mercenary by the revolutionary forces with the lure of large swaths of land.<sup>55</sup> Walker, using the Accessory Transit Company for logistical support, captured Managua, the Nicaraguan capital, and Granada, a port town on Lake Nicaragua.<sup>56</sup> However, the longstanding Nicaraguan government controlled by the Nicaraguan Legitimist Party continued to provide fierce resistance with the help of neighboring Costa Rica.<sup>57</sup> The Legitimists became increasingly wary of Walker's guerilla tactics and use of civilian infrastructure, including steamships owned by the Company.<sup>58</sup>

FIGURE 4: WALKER'S THEATER OF OPERATIONS IN NICARAGUA<sup>59</sup>



55. WALKER, *supra* note 53, at 24; S. EXEC. DOC. NO. 45-3, at 2; Rasp, *supra* note 14, at 43.

56. S. EXEC. DOC. NO. 45-3, at 2; Letter from J.G. Kendrick to President Franklin Pierce (July 1, 1856), in S. EXEC. DOC. NO. 45-3, at 29.

57. S. EXEC. DOC. NO. 45-3, at 2.

58. See Scroggs, *supra* note 44, at 796.

59. Figure 4 was created from *Walker's Theaters of Operations in Nicaragua* (map), in WILLIAM O. SCROGGS, *FILIBUSTERS AND FINANCIERS: THE STORY OF WILLIAM WALKER AND HIS ASSOCIATES* 110 (1916).

One particular skirmish altered the course of the trans-isthmus canal and affected U.S.–Nicaragua relations for decades to come. On October 17, 1855, Walker’s forces attacked the Legitimist-held fort at San Carlos, but were repelled back across Lake Nicaragua.<sup>60</sup> The next day, a steamship carrying several hundred California-bound passengers approached San Carlos on the shore of the lake from the east.<sup>61</sup> Nicaraguan and Costa Rican forces fired on the civilian passenger ship, having assumed it was Walker returning.<sup>62</sup> Two passengers, a woman and a child, were killed before the Legitimists called off the attack.<sup>63</sup>

William Walker took his forces west across Lake Nicaragua, commandeered a steamship, and traveled north to Granada for reinforcements.<sup>64</sup> That fateful decision left over 250 Accessory Transit Company customers stranded while they waited for another boat.<sup>65</sup> When approximately 200 Nicaraguan forces came into the area the next night, they assumed the stranded travelers were part of the filibuster’s forces.<sup>66</sup> In the confusion, the Legitimists again fired upon American civilians, which killed several and wounded many more.<sup>67</sup>

Up until that point, the United States had stayed officially neutral in the Nicaraguan civil conflict and the American Ambassador to Nicaragua, John Wheeler, tightly controlled official dialogue.<sup>68</sup> Ambassador Wheeler lent his personal support to Walker’s efforts, which in turn bore some of the trappings of tacit U.S. approval.<sup>69</sup> At one point, the Legitimists even captured and imprisoned Ambassador Wheeler for his actions supporting Walker.<sup>70</sup> Walker’s forces eventually freed Wheeler, though Walker had privately hoped the Ambassador would be executed so the full force of the United States would be pulled into the fight.<sup>71</sup> On the official side, in

60. WALKER, *supra* note 53, at 121–22; ALEJANDRO BOLAÑOS GEYER, FAVORED OF THE GODS: ABRIDGED VERSION OF WILLIAM WALKER THE GREY-EYED MAN OF DESTINY 62 (2002).

61. S. EXEC. DOC. NO. 45-3, at 29; BOLAÑOS GEYER, *supra* note 60, at 63.

62. BOLAÑOS GEYER, *supra* note 60, at 63–64.

63. S. EXEC. DOC. NO. 45-3, at 16; WALKER, *supra* note 53, at 122; BOLAÑOS GEYER, *supra* note 60, at 63.

64. BOLAÑOS GEYER, *supra* note 60, at 64.

65. *Id.* at 64.

66. *Id.* at 63–64.

67. *Id.* at 64.

68. *See id.* at 59, 64. Wheeler also came to notoriety that year. As a slave owner in North Carolina, he traveled to New York upon his appointment as Ambassador to catch a ship to Nicaragua. Carrie Hagen, *The Courageous Tale of Jane Johnson, Who Risked Her Freedom for Those Who Helped Her Escape Slavery*, SMITHSONIAN MAG. (Nov. 16, 2020), <https://www.smithsonianmag.com/history/courageous-tale-jane-johnson-who-risked-her-freedom-testify-those-who-helped-her-escape-180976302/> [https://perma.cc/3KR4-X6TN]. Along the way, an enslaved Jane Johnson and her two sons escaped in Pennsylvania. *Id.* The ensuing legal battle was a major test for the Fugitive Slave Act of 1850, ch. 60, 9 Stat. 462 (repealed 1864). *Id.* This anecdote was not out of character for Wheeler who disdained people of color, a trait he would apply during his appointment to Nicaragua. BOLAÑOS GEYER, *supra* note 60, at 64, 98.

69. BOLAÑOS GEYER, *supra* note 60, at 61, 63.

70. *Id.*

71. *Id.* at 63.

correspondence with Secretary of State William Marcy, Nicaraguan and Costa Rican officials referred to Walker as a “freebooter” and a “pirate.”<sup>72</sup> Secretary Marcy did not disagree with those categorizations but did disavow any U.S. involvement.<sup>73</sup>

Due to massacre by the Legitimists, Walker shifted his tactics and began executing prisoners and taking civilians as hostages.<sup>74</sup> He also used U.S. civilians as props for his war. When a Legitimist emissary came to negotiate with him, Walker handed out weapons to non-combatants so estimates of his actual fighting force reported by the emissary would be much higher.<sup>75</sup> Ambassador Wheeler, for his part, provided protection to the U.S. civilians even though they were not actually being targeted by the Legitimists.<sup>76</sup> Wheeler also began collecting and sending to his office in Washington hand-picked witness testimony to show the barbarism of Nicaraguan forces.<sup>77</sup> This testimony did not immediately have the effect Wheeler desired, but it did color international relations for the coming decades.

Some of the statements Ambassador Wheeler recorded also became the basis for international claims against the Nicaraguan government. The families of those wounded and killed in the Nicaraguan civil war petitioned the State Department and Congress for restitution.<sup>78</sup> The State Department struggled to press for restitution for the dozens of individuals harmed in the crossfire between the Legitimists and Walker’s forces, especially after Nicaragua counter-claimed against William Walker’s entire campaign and conquest.<sup>79</sup> Later, in May 1878, the Senate passed a resolution to pull information from the State Department on claims made by U.S. citizens based on events of October 19, 1855, at Virgin Bay, Nicaragua.<sup>80</sup> A year later, on February 4, 1879, the Senate created a select committee to examine the claims stemming from the Virgin Bay incident.<sup>81</sup> One Senator John Tyler Morgan was appointed to serve on that select committee, which was called the Senate Select Committee to Inquire into All Claims of Citizens of the United States Against the Government of Nicaragua.<sup>82</sup>

But in 1855, Walker did not ultimately need U.S. military involvement. His terrorist-like tactics were enough to force the Legitimists into peace talks where Walker was made commander-in-chief of the Nicaraguan military while a Legitimist

---

72. S. EXEC. DOC. NO. 34-68, at 131, 133–34 (1st Sess. 1856).

73. *Id.* at 137–40.

74. WALKER, *supra* note 53, at 123–24; BOLAÑOS GEYER, *supra* note 60, at 64.

75. WALKER, *supra* note 53, at 125; BOLAÑOS GEYER, *supra* note 60, at 65.

76. S. EXEC. DOC. NO. 45-3, at 6 (3d Sess. 1879); BOLAÑOS GEYER, *supra* note 60, at 64.

77. S. EXEC. DOC. NO. 45-3, at 8; BOLAÑOS GEYER, *supra* note 60, at 64.

78. S. EXEC. DOC. NO. 45-3, at 3.

79. *Id.*

80. 7 CONG. REC. 3814 (1878) (resolution passed in Senate).

81. S. Res. 50, 45th Cong., 8 CONG. REC. 994 (1879) (enacted).

82. 8 CONG. REC. at 1070 (Sen. Morgan appointed to Senate Select Committee).

figurehead continued as president.<sup>83</sup> Walker completed his coup less than a month later and consolidated power.<sup>84</sup> Walker used the levers of state power in Nicaragua to swell his foreign military ranks from several hundred to several thousand.<sup>85</sup> While Ambassador Wheeler hastened to recognize Walker's authority, the U.S. government never did.<sup>86</sup> Walker gained so much power that President Franklin Pierce issued a proclamation discouraging Americans to travel to Nicaragua for the purpose of joining Walker's filibuster force.<sup>87</sup>

Walker was only "president" of Nicaragua for less than a year.<sup>88</sup> He had made many enemies in the fight for power, including Vanderbilt and leaders of the other Central American countries.<sup>89</sup> Walker ultimately crossed the Accessory Transit Company by revoking Vanderbilt's charter, purportedly due to the Company's failure to make progress on constructing a Nicaraguan canal.<sup>90</sup> Vanderbilt in turn, partnered with Costa Rica to blockade Nicaragua and deny it access to the Caribbean, which crippled the Walker-backed Nicaraguan regime.<sup>91</sup> A weakened Walker eventually surrendered to American forces under the command of Commodore Hiram Paulding.<sup>92</sup>

### B. Clayton-Bulwer and Treaty Negotiations

In 1848, the United States and Great Britain nearly went to war when British forces occupied Greytown, Nicaragua, the Caribbean port-town on the Atlantic coast where the Accessory Transit Company passengers began the overland journey to San Juan del Sur on the Pacific.<sup>93</sup> The United States was concerned the move would precipitate a British canal, which would have greatly increased the British Empire's position in Central America and the Pacific.<sup>94</sup> To ratchet down escalating tensions,

---

83. WALKER, *supra* note 53, at 127; BOLAÑOS GEYER, *supra* note 60, at 65.

84. BOLAÑOS GEYER, *supra* note 60, at 67–68.

85. *Id.* at 71.

86. S. EXEC. DOC. NO. 45-3, at 3 (3d Sess. 1879).

87. Proclamation No. 40, 11 Stat. 789 (1855).

88. BOLAÑOS GEYER, *supra* note 60, at 92, 159 (detailing that Walker controlled Nicaragua from July 12, 1856, to May 1, 1857).

89. H.R. EXEC. DOC. NO. 34-103, at 82 (1856); WALKER, *supra* note 53, at 136; Scroggs, *supra* note 44, at 805.

90. Scroggs, *supra* note 44, at 802–04.

91. WALKER, *supra* note 53, at 148, 153; *see* Rasp, *supra* note 14, at 45–46.

92. *See* CONG. GLOBE, 35th Cong., 1st Sess. 273 (1858) (statement of Rep. Curtis); Scroggs, *supra* note 44, at 808. Commodore Paulding was himself an interesting historical figure. He was the son of John Paulding, who, during the American Revolution, captured British major John André acting as a spy and attempting to negotiate the surrender of West Point by famed traitor Benedict Arnold. H.R. REP. NO. 45-220, at 1 (3d Sess. 1879). Potentially, had it not been for the capture of Major André, the American forces would have been crippled and the Revolution lost. *Id.*

93. MCCULLOUGH, *supra* note 1, at 38.

94. *Id.*

then-Secretary of State John Clayton and British special envoy Sir Henry Bulwer agreed that any canal built through Central America would be under joint control of the two nations.<sup>95</sup> Secretary Clayton's and Bulwer's agreement came to be known as the Clayton-Bulwer Treaty.<sup>96</sup> Although the treaty was considered to be a great compromise in 1850, it plagued canal negotiations decades later.

As the border dispute continued between Costa Rica and Nicaragua, travel along the Accessory Transit Company's overland route through Nicaragua was disrupted and the Company struggled to get back on its feet.<sup>97</sup> When President James Buchanan asked Congress for the authority to employ U.S. troops to reopen the lines of travel between Greytown and San Juan del Sur, it declined.<sup>98</sup> In debate, Congress showed concern that doing so would constitute an invasion of Nicaraguan sovereignty, perhaps especially because Commodore Paulding had just done so without the consent of Congress.<sup>99</sup>

In 1857, American and Nicaraguan officials negotiated a treaty that granted a right of access through Nicaragua to the United States in exchange for American protection of trans-isthmus transit routes across Nicaragua.<sup>100</sup> But the treaty became unpalatable to the United States after the Nicaraguan legislature added language to it that required the United States to adopt and enforce laws to prevent further filibustering by Americans.<sup>101</sup> The situation rapidly deteriorated after Nicaragua negotiated a nearly identical treaty with the United Kingdom.<sup>102</sup> American officials scrambled to save a deal with Nicaragua and negotiated a second treaty nearly identical to the first (including the anti-filibuster provisions), called the Lamar-Zeldón Treaty, which the Nicaraguan legislature ratified on March 19, 1859.<sup>103</sup>

The Buchanan administration opposed the Lamar-Zeldón Treaty's anti-filibustering measures and President Buchanan informed Nicaraguan officials that he would not sign it unless they were removed.<sup>104</sup> The Nicaraguan legislature acquiesced to Buchanan's stipulation and ratified an amended treaty that omitted the offending provisions.<sup>105</sup> Upon reaching the Senate, the Lamar-Zeldón Treaty was further modified before it was ultimately ratified.<sup>106</sup> Unfortunately for the Lamar-Zeldón Treaty, the

---

95. *Id.*

96. Convention Between the United States of America and Her Britannic Majesty, U.S.-U.K., Apr. 19–July 4, 1850, 9 Stat. 995.

97. Rasp, *supra* note 14, at 46–47.

98. *Id.* at 50.

99. CONG. GLOBE, 35th Cong., 2d Sess. 688–89 (1859) (statement of Rep. Foot).

100. Rasp, *supra* note 14, at 57–59.

101. *Id.* at 61.

102. *Id.* at 61–62.

103. *Id.* at 62–63.

104. *Id.* at 63–64.

105. *Id.* at 64.

106. *Id.* at 64–65.

final Senate-approved text did not reach the Nicaraguan legislature until after its legislative session had ended and the legislature would not convene again until after the ratification deadline included in the treaty had passed.<sup>107</sup> Though the United States ratified the Lamar-Zeldón Treaty and the Nicaraguan government likely would have agreed to its terms as modified by the Senate, it did not go into effect.<sup>108</sup>

During the American Civil War, most of the United States lost interest in a trans-isthmus canal, with one exception: President Abraham Lincoln's Secretary of State, William Seward.<sup>109</sup> Seward felt that a canal through Nicaragua would benefit the Union and he was able to re-submit the Lamar-Zeldón Treaty to a solely-Republican Congress, which again ratified it on May 9, 1862.<sup>110</sup> However, the legislature in Nicaragua declined to assent to the treaty, and again no terms were agreed upon.<sup>111</sup>

Following the Civil War, however, the United States experienced a renewed interest in a trans-isthmus canal project. In 1866, the Senate passed a resolution calling for "surveys of the various proposed lines for inter-oceanic canals and railroads between the waters of the Atlantic and Pacific oceans; as also their relative merits as practicable lines for the construction of a ship-canal" from the Secretary of the Navy.<sup>112</sup> The study recommended that, if a canal were to be built, it should be across the Isthmus of Darien in Panama.<sup>113</sup> The next administration pursued a canal much more aggressively than past administrations had.

The Costa Rica–Nicaragua border dispute lasted well into the 1880s. Costa Rica was unwilling to give up its partial claim to a potential canal route, which it knew would greatly benefit the country that hosted it.<sup>114</sup> The Costa Rica–Nicaragua border dispute, the lack of a final, agreed-upon Lamar-Zeledón Treaty, and Costa Rica's claims to partial ownership of a canal route ultimately casted just enough doubt on a Nicaraguan route that some in Congress came to prefer a more predictable Panamanian route.

For Ulysses S. Grant, a trans-Panamanian canal showed its potential value early, in 1852.<sup>115</sup> Grant was then a brevet captain and regimental quartermaster tasked with moving his unit across Panama in the depths of the rainy season.<sup>116</sup> Over 100 of his

---

107. *Id.* at 65.

108. *Id.* at 65.

109. *Id.* at 67.

110. *Id.* at 68.

111. *Id.* at 68–69.

112. CONG. GLOBE, 39th Cong., 1st Sess. 1414 (1866); *see also* Rasp, *supra* note 14, at 73.

113. Rasp, *supra* note 14, at 73–74.

114. Letter from Henry C. Hall to Frederick T. Frelinghuysen, Sec'y of State of the United States (July 11, 1883), in H.R. EXEC. DOC. NO. 48-1, pt. 1, at 61–62 (1st Sess. 1884).

115. Jackson Crowell, *The United States and a Central American Canal, 1869-1877*, 49 *HISPANIC AM. HIST. REV.* 27 (1969); *see also* 1 *PERSONAL MEMOIRS OF U.S. GRANT 193–98* (New York, Charles L. Webster & Co. 1885); LLOYD LEWIS, *CAPTAIN SAM GRANT 304, 308* (1950).

116. Crowell, *supra* note 115, at 27.



fellow servicemembers perished crossing the thick jungle and dense mud, a tragedy that Grant attempted to rectify years later as President of the United States.<sup>117</sup> As Commander-in-Chief, Grant sent seven separate expeditions to the Central American isthmus to study potential canals.<sup>118</sup> Grant's second (and short-lived) Vice President, Henry Wilson, also showed interest in a Panamanian canal. As chair of the Senate Military Affairs Committee, then-Senator Wilson<sup>119</sup> introduced legislation to authorize a presidential commission to study a trans-isthmus canal.<sup>120</sup> Introduced in April 1869, Senator Wilson's proposal was among the first of such policies put before Congress.

In February 1869, the President sent a treaty to the Senate for ratification.<sup>121</sup> In this draft treaty, the United States of Colombia (the successor state to the Republic of New Granada and the precursor to the contemporary Republic of Colombia<sup>122</sup>) gave the United States the right to construct a canal across the Isthmus of Panama.<sup>123</sup> The terms agreed to by Colombia in this treaty were later characterized in a congressional hearing thus: "[N]o terms more favorable than those set forth in this treaty could be obtained or expected."<sup>124</sup> Unfortunately, the Senate failed to ratify this agreement because (it was thought) it nearly violated the terms of the Clayton-Bulwer Treaty with the United Kingdom.<sup>125</sup> President Grant submitted another version of the treaty in 1870 in a secret session of the Senate,<sup>126</sup> though this version failed to move forward, too.<sup>127</sup>

117. *Id.*

118. *TR and the Panama Canal*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/tr-panama> [<https://perma.cc/Z4ML-KFNB>]; see Letter from Ulysses S. Grant to Nathan Appleton (Jan. 7, 1881), <https://www.gilderlehrman.org/history-resources/spotlight-primary-source/panama-canal-proposal-1881> [<https://perma.cc/78DS-9RWD>]. Grant's fervor for a trans-isthmus canal was so great, it caught the attention of the French builders. Letter from Ulysses S. Grant to Nathan Appleton, *supra*. When Grant eventually left office in 1880, an agent of the Panama Canal Company offered Grant a position in the company. *Id.* Grant turned down this offer, stating, "My judgment is that every dollar invested in the Panama Canal, under the present scheme of a thorough cut, or sea level, will be sunk without any return to the investors, and without a canal to promote commercial interests." *Id.* A prescient prediction in 1881.

119. *Henry Wilson, a Featured Biography*, U.S. SENATE, [https://www.senate.gov/senators/FeaturedBios/Featured\\_Bio\\_Wilson\\_Henry.htm#:~:text=Wilson%20introduced%20the%20first%20post,died%20on%20November%202022%2C%201875](https://www.senate.gov/senators/FeaturedBios/Featured_Bio_Wilson_Henry.htm#:~:text=Wilson%20introduced%20the%20first%20post,died%20on%20November%202022%2C%201875) [<https://perma.cc/52FD-JQ5E>].

120. S.J. Res. 63, 41st Cong. (1869).

121. Convention between the United States of America and the United States of Colombia, Relating to the Construction of a Ship Canal Between the Atlantic and Pacific Oceans, Concluded at Bogota the 14th January, 1869, *reprinted in* S. EXEC. DOC. NO. 46-112, at 34 (1880).

122. 15 AGUIRRE, *supra* note 30, at 148.

123. *See id.*

124. *The Story of Panama Vol. 1*, *supra* note 8, at 86 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World).

125. *Id.* at 86, 88.

126. A Treaty for the Construction and Regulation of an Interoceanic Canal Across the Isthmus of Darien, *reprinted in* S. EXEC. DOC. NO. 46-112, at 39 (1880).

127. *See Hearing on H.R.J. Res. 236 Before the H.R. Comm. on Foreign Affs.*, 46th Cong. 23–24 (1881) (statement of Richard W. Thompson, Chairman, Am. Comm., Pan. Canal Co.). One potential reason these

In 1870, the Senate introduced two joint resolutions dealing with a trans-isthmus canal: one authorizing a study of the Nicaraguan routes<sup>128</sup> and another requesting a review of other possible routes.<sup>129</sup> The two resolutions and Senator Wilson's earlier resolution were indefinitely postponed,<sup>130</sup> but the Grant administration began surveying potential canal routes nonetheless.<sup>131</sup> President Grant also worked with Congress to create and appoint the first Interoceanic Canal Commission in 1872.<sup>132</sup> This Commission at first fell under the command of U.S. Navy commander Alexander Crosman, who drowned making landfall from his ship, *Kansas*, to Greytown, Nicaragua.<sup>133</sup> The Commission then fell to U.S. Navy commander Edward Lull (and was henceforth known as the Lull Commission).<sup>134</sup>

The Lull Commission finished its work in 1876 and submitted a report that found "[t]hat the route known as the 'Nicaragua route,' . . . possesses, both, for the construction and maintenance of a canal, greater advantages, and offers fewer difficulties from engineering, commercial, and economic points of view, than any one of the other routes shown to be practicable by surveys."<sup>135</sup> This finding was essentially the same as previous private surveys dating back to 1852 and was echoed in future U.S. surveys until 1902.<sup>136</sup> In fact, Nicaraguan route options continued to dominate U.S. domestic policy debates until 1896, when a newly-chartered French company began to lobby on behalf of a Panamanian route.<sup>137</sup>

On April 15, 1879, the Senate considered and passed by unanimous consent a resolution that requested the report from the Lull Commission.<sup>138</sup> The resolution notes that the report was available in 1876 and "relat[ed] to the different interoceanic canal surveys and the practicability of the construction of a ship-canal across this continent."<sup>139</sup>

In the House, a Representative offered a joint resolution to send a team of surveyors to the Isthmus of Panama to explore canal route options.<sup>140</sup> Although this

---

treaties were not ratified in the Senate was that it was thought that a canal would hurt the profits of a railroad being constructed across the isthmus. See *The Story of Panama Vol. 1, supra* note 8, at 88 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World).

128. S.J. Res. 160, 41st Cong. (1870).

129. S.J. Res. 161, 41st Cong. (1870).

130. CONG. GLOBE, 41st Cong., 2d Sess. 5033 (1870).

131. Rasp, *supra* note 14, at 79.

132. *Id.* at 79–80.

133. S. EXEC. DOC. NO. 43-57, at 7 (1874). When Commander Crosman's boat capsized in the surf, four other seamen drowned including, coincidentally, a cockswain named William Walker. *Id.* at 10.

134. Crowell, *supra* note 115, at 31.

135. S. EXEC. DOC. NO. 46-15, at 1–2 (1st Sess. 1879).

136. See Rasp, *supra* note 14, at 81; S. DOC. NO. 57-54, at 54 (1st Sess. 1901).

137. See Rasp, *supra* note 14, at 86.

138. 9 CONG. REC. 435 (1879) (resolution passed in Senate).

139. *Id.* (text of resolution).

140. H.R.J. Res. 146, 41st Cong. (1879).

joint resolution did not move forward in that session of Congress, it was one of many proposals that pushed the House to begin to seriously consider the many options for a canal. On December 16, 1879, Representative John King introduced a resolution to create the House Select Committee on the Interoceanic Ship Canal.<sup>141</sup>

Under King's proposal, the Select Committee would have eleven members and jurisdiction over all House measures touching on the selection of a route for, and the construction of, a canal between the Atlantic and Pacific Oceans.<sup>142</sup> The House adopted the resolution unanimously and appointed Representative King as the Select Committee's chair.<sup>143</sup> The next month, Senator John Brown Gordon proposed a companion measure to create a similar committee in the Senate.<sup>144</sup> But Gordon's motion languished in the Senate and that body struggled to move forward on canal issues.<sup>145</sup>

Once the House Select Committee on the Interoceanic Ship Canal was constituted, its first order of business was to request information from the executive branch on what had already been done regarding a canal across the isthmus. The House passed resolutions requesting canal-related documents from the Secretaries of the Treasury and the Navy.<sup>146</sup> The Select Committee gained prominence and influence, though it vied for power with the House Committee on Foreign Affairs.<sup>147</sup>

On January 19, 1880, Senator Orville Platt offered a joint resolution on a potential interoceanic canal,<sup>148</sup> which he said "attracts public attention and excites public interest."<sup>149</sup> At this stage, the interest in a trans-isthmus canal was still primarily economic and route agnostic.<sup>150</sup> Senator Platt thought it best for the United States to work with European stakeholders to construct the canal.<sup>151</sup> By February, there had

141. 10 CONG. REC. 128 (1880) (measure introduced in House).

142. *Id.* (text of resolution).

143. *Id.* (resolution adopted in House); see H.R. REP. MISC. DOC. NO. 46-16, at 2 (1882) (detailing the Speaker of the House's announcement of the Select Committee's members).

144. 10 CONG. REC. at 596 (measure introduced in Senate).

145. Senator Gordon's resolution passed by unanimous consent when it was introduced, but another Senator moved to reconsider the vote. *Id.* at 597 (statement of Sen. Davis). Senator Gordon ultimately withdrew his resolution following debate on the motion to reconsider. *Id.* at 1497-98 (statement of Sen. Gordon).

146. *Id.* at 831 (resolution passed in House), *id.* at 865 (same).

147. See *id.* at 1775-78 (reporting debates between members of the House Select Committee on the Interoceanic Ship Canal and the House Committee on Foreign Affairs over which committee certain matters ought to have been referred to).

148. S.J. Res. 66, 46th Cong., 10 CONG. REC. at 380.

149. 10 CONG. REC. at 380 (statement of Sen. Platt).

150. Senator Platt's resolution included a finding that "an improved and cheaper maritime communication between the Atlantic and Pacific sea-boards of the United States by means of a ship-canal through *some portion of the Central American isthmus* has become important to the commercial interests of this country . . ." S.J. Res. 66.

151. Senator Platt's resolution requested that the President "communicate to the governments of the principal maritime nations of Europe the desire of this Government to secure such public interests, and to invite the co-operation of such governments in the selection of a route of isthmus ship transit which shall be found to subserve most largely the general interests of all the maritime nations . . ." *Id.*; see also MCCULLOUGH, *supra* note 1, at 71-72. The House also began drafting language that would call for the U.S. to host an international

still been no movement on Senator Platt's resolution, and Senate debate centered around whether it too should form a select committee on canal construction.<sup>152</sup> The existing Senate Select Committee to Inquire into All Claims of Citizens of the United States Against the Government of Nicaragua meanwhile passed a bill authorizing the President to move forward on treaty negotiations with Nicaragua, to wrap up the decades old outstanding claims.<sup>153</sup> Though this bill did not ultimately pass, perhaps the Senate Select Committee on Nicaraguan Claims already had in mind the need to thaw relations in order to move forward on canal construction.

On February 25, 1880, the House Select Committee on the Interoceanic Ship Canal held a hearing on selecting a suitable route for a trans-isthmus canal.<sup>154</sup> Representative King presided as chair and the witnesses were experts in civil engineering, foreign policy, and logistics (including Rear Admiral Ammen, A. G. Menocal, the Accessory Transit Company's chief engineer, Commander Lull, and the French engineer, Ferdinand de Lesseps, who happened to be visiting the United States at the time).<sup>155</sup> It was a who's who of canal experts and the discussion was potentially the most robust and informed on the topic up to that point in time.

The following two decades were characterized by continued inaction and increased rhetoric in Congress. In 1880, the House considered a joint resolution affirming that it would consider a French-constructed Panama canal to be a French colony in Central America.<sup>156</sup> An additional House joint resolution supported the abrogation of the Clayton-Bulwer Treaty.<sup>157</sup> The Senate followed suit in 1881, introducing a joint resolution stating that U.S. approval should be sought before any European nation could construct an interoceanic canal.<sup>158</sup> But the failure of this legislation to move forward meant no changes on the ground were seen.

The limited success of these legislative provisions was due in part to the efforts of the Provisional Interoceanic Canal Society in New York City, a group formed in 1880 to support an American-built canal.<sup>159</sup> This group was led by A. G. Menocal and had members such as President Ulysses Grant, General George B. McClellan, and Vice President Levi P. Morton.<sup>160</sup> Then-former-President Grant authored an

---

convention on a trans-isthmus canal. H.R.J. Res. 251, 46th Cong. (1880). In the wake of the de Lesseps ill-organized and chaotic convention held in Paris in May of 1879, pressure was building on the United States to take a more practical approach to the question of a canal route. MCCULLOUGH, *supra* note 1, at 85.

152. See 10 CONG. REC. at 1028 (statement of Sen. Gordon); *id.* (statement of Sen. Platt).

153. S. 1650, 46th Cong. (1880).

154. H.R. MISC. DOC. NO. 46-16, at 1 (3d Sess. 1881).

155. See *id.* *in passim*.

156. H.R.J. Res. 236, 46th Cong. (1880); see also H.R. REP. NO. 46-390 (3d Sess. 1881) (report accompanying House Joint Resolution 236).

157. H.R.J. Res. 281, 46th Cong. (1880); see also H.R. REP. NO. 46-1121 (1880) (report accompanying House Joint Resolution 281).

158. S.J. Res. 43, 46th Cong., 9 CONG. REG. 2312 (1879).

159. Rasp, *supra* note 14, at 96.

160. *Id.* at 96-97.

article that the *North American Review* published in February 1881 that called again for a Nicaraguan canal over a Panamanian Canal.<sup>161</sup>

A. G. Menocal was a Cuban immigrant to the United States and became a renowned engineer in the Navy Civil Engineer Corps.<sup>162</sup> Menocal served on the Lull Commission in 1872 when he was described as “indefatigable” in his efforts to survey the thick Nicaraguan landscapes.<sup>163</sup> Menocal went on to conduct many surveys of Central America<sup>164</sup> and give testimony on his experience to congressional committees.<sup>165</sup> He also published a popular book in 1890, *The Nicaragua Canal: Its Design, Final Location, and Work Accomplished*,<sup>166</sup> which can still be purchased today.<sup>167</sup>

The Provisional Interoceanic Canal Society formed the Maritime Canal Company of Nicaragua and obtained a concession from the Nicaraguan government to build and operate a canal.<sup>168</sup> The Canal Society got its supporters in Congress to introduce companion bills, House Bill 6799<sup>169</sup> and Senate Bill 550,<sup>170</sup> incorporating the Company of Nicaragua in the United States and guaranteeing its stock.<sup>171</sup> Unfortunately for the Canal Society, while House Bill 6799 received a favorable report from the House Committee on Foreign Affairs, the Committee minority pushed back against the cost of the move and questioned its legality under the Clayton-Bulwer Treaty, and the legislation failed to become law.<sup>172</sup> Senate Bill 550 ultimately failed as well. In the face a newly announced French project in Panama led by de Lesseps, building a second canal across the isthmus in Nicaragua made questionable economic sense.

In 1881, Ferdinand de Lesseps was possibly the world’s most renowned expert

161. U.S. Grant, *The Nicaragua Canal*, 132 N. AM. REV. 107 (1881).

162. *CDR Aniceto G. Menocal and the Isthmian Canal*, NAVAL HIST. & HERITAGE COMMAND: U.S. NAVY SEABEE MUSEUM (Jan. 27, 2020, 10:55 AM), <https://www.history.navy.mil/content/history/museums/seabee/explore/civil-engineer-corps-history/cdr-aniceto-g—menocal-.html> [<https://perma.cc/F7G8-ET42>].

163. S. EXEC. DOC. NO. 43-57, at 50 (1874).

164. *See id.*; S. EXEC. DOC. NO. 49-99 (1st Sess. 1886); *see also* S. DOC. NO. 57-54, at 54, 57 (1st Sess. 1901) (discussing Menocal’s surveys).

165. *Hearings on H.R. 3110 Before the S. Comm. on Interoceanic Canals*, 46th Cong. pt. 3, at 1031–73 (1902) (statement of A. G. Menocal).

166. A. G. MENOCAL, *THE NICARAGUA CANAL: ITS DESIGN, FINAL LOCATION, AND WORK ACCOMPLISHED* (N.Y. Printing Co. 1890).

167. *See Books by A. G. Menocal*, THRIFTBOOKS, <https://www.thriftbooks.com/a/ag-menocal/3826407> (last visited Mar. 24, 2023).

168. Rasp, *supra* note 14, at 97; *see also* CONCESSION GRANTED BY THE REPUBLIC OF NICARAGUA TO THE PROVISIONAL INTEROCEANIC CANAL SOCIETY FOR A SHIP-CANAL ACROSS THAT COUNTRY (Washington, D.C., Gibson Bros. 1880).

169. H.R. 6799, 47th Cong. (1883).

170. S. 550, 47th Cong. (1881).

171. *See also* H.R. REP. NO. 47-1698, pt. 1, at 6 (1882); Rasp, *supra* note 14, at 98.

172. H.R. REP. NO. 47-1698, pts. 2–3.

on constructing canals.<sup>173</sup> He joined a French company pursuing canal construction, La Société International du Canal Interoceanique, as its lead engineer.<sup>174</sup> De Lesseps had led the construction of the Suez Canal, which had connected the Mediterranean Sea and the Indian Ocean.<sup>175</sup> De Lesseps, through La Société, conducted a subscription campaign to raise funds for an American trans-isthmus canal across New Granada through a Panama route.<sup>176</sup> Thousands of middle-class French families invested in de Lesseps's Panama endeavor with the thriving success of Suez so clear in their minds.<sup>177</sup>

For years, the French worked to construct a lock system that would connect the Atlantic and Pacific Oceans and they ultimately found that a trans-isthmus canal posed more than just engineering challenges. They battled the climate, including heat and torrential rains, and faced immense management challenges, corruption, and tropical illnesses.<sup>178</sup> The ill-fated endeavor cost thousands of lives and today's equivalent of billions of dollars.<sup>179</sup> Due to incredibly high-cost overruns, La Société ceased all operations on February 4, 1889, risking the investments of over 100,000 shareholders.<sup>180</sup> Afterward, the French government convicted de Lesseps for the "greatest fraud in modern times."<sup>181</sup> Others involved in La Société were sentenced to prison time, including members of its board of directors, its supervisors, and even its engineers.<sup>182</sup> De Lesseps narrowly avoided imprisonment due to his advanced age and stature in French society.<sup>183</sup>

In its bankruptcy proceedings, the French government dissolved La Société and formed a new corporate entity, the New French Panama Canal Company.<sup>184</sup> This new company raised funds through a mandate of the French courts whereby officers of the dissolved La Société were subject to mandatory investment in the New French Panama Canal Company.<sup>185</sup> Not only were these investments coerced, but they also carried no voting rights and former officers in La Société were also banned from any

---

173. See MCCULLOUGH, *supra* note 1, at 54-56.

174. *Id.* at 60.

175. See *id.* at 49.

176. See DWIGHT CARROLL MINER, THE FIGHT FOR THE PANAMA ROUTE: THE STORY OF THE SPOONER ACT AND THE HAY-HERRÁN TREATY 19-20 (1966).

177. Andrew Scott Merrifield, The Congressional Decision to Build the Panama Canal: The Influence of Senators John Tyler Morgan, Marcus Alonzo Hanna and Others, and the Role of the Walker Report 10-11 (1975) (M.A. thesis, Portland State University), [https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=3439&context=open\\_access\\_etds](https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=3439&context=open_access_etds) [<https://perma.cc/AJK4-YPKF>].

178. MCCULLOUGH, *supra* note 1, at 132-34.

179. See *id.* at 206.

180. See *id.* at 126, 203.

181. See *id.* at 225.

182. PHILIPPE BUNAU-VARILLA, PANAMA: THE CREATION, DESTRUCTION, AND RESURRECTION 114, 121 (1913); MCCULLOUGH, *supra* note 1, at 226.

183. MCCULLOUGH, *supra* note 1, at 222.

184. Merrifield, *supra* note 177, at 18.

185. *Id.* at 11-12.

decision-making roles in the new company.<sup>186</sup> One such individual was Philippe Bunau-Varilla, a former senior engineer in La Société who, like de Lesseps, had also escaped jail time for La Société's failure.<sup>187</sup>

In a group of eccentric and enigmatic individuals, Bunau-Varilla stood out. Various reports note that he was among the wealthy elite of France while others say he was the illegitimate child of an unknown father.<sup>188</sup> Bunau-Varilla attended the École Polytechnique, a prestigious engineering school, and served in a colonizing mission in North Africa before traveling to Panama for his "Great Adventure."<sup>189</sup> Bunau-Varilla rose quickly in La Société despite having survived a bout of yellow fever.<sup>190</sup> Bunau-Varilla went on to author several autobiographies and firsthand accounts of canal building.<sup>191</sup> Though he greatly inflated his own role in a canal being realized, Bunau-Varilla truly was a pivotal character in the ascension of a Panamanian canal route over a Nicaraguan route.<sup>192</sup>

Prior to the French failure in Panama, President Chester Arthur's administration, which had concerns about a European-controlled route, took the matter of an American canal into its own hands in 1884. President Arthur's Secretary of State, Frederick Frelinghuysen, devised a treaty with Nicaragua that provided terms for a U.S.-operated and -protected canal in direct opposition to the Clayton-Bulwer Treaty.<sup>193</sup> When submitted to the Senate, the treaty found a champion in Senator Morgan.<sup>194</sup> However, it also received stiff opposition from Senators John Sherman and Thomas Bayard.<sup>195</sup> Their opposition was enough to lead to a failed vote on January 29, 1885, and the fate of this treaty was sealed when the Cleveland administration came into power two months later.<sup>196</sup>

With a new administration in the White House, the Provisional Interoceanic Canal Society made new attempts to obtain a congressional charter. The French project in Panama had just gone bankrupt, which made the economics of a Nicaraguan canal much more lucrative.<sup>197</sup> With the help of Senate proponents,<sup>198</sup> a charter bill passed

186. *Id.* at 12.

187. *Id.* Bunau-Varilla and his brother, a newspaper publisher in France, they were compelled to invest nearly two million francs in the Company. *Id.*

188. MCCULLOUGH, *supra* note 1, at 162.

189. *Id.* at 162–63.

190. *Id.* at 191.

191. *Id.* at 277.

192. *Id.*

193. Rasp, *supra* note 14, at 105.

194. *Id.* at 106.

195. *Id.*

196. *Id.* at 107.

197. See *The Story of Panama Vol. 1*, *supra* note 8, at 92 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World).

198. *Id.*; DOROTHY GANFIELD FOWLER, JOHN COIT SPOONER: DEFENDER OF PRESIDENTS 273 (1961).

Congress and was signed by President Cleveland on February 20, 1889.<sup>199</sup> This charter successfully created the Maritime Canal Company of Nicaragua, the entity whose charter had died in the Senate several years earlier, with a capitalization of \$150 million.<sup>200</sup> The Maritime Canal Company contracted with the Nicaragua Canal Construction Company to begin construction on June 3, 1889.<sup>201</sup> The Canal Construction Company spent over \$2 million in the first year emplacing a railroad and establishing other logistics along the route and excavating for the canal.<sup>202</sup>

The Canal Construction Company was burning through capital and began to seek investment opportunities which caught the ire of some in Congress.<sup>203</sup> On January 10, 1891, the Senate Committee on Foreign Relations reported a bill that would guarantee a bond issuance from the Company in exchange for the U.S. government holding a sizable portion of company stock and the right to name a majority of the board of directors.<sup>204</sup> The Senators were particularly concerned about foreign ownership of the company and drafted the bill to ensure American control.<sup>205</sup> Although the bill failed, the Senators achieved their objective of scaring away foreign capital, but they jeopardized the Company in the process.<sup>206</sup> Unfortunately, private investment dried up in the Panic of 1893 and the Canal Construction Company went bankrupt and ceased construction.<sup>207</sup> The Company's failure set the stage for a series of failed bills in subsequent sessions of Congress in 1892, 1894, 1895, and 1896.<sup>208</sup>

## II. CONGRESSIONAL DEBATES AND PERSPECTIVES

The legislative story of the Panama Canal Purchase Act is tightly bound up with the personalities and egos of the time.<sup>209</sup> The debate lasted multiple election cycles and exhibited all the hallmarks of an intractable issue. Like many legislative battles, the trans-isthmus canal pitted Democrat against Republican, House against Senate, and Congress against executive. Decades of debate revealed a consensus that an American-controlled canal must be built, though where it would be situated and whose name would be on the bill creating it revealed historic contention. This Part introduces the main members of Congress who were involved in the canal debate and examines their motivations and the advisors who influenced their decision making.

---

199. Act of Feb. 20, 1889, ch. 176, 25 Stat. 673.

200. Rasp, *supra* note 14, at 118.

201. *Id.*

202. *Id.* at 120.

203. *Id.*; S. EXEC. DOC. NO. 51-49, at 1-3 (1st Sess. 1890).

204. S. 4827, 51st Cong. (1891); *see also* Rasp, *supra* note 14, at 121.

205. Rasp, *supra* note 14, at 121.

206. *Id.* at 121-22.

207. *Id.* at 123.

208. *Id.* at 122.

209. *See* Merrifield, *supra* note 177, at 50-72.



This Part follows the process for the passage of the bill that became the Panama Canal Purchase Act, including its early drafts, committee markups, and lobbying campaigns. Finally, this Part explores the reasons, some real, some manifested, that led Congress to ultimately agree to pursue a Panama-based canal.

### A. *Senator Morgan: The Father of the Isthmian Canal*

Alabama Senator John Morgan was a Confederate general in the Civil War and fought in the First Battle of Manassas and the Battle of Chickamauga.<sup>210</sup> Morgan was a staunch segregationist and an opponent of the Fifteenth Amendment to the U.S. Constitution.<sup>211</sup> In 1876, Morgan was elected to the Senate, where he represented Alabama until he died in 1907.<sup>212</sup> Potentially, Morgan's experiences in the Civil War motivated him to desire a trans-isthmus canal.<sup>213</sup> That formative experience made Morgan realize that shipping routes were needed for military production in addition to the economic advantage that would be gained.<sup>214</sup> Such a canal would be an enormous boon to southern port towns, including Mobile, Alabama, New Orleans, Louisiana, and Houston, Texas.<sup>215</sup>

Morgan was strongly in favor of the Nicaraguan route for a canal, and it was said that he would rather have “see[n] no canal than any other” outside of Nicaragua.<sup>216</sup> While in the Senate, Morgan served on at least four separate committees with jurisdiction over a trans-isthmus canal.<sup>217</sup> His work promoting canal legislation in this role earned him the nickname, the “father of the isthmian canal,” which he violently eschewed.<sup>218</sup> In hindsight, those steeped in the canal negotiations described that Morgan's “stubbornness in favor of Nicaragua was only equaled by his continued efforts in favor of this project, and the animosity with which he constantly attacked and belittled the cause of Panama and everything and everybody connected with that cause.”<sup>219</sup> For Senator Morgan, the story of the Panama Canal was one of the most

---

210. JOSEPH A. FRY, JOHN TYLER MORGAN AND THE SEARCH FOR SOUTHERN AUTONOMY 19 (1st ed. 1992)

211. *Id.* at 29, 52.

212. *Morgan, John Tyler*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS, <https://bioguide.congress.gov/search/bio/M000954> [<https://perma.cc/MV8N-ZLHR>].

213. See Merrifield, *supra* note 177, at 15–16.

214. *Se id.*

215. *Id.* at 16.

216. *Panama Route Chosen for Isthmian Canal*, WASH. TIMES, June 20, 1902, at 1 [hereinafter *Panama Route Chosen*], [https://tile.loc.gov/storage-services/service/mdnp/dlc/batch\\_dlc\\_abe\\_ver01/data/sn87062245/100493123/1902062001/0223.pdf](https://tile.loc.gov/storage-services/service/mdnp/dlc/batch_dlc_abe_ver01/data/sn87062245/100493123/1902062001/0223.pdf) [<https://perma.cc/XP6P-5Y7W>].

217. *Id.*; FRY, *supra* note 210, at 105.

218. 35 CONG. REC. 6984 (1902) (statement of Sen. Spooner); BUNAU-VARILLA, *supra* note 182, at 356–57; see Merrifield, *supra* note 177, at 15. The nickname here stands in opposition to perhaps what Senator Morgan would have preferred: “The Father of the Nicaraguan Canal.”

219. William Cromwell, General Statement of the Services Rendered by Messrs. Sullivan & Cromwell as General Counsel in America of La Compagnie Nouvelle du Canal de Panama During the Eight Years, 1896–1904, in Representation, Defense, Protection, and Advancement of the Interests of the Said Company (Henry

successful failures in history.

Morgan was instrumental in establishing a select committee concerning canal construction in the Senate.<sup>220</sup> On December 30, 1895, the Senate Select Committee to Inquire into All Claims of Citizens of the United States Against the Government of Nicaragua became the Select Committee on the Construction of the Nicaragua Canal.<sup>221</sup> Senator Morgan was appointed chair and Senators John Palmer, John Martin, Joseph Hawley, John Mitchell of Oregon, Watson Squire, and William Sewell joined him as members.<sup>222</sup> Senator Morgan used this posting to guide the dialogue around a trans-isthmus canal, so much so that the Select Committee in time came to be known as the “Morgan Committee.”<sup>223</sup> Morgan later credited President Grant with inspiring him to focus on the trans-isthmus canal project.<sup>224</sup>

In 1895, when the Senate bill to guarantee the Nicaragua Canal Construction Company failed in the House, the Senate took steps to advance the issue and show that the Nicaraguan route was the best path for the United States to pursue.<sup>225</sup> Rather than push stand-alone legislation, the Senate included a Nicaragua Canal Board provision, charged with a route survey, in the annual appropriations bill which forced its passage on March 2, 1895.<sup>226</sup> This provision authorized the President to appoint three engineers to report “on the feasibility, permanence, and cost of completion of the company’s project.”<sup>227</sup>

The President appointed three engineers to conduct this survey, which became known as the Ludlow Survey: Lieutenant Colonel William Ludlow, M. T. Endicott, and Alfred Noble.<sup>228</sup> The Ludlow Survey reported back to Congress on November

N. Hall trans., 1911) [hereinafter Sullivan & Cromwell Brief], in *The Story of Panama Vol. 1*, *supra* note 8, at 159, 165.

220. See Merrifield, *supra* note 177, at 15.

221. 28 CONG. REC. 420–21 (1896) (resolution creating Select Committee on the Construction of the Nicaragua Canal adopted in Senate).

222. *Id.* at 421 (members of Committee appointed in Senate). Senator Morgan was a Democrat whose party briefly held a majority in the Senate in the 53rd Congress. See *Party Division*, U.S. SENATE, <https://www.senate.gov/history/partydiv.htm> [<https://perma.cc/G3Q7-4ZA9>]. When the Republicans took over the Senate majority in the 54th Congress, Senator Morgan kept his chair “by the courtesy of the Senate” as “one of those placebos thrown out to the minority here to keep them in good humor.” 35 CONG. REC. at 6659 (statement of Sen. Morgan). Whether it was false modesty or self-depreciation Morgan was using, Senator George Hoar responded contemporarily:

The Republican side of the Senate assigned him to that position because they believed him to be one of the greatest living Senators and one of the greatest authorities on one of the greatest subjects with which we have to deal, and, therefore, without any regard to party, we were all delighted to ask him to assume that dignified and honorable post.

*Id.* (statement of Sen. Hoar).

223. MCCULLOUGH, *supra* note 1, at 260; see also Merrifield, *supra* note 177, at 13.

224. 35 CONG. REC. at 6659 (statement of Sen. Morgan).

225. S. 1481, 53rd Cong. (1894); see also S. REP. NO. 55-1417, at 3 (1898).

226. See Act of Mar. 2, 1895, ch. 189, 28 Stat. 910, 948–49; see also Rasp, *supra* note 14, at 127.

227. S. REP. NO. 55-1417, at 3.

228. Rasp, *supra* note 14, at 127.

1, 1895.<sup>229</sup> For the most part, the Ludlow Survey agreed with the route chosen by A. G. Menocal and the Provisional Interoceanic Canal Society a decade-and-a-half earlier.<sup>230</sup> While they quibbled somewhat with the design and engineering choices, their main recommendation was that a further eighteen-month study be conducted.<sup>231</sup>

In 1896, a Nicaraguan canal seemed like a sure thing. That year saw William McKinley ascend to the presidency and the Republican Party platform's inclusion of the goal of building an interoceanic canal, preferably through Nicaragua.<sup>232</sup> President McKinley went on to champion a trans-isthmus canal project.<sup>233</sup> In that same year, lobbyists assessed whether, if a floor vote occurred on a Nicaraguan canal bill, it would pass.<sup>234</sup> Yet the Panama route had one thing that Nicaragua did not: William Nelson Cromwell.

In 1896, the New French Panama Canal Company, under the stewardship of Bunau-Varilla, engaged the services of Cromwell, then a senior partner at a successful law firm, Sullivan & Cromwell.<sup>235</sup> Cromwell had previously been counsel to the Panama Railroad Company founded by Aspinwall (which the New French Panama Canal Company had purchased by that time) and was well versed on issues of trans-isthmus canals.<sup>236</sup> In future House Committee on Foreign Affairs hearings that reviewed Cromwell's engagement on the canal issue, he was called "the most dangerous man this country has produced since the days of Aaron Burr—a professional revolutionist-and . . . one of the most accomplished lobbyists this country has ever produced."<sup>237</sup> In another exchange between two members of Congress, one asked the other, "[D]oesn't it follow that Cromwell was more powerful than all the railroads in the country?,"<sup>238</sup> to which his colleague replied, "I am afraid the conclusion reached is almost inevitable."<sup>239</sup>

Still, it was in that year, 1896, when Senator Morgan saw his first major success in moving forward legislation when the Senate passed his Nicaragua canal bill.<sup>240</sup> This bill included financial compensation for the Maritime Canal Company, a huge

229. H.R. DOC. NO. 54-279 (1st Sess. 1896); *see also* S. REP. NO. 55-1417, at 3.

230. H.R. DOC. NO. 54-279, at 85–88; *see also* Rasp, *supra* note 14, at 128.

231. H.R. DOC. NO. 54-279, at 88.

232. *See* OFFICIAL PROCEEDINGS OF THE ELEVENTH REPUBLICAN NATIONAL CONVENTION HELD IN THE CITY OF ST. LOUIS, MO., JUNE 16, 17, AND 18, 1896 84 (1896) [hereinafter OFFICIAL PROCEEDINGS].

233. McCULLOUGH, *supra* note 1, at 256.

234. Cromwell, *supra* note 219, at 165–66.

235. *Id.* at 160.

236. *The Story of Panama: Hearings on the Rainey Resolution Before the H. Comm. on Foreign Affs.*, 62d Cong. 5 (1913) [hereinafter *The Story of Panama Vol. 2*] (statement of Frank D. Pavey); *see also* text accompanying *supra* notes 29–31 (discussing the Panama Railroad Company).

237. *The Story of Panama Vol. 1*, *supra* note 8, at 17–18 (statement of Rep. Henry Rainey).

238. *Id.* at 25 (statement of Rep. W.S. Goodwin, Member, H.R. Comm. on Foreign Affs.).

239. *Id.* (statement of Rep. Henry Rainey).

240. Merrifield, *supra* note 177, at 21; *see also* S. 3247, 54th Cong. (1897).

step forward for canal proponents.<sup>241</sup> However, it did not directly address the Clayton-Bulwer Treaty.<sup>242</sup> Iowa Representative William Hepburn opposed Senator Morgan's bill for being ill-conceived, but potentially more important was that Hepburn wanted to author the bill himself.<sup>243</sup> While Representative Hepburn held the bill in the House Committee on Interstate and Foreign Commerce, which he chaired, Senator Morgan engaged his allies to support a discharge petition and force a floor vote on the Senate floor.<sup>244</sup> When the bill came to the floor for debate, its opponents suggested it go back to committee for amendments to be considered.<sup>245</sup> Senator Morgan retorted that they were using "a method of filibustering that I do not think is proper and just."<sup>246</sup> That was the second time that filibustering derailed the Nicaraguan canal.

When President McKinley came to office in March 1897, he appointed Senator John Sherman as Secretary of State.<sup>247</sup> Senator Sherman was the chair of the Senate Committee on Foreign Relations and had oversight of the canal bills moving through that body when McKinley appointed him to his cabinet.<sup>248</sup>

On June 4, 1897, Congress, following the recommendation of the Ludlow Survey, created the Nicaragua Canal Commission,<sup>249</sup> also known as the First Walker Commission.<sup>250</sup> Through the annual appropriations bill, Congress gave the President authority to appoint a commission to survey and report on the Nicaragua route in more detail.<sup>251</sup>

U.S. Navy admiral John Grimes Walker was the commander of the Pacific fleet in 1894.<sup>252</sup> Admiral Walker completed his uniformed service in 1897 after a stellar career. Admiral Walker's contemporaries described him as "politically the most powerful man in the Service," and "one of the ablest administrators and executives the Department has ever had."<sup>253</sup> Despite his retirement, Admiral Walker continued to serve in a civilian fashion. He was soon appointed to a presidential commission that would become the most influential, if not always objective, source for

---

241. Merrifield, *supra* note 177, at 21.

242. *Id.*

243. *Id.* at 16–17.

244. Cromwell, *supra* note 219, at 167.

245. *See, e.g.*, 29 CONG. REC. 1017 (1897) (statement of Sen. Villas).

246. *Id.* (statement of Sen. Morgan).

247. *Biographies of the Secretaries of State: John Sherman (1823–1900)*, U.S. DEP'T OF STATE: OFF. OF THE HIST., <https://history.state.gov/departmenthistory/people/sherman-john> [<https://perma.cc/W6ZM-STAT>].

248. Cromwell, *supra* note 219, at 168.

249. Act of June 4, 1897, ch. 2, 30 Stat. 11, 59; *see also* Rasp, *supra* note 14.

250. *The Story of Panama Vol. 1*, *supra* note 8, ex. K, at 580.

251. *See* Act of June 4, 1897.

252. Frances P. Thomas, *Career of John Grimes Walker, 1835–1907*, at 77 (1959) (unpublished manuscript) (HathiTrust). Admiral Walker has no known relation to William Walker.

253. ALBERT GLEAVES, *LIFE AND LETTERS OF REAR ADMIRAL STEPHEN B. LUCE 172–73* (1925).

congressional information.<sup>254</sup>

In 1897, President McKinley appointed the Nicaragua Canal Commission, which was tasked with exploring the possibility of a trans-isthmus shipping route through Nicaragua.<sup>255</sup>

But Representative Hepburn, representing landlocked Iowa, did not have a clear reason to support a trans-isthmus canal. In fact, it was likely that the influence of politically important railroads would suffer.<sup>256</sup> For as much as the railroad companies in the United States were concerned, most preferred a Panama route, though it was suspected by some that the railroads only supported Panama to delay and ultimately prevent the Nicaragua canal.<sup>257</sup>

In the 55th Congress, several competing bills were introduced to encourage the building of a Nicaraguan Canal. In December 1897, Representative John Barham introduced a bill.<sup>258</sup> In January 1898, a bill was introduced by Senator Henry Hansbrough<sup>259</sup> and another was introduced by Representative James Davidson.<sup>260</sup> Senator Morgan reintroduced his bill in May 1898,<sup>261</sup> and Senator William Stewart introduced a bill a few days later.<sup>262</sup> Senator Morgan reintroduced a bill through the Select Committee on the Construction of the Nicaragua Canal in June 1898 as a substitute for his earlier draft and some of these other bills.<sup>263</sup> In order to stall Congress in moving forward on a Nicaraguan route bill, Cromwell insisted that members should wait to move forward until the Nicaragua Canal Commission issued its report.<sup>264</sup> As one analyst pointed out, the effect was that “a commission formed to promote a Nicaragua Canal was being used by Panama interests as a stalling tactic.”<sup>265</sup> The tactic worked, and the 55th Congress adjourned without passing any major canal legislation.<sup>266</sup>

### *B. Spanish America War: Making a National Security Case*

For the United States, the Panama Canal was not necessarily foremostly an

254. Merrifield, *supra* note 177, at 20, 58–59.

255. *Id.* at 20.

256. *Id.* at 16.

257. Charles D. Ameringer, *The Panama Canal Lobby of Philippe Bunau-Varilla and William Nelson Cromwell*, 68 AM. HIST. REV. 346, 355 (1963).

258. H.R. 4109, 55th Cong. (1897).

259. S. 2933, 55th Cong. (1898).

260. H.R. 6260, 55th Cong. (1898).

261. S.4539, 55th Cong. (1898).

262. S. 4657, 55th Cong. (1898).

263. *See* S. 4792, 55th Cong. (1898).

264. Merrifield, *supra* note 177, at 21–22.

265. *Id.* at 22.

266. *The Story of Panama Vol. 1*, *supra* note 8, at 110–11 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World).

economic project. Contemporary national-security scholars viewed a Central American canal as a military imperative.<sup>267</sup> U.S. Navy captain Alfred Thayer Mahan published his seminal treatise, *The Influence of Sea Power upon History*, which influenced military strategy in 1890.<sup>268</sup> Captain Mahan himself was responsible for ending a revolt in Panama that threatened the viability of the cross-Panama railroad in 1885.<sup>269</sup> Mahan's work not only caused the military to re-examine the importance of a dominant and capable Navy, but also pressed Congress to act.<sup>270</sup>

When the Spanish-American War broke out in early 1898, Congress all but forgot about the canal debate until it became the focal point of the American public.<sup>271</sup> While U.S. Navy Admiral Sampson led the naval fight around Cuba, he awaited reinforcements from the Pacific fleet.<sup>272</sup> It took more than two months for the USS *Oregon* (BB-3) to travel from San Francisco to Florida, taking the 12,000-mile route around Cape Horn.<sup>273</sup> *Oregon* reached her destination only just in time to take part in the Battle of Santiago.<sup>274</sup> Interestingly, the journey of the *Oregon* was sixty-nine days, which was a record speed for the voyage from the west coast to the east coast of the United States.<sup>275</sup>

Even still, it was too long for the American public.<sup>276</sup> Senator Morgan later remarked in support of canal construction that Congress should not "assume the responsibility of a renewal of the difficulties and dangers and the heart-rending troubles we felt over the Oregon at the time of her great voyage around Cape Horn."<sup>277</sup> The lack of a canal underscored the vulnerability of America's geography, but it also emphasized the potential opportunity that a canal could offer: doubling the size of America's navy.<sup>278</sup>

Following the conclusion of the Spanish-American War, Puerto Rico and Cuba came under the control of the United States.<sup>279</sup> It was clear to the growing empire

267. Merrifield, *supra* note 177, at 22.

268. MCCULLOUGH, *supra* note 1, at 250–51.

269. *Id.* at 179.

270. *Id.* at 251.

271. See *The Story of Panama Vol. 1*, *supra* note 8, at 101 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World).

272. *Id.*

273. *This Great Enterprise: Theodore Roosevelt and the Panama Canal*, CONST. RIGHTS FOUND., <https://www.crf-usa.org/bill-of-rights-in-action/bria-21-2-b-this-great-enterprise-theodore-roosevelt-and-the-panama-canal.html> [<https://www.crf-usa.org/bill-of-rights-in-action/bria-21-2-b-this-great-enterprise-theodore-roosevelt-and-the-panama-canal.html>].

274. Cromwell, *supra* note 219, at 173.

275. Merrifield, *supra* note 177, at 23.

276. *Id.*

277. 32 CONG. REC. 112 (1899) (statement of Sen. Morgan).

278. Cromwell, *supra* note 219, at 173.

279. Merrifield, *supra* note 177, at 23.

that a trans-isthmus canal was a necessity.<sup>280</sup> Furthermore, the acquisition by the United States of the Philippines and the Hawaiian Islands made the need for a passageway even more pressing.<sup>281</sup> Public opinion not only solidified around the need for a canal but transitioned fully behind a government-owned, -operated, and -fortified project.<sup>282</sup> As a matter of national security, this was too important to leave in the hands of a private company.<sup>283</sup>

In May 1898, the Senate passed a resolution inviting the Maritime Canal Company to make a proposal for the transfer of stock to the United States.<sup>284</sup> The Company proposed to issue new shares to the United States and cancel all of its then-outstanding shares (leaving the United States as its sole owner) in exchange for a buyout of its current shareholders to the tune of \$4.5 million and a guarantee of new bonds, totaling up to \$100 million, that the Company would offer for sale.<sup>285</sup> The next month, Senator Morgan introduced a bill in response to this proposal, Senate Bill 4792,<sup>286</sup> which would have allowed the United States to move forward on that sale.<sup>287</sup>

Senate Bill 4792 became known as the Nicaragua Canal Bill.<sup>288</sup> The bill did not directly address the Clayton-Bulwer Treaty, but Senator Morgan explained that there was no conflict if the actions were through a U.S. corporation.<sup>289</sup> Yet, Wisconsin Senator John Spooner pressed Senator Morgan on specific details around the length of the concession from the Nicaraguan government and faulted the Nicaragua Bill for its impracticality.<sup>290</sup> Though valid concerns, Senator Morgan addressed them but added some colorful commentary: “No lobby has whispered its siren songs in my ears, no great corporate combinations have come forward to suggest to me, through their hired agencies, that their interests are going to be injured if we build this canal.”<sup>291</sup>

Senator Spooner was an especially high-profile member of Congress and was

280. *Id.*

281. Griffin B. Bell & H. Miles Foy, *The President, the Congress, and the Panama Canal: An Essay on the Powers of the Executive and Legislative Branches in the Field of Foreign Affairs*, 16 GA. J. INT'L & COMPAR. L. 607, 610 (1986).

282. Cromwell, *supra* note 219, at 173.

283. *See id.*

284. 31 CONG. REC. 4923–24 (1898) (text of resolution); *id.* at 4925 (resolution passed in Senate).

285. *See* S. DOC. NO. 55-289, at 2–3 (1898).

286. S. 4792, 55th Cong. (as introduced in Senate, June 20, 1898).

287. *See* S. REP. NO. 55-1265 (1898).

288. *See A Nicaragua Canal Bill: Senate Committee Agrees on a Measure Providing for Canal Construction by the United States*, N.Y. TIMES, June 21, 1898, at 4. Senator Morgan later entered a series of supporting documents compiled by the Senate Librarian into the Senate record. It included nine pages of congressional documents relating to interoceanic canals ranging from 1825 at the earliest to the present day. S. DOC. NO. 55-26 (3d Sess. 1898).

289. *See* 32 CONG. REC. 104 (1899) (statement of Sen. Morgan).

290. *See id.* at 107 (statement of Sen. Spooner).

291. *Id.* at 112 (statement of Sen. Morgan).

part of a group known as “The Senate Four.”<sup>292</sup> Spooner was originally from Indiana and had attended the University of Wisconsin.<sup>293</sup> When he graduated in 1867, Spooner enlisted in the Union Army with the 40th Wisconsin Volunteers.<sup>294</sup> He worked his way up the ranks from a private to brevet major.<sup>295</sup> Following a lengthy legal career, Spooner was elected to the Senate as a Republican in 1885.<sup>296</sup> In time, he grew to wield an inordinate amount of power in the Senate and was known among his colleagues as an exceptional debater.<sup>297</sup>

For a variety of reasons, Spooner personally opposed a Nicaragua-based canal route and preferred a Panamanian route, which he believed was more expedient.<sup>298</sup> He became more entrenched in this position after the publication of an article by then-retired brigadier general Henry Abbot.<sup>299</sup> Abbot was a consulting engineer for the New French Panama Canal Company, though it was rumored that he was employed by Cromwell to pen the article.<sup>300</sup> Cromwell and Spooner were closely acquainted years before, when Spooner had worked as an attorney under Cromwell for the Northern Pacific Railroad receivership.<sup>301</sup> Spooner wrote of Cromwell that he was “wonderful in his energy, in his quickness of comprehension, his mastery of details, his power of rapid generalization, his fertility of resources, etc. etc.”<sup>302</sup> The two worked so closely enough together on canal issues that Senator Spooner was said to have been an agent of Cromwell’s.<sup>303</sup>

With the chamber continuously delaying the Nicaragua Canal Bill, Morgan expressed his frustration on the Senate floor:

[T]o postpone action, to delay, to quibble, and to higggle over this subject in the hope that the atmosphere of the whole world will be clear of these questions before we touch it with our legislative power is something, Mr. President, that is unworthy of the occasion and unworthy of the Senate.<sup>304</sup>

292. FOWLER, *supra* note 198, at 10.

293. SPOONER, *John Coit*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS, <https://bioguide.congress.gov/search/bio/S000741> [<https://perma.cc/SW7P-XA6V>].

294. 1 MEN OF MARK IN AMERICA: IDEALS OF AMERICAN LIFE TOLD IN BIOGRAPHIES OF EMINENT LIVING AMERICANS 318 (Merrill E. Gates ed., 1905).

295. FOWLER, *supra* note 198, at 19.

296. *Id.* at 76–78.

297. *The Senate Four*, U. S. SENATE, [https://www.senate.gov/artandhistory/history/common/generic/People\\_SenateFour.htm](https://www.senate.gov/artandhistory/history/common/generic/People_SenateFour.htm) [<https://perma.cc/2CAC-DFRB>].

298. FOWLER, *supra* note 198, at 274.

299. *Id.* at 274.

300. *Id.* at 275–76 & n.37.

301. *Id.* at 180–81.

302. *Id.* at 180 n.50.

303. *Id.* at 276.

304. 32 CONG. REC. 112 (1899) (statement of Sen. Morgan).



Despite Cromwell's efforts, the Nicaraguan route continued to be the forerunner. On December 5, 1898, President McKinley's State of the Union address was transmitted to Congress wherein he recommended that a Nicaraguan canal be built.<sup>305</sup> On the seventh, Senator Morgan followed up with a report from the Select Committee on the Construction of the Nicaragua Canal urging Congress to pass a Nicaraguan canal bill and lambasted the Panama route as dangerous.<sup>306</sup> One contemporary-commentator quipped that "[n]obody in America thought the session of Congress would end without the enactment of law for the building of the Nicaraguan Canal. Nothing seemed able to resist the influences combined in its favor. . . . Cromwell, however, proved himself equal to the task."<sup>307</sup>

Morgan secured further consideration of the Nicaragua Canal Bill in January 1899 when several amendments were offered to address treaty concerns and the technical aspects of the U.S. government's purchase of stock in a private company.<sup>308</sup> Cromwell, meanwhile, set up a private press bureau "for the preparation and publication of technical and popular articles in the various magazines and periodicals of the country."<sup>309</sup> Cromwell was targeting public opinion. He in turn hired General Abbot for work in the propaganda machine.<sup>310</sup>

### C. *The Fight for the Nicaraguan Route (1899–1902)*

As the new year, 1899, came in, it became clearer that Congress was going to move forward with a Nicaraguan route. Representative Hepburn had supported a Nicaraguan canal in the past, and Cromwell expected him to push the Nicaragua Canal Bill as chair of the House Committee on Interstate and Foreign Commerce (the committee that would receive the bill in the House if the Senate passed it).<sup>311</sup> Cromwell, however, used every tactic at his disposal to kill the Nicaragua Canal Bill in the House. For example, Cromwell and the champions of the Panama route secured public hearings on the bill before the House Committee on Interstate and Foreign Commerce,<sup>312</sup> which took place on January 17, 18, and 19, 1899.<sup>313</sup> The witnesses at this hearing included Cromwell himself, William Curtis, and General Abbot.<sup>314</sup>

305. H.R. DOC. NO. 55-1, at lxxi–lxxii (3d Sess. 1901).

306. S. REP. NO. 55-1418, at 15 (1898).

307. *The Story of Panama Vol. 1*, *supra* note 8, at 103 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World).

308. See 32 CONG. REC. at 701–04 (amendments to Nicaragua Canal Bill offered in Senate).

309. Cromwell, *supra* note 219, at 174.

310. *The Story of Panama Vol. 1*, *supra* note 8, at 102 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World).

311. Cromwell, *supra* note 219, at 165, 178.

312. *Id.* at 178.

313. *Hearings on New Panama Canal Company, the Maritime Company, and the Nicaragua Canal Company, (Grace-Eyre-Craig Syndicate) Before the H. Comm. on Interstate & Foreign Com.*, 56th Cong. (1899).

314. See *id.* at 3 (statement of William Nelson Cromwell, General Counsel, The New Panama Canal

But Pro-Panama politicians had not given up in the Senate. On January 20, 1899, Senator Spooner brought his great debating skills to the fore. Senator Spooner explained, perhaps in response to earlier aspersions, that he cared “nothing about the Panama Canal” and wanted any canal constructed.<sup>315</sup> Senator Spooner expounded that by limiting the President to a Nicaraguan route, the Central American countries would have too much leverage to exact a cost from the United States.<sup>316</sup> Senator Spooner led Senator Morgan to an agreement that broadened the Nicaragua Canal Bill to allow the President the flexibility to explore other routes, should negotiations with Nicaragua and Costa Rica fall through.<sup>317</sup> The bill passed the Senate the next day,<sup>318</sup> including an amendment from Senator Spooner,<sup>319</sup> foreshadowing the process to come in future Congresses.

By Cromwell’s assessment, the Nicaragua Canal Bill would have passed neatly in the House, were a vote to be taken on it.<sup>320</sup> Cromwell pushed for one more congressional exploratory commission to examine a Panama route and recruited several influential members to support the idea.<sup>321</sup> That group included Representative Thomas Brackett, the Speaker of the House, Representative Joseph Gurney, the chair of the House Committee on Ways and Means, and Representative Theodore Burton, the chair of the House Committee on Rivers and Harbors, which was then a powerful House committee.<sup>322</sup>

When the House failed to immediately take up the Nicaragua Canal Bill, the Senate Committee on Commerce chaired by Senator Morgan reported House Bill 11795 to the Senate with the text of the Nicaraguan Canal Bill added to it.<sup>323</sup> House Bill 11795 was then “must pass” bill that appropriated millions of dollars across the country and was being used as a vehicle for lots of members’ priorities.<sup>324</sup> Senator Spooner proposed to add the same language granting the President discretion to negotiate an alternative canal route through Panama to the Committee’s amendments,

Company); *id.* at 7 (statement of William J. Curtis, Of Counsel, New Panama Canal Company); *id.* at 9 (statement of Henry L. Abbot, General (Retired), U.S. Army).

315. 32 CONG. REC. 849 (1899) (statement of Sen. Spooner).

316. *Id.* at 849–50 (statement of Sen. Spooner).

317. Senator Spooner proposed to add the following language to the Nicaraguan Canal Bill:

That if the President shall be unable to secure from the Governments of Nicaragua and Costa Rica such concessions as will enable the United States to build and perpetually own and control said canal, the President is authorized to negotiate for a control of or a right to construct, maintain, and perpetually control the same other canal connecting the Atlantic and Pacific oceans . . .

*Id.* at 849 (statement of Sen. Spooner). Senator Morgan responded, “[M]y mind is inclined to the proposition of accepting the Senator’s amendment.” *Id.* (statement of Sen. Morgan).

318. *Id.* at 911 (Senate Bill 4792 passed in Senate). The final roll call vote was forty-eight to six. *Id.*

319. *See* S. 4792, 55th Cong. (as received in House, Jan. 23, 1899).

320. Cromwell, *supra* note 219, at 178.

321. *Id.* at 179–80.

322. *Id.* at 179.

323. *See* H.R. 11795, §§ 3–8, 55th Cong. (as reported by S. Comm. on Com., Feb. 17, 1899).

324. Cromwell, *supra* note 219, at 179; *see also* S. REP. NO. 55-1686 (1899).

and the Senate agreed.<sup>325</sup> The Senate passed House Bill 11795 as amended by Committee and Senator Spooner by a vote of fifty to three,<sup>326</sup> which was even stronger than the Nicaraguan Canal Bill.

The House rejected House Bill 11795 as amended by the Senate and both chambers convened conferences to resolve the dispute.<sup>327</sup> Cromwell worked with Representative Burton, a member of the House Bill 11795 conference, on an amendment that would strike and replace the Senate's language forging ahead on a Nicaraguan canal.<sup>328</sup> Cromwell was successful: the conference report replaced the Senate's language authorizing the construction of a Nicaragua canal with language authorizing the President to examine and alternative canal route through Panama.<sup>329</sup>

On March 3, 1899, the last day of the congressional session, Congress passed House Bill 11795 as amended by the conference report and President McKinley signed it.<sup>330</sup> Senator Morgan's language went from authorizing the construction of a canal through Nicaragua in the original Nicaraguan Canal Bill to authorizing the construction of *any* canal through the Central American isthmus after Senate amendments and ultimately to language that authorized no canal construction and instead funded an investigation into an alternative Panama route.

But just before McKinley created the Isthmian Canal Commission, the Nicaragua Canal Commission reported back on its findings on May 9, 1899.<sup>331</sup> The Nicaragua Canal Commission, like the Ludlow Commission, recommended a route across Nicaragua and put the total cost of construction at nearly \$120 million.<sup>332</sup> Though, despite taking an in-depth investigation, they left open the door to further study before moving forward on construction.<sup>333</sup>

President McKinley carried out House Bill 11795's directive by creating the Isthmian Canal Commission, also called the Second Walker Commission, in June 1899.<sup>334</sup> Though the Nicaragua Canal Commission's report had been thorough, the Isthmian Canal Commission's report would become the authoritative look at a trans-isthmus canal with its \$1 million appropriation to conduct its work.<sup>335</sup>

Cromwell fought hard to keep Admiral Walker, who had already spent so much

325. See H.R. 11795, § 9, 55th Cong. (as received in House, Feb. 25, 1899); see also 32 CONG. REC. 2291 (1899) (statement of Sen. Spooner).

326. 32 CONG. REC. at 2302 (House Bill 11795 passed as amended in Senate).

327. *Id.* at 2663 (House Bill 11795 rejected and conference appointed in House); *id.* at 2622 (conference appointed in Senate).

328. Cromwell, *supra* note 219, at 180.

329. 32 CONG. REC. at 2815–16 (conference report received in Senate).

330. See Act of Mar. 3, 1899, ch. 425, §§ 3–6, 30 Stat. 1121, 1150; see also Rasp, *supra* note 14, at 130–31.

331. S. DOC. NO. 57-357, at 3 (1902).

332. *Id.* at 47, tbl. 1.

333. S. DOC. NO. 57-357, at 49.

334. S. DOC. NO. 57-54, at 11–12 (1st Sess. 1901).

335. *Id.* at 9.

time in Nicaragua with the Nicaragua Canal Commission, off the new commission.<sup>336</sup> But Walker's pristine reputation won out and he was appointed as the president of the Isthmian Canal Commission.<sup>337</sup> However, Cromwell successfully placed some of his own friends on the Commission and convinced Walker to first travel to Paris to review the New French Panama Canal Company's books.<sup>338</sup>

The standing Senate Committee on Interoceanic Canals was established on December 15, 1899, and succeeded the Senate Select Committee on the Construction of the Nicaragua Canal.<sup>339</sup> The Senate appointed Senator Morgan as chair of the permanent committee.<sup>340</sup> The Committee's transition from special to standing committee elevated the power and jurisdiction of the Committee and its members, including Senator Morgan.<sup>341</sup>

Representative Hepburn, chair of the House Committee on Interstate and Foreign Commerce, authored House Bill 2538 in 1899,<sup>342</sup> which provided for the construction of a canal through Nicaragua.<sup>343</sup> In his floor speech in support of his bill, Hepburn noted that in the previous fifty-four years Congress was debating an interoceanic canal, "volumes . . . have been written and . . . thousands of speeches . . . made, but this is the first day that the proposition to secure the building of such a canal has ever received the attention of the House of Representatives for a direct vote."<sup>344</sup>

On May 16, 1900, the Senate Committee on Interoceanic Canals issued a report that severely criticized Cromwell and his methods of lobbying.<sup>345</sup> The report insinuated that the "manifest purpose" of the New Panama Canal Company that Cromwell represented was to "interfere with legislation."<sup>346</sup> The scathing report went on:

336. MCCULLOUGH, *supra* note 1, at 274.

337. S. DOC. NO. 57-54, at 26-27.

338. MCCULLOUGH, *supra* note 1, at 274.

339. 33 CONG. REC. 441 (1900) (Senate Committee on Interoceanic Canals created in Senate). The Senate Select Committee on the Construction of the Nicaragua Canal was established in 1895 and Senator Morgan was appointed as chairman. S. REP. NO. 55-1417, at 9 (1898). The Senate Select Committee to Inquire into All Claims of Citizens of the United States Against the Government of Nicaragua was last organized in the 53rd Congress. Compare STAFF OF THE JOINT COMM. ON PRINTING, FIFTY-THIRD CONGRESS [THIRD SESSION]: OFFICIAL CONGRESSIONAL DIRECTORY (Francis M. Cox ed., 2d ed. 1895), *in* S. MISC. DOC. 53-19, pt. 2, at 1, 129 (3d Sess. 1895) (listing the Select Committee on Nicaraguan Claims among the Senate's committees), with STAFF OF THE JOINT COMM. ON PRINTING, FIFTY-FOURTH CONGRESS [FIRST SESSION]: OFFICIAL CONGRESSIONAL DIRECTORY (Francis M. Cox ed., 1st ed. 1895) (not listing the Select Committee on Nicaraguan Claims among the Senate's committees), *in* S. DOC. NO. 54-14, at 1, 142-148 (1st Sess. 1895).

340. *Id.*

341. Merrifield, *supra* note 177, at 14.

342. 33 CONG. REC. at 151 (House Bill 2538 introduced in House).

343. H.R. 2538, 56th Cong. (1900); see also *Nicaragua Canal Debate: House Takes Up Consideration of the Hepburn Bill*, N.Y. TIMES, May 2, 1900, at 3 [hereinafter *Nicaragua Canal Debate*].

344. 33 CONG. REC. app. at 393 (statement of Rep. Hepburn).

345. S. REP. NO. 56-1337, pt. 1 (1st Sess. 1900).

346. S. REP. NO. 56-1337, pt. 1, at 9.

It is a spectacle that is, happily, without precedent, that this foreign corporation, acting in a foreign country and without any recognition even of the honesty of its dealings, while it has all the time been the subject of distrust by our Government, should ask the President to “advise the Congress of the facts of the case” for the purpose of opposing Congress in declaring and enforcing the public policy of our people and Government.

A bill that the House had agreed to consider on the 1st and 2d day of May, 1900, is severely censured by this speculating corporation, because its passage would destroy the hope of that company of unloading a failing enterprise upon the United States under its proposal of February 28, 1899, which is again renewed in this letter.

Aside from the fact that said proposal contains suggestions that provide for the robbery of the stockholders of the “old company,” and the violation of the decrees of the courts of France, it proposes a direct violation of the statutes of Colombia, enacted in granting the concessions to that company, and a breach of our treaty of 1846 with Colombia, which binds us to guarantee the sovereignty of that territory over the State of Panama.<sup>347</sup>

Interestingly, although House Bill 2538 passed the House,<sup>348</sup> it received opposition from Representative Joseph Cannon, the chair of the House Committee on Appropriations,<sup>349</sup> and Representative Robert Hitt, the chair of the House Committee on Foreign Affairs,<sup>350</sup> who were both extremely powerful members of Congress at the time.<sup>351</sup> Representative Cannon explained his position that many members of the House were assuming the Senate would either amend or kill House Bill 2538 and he felt that the House was abrogating its authority by passing a bill they did not expect to become law.<sup>352</sup>

Ohio junior Senator Mark A. Hanna had been appointed to the new Senate Committee on Interoceanic Canals.<sup>353</sup> Senator Hanna had become an extremely wealthy coal and shipping magnate in Cleveland, Ohio.<sup>354</sup> Though he was active in the campaigns for Presidents Hayes and Garfield, it was Senator Hanna’s management of

---

347. *Id.* at 9–10.

348. See H.R. 2538, 56th Cong. (as reported in Senate, May 14, 1900).

349. 33 CONG. REC. at 4913–15 (statement of Rep. Cannon), *id.* at 4934–36 (statement of Rep. Cannon), *id.* at 4998–99 (statement of Rep. Cannon), *id.* at 5010–12 (statement of Rep. Cannon).

350. *Id.* at 4933–34 (statements of Rep. Hitt).

351. *Nicaragua Canal Debate*, *supra* note 343.

352. 33 CONG. REC. at 5012 (statement of Rep. Cannon).

353. 33 CONG. REC. at 441 (Sen. Hanna appointed to Senate Committee on Interoceanic Canals).

354. Merrifield, *supra* note 177, at 25.

President McKinley's run in 1896 that gained him national fame.<sup>355</sup> Though the endeavor was extremely well-funded, President McKinley largely stayed home while Hanna paid for voters to travel to hear the candidate on his front porch.<sup>356</sup> Through managing this "front porch campaign," Hanna became one of McKinley's best friends and was "more than any other man, . . . instrumental in making McKinley the President."<sup>357</sup>

President McKinley offered Hanna a position in his cabinet, but Hanna declined to join the administration and instead ran for Senate in 1897.<sup>358</sup> Hanna became influential in Washington, becoming the Republican National Committee chair and leveraging his business relationships to become a chief fundraiser.<sup>359</sup> Hanna also played a key role in a trans-isthmus shipping route, so much so that his colleagues in the Senate referred to the route as the "Hannama Canal."<sup>360</sup>

The next month, after the Senate Committee on Interoceanic Canals issued a pro-Nicaragua report, Senator Hanna attended the Republican national convention in June 1900 and helped draft the party platform.<sup>361</sup> The first draft included a similar proposal to the 1896 platform that had supported a Nicaraguan canal.<sup>362</sup> However, Cromwell, who was in attendance at the convention, convinced Senator Hanna to alter the language from supporting a Nicaraguan canal to *any* trans-isthmus canal, which put a Panama route on equal footing in the party.<sup>363</sup> Cromwell contemporaneously made a \$60,000 contribution to the Republican National Committee, which Hanna chaired and fundraised for.<sup>364</sup> From then on, it seemed that Hanna strongly preferred Panama to the alternative.<sup>365</sup>

After House Bill 2538 passed the House, it was shepherded through the Senate by Senator Morgan.<sup>366</sup> But the bill was stalled by Republican Senate leadership, including Senator Henry Cabot Lodge (who was close personal friends with

---

355. *Id.*

356. *Mark Hanna and the 1896 Election*, U.S. SENATE, [https://www.senate.gov/artandhistory/history/minute/Hanna\\_1896Election.htm](https://www.senate.gov/artandhistory/history/minute/Hanna_1896Election.htm) [<https://perma.cc/LZ2V-WKXS>].

357. Merrifield, *supra* note 177, at 25.

358. *Mark Hanna and the 1896 Election*, *supra* note 356.

359. Merrifield, *supra* note 177, at 25.

360. *Mark Hanna and the 1896 Election*, *supra* note 356.

361. *The Story of Panama Vol. 1*, *supra* note 8, at 111 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World); see also Merrifield, *supra* note 177, at 25.

362. OFFICIAL PROCEEDINGS, *supra* note 232, at 84; *The Story of Panama Vol. 1*, *supra* note 8, at 111 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World).

363. *The Story of Panama Vol. 1*, *supra* note 8, at 111 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World).

364. *Id.*

365. Bunau-Varilla would claim that he was solely responsible for Hanna's interest in the canal, though that is likely an embellishment as Bunau-Varilla didn't meet Hanna until the Spring of 1901. BUNAU-VARILLA, *supra* note 182, at 186.

366. See Merrifield, *supra* note 177, at 69.

Theodore Roosevelt).<sup>367</sup> Roosevelt had advocated for a trans-isthmus canal while Governor of New York.<sup>368</sup> He was a strong believer in American naval superiority, and favored expedient action.<sup>369</sup>

On January 14, 1901, Senator Morgan introduced a report from the Committee on Interoceanic Canals,<sup>370</sup> which he noted was delayed to include a statement by Professor Emory Johnson of the Isthmian Canal Commission.<sup>371</sup> Johnson's statement included an economic analysis of a Nicaraguan canal that asserted a profit could be made even if over \$200 million were spent in its construction.<sup>372</sup> The idea of constructing a canal was finally gaining broad support and advocacy was seen from chambers of commerce across the nation.<sup>373</sup> This included the National Board of Trade, which issued a resolution urging the swift passage of House Bill 2538.<sup>374</sup> But the session of Congress ended on March 3, without passing that bill into law.<sup>375</sup>

The passage of House Bill 2538 in the House, however, showed Congress's very real interest in building a trans-isthmus route and ratcheted up the pressure on the New French Panama Canal Company to court Congress as a potential buyer.<sup>376</sup> It particularly caught the attention of Bunau-Varilla, who became a major shareholder of the Company, which controlled the assets of the failed *La Société*.<sup>377</sup>

That summer, while the Isthmian Canal Commission conducted its investigation of all trans-isthmus routes, a disagreement arose between Cromwell and the president of the New French Panama Canal Company on how to engage with the Commission.<sup>378</sup> Cromwell lost in a dramatic fashion to his client, who fired him, though Cromwell proved the victor in the long run.<sup>379</sup>

In November 1901, the Commission reported back to President Roosevelt, who transmitted its findings to Congress on December 4, 1901.<sup>380</sup> The issuance of the Committee's report was rushed by the administration because its substance had been

367. *Id.*

368. *Id.* at 71.

369. *Id.*

370. S. REP. NO. 56-1337, pt. 5 (1st Sess. 1901).

371. 34 CONG. REC. 957 (1901) (statement of Sen. Morgan).

372. Letter from Emory R. Johnson, Chairman, Comm. on Value of Canal, Isthmian Canal Comm'n, to Sen. John T. Morgan, Chair, Sen. Comm. on Interoceanic Canals (Jan. 11, 1911), in S. REP. NO. 56-1337, pt. 5, at 1.

373. See Paul J. Scheips, *United States Commercial Pressures for a Nicaragua Canal in the 1890's*, 20 AMERICAS 333, 338-58 (1964).

374. Nat'l Bd. of Trade, Resolution Relating to House Bill No. 2538 (Jan. 24, 1901), in 34 CONG. REC. at 1497.

375. *Dates of Sessions of Congress*, U.S. SENATE, <https://www.senate.gov/legislative/DatesofSessionsofCongress.htm> [<https://perma.cc/W6UA-Q6CR>].

376. *Hearings on H.R. 3110 Before the S. Comm. on Interoceanic Canals*, *supra* note 165, pt. 1, at 40 (statement of Edouard Lampre, Secretary-General, Compagnie Nouvelle du Canal de Panama).

377. Ameringer, *supra* note 257, at 348-49.

378. *Id.* at 348.

379. *Id.*

380. See S. DOC. NO. 57-54 (1st Sess. 1901); see also Rasp, *supra* note 14, at 144.

leaked by the *New York Journal*.<sup>381</sup> Apparently, William Randolph Hearst had bribed Admiral Walker's stenographer and had received an advanced copy of the report.<sup>382</sup> But like many other lengthy documents, the nuance made by the Commission was lost on most readers; the headline was that the Commission had recommended Nicaragua.<sup>383</sup>

The Isthmian Canal Commission's report actually narrowed possible routes down to two options. One was the Nicaraguan route, begun by the Nicaragua Canal Construction Company, which the report concluded would cost \$190 million to complete.<sup>384</sup> The second was the Panama route, begun by de Lesseps, which the report detailed would cost \$144 million to complete and an additional \$110 million to purchase the rights to build a Panamanian canal from the New French Panama Canal Company.<sup>385</sup>

Admiral Walker's Isthmian Canal Commission recommended the Nicaraguan route as the "most practicable and feasible."<sup>386</sup> But this recommendation was based on the fact that "the price fixed by [the New French Panama Canal Company] for a sale of its property and franchises is so unreasonable that its acceptance can not be recommended."<sup>387</sup> This news was crushing to Panama supporters, including Bunau-Varilla, who knew that unless the cost of the Panama route would come down, the United States would finally settle on a Nicaraguan route. Cromwell continued to work the issue independently, and potentially saw this setback as a personal opportunity for redemption.

There was one chance to make the math work in favor of a U.S. purchase. In December 1901, the shareholders of the New French Panama Canal Company gathered for their annual meeting.<sup>388</sup> On the docket for discussion was the potential sale of the Company to the United States.<sup>389</sup> The investors were disinclined to reduce their asking price, potentially losing money on their investments in the Company.<sup>390</sup> Because of the bankruptcy proceedings, major shareholders of the Company's predecessor, La Société, were not permitted to attend.<sup>391</sup> That ruled out Bunau-Varilla and many others. Though, from Bunau-Varilla's perspective, the choice was to either

---

381. MCCULLOUGH, *supra* note 1, at 264.

382. *Id.* at 264. William Randolph Hearst was a newspaper editor and owned a nationwide chain of magazines and newspapers who later become a Representative from New York. HEARST, William Randolph, HIST. ART & ARCHIVES: U.S. HOUSE OF REPRESENTATIVES, [https://history.house.gov/People/Listing/H/HEARST,-William-Randolph-\(H000429\)/](https://history.house.gov/People/Listing/H/HEARST,-William-Randolph-(H000429)/) [<https://perma.cc/5MZ3-42NJ>].

383. MCCULLOUGH, *supra* note 1, at 264.

384. S. DOC. NO. 57-54, at 261.

385. *Id.*; see also Rasp, *supra* note 14, at 132.

386. S. DOC. NO. 57-54, at 263; Rasp, *supra* note 14, at 132.

387. S. DOC. NO. 57-54, at 263.

388. Merrifield, *supra* note 177, at 78.

389. *Id.*

390. Ameringer, *supra* note 257, at 348.

391. Merrifield, *supra* note 177, at 78.



reduce the price and salvage some value of their stock, or lose the entirety of the sunk cost in the defunct venture.<sup>392</sup>

Coincidentally, Bunau-Varilla's brother owned a newspaper and secured a press pass for Bunau-Varilla to attend.<sup>393</sup> Though it meant certainly violating the spirit of the bankruptcy court's order, Bunau-Varilla not only attended, but used his considerable charisma to just push the shareholders' vote in favor of reducing the asking price from \$110 million to \$40 million.<sup>394</sup> Order completely broke down at the meeting and French authorities were forced to call in the police in response to rioting.<sup>395</sup> This, in turn, led to the resignation of the president of the New French Panama Canal Company.<sup>396</sup> The reduction in prices was just enough to underbid the Nicaraguan estimates.<sup>397</sup> According to Admiral Walker's report, Nicaragua would cost \$190 and the Panama total would rise to just \$184 million.<sup>398</sup> With the president of the Company gone, Bunau-Varilla urged the rehiring of Cromwell for his U.S. expertise on the sale.<sup>399</sup> Four days into the new year of 1902, the Company submitted its offer to the United States.<sup>400</sup>

Following the Company's shareholders' vote and new offer, Cromwell and Bunau-Varilla sprang into action on Capitol Hill. Cromwell first convinced Admiral Walker and the Isthmian Canal Commission to change their "final" recommendation and file a supplemental report.<sup>401</sup> On January 20, 1902, the Commission released that supplemental report wherein Admiral Walker and other senior members of the Commission changed their recommendation from Nicaragua to Panama, and the only holdout was A. G. Menocal.<sup>402</sup> Though he was a respected and knowledgeable engineer, Menocal's recommendations were overshadowed by the fact that he was still a shareholder and director of the Maritime Canal Company formed two decades previously.<sup>403</sup> Cromwell energized Senators Spooner and Hanna to meet with

392. Ameringer, *supra* note 257, at 349; Merrifield, *supra* note 177, at 78–79.

393. See BUNAU-VARILLA, *supra* note 182, at 210.

394. Merrifield, *supra* note 177, at 78, 80–81.

395. MCCULLOUGH, *supra* note 1, at 265–66.

396. *Id.*

397. S. DOC. NO. 57-54, at 261–62 (1st Sess. 1901); Merrifield, *supra* note 177, at 76.

398. S. DOC. NO. 57-54, at 261–62.

399. Ameringer, *supra* note 257, at 350–51.

400. See S. REP. NO. 57-123 (1st Sess. 1902).

401. See *The Story of Panama Vol. 1*, *supra* note 8, at 113, 120 (statement of Henry N. Hall, Staff Correspondent, *The N.Y. World*). Years later a scandal would burst forth when claims came out that, through Bunau-Varilla, individuals such as Cromwell, Charles Taft (President Taft's brother), Douglas Robinson (President Theodore Roosevelt's brother-in-law), and others bought a great deal of the New French Panama Canal Company stock at this time. *The Story of Panama Vol. 1*, *supra* note 8, ex. B, at 255. The claim was that these individuals used insider information to purchase the stock at a discounted rate, shortly before approval of the sale of the Company to the United States. *Id.* at 255–56. The scandal, though unproven, then became a battleground for the power of the government to push back against false narratives in the media. *Id.* at 256–57.

402. S. DOC. NO. 57-123, at 10 (1902); Rasp, *supra* note 14, at 97.

403. The Isthmian Canal Commission's supplemental report stated that, "after considering the changed

Commission directly, and Spooner, in turn, followed up directly with President Roosevelt.<sup>404</sup>

While Cromwell leveraged his existing relationships, Bunau-Varilla continued his eccentric advocacy. Bunau-Varilla turned his focus to why Nicaragua was a poor choice, specifically, he lobbied Congress to steer away from building in Nicaragua due to instability caused by volcanoes and earthquakes, which could destroy the progress on a canal at any point.<sup>405</sup> The Nicaraguan government representatives in Washington assured Congress that this was inaccurate.<sup>406</sup> Undeterred, Bunau-Varilla discovered a smoking gun document from the Nicaraguan government, or rather, a smoking volcano document.<sup>407</sup> Bunau-Varilla sent an explanatory letter to each Senator, along with a Nicaraguan-issued postage stamp from 1900.<sup>408</sup> This stamp displayed an erupting volcano, Momotombo, which Bunau-Varilla explained was an official Nicaraguan admission that volcanoes put a canal project at risk.<sup>409</sup>

As fate would have it, Mount Pelée on the Caribbean island of Martinique erupted on May 8, 1902.<sup>410</sup> The volcanic eruption “totally destroyed, with all its inhabitants,” the city of Saint-Pierre, Martinique,<sup>411</sup> and the catastrophe was felt deeply in the Senate Committee on Interoceanic Canals.<sup>412</sup> As one State Department cable phrased it, the eruption “caused a great deal of apprehension in certain quarters regarding the future stability and security of the Isthmian Canal in case it be built by the Nicaragua route.”<sup>413</sup> In short order, Senator Alfred Kittredge filed a minority report from the Committee.<sup>414</sup>

In that report, Kittredge made a complete and compelling case for why Congress ought to reevaluate its support for a Nicaraguan canal and focus on the Panama option.<sup>415</sup> The capstone of his argument was (with the eruption of Mount Pelée fresh

conditions that now exist and all the facts and circumstances upon which its present judgment must be based, the Commission is of the opinion that ‘the most practicable and feasible route’ for an isthmian canal . . . is that known as the Panama route.” S. DOC. NO. 57-123, at 10. But Menocal’s signature does not appear in the record of the Commission’s supplemental report that was printed by the Senate. *See id.*

404. FOWLER, *supra* note 198, at 277.

405. BUNAU-VARILLA, *supra* note 182, at 242.

406. *The Story of Panama Vol. I*, *supra* note 8, ex. K, at 593.

407. BUNAU-VARILLA, *supra* note 182, at 246–48.

408. *Id.* at 247.

409. Ameringer, *supra* note 257, at 361; *see also* Kenneth A. Wood, *Notes from the Past: Nicaragua’s Stamp Ends Canal Dreams*, STAMPNOTES (Apr. 26, 2000), [http://www.stampnotes.com/Notes\\_from\\_the\\_Past/past-note289.htm](http://www.stampnotes.com/Notes_from_the_Past/past-note289.htm) [[https://web.archive.org/web/20211201083201/http://www.stampnotes.com/Notes\\_from\\_the\\_Past/past-note289.htm](https://web.archive.org/web/20211201083201/http://www.stampnotes.com/Notes_from_the_Past/past-note289.htm)].

410. *The Story of Panama Vol. I*, *supra* note 8, ex. K, at 592.

411. S. DOC. NO. 57-131, at 31 (2d Sess. 1903).

412. *See* S. REP. NO. 57-783, pt. 2, at 23–24 (1902).

413. S. DOC. NO. 57-131, at 31.

414. *See* S. REP. NO. 57-783, pt. 2. This report was much more thorough than an earlier minority report that had been filed with the majority report in March. *See id.* pt. 1, 33–47 (March minority report).

415. *See id.* pt. 1.

in Representatives' minds) a similar event from the Nicaragua volcanoes would "in a day destroy the results of years of labor and of the expenditure of hundreds of millions of dollars."<sup>416</sup> Kittredge went on to explain that Panama was "the most stable portion of Central America."<sup>417</sup> But in fact, Panama and Nicaragua had nearly similar amounts of seismic activity.<sup>418</sup> Though volcanic activity should not have been a determining factor in any event, the argumentative damage was done and the risk of seismic activity in Nicaragua may well have swayed some members of Congress.

#### D. Panama Wins Out

In the 57th Congress, Representative Hepburn again offered a bill to appropriate funds (\$180 million) for a Nicaraguan canal, this time as House Bill 3110, also called the Hepburn Bill.<sup>419</sup> Action by Bunau-Varilla and Cromwell was not enough to hold back the chair of the House Committee on Interstate Commerce.<sup>420</sup> Again, like his bill from the previous Congress, Hepburn's bill sailed through the House<sup>421</sup> and ran into choppy waters in the Senate, where it had been received by the Senate Committee on Interoceanic Canals (where Republican Senator Hepburn was in the majority party but which Republican Senator Morgan chaired).<sup>422</sup>

By early 1902, Senator Morgan's fervor to pass a canal bill had begun to change to ire against those that threatened the Nicaraguan route. In January, the Senate Committee on Interoceanic Canals held a hearing with the general counsel for the New French Panama Canal Company.<sup>423</sup> Although the hearing was ostensibly about the details of a potential sale of the New French Panama Canal Company's right to build a canal through Panama to the U.S. government, Morgan used it as an opportunity to pick apart the correspondence of Cromwell.<sup>424</sup> At one point in the hearing, Morgan retorted to his witness, "I will take the liberty of saying that there are mistakes made by lawyers very often. They are just as apt to be mistaken as others."<sup>425</sup> Morgan went on to question other witnesses as to the veracity of Cromwell's statements at later hearings.<sup>426</sup> One wonders if Morgan would have been more successful if he were able to keep his focus and had not turned his attention to ad hominem attacks.

Following these hearings in the Senate Committee on Interoceanic Canals, others

416. *Id.* at 22.

417. *Id.* at 25.

418. S. DOC. NO. 57-54, at 168 (1st Sess. 1901).

419. H.R. 3110, 57th Cong. (as introduced in House, Dec. 6, 1901).

420. Ameringer, *supra* note 257, at 346–63.

421. *See* 35 CONG. REC. 557–58 (1902) (House Bill 3110 passed in House, January 9, 1902).

422. *Id.* at 597 (House Bill 3110 referred to Senate Committee on Interoceanic Canals, January 13, 1902).

423. *See Hearings on H.B. 3110 Before the S. Comm. on Interoceanic Canals, supra* note 165, pts. 1–3.

424. *See id.* pt. 1, at 38 (statement of M. Edouard Lampre).

425. *Id.* at 15.

426. *Id.* pt. 3, at 832–38 (statement of Henry L. Abbot, General (Retired), U.S. Army).

in the Senate sought changes to the Hepburn Bill based on the Isthmian Canal Commission's supplemental findings. On the Senate floor, Senator Spooner offered an amendment to the Hepburn Bill in the nature of a substitute that changed the location of the canal to Panama and purchased the rights to build such a canal from the New French Panama Canal Company.<sup>427</sup> Spooner's amendment to House Bill 3110 is called the Spooner Amendment.

Although Spooner is credited with offering this amendment—called the Spooner Amendment—its authorship is disputed; Cromwell later claimed credit for drafting the language, but other sources credit the Roosevelt administration.<sup>428</sup> The Spooner amendment was based heavily on the Isthmian Canal Commission's supplemental report and used updated numbers from the New French Panama Canal Company.<sup>429</sup>

Despite his personal views that the canal should be situated in Panama and not Nicaragua, Hanna could not persuade the Senate Committee on Interoceanic Canals to endorse the Spooner Amendment—Senator Morgan held too much sway as the committee chair.<sup>430</sup> Instead, the Committee recommended the original language proposed by Representative Hepburn and Hanna supported the Spooner Amendment in the Committee's report.<sup>431</sup>

The Senate continued debating the Hepburn Bill and the Spooner Amendment on June 5, 1902, when Senator Hanna gave a speech that he considered to be "one of the most important of his career."<sup>432</sup> Like the Spooner Amendment, Cromwell later took credit for authoring this speech, though this is disputed.<sup>433</sup> Hanna presented a practical business case for constructing a canal in Panama over Nicaragua and included data derived from the Nicaragua Canal Commission and the Isthmian Canal Commission.<sup>434</sup> When the Senate continued debating the Hepburn Bill the next day, Hanna spent considerable time discussing the earthquake zones, which influenced other senators to support the Spooner Amendment potentially more than anything else.<sup>435</sup>

427. 35 CONG. REC. at 1048 (amendment offered by Sen. Spooner, January 28, 1902); *see also id.* at 7008 (text of Senator Spooner's proposed amendment with subsequent amendments).

428. FOWLER, *supra* note 198, at 278; MINER, *supra* note 176, at 123–25. Of course, Senator Spooner himself also claimed to have written the language, and ensured that claim was noted on the Senate floor on June 12, 1902. 35 CONG. REC. at 6657 (statement of Sen. Spooner).

429. *See* 35 CONG. REC. at 6318 (statement of Sen. Hanna); *id.* at 6321 (statement of Sen. Mitchell).

430. FOWLER, *supra* note 198, at 278.

431. *See* S. REP. NO. 57–783, at 1–32 (1902) (reporting the views of the majority of the Senate Committee on Interoceanic Canals against purchasing the rights to build a Panama canal from the New French Panama Canal Company); *id.* pt. 2, at 31 (“[W]e, the minority members of the committee, record our votes against the House bill No. 3110, and recommend the adoption, as a substitute therefor, of the amendment introduced by Senator Spooner . . .”); *see also* 35 CONG. REC. at 6848 (statement of Sen. Cullom) (discussing the competing views regarding House Bill 3110 among the members of the Senate Committee on Interoceanic Canals).

432. FOWLER, *supra* note 198, at 278; *see also* 35 CONG. REC. at 6318–21 (statements of Sen. Hanna).

433. Merrifield, *supra* note 177, at 113, 118.

434. *See* 35 CONG. REC. at 6318–21 (statements of Sen. Hanna); Merrifield, *supra* note 177, at 117.

435. 35 CONG. REC. at 6380–81 (statements of Sen. Hanna).

Senator Morgan pushed back on June 12 and challenged the wisdom of a Panama route by pointing to political instability in Colombia, specifically that Panamanian separatists were at odds with the Colombian government in Bogota.<sup>436</sup> He noted that if the separatists won and Panama seceded from Colombia, any claims or concessions to build a canal would be void.<sup>437</sup> Morgan used the opportunity to invoke President “General” Grant as well as President McKinley in a way that almost made it seem like McKinley’s dying wish was for a Nicaraguan Canal.<sup>438</sup>

The Spooner Amendment gained momentum when Illinois Senator Shelby Cullom, then the chair of the Senate Foreign Relations Committee, and Senator Kittredge spoke on its behalf on the Senate floor on June 16, 1902.<sup>439</sup> Like Hanna, Cullom presented a complete narrative explaining his personal decision to switch his support from Nicaragua to Panama.<sup>440</sup> He explained it hinged largely on the recommendation of the Isthmian Canal Commission’s supplemental report and the adjustment of its cost estimates.<sup>441</sup> Cullom noted that the commissioners gave testimony to that effect to the Senate Committee on Interoceanic Canals “stating substantively that the Panama route is the best, and that they would have recommended that route in their first and second reports had [the New French Panama Canal Company] offered to sell its property for \$40,000,000 in the first place.”<sup>442</sup> Cullom also mentioned the geology and diplomatic concerns that favored Panama, though they were clearly secondary factors compared to expedience and price.<sup>443</sup>

Senator Kittredge followed Cullom with more analysis of the political unknowns, specifically on the shared border of the Nicaraguan route with Costa Rica.<sup>444</sup> In his speech, Kittredge spoke on Costa Rica:

We can not undertake to compel that Government to violate the constitution of the country; we can not interfere in its domestic affairs and force it to amend its constitution or call a constituent assembly; we can not seize upon its territory by force and occupy it in spite of its laws.<sup>445</sup>

Little did he know that the United States would go on to do all of those things to advance the Panama Canal project in Colombia.<sup>446</sup>

---

436. *See* 35 CONG. REC. at 6652–66 (statements of Sen. Morgan).

437. *Id.* at 6656 (statements of Sen. Morgan).

438. *Id.* at 6663–65 (statements of Sen. Morgan).

439. *See id.* at 6847–52 (statements of Sen. Cullom); *id.* 6852–59 (statements of Sen. Kittredge).

440. *See id.* at 6847 (statement of Sen. Cullom).

441. *Id.* at 6850 (statement of Sen. Cullom).

442. *Id.* (statement of Sen. Cullom).

443. *See id.* at 6851 (statement of Sen. Cullom).

444. *See id.* at 6853 (statement of Sen. Kittredge).

445. *Id.* (statement of Sen. Kittredge).

446. *See infra* Part III.A.

In a speech to the Senate on June 18, 1902, Senator Spooner kept to his previous statements that his main goal was any trans-isthmus canal. He explained that his amendment expanded the Hepburn Bill to allow for the purchase of the Panama route, and the Nicaraguan route if that failed.<sup>447</sup> Spooner defended his provision: “I want . . . a bill to be passed here under which we will get a canal. There never was greater need for it than now. The *Oregon* demonstrated [that] to our people.”<sup>448</sup> Spooner was clearly confident the Panama route was the best and cheapest option and that he felt no hurdles would arise preventing the purchase of the New French Panama Canal Company.<sup>449</sup>

On June 19, 1902, after countless hours of debate and thousands of pages of testimony and analysis, the Senate voted on the Hepburn Bill.<sup>450</sup> It first dispatched a series of amendments, the most important and substantive of which was the Spooner Amendment.<sup>451</sup> Spooner had won the upper hand, though Morgan valiantly took to the floor one last time to oppose the Panama route, pointing to the failure of the French endeavor: “It is not the loss of men and money, perhaps. We may have men to throw away and as much money to spend as anybody else, but the danger is to the glorious reputation of this splendid free Republic.”<sup>452</sup> With that mindset, Morgan voted against the Spooner Amendment but failed to convince his colleagues, and the Spooner Amendment passed in the Senate by a vote of forty-two to thirty-four.<sup>453</sup>

The Panama Canal Purchase Act of 1902, known occasionally as the Hepburn Bill and then in sum as the Spooner Amendment, passed the Senate overwhelmingly by a vote of sixty-seven to six later that day on June 19, 1902.<sup>454</sup> Morgan ultimately supported the bill on its final passage.<sup>455</sup> His vote came as a surprise to some, especially after his staunch support for Nicaragua and opposition to all alternatives.<sup>456</sup> It seemed that after all his fighting, Morgan preferred to move forward with an imperfect solution rather than none at all. It took only a week for the House and Senate to conference the bill and send it to the President for his signature.<sup>457</sup>

---

447. See 35 CONG. REC. at 6990 (statement of Sen. Spooner).

448. *Id.* (statement of Sen. Spooner).

449. See *id.* (statement of Sen. Spooner).

450. See *id.* at 7059–74 (statement of Sen. Spooner).

451. See *id.* at 7070–72 (statement of Sen. Spooner).

452. *Id.* at 7067 (statement of Sen. Morgan).

453. *Id.* at 7072–73 (Spooner Amendment passed in Senate).

454. *Id.* at 7074 (House Bill 3110 passed in Senate); see also *Panama Route Chosen*, *supra* note 216

455. 35 CONG. REC. at 7074 (listing Sen. Hanna’s vote in favor of House Bill 3110); see also *Panama Route Chosen*, *supra* note 216.

456. *Panama Route Chosen*, *supra* note 216.

457. See 35 CONG. REC. at 7074 (conference appointed in Senate, June 19, 1902); *id.* at 7120 (conference appointed in House, June 20, 1902); *id.* at 7428 (conference recommends that House pass bill as amended by Senate and House agrees to conference’s report on June 26, 1902); Panama Canal Purchase Act of 1902, ch. 1302, 32 Stat. 481 (1902).

### III. LEGACY OF THE BILL AND THE CANAL IT CREATED

Unfortunately for world history, passing the law in Congress did not create the canal. Colombia was unwilling to move forward with the solution unilaterally agreed to in Washington. This Part examines the legacy of the Panama Canal Purchase Act of 1902 and the disruptive effects it had on Central America. The passage of the Spooner Amendment was a long and arduous process, though the passage itself was ultimately just the beginning of even greater tumult. Old alliances fell apart. Countries rose into existence. The Panama Canal would become one of the United States' most remarkable achievements and a testament to our more shameful history. This Part also looks to the future. While the immediate after-effects of the bill should serve as a warning, the process to get the law through Congress can still be instructive to those wishing to pass world-changing legislation.

#### A. *Continuing Controversy Post-bill Passage*

The law's passage was only a first step in completing the trans-isthmus waterway. The Act gave the President authority to negotiate a treaty with Colombia, the nation with sovereignty over the Panama territory.<sup>458</sup> This negotiation was critical to ensuring the construction could progress. However, Colombia was not inclined to allow America to have free passage through its sovereign territory.<sup>459</sup> As William Randolph Hearst, elected to Congress from New York in 1902, wrote in the *New York Journal*, "[T]he only way we could secure a satisfactory concession from Colombia would be to go down there, take the contending statesmen by the necks, and hold a batch of them in office long enough to get a contract in mind."<sup>460</sup> Bunau-Varilla, who was continuing to shepherd the negotiations and deal-making, seemed to agree. In October 1903, Bunau-Varilla met with President Roosevelt and encouraged him to support a budding revolution in Panama.<sup>461</sup>

While Roosevelt did not publicly support the rebels, he did send the USS *Nashville* to Colón, Panama, with 500 Marines aboard, to observe the situation.<sup>462</sup> Despite America's official neutrality, Bunau-Varilla made it appear that the U.S. forces would support the Panamanian revolutionaries.<sup>463</sup> Bunau-Varilla's boasting, coupled with a hefty bribe from the Panama Railroad Company, was enough for the

458. Panama Canal Act of 1902 § 2, 32 Stat. at 481.

459. R.R.N., Note, *Legal History of the Panama Canal*, 1 WASH. U. L. REV. 246 (1916).

460. BRITTA H. CRANDALL & RUSSELL C. CRANDALL, "OUR HEMISPHERE"?: THE UNITED STATES IN LATIN AMERICA, FROM 1776 TO THE TWENTY-FIRST CENTURY 100–02 (2021).

461. BUNAU-VARILLA, *supra* note 182, at 327.

462. JOHN MAJOR, PRIZE POSSESSION: THE UNITED STATES AND THE PANAMA CANAL 1903–1979, at 40 (1993); BUNAU-VARILLA, *supra* note 182, at 413–14.

463. BUNAU-VARILLA, *supra* note 182, at 342.

Colombian troops to withdraw without a shot having been fired.<sup>464</sup> Three days later, the United States officially recognized the Republic of Panama.<sup>465</sup> Roosevelt later claimed credit for the Panamanian revolution, saying that he “took the Isthmus, started the canal and then left Congress not to debate the canal but to debate me.”<sup>466</sup>

Despite diplomatic recognition, the U.S. government, represented by Secretary of State John Hay, continued negotiating with the French national Bunau-Varilla.<sup>467</sup> Before the Panamanian government could form and establish itself, Bunau-Varilla agreed to provide the United States with complete control within five miles of the Canal.<sup>468</sup> The treaty created the Canal Zone.<sup>469</sup> This sovereign U.S. territory persisted for decades until 1979 when Panama took over joint control of the area,<sup>470</sup> though it did not gain full sovereignty over the Canal until 1999.<sup>471</sup>

Like any lawyer, Cromwell and his firm fought for fees to be paid for legal services in the sale of the New French Panama Canal Company. He submitted a request for \$800,000 to be paid out of the \$40 million total purchase price.<sup>472</sup> When the New French Panama Canal Company balked at the cost, the two parties entered into arbitration for which Cromwell submitted a detailed record of his actions behind the scenes.<sup>473</sup> In his words, Cromwell “ward[ed] off what on several occasions looked like the final deathblow to the Panama enterprise, and to drag out of a desperate case a decisive victory.”<sup>474</sup> Yet one man’s victory had disastrous effects on the territorial integrity of a whole country. The world has been better off with a trans-isthmus canal, but not with the process that got it there.

464. *The Story of Panama Vol. 1*, *supra* note 8, at 16 (statement of Rep. Henry Rainey); *id.* at 456 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World); *id.* ex. G, at 525. Although the Panamanian rebels deserve much of the credit for the revolution, it is unclear what would have transpired without perceived U.S. involvement. President Roosevelt later was heard to say that the people rose up against Colombia “literally as one man.” *Id.* at 469. A Senator contemporaneously quipped, “Yes, and the one man was Roosevelt.” *Id.*

465. MCCULLOUGH, *supra* note 1, at 377.

466. MAJOR, *supra* note 462, at 63.

467. MCCULLOUGH, *supra* note 1, at 387–88.

468. *Id.* at 390–92.

469. Convention for the Construction of a Ship Canal to Connect the Waters of the Atlantic and Pacific Oceans, Pan.-U.S., Nov. 18, 1903–Feb. 26, 1904, 33 Stat. 2234.

470. MAJOR, *supra* note 462, at 357.

471. *Timeline and Map of the Panama Canal*, BRITANNICA, <https://www.britannica.com/story/timeline-and-map-of-the-panama-canal> [<https://perma.cc/DZX9-LJ58>].

472. *The Story of Panama Vol. 1*, *supra* note 8, at 95 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World). Cromwell was later questioned why he continued to work on the canal construction after the sale of the New French Panama Canal Company. See S. DOC. NO. 59-457 (1906). He responded by saying he worked due to the “broad instinct of good nature, and the other consideration that I have more money than I need, unfortunately.” *Id.* at 27.

473. *The Story of Panama Vol. 1*, *supra* note 8, at 95 (statement of Henry N. Hall, Staff Correspondent, The N.Y. World).

474. Cromwell, *supra* note 219, at 161.



### B. *Contemporary Lessons from a 120-Year-Old Bill*

The converse of the cultural warning implicit in the effects of the Panama Canal Purchase Act is a roadmap offered by the passage of the Spooner Amendment. In examining the history of this one bill, we can learn several lessons that are applicable even today. For those who wish to see the United States tackle significant issues, especially those topics that cause division, the path of the Act can be instructive. Several anecdotes behind the passage of this bill were fortuitous, while lobbyists meticulously planned others. Either way, advocacy today could follow many of the same patterns to push legislation.

The first lesson is to be patient. It took a dozen more years to build the Canal in addition to the time and resources the French had already put into Panama. Nevertheless, Representative Hepburn pointed out that Congress took fifty-four years to enact a substantive bill.<sup>475</sup> Others pointed to the first European explorers such as Columbus who had hoped to find a trans-isthmus waterway. But dreams take work to become a reality. And in Congress, each successive study, commission, survey, report, and hearing brought the Canal closer into being. Passing a law in Congress requires dedication and perseverance.

Next, it benefits all to put ego aside and compromise to find a solution together. Hepburn would have seen a bill pass years before had he been willing to let Morgan take the win. After meeting Senator Morgan, Bunau-Varilla described him as in “a demented state of mind” and felt that Morgan was “prompted . . . to see conspirators everywhere.”<sup>476</sup> Morgan may have kept his Nicaraguan route had he not lost his focus and turned his energy toward deposing Cromwell. Perhaps the most megalomaniac of all these characters, Bunau-Varilla, showed true wisdom in convincing his fellow shareholders to reduce their price by more than half.<sup>477</sup> Though he violated an ethical code to do so, Bunau-Varilla salvaged some value in his company, which may have otherwise gone completely to ruin.

Also crucial to any bill passage is to get leadership involved. It is some miracle, likely unrepeatable today, that any bill saw success with House leadership such as Representative Cannon and other powerful committee chairs in opposition. Moreover, the conclusion of House Bill 3110, the Hepburn Bill, is an example of a high-profile Senator, like Senator Spooner, coming in near the end and making significant changes. Furthermore, the canal issues show how influential the congressional committee process can be. From select committee to subcommittee to full standing committee, the structure of Congress itself can be instrumental in prioritizing legislation.

Finally, it is constructive if there is a national-security nexus. The economic drivers behind a trans-isthmus canal were compelling. So much of the world’s

---

475. See text accompanying *supra* note 344.

476. MCCULLOUGH, *supra* note 1, at 287.

477. See text accompanying note 384–96.

commerce would depend on such a narrow cut through the land. However, the voyage of the USS *Oregon* and its impact on the minds of members of Congress cannot be overstated. While the early canal dream drove some to war, the Spanish-American War drove others to support the canal. Many felt the importance of a waterway during or immediately after the Civil War, but the *Oregon* made a canal a household issue. Especially with the territorial additions in the Caribbean and South Pacific after the Spanish America War, a canal was the only way to keep a protective reach from America's contiguous states.

#### CONCLUSION

This Article examined the legislative history of the Panama Canal Purchase Act. The *Congressional Record* and the *Congressional Serial Set* include a wealth of documents, debates, and analyses that only scratch the surface. Concerning the trans-isthmus canal, one congressional report noted that “[t]he mass of printed material alone is so huge that it would be impossible for Senators even to examine it, and were such examination necessary, all hope of ever reaching an agreement upon the subject must be abandoned.”<sup>478</sup> Noted canal historian David McCullough pointed out that the *Minneapolis Times* quipped, “If pens were spades, the canal would have been dug long since.”<sup>479</sup>

It was crucial to start with the historical context of the Panama Canal aspiration before looking more closely at the legislative vehicles that became the Spooner Amendment. Through examining the early challenges in building a trans-isthmus canal, including early surveys of potential routes and a significant regional conflict, we better understand the cultural and legislative attitudes toward the project.

This Article looked at early agreements restricting countries' lawful activities that were influential, though not determinative, in the minds of congressional actors. Next, this Article expounded on the specific debates in Congress, focusing on the main influences of the legislative text, both in and out of Congress. The primary debate centered around a Nicaraguan route versus a Panamanian route. The Article explained why members of Congress backed each side and their arguments made for and against each option. Finally, the Article put the fight to pass legislation into present-day context by looking at the near- and long-term impacts. It explained some unfortunate and unrepeatably outcomes in the immediate aftermath of the Panama Canal Act but also suggested modern applications for successfully advocating for intractable issues.

---

478. S. REP. NO. 57-783, pt. 2, at 2 (1902).

479. MCCULLOUGH, *supra* note 1, at 263.