

The Public Lands of Western Texas,
1875 - 1900

The Clash of Public and Private Interests

Wilson Elbert Dolman, III
University of Texas at Austin

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Of the states admitted after the formation of the federal Union, Texas was in the unique position of retaining all of its public land. Consequently a separate historiography has developed on the subject of the public and land policy of Texas as distinguished from that of the United States. Historians of federal lands have long since delved into the minute workings of the national land system through special and local studies.¹ But historians of the public domain of Texas have not. Though they have described the Texas system in terms of its over-all structure, legislative history, weaknesses, and financial benefits, and have drawn comparisons between federal and state public land policy, they have made no close analysis of the process of land alienation.² The purpose of this dissertation is to fill a part of that gap.

This study began with an interest in the cattle industry during its halcyon days following the Civil War. "Free grass" was a key element in the boom lasting into the early 1880's, but "free grass" could not last forever. On federal land overcrowding placed unbearable strains on quasi-legal "range rights;" farmers began pushing into the eastern fringes of the cattle empire; and after stockman began fencing their range in response to these problems, the government became concerned about the illegal use of public domain. Although timing and details

differed, similar events occurred in Texas.

At this point it became apparent that vague descriptions of illegal utilization of land law to obtain control of grazing land were inadequate. A closer look at the interaction between public land policy and the economic requirements of a changing cattle industry was needed. To keep the scope of the study within manageable limits, I decided to limit the analysis to Texas during the last quarter of the nineteenth century, paying particular attention to the Panhandle-Plains region of West Texas, an area that experienced the cattle boom and was also potential farm land.

My exposition has proceeded along three lines. First it has been necessary to describe the public land system of Texas, which required topics on land law, the operation of the General Land Office, and surveying, a practical subject whose importance is easily overlooked. The next step was to examine the process by which the state transferred title to private parties. Because concentration of land ownership was the rule rather than the exception in West Texas, this phase entailed inquiries into speculation and corporate and ranch ownership. Finally the question of public land policy was important politically as agrarian interests battled the ranchers and their allies, the speculators and land corporations, for control of policy decisions. Consequently an analysis of land issues in local and state politics constitutes the last section.

The principal theme of the dissertation is the divergence between goal and reality in the formulation and implementation of public land policy. In common with the federal government, the supposed guiding principle of the state was to preserve the public domain for settlement by yeoman farmers. At the same time, public opinion demanded low taxes, cheap public education, and economic development. To stimulate development and public education without resort to taxation, the bulk of West Texas land was granted to railroads and to the public school fund. Railroads received land scrip in the form of certificates to be "located," or surveyed, at their own expense on some part of the unappropriated public domain. Because certificates were transferable, railroads sold both scrip and land, thus creating two speculative markets. The plentiful supply of scrip kept the price of both low and encouraged large-scale land acquisition. The effect was to defeat the ideal of democratic distribution of land.

The activities of Guenter & Munson, a land locating partnership based in Sherman, Texas, illustrate the speculative opportunities offered by the public domain. The firm located land on its own account and for others, speculated in certificates, and specialized in land law. The partners sold land to settlers, other speculators, and ranchers and retained two concentrated blocks of land to establish ranches of their own. In the ten years the firm was active, it handled in excess of two million

acres of land.

An example of the land corporation was the New York and Texas Land Company, Limited, owner of over four million acres of Texas land. The principal source of its land were grants to the Houston and Great Northern Railroad and the International and Great Northern Railroad companies. It was an investment and land management firm, which is to say that it engaged in long-term speculation. While awaiting a rise in the value of its land, it leased to stockmen, but leasing was not a permanent policy. Eventually the company sold all of its land to stockmen and speculators. Major problems facing the company were protecting its property from rival land claimants and resisting the public hostility to corporate ownership of land.

Because the public land policy of Texas was relatively more conducive to land acquisition than was federal law, ranchers in Texas were able to obtain vast acreages during the cattle boom. They purchased railroad land directly from the companies or indirectly from speculators. They bought public school land from the state, circumventing restrictions on quantity and requirements of residence. When the state sold land to pay its debt, they purchased more. They also leased public school land, thus benefiting from a policy that the federal government would not enact for stockmen outside of Texas.

Concentration of land ownership in the hands of ranchers, speculators, and land corporations aroused the opposition of the

farmer-dominated electorate. Unfortunately, however, the alienation of huge blocks of public land had occurred against the confusing background of reconstruction and restoration politics, and by the time the voters realized what had happened and reacted, little public land remained except for that belonging to the educational funds. In 1882 the legislature rescinded the policy of granting land to promote internal improvements. Thereafter popular resentment against large landowners grew in tandem with resentment against the monopoly power of railroads, and these attitudes spilled over from the Farmers' Alliance and Populist party into the agrarian wing of the Democratic party. This political activity culminated in legislation prohibiting corporate ownership of land.

More widespread distribution of land in West Texas actually came about for economic reasons, not because of the political reaction. The depression of the cattle industry beginning in the late 1880's is well known to historians. At the same time the settler began coming to West Texas in large numbers bringing with him higher land prices. Many ranches then sold land suitable for farming, keeping only the rougher land for grazing.

The coming of the settler produced political conflict on the local level as well. Before they came to realize the potential for profit in selling land to farmers, ranchers discouraged immigration and attempted as long as possible to prevent the organization of counties. The settlers fought to

obtain basic county services, the ranchers to keep taxes at an absolute minimum. Contrary to western myth, these conflicts were rarely violent, but there were tense moments.

An evaluation of public land policy brings into question the sincerity of the expressed desire to preserve the benefits of the public domain for the "actual settler."³ James W. Hurst, in Law and Economic Growth (1964), argues that the weaknesses of state and federal land policy were not because of the lack of constitutional authority. Indeed, Hurst says that Americans were quite willing to use law to fashion a society to their liking and that included the utilization of public land for the rapid development of national wealth, but "Nineteenth--century law sought chiefly to encourage maximum range and intensity of private decision-making" because economic development was in private hands.⁴ Hurst provides a perceptive insight into the period: "The time would come when the North American continent would be very wealthy in yield as well as in potential. But through most of the nineteenth century this was still a hard-pressed society, challenged by the promise of its situation, recurrently frustrated by want of means to realize its promise."⁵ The role of government was limited. As Wallace D. Farnham has observed in analyzing the role of the government directors of the Union Pacific Railroad, the government "subsidized, but it did not rule." He quotes the early twentieth-century historian M. I. Ostrogorski: "The notion of the moral objects of the

State grew dim in the public mind, the State was asked only to ensure or assist the production of wealth."⁶

Ultimately the problem comes down to one of attitude toward public resources. In terms of private morals the era was quite strict, but public morals, even among men upright in their private lives, were another matter. William B. Munson, of the partnership Gunter & Munson mentioned previously, wrote to another stockman: "I suppose you know what the legislature did. We will have to lease most of the school land in our ranges unless there can be some way found to evade the law."⁷ Earlier Gunter & Munson had written a letter of introduction for one of their customers: "This will introduce to you Rev. L. H. Carhart a colaborer in the great work of Land Stealing. He brings to Austin a lot of transfers with a view to get the best lands patented to himself and the sand and Rocks reserved for the State. You will please do all you can to assist him in this laudable enterprise."⁸ A few weeks later one of the partners confided to a friend: "Our land matters are working very well I think. We have filed in the G. L. O. nearly all of the field notes that were secured in the now famous book G&M[M] 1 and 2 and have our seven league boots ready for another descent on the public domain should opportunity offer."⁹ Although both were prominent men, neither ever suffered social or political stigma for their land activities; consequently the logical conclusion is that success was valued more highly than protection

of the public's interest.

In short, the state parted with its most valuable resource for a pittance; the beneficiaries were a small group of men-on-the-make whose contribution to the state's economic development was questionable.

FOOTNOTES

1. For example, Paul W. Gates, "Land Policy and Tenancy in the Prairie States," Journal of Economic History, I (May, 1941), 60-82; Fifty Million Acres: Conflicts over Kansas Land Policy, 1854-1890 (Ithaca, N. Y.: Cornell University Press, 1954); George L. Anderson, "The Administration of Federal Land Laws in Western Kansas, 1880-1890: A Factor in Adjustment to a New Environment," Kansas Historical Quarterly, XX (November, 1952), 233-51; Homer E. Socolofsky, "Land Disposal in Nebraska, 1854-1906: The Homestead Story," Nebraska History, XLVIII (Autumn, 1967), 225-48; Malcolm J. Rohrbough, The Land Office Business: The Settlement and Administration of American Public Lands, 1789-1837 (New York: Oxford University Press, 1968); Tobert P. Swierenga, Pioneers and Profits: Land Speculation on the Iowa Frontier (Ames, Iowa: Iowa State University Press, 1968).

2. The principal state studies are: Aldon S. Lang, Financial History of the Public Lands of Texas (Waco, Tx.: Baylor Bulletin, Vol. XXXV, July, 1932); Reuben McKittrick, The Public Land System of Texas, 1823-1910 (Madison, Wisc.: Bulletin on the University of Wisconsin, 1918); Edmund T. Miller, A Financial History of Texas (Austin, Tex.: Bulletin of the University of Texas, 1916); Thomas L. Miller, The Public Lands of Texas 1519-1970 (Norman, Okla.: University of Oklahoma Press, 1972).

3. On this point, Paul W. Gates has the following to say: "Since the constantly stated purpose of the land system and its individual laws was to make land available to the 'actual settler,' other than in the early years when the need for revenue counted heavily, I have tried to keep this in mind and to weigh the successes and failures according to the degree to which they contributed to that end." History of Public Land Law Development (Washington D.C.: U. S. Government Printing Office, 1968), xii.

4. James W. Hurst, Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin, 1836-1915 (Cambridge, Mass.: Harvard University Press, 1964), 571.

5. Ibid., 23.

6. Wallace D. Farnham, "'The Weakened Spring of Government': A Study in Nineteenth-Century American History," American Historical Review, LXVIII (April, 1963), 677.

7. William B. Munson to Charles Goonight, February 14, 1884, Jot Gunter Papers, Archives Collection, Library of the University of Texas at Austin.

FOOINOTES

8. Gunter & Munson to Maddox Bros., April 2, 1880.
9. Gunter & Munson to Thomas J. West, March 31, 1880.