How the West was Lost: Why Federal Land Policy Disrespects our Constitution and Children

By Congressman Rob Bishop

How a government deals with property has been the window to the soul of that government. Property may have been a tangible item and liberty may have been an intangible value, but the preservation of both was the historic purpose of American government; and the preservation of one was the precondition to the preservation of the other. Sir Henry Sumner Maine (1889) found that the history of property and civilization “cannot be disentangled” (p. 230). The desire and use of property raised mankind from political slavery.

The Founding Fathers knew that property in a state of nature was controlled only until a bigger force took it. All knew the Thomas Hobbes (1651) idea that life in nature was “solitary, poor, nasty, brutish, and short.” Almost a half century after Hobbes, John Locke (1690) wrote “every man has a property in his own person…the labor of his body and work of his hands we may say are properly his.” Fidelity to the philosophy of property protection became the standard by which a government was judged. Property rights were, if not greater, at least co-equal with every other right—speech, religion, press, and the others.

At the time the Constitution was written, a few believed everyone ought to have a limit on the amount of property owned—most clearly did not—but they all believed that if a small minority, like a royal elite, controlled all property or the wealth that came from property then a republic would be impossible. Property equaled liberty. If a government was to become the propertied elite, wouldn’t this also threaten liberty?

THE FEDERAL GOVERNMENT AS THE PROPERTIED ELITE

Sadly, our national government has become the propertied elite. The federal government now controls one out of every three acres in the United States and has a current policy to increase that amount (Library of Congress, 2012). The amount of land controlled by the national government is tragically ironic for a country that has venerated individualism, limited government, and private property.

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The sale of territorial lands produced as much as 25% of national revenue in the early 1800s. The Land Act of 1796 was passed to spur the sale of these territorial lands. It failed. The Civil War-era efforts of homestead development were romantically popular, but failed financially as policy (Coffman, 2012). As a vehicle for producing government income and controlling distribution of the lands, each new effort was generally both noble and a failure. Eastern lawmakers screwed up—continuously—because they passed laws about land far away from their understanding. Congress never understood the geographical realities of the West. Congress still doesn’t.

Views of land management changed dramatically during the Progressive Era. Because past efforts of distribution of public lands were a financial failure, the Progressives decided to just keep all the land. Creating “public lands” rather than “private” property became the new value.

The decision to keep the land was not totally about preserving the land. There was never evidence to assume that private sector land management was less effective than public management or that the national government managed lands better than states. Nevertheless, the national government became a gigantic zoning commission for the “public land” found in states. This change was just another aspect of the growth of government.

The basis for national land control in the Progressive Era was that “scientific” methods of land management would be used. Progressives invested near mystical power in science. The Constitution was to have established a government of the people; scientific management established a government of the elite.

What proceeded was one bad land policy after another, which few outside the West recognized. As Nelson (1995) wrote, there was a “great difficulty in changing public thinking once it had fixed on a conservation idea” (pp. 33-34). He continues,

“The American public as a whole was not willing to abandon ideas until they had failed repeatedly. This rigidity was re-enforced by the mor- alistic quality of public land debate, (and) the tendency to perceive
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The Progressive Era was all about consolidation of government control. Communism was also the new, intellectual concept of this era. However, by 1989 the Berlin Wall had fallen and the central planning of the old Soviet Union had been discredited. Around the world people were privatizing inefficient government businesses. In the private sector, the technology revolution made the dominance of large corporate organizations obsolete. The value of free markets was everywhere extolled. The idea of centralized government programs being less efficient was a political given. Everywhere smaller local leadership was the goal—except in Washington where land policies became more centralized. The Department of Interior bred ever-expanding bureaucracies who believed in large centralized government management and repeated attempts to acquire more and more land.

Over the decades, there was no real examination of national land policy or its fundamental Constitutional purpose. There was no natural scope to national land management policy. The national agencies stumbled into involvement with everything from zoning and road construction to fire service and other responsibilities that were traditionally the role of local governments. Many would argue that the resulting national land system exists only because it became politically impossible to reform it. Programs existed or still do because no one had the stamina to question, let alone challenge, the status quo of public land control.

President Ronald Reagan was purported to have looked at a map of our national government’s land holdings and declared that one couldn’t find a similar situation this side of the Soviet Union. Showing maps of the national government’s property holdings to foreigners often invokes gasps of surprise. Actually, Members of Congress from the East do the same. Few in or out of government comprehend the scope or impact of national government control of land. No one in government planned for this phenomenon. Federal land management policy has been the result of a haphazard evolution rather than a thoughtful continuation of founding principles. It is time to challenge the status quo.

THE HARM TO THE WEST

If one drew an imaginary line from Montana to New Mexico, every state west of the line has been the victim of statehood discrimination. Each was held hostage and forced to cede massive amounts of state lands to the national government while still a territory as a condition for statehood. The West was thus known as the region of “public land states.” Each public land state (except Hawaii) was promised that the national government would eventually dispose of the land given by each state. Utah’s 1894 Enabling Act (the law that established statehood status) was typical of the genre. Territorial land was ceded to the national government “…without the consent of the United States and the people of said state…until the title (to these public lands) shall have been extinguished by the United States” (Enabling Act, §III). The other states were promised sale money for infrastructure needs. When the Progressive Era hit, the sales never happened.

10 of the 13 Western states, including Utah, were promised 5% of the proceeds to fund public education (Enabling Act, §IX). The other states were promised sale money for infrastructure needs. The other states were promised sale money for infrastructure needs. When the Progressive Era hit, the sales never happened.

States east of that imaginary Montana to New Mexico line had 4% of their collective acreage controlled by Washington, D.C. States west of that line realized that 57% of their land was under national dominion. Some Western states were forced to hand over 90% of their land to the national government. The end result was the national government owned more actual land than the total area of any world country, save Russia and Canada. One in every three acres of America was eventually controlled by the national government, but in the “public lands” West, it was one in every two acres.

The philosophical change concerning public lands was one-sided. With votes from the East, where few public lands were found and fewer national government mandates endured, Congress voted to change the way the game was played. In 1976, the Federal Land Policy and Management Act (FLPMA) formally reneged on the promises made at statehood. Western states were
out-voted and compelled to accept the “new” standard, albeit a standard in stark contrast to the Equal Footing Doctrine of the Constitution. The idea that the public lands belonged to all of the citizens of America was a very new, very inaccurate, and very extra-constitutional point of view. Original BLM planning had been decentralized. This law centralized the process, and central land use planning failed.

Unfortunately many Eastern politicians, who were not impacted at home by the policy imposed on the West, claimed the newly created “public” lands always belonged to “all Americans.” The Founding Fathers recognized this communal, very European mindset meant no one really owned anything. That which was held by the group eliminated, by definition, individuals as stakeholders. The end result is not land owned by all, but instead land controlled by a faceless Washington bureaucrat.

The national government has gone through massive contortions, including the Payment in Lieu of Taxes and Secure Rural School programs, to compensate the West for land controlled by Washington. That has cost a lot of money. The easier approach would be to live up to promises made at statehood and transfer more land control to state governments. It would cost less money. Perhaps because it would be easier and cheaper, Washington hasn’t considered it.

THE IMPACT ON PUBLIC SCHOOL FUNDING

Our public land policies not only trample on principles established by the Founding Fathers but they also harm our kids. Federal control and ownership of so much land prevents adequately funding the education of our children. For years as a state legislator and a teacher I had understood the need for adequate funding of education and the difficulty in meeting that need in a Western “public land” state. It was as if there was some gigantic blockage that made adequate funding impossible. Once in Congress, the blockage was easy to identify. It was the amount of land the national government controlled. Like a dam in a creek that artificially stopped the flow of water, there was a dam on the stream of funds for kids in the West. That dam was the biggest landowner this side of the old Soviet Union: the national government. Over half of Western land and the rich resources on the land were off limits to states in need of funds for basic services, including education. This was about money the states could not legally acquire because national government land ownership was standing in the way.

When Utah lawmakers and others did some research on these impacts, they found that 12 of the 15 states with the slowest growth in education funding were in the West (U.S. Census Bureau, 2010). Eastern states were able to increase their education funding at twice the rate of states in the West. Class sizes were significantly larger in Western states than the rest of the country. The funding problem was not a lack of effort. Those Western states taxed their citizens at a rate higher than the states that kept their land. The West put a greater percentage of their budgets into education, which they still do to this day. In Fiscal Year (FY) 2012, the State of Utah provided $3,352,796,900 for public education funding, which amounted to over 24% of the total annual budget (UT Ed. Budget Report, 2012; UT State Budget Report, 2012). The problem was not lack of effort, but lack of resources. There was almost a direct correlation—the more land the national government controlled in a state, the less money for education that state had. Education in the West is harmed by existing federal land holdings and policies.

SUMMARY

Property matters. The current amount of federal lands is not in harmony with the intent of the founding of this country or in accordance with the enabling acts of states in the West. Federal land management policy is an anomaly in American history, the result of a haphazard evolution rather than a thoughtful continuation of founding principles, and it has been abused by those who favor a centralization of power and control. The negative effects of this harm Western states generally but our school children specifically.

The only real solution is giving states greater control over their destiny. Our Founding Fathers, foreseeing the likelihood that the federal government would try to grow beyond its intended purpose, included the 10th Amendment to the Constitution, which states that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people” (U.S. Const. amend X). This is the basis for the concept of federalism.

Federalism is rooted in the core belief that local governments are better suited to address local issues than a distant, out-of-touch federal government. Under this concept, states should maintain the majority of land within their borders. The State of Utah should be applauded for its efforts to seek more control over its land, as that would be a win for the principles of property and federalism on which this country was founded and a win for our children.

REFERENCES


U.S. Const., Amendment X.

