Land Speculation in Texas

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TEXAS, alone among the forty-eight states, entered the Union in possession of its public lands, and consequently was the only state to develop a land system parallel to the federal land system. There were marked differences between the two, and though land speculation was an intrinsic part of both, in Texas land speculation was a major factor in the passing of land from government to private ownership.

Land speculation was a unique American development. In Europe land titles had been complicated by various sorts of entailments, and the transfer of land as well as the change in its value had been relatively static for centuries before the discovery of America. A forty-shilling freehold in the time of Henry II was a forty-shilling freehold in Henry VIII's reign. In the Old World sales were infrequent and the title structure was complex; in the New World fee simple titles became commonplace, entailments became taboo, and land sales became an important feature of economic life. As the population of America increased, as civilization expanded, land values rose; and the sale of land, unhampered by Old World entailments, became easy and profitable.

The selling of land sharpened men's interests in land values and land titles, and, in a sense, all landowners became speculators. In its simplest form land speculation may be defined as the purchase of land with the intention of selling it for a profit. But whether or not there was an immediate *intention* to sell, there was certainly in nineteenth-century America the expectation that value would rise, as well as knowledge that a clear title would make a sale possible. The influence of the land speculator in shaping land policy cannot be separated from the influence of the average landowner. Both were interested in land prices and clear titles; and to both the purchase of land was in reality a speculation, though one might consider it a short-term speculation, and the other might not think of it as a speculation at all. As a matter of fact the difference between the land speculator and the landowner seems to be one of degree rather than kind, and a really satisfactory definition for land speculation is hard to make. Was the pioneer not speculating who moved west with the frontier, buying forty, sixty, or eighty acres, clearing his tract, living on it until civilization caught up with him, and selling out to move farther west?

When the Anglo-Americans entered Texas they brought with them their regard for land values, valid titles, and the possibilities of resale. This was natural.

When the Republic of Texas was created, just as naturally, its founders gave due consideration to the problem of land titles, land values, and land sales.

In creating a land system Texans were torn between the desire to attract immigration by giving away land and the desire to protect the value of privately owned property by keeping the government out of the land business. The process by which the system was shaped is interesting.

The formation of a land policy became the problem of the Anglo-American government in the fall of 1835. One of its first acts was the nullification of land laws passed by the state legislature of Coahuila and Texas at Monclova and the abolition of all land offices, agents, and commissioners that might be operating in Texas. The government of Texas therewith assumed responsibility for the public domain and created a special office to take control of the public lands and all papers and archives pertinent to them. Here the matter rested until independence was actually declared and a constitution was written.

At the making of the constitution the following March two conflicting principles emerged—those of the land policies of the United States and of Mexico. With both the Texans had had experience. Simply stated, the policy of the United States was to sell the public domain to individual settlers at a minimum price of $1.25 an acre, while that of Mexico was to give the land away, usually through empresarios, or colonizing agents. Since a substantial majority of Texans had migrated under the Mexican system, it might seem surprising that they did not immediately continue it.

Texans realized, however, that a minimum price on the public domain not only enriched the government but protected and enhanced the value of privately owned land. It was plain to most Texans that the monetary value of private land would necessarily be low if the public land was to be free. To those in Texas who owned land—and this was virtually every citizen—such a possibility was, if not alarming, at least worthy of attention. A portion of the first draft of the constitution of 1836 expressed the Texan reaction in these words: "The public lands being the only resource and wealth of the Republic, congress shall have no power to give or grant them away, except for a price fixed by law."

This provision was not adopted. The constitution instead suspended the land system until congress should establish a general land office and provide a general land policy. In fulfilling this obligation congress vacillated clumsily during the next few years. The first legal provision for a land office was made in 1836; but no land office was opened for any purpose until 1838, and the general land office did not operate satisfactorily until about 1844.

In the meantime, congress had continued the policy begun by the provisional government of making bounty and donation land grants to soldiers—though it failed to provide for their consummation. A uniform schedule for these grants was eventually established on December 4, 1837: three months' army service entitled a man to 320 acres; six months', 640 acres;

nine months', 960 acres; and 12 months' or longer, 1,280 acres. Those persons who had already received from the secretary of war certificates for lesser amounts were privileged to make up any deficiency in what they were entitled to. Later grants were made to veterans of San Jacinto, of the siege of Bexar, and of certain ranging campaigns.

In addition to the bounties and donations to soldiers, a series of grants, known commonly as headrights, were made to individuals to promote citizenship and induce immigration. The first of these, a part of the constitution of 1836, provided that heads of families living in Texas at the time of the Declaration of Independence were entitled to one league and one labor of land and single persons to one-third of a league, provided they had not previously received that much land as colonists.

The constitutional grant became known as the "First Class Headright." A "Second Class Headright" law granted 1,280 acres to families and 640 acres to single men who immigrated to the Republic prior to October 1, 1837.

The third headright act, passed in 1838, extended the time limit to January 1, 1840, but reduced the size of the grant to 640 acres for a head of family and 320 acres for a single man. This act was allowed to expire and was not renewed until 1841, when congress extended the period from January 1, 1840, to January 1, 1842. This was the last of the Republic's grants directly to individuals to induce immigration, and the state government was not to give away land in this same manner again until the passage of an effective pre-emption law in 1854.

It is noteworthy that these headright grants were not patterned after the Mexican empresario system. It is further noteworthy that none of the series of headright grants actually was intended to establish a general policy; instead, each of the laws in the series, as can be seen by its terms, was passed only as a temporary measure.

THE SHIFTING BASIS of land policy in Texas during this period can be fully understood only if the series of headright, bounty, and donation laws are considered as stopgap measures, passed solely to relieve the tension of certain situations. The underlying intention remained to imitate the policy of the United States. During the course of the five years prior to 1841, it was believed that Texas would soon begin to sell her vacant lands to incoming hordes of frontiersmen. The give-away lands were to be used only to prime the pump. When it was discovered that the pump needed more than priming, Texas temporarily turned back to the empresario system.

On February 4, 1841, congress provided specifically for the establishment of one empresario colony by a group of men headed by William S. Peters. Peters contracted with the Republic on terms similar to those that empresarios like Austin and De Witt had made with Mexico. The Peters empresario law was soon extended to other contractors, and within the next three years the Republic signed a number of empresario contracts, the most important of which, in addition to the Peters contract, were the Mercer, the Fisher and Miller (later the German), and the Castro contracts. Settlers in these colonies re-

ceived Third Class Headright certificates for 640 acres per family.

On January 29, 1844, the Republic repealed the empresario law. Texans expressed their dissatisfaction further in an ordinance of the constitutional convention of 1845 which proposed that empresario operations be stopped by the attorney-general. Most of the public resentment was directed against the Peters and the Mercer colonies in north central Texas, whose empresarios were forced into long-drawn-out fights in the courts and in the legislature to preserve their contracts. Mercer eventually lost; the Peters group, known as the Texas Emigration and Land Company, won.

Except in the colonies, there was no way that incoming settlers could obtain land from the government, even by purchase, after the expiration of the Third Class Headright law in 1842. Immigrants had to turn to persons who had already received grants, and thus the speculator became the agent through whom the land was put into the hands of the settler. This is the crux of the argument: six years after the Anglo-Americans in Texas assumed the responsibility of the public lands, they created a system specifically designed to benefit persons with land to sell.

This policy, which kept the government out of the real estate business for twelve years, prevailed until the speculative pressure diminished. As the number of landless emigrants increased in Texas and as the number of speculators and the amount of land for sale decreased, the land policy was adjusted again to express the desires of the majority. From 1842 until 1854, when the first effective preemption law reopened the public domain to settlers, the operations of land speculators were particularly significant in the development of the state. While there was some speculation in actual tracts of land, speculation in unlocated Texas land paper was probably of more importance during this period, and the existence of large amounts of unlocated land paper produced a unique type of land speculation in Texas.

LAND PAPER was the written promise of the Texas government to patent to the holder of the paper the amount of land specified thereon. There were three principal types of land paper: (1) scrip, which had been sold to finance the revolution, (2) the bounty and donation warrants given to soldiers, and (3) the headright certificates given to citizens. It is important to note that in the main these were not grants of designated tracts of land (although the headright grant had been planned as such); they were instead simply pieces of paper entitling the holder to locate, survey, and patent the amount of land specified, anywhere in the unreserved public domain. This paper was actually an unwieldy currency, redeemable in land; it was usually negotiable by endorsement, and the unlocated portions of an individual certificate might be transferred. Here is a typical example taken from the land office records: A Third Class Headright certificate for 640 acres was issued to Perry Malone, a thirty-six-year-old farmer, born in Kentucky, who moved from Missouri to Texas with a wife and eight children. Malone sold

the certificate unlocated for $450 and it was laid, or located, by the buyer on a tract of land in Denton County that measured only 617 acres. The new owner of the certificate sold the twenty-three-acre excess for $15.00, transferring the certificate with such a notation to a third party who located the twenty-three acres in Tarrant County. All three men were part of the speculative scene.

In 1842 there was over a million acres' worth of unlocated land paper in circulation. The holders of this paper included, besides the persons to whom it had been issued, scores of speculators who had purchased the paper at a discount. The speculator who bought unlocated land paper could either sell it to a settler or locate the land, a process known as "laying" the certificate, and sell the surveyed tract. There is ample evidence of both types of operation.

Surveyors were necessarily involved in land paper speculation, and it was not unusual for the three functions of buyer, locator, and seller to be combined in one man. It was the locator, as he was called, working for himself or for a commission, who was a significant, often a leading, element in the westward movement of the Texas frontier. The locator was as distinctively Texan as the land system that created his unique occupation, for in the rest of the United States the land was usually surveyed before it was offered for sale.

During the period immediately following annexation, immigration to Texas increased and the backlog of unlocated land paper diminished. By 1850 the complexion of the land situation began to change. An increasing number of voters wanted to obtain land, instead of having land for sale. The change was reflected in the legislature. In 1845 the first Texas pre-emption law had been passed to protect settlers living on unoccupied portions of the public domain by giving them a priority for three years to cover their claim with some form of land paper. The pre-emption law, which had been extended in 1852, was converted into the Western world's first "homestead" law by a Texas statute enacted on February 7, 1853.

This law provided that any person who had settled on and improved any portion of the unappropriated public domain under the terms of the previous pre-emption laws could acquire a title to 320 acres by paying the usual surveying costs plus twenty dollars. The following year this act was revised and broadened to include all settlers, but the quantity of land was reduced to 160 acres.

The homestead law ended the speculator's paradise, and though the tide of immigration tended to increase Texas land values, the free land tended to stabilize prices. Speculation in Texas land did not, however, end in 1854. From time to time new issues of land paper were made to colonization companies as premiums, to certain soldiers in the Mexican and Civil Wars, and to individuals and companies for constructing railroads and other internal improvements. As was natural, some fraudulence and dishonesty were detected in a few speculative operations, especially after the fifty-cent sales scrip act of 1879; but there seems to be scant factual basis for describing land specula-

tion in Texas as an evil or a hindrance to settlement.

Texas had begun in 1836, at its constitutional convention, with the intention of selling its public domain; but circumstances rendered necessary free grants to both soldiers and settlers to induce them to come to the Republic. Each of these grants was limited to a particular situation; no general give-away law was passed or even suggested. In 1841 Texas turned back to the Mexican system and established a few empresario colonies. When the Third Class Headright Act expired in 1842, land was free only in these colonies, and they were immediately brought under attack. From 1842 until 1854, when the public domain was reopened to settlers, land speculation was a major force in the expansion of settlement in Texas.

Hallucination of the Snail

CHARLES EDWARD EATON

April and the flowering wind make mockery of hazard.
Where snow heaped the tunnel of wistaria is entrance-dream,
And who will not belabor the weeping one among us and call him coward?

We have walked like the snail a trudging winter-pace,
And, waiting for the heavy footfall on our breath,
Cried out in desperate fortitude the moment's place.

Now, the weeping one among us, the one most like the snail,
We set apart in a caste of derision, the leper of time,
A figment of mind's terribilitas, *something to rail*

At and turn from, shuddering, and cry
April, april, april, while we shake the iris at the tunnel mouth
And wish that the festering one of us would die.

O hear how the wind sucks through the tunnel, petals, petals—
There, white and purple, like rainbow fragments of desire,
And each will move as fast as a falling dream before it settles,

Fails in the illusion of finding the outlet of the world,
While the beggar in us, caught in the hallucination of the snail, clings to the tunnel-sides of darkness,
Weeping, weeping, and the corpulent wistaria trembles with ecstasy, swelling, and downward hurled.