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US Land Policy and the Commodification of Arid Land (1862–1920)

Lisi Krall

In 1923 my paternal grandmother, Elise Saxe Krall, “proved up” (gained title) on a 160-acre homestead in southwestern Wyoming. My grandfather, William Krall, had taken out the claim in May of 1918, one month after the birth of my father. My grandmother was delayed in her ability to prove up because in the summer of 1920 my grandfather was shot in an altercation with his neighbor over water and subsequently died of gas gangrene from the wound. In part the problem for my grandfather was that he had access to the land but couldn’t gain access to the water. My grandmother was ultimately given title to the land because she grazed two cows and hayed twenty acres. But the truth was she couldn’t make a living on twenty acres of hay and two cows. She subsequently moved to town and started a boarding house. Twenty years later she sold the property to my grandfather’s brother for \$800.00, and the land became part of a much larger ranch. This story, while dramatizing the difficulties a homesteader might face, was not the exception but rather the rule insofar as most homesteaders west of the one hundredth meridian found that US government land policies were inadequately formulated to provide them any assurance of a decent livelihood on the land.

The experience of my grandparents and of government land policy in the West cannot be understood unless one is clear about the underlying forces which disconnected the rhetoric or stated purpose of land policy, which was clearly agrarian (i.e., small independent farmers), from the outcome of that policy. Although historians of land policy have long recognized that the outcome of land policy differed from the stated purpose, their interpretation of this divergence has been ad hoc and inadequately formulated, leaving one unclear about the systematic forces at work. For

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example, the work of Paul Wallace Gates, one of the most noted historians of public land policy, is replete with detailed historical accounts of the ways in which greed, speculation, monopolization, fraud, and the inability to fully understand the limitations of aridity drove a wedge between the stated purpose and outcome of land policies (1968, 387–529). Gates and other land historians attributed this tension to the contamination of land policy by these factors.

There is no question that these factors, which Gates captured in historical detail, are symptomatic of the conflict in land policy, but they do not explain the underlying dynamic at work and therefore need to be incorporated into a general framework for viewing western land policy as a logical whole. Fred Shannon offered yet another example of this narrow focus. His interpretation of the Desert Land Act is especially revealing in this respect. He attributed the passage of the Act to the special interests and political pull of “great cattle companies.” Hence, in Shannon’s framework the real intent of the government in its formulation of land policy was to kowtow to the powers that be and manipulate the little guy in the process (1945, 59–60). This interpretation of the Act assumes that the dynamic of land policy on arid land is best explained as the unfolding of class interests with the government carrying on the agenda of the rich and powerful. It is especially problematic given that the division between the genuine homesteader and the speculator/monopolist is difficult to draw.¹ Moreover, given the problems of western agricultural development, in the context of the institutional environment of late nineteenth century America, there was ample reason for passage of the Desert Land Act without appealing to the motives and political maneuverings of “cattle interests.”

The purpose of this paper is not to explain the real intent or motive behind government land policy; rather it is to provide a general framework to explain the divergence between the stated purpose and outcome of land policy. More specifically, the divergence is explained by the interplay between the underlying cultural adherence to the agrarian ideal (i.e., the stated purpose of land policy) and the unfolding of agrarian capitalism as it encountered arid land. The tendency for agrarianism to clash with the dynamic of an expanding market economy was exacerbated and accelerated on arid and agriculturally diverse land. Here the necessity of reclamation and flexibility in the sizing of agricultural units added fuel to this conflict because it fed into the tendencies of agrarian capitalism toward concentration of ownership, speculation, and fraud. Under these conditions adhering to agrarian goals as the stated purpose of land policy was increasingly problematic. The proliferation of land policies in the West bears testimony to this claim. This analysis finds its roots in the Veblenian notion that changing material forces were out of sync with the cultural beliefs or “habits of thought” of the time, which were embodied in the stated purpose or rhetoric of land policy. Material conditions changed as settlement extended westward and market capitalism accelerated, but the agrarian ideal was slow to adapt to these changing material circumstances. As Henry Nash Smith stated: “One of the significant facts of American

intellectual history is . . . the astonishing longevity of the agrarian ideal as the accepted view of western society” (1950, 159).

The Conflict between Agrarian Capitalism and the Agrarian Ideal

In the late eighteenth century Thomas Jefferson articulated and established a cultural identity with agrarian idealism. Smith cogently summed up Jefferson’s ideal in the following way: “Jefferson was primarily interested in the political implications of the agrarian ideal. He saw the cultivator of the earth, the husbandman who tilled his own acres, as the rock upon which the American republic must stand . . . Such men had the independence, both economic and moral, that was indispensable in those entrusted with the solemn responsibility of the franchise” (1950, 128). This paper claims that this ideal became embedded in the cultural moment of the nineteenth and early twentieth centuries and was reflected in the rhetoric of nineteenth and early twentieth century land policy. The notion that agrarian attitudes were persistent in the United States throughout this time is supported by the work of Anne Mayhew. Mayhew argued that the formation of farm movements in the latter nineteenth century cannot simply be explained by a frustration with price movements, but results from a frustration with “commercialization” of agriculture. Mayhew stated: “The argument is that the farmers were objecting to the *increasing importance of prices*; that they were protesting a system in which they had to pay for transport and money rather than the specific *prices of transport and money*” (1972, 469).

The historical roots of the divergence of the agrarian ideal and the course of agricultural development in the United States are not the purpose of this paper. Nonetheless a few words of clarification are warranted. Land policy adheres to both the agrarian ideal and to the economic foundations and forces of market capitalism. This “contradiction” in land policy goes back to Thomas Jefferson. Although Jefferson was not known for his contributions to economic thought, it is nonetheless true that he adhered completely and unequivocally to the principles of *laissez-faire* capitalism and set about to establish institutions consistent with *laissez-faire* capitalism on the land. These included getting rid of the vestiges of entail and primogeniture and replacing them with a system of fee simple ownership in addition to providing uniform and clear property descriptions. Both were drafted into the provisions of the Northwest Ordinance.² It is quite clear that Jefferson did not see any contradiction between his political ideal and the institutional arrangements for agrarian capitalism.³ But, in fact, under the right material circumstances, these foundations of land policy would diverge from the political ideal and would result in a split between the political ideal or stated purpose of land policy and the actual workings of land policy. Nonetheless, Jefferson’s image of the independent farmer, self-actualized on small plots of land, did not suddenly evaporate. It continued to define the cultural moment of the nineteenth and early twentieth centuries long after it ceased to be a reflection of reality.

The reality of the extension of a market economy to the land is that land cannot simultaneously function as the bedrock of our democracy (grounding independent farmers on small plots of land) and also as a resource to be bought and sold according to the dictates of the market. Karl Polanyi captured this best in the following passage: “One big Market, on the other hand, is an arrangement of economic life which includes markets for the factors of production. Since these factors happen to be indistinguishable from the elements of human institutions, man and nature, it can be readily seen that market economy involves a society the institutions of which are subordinated to the requirements of the market mechanism”([1944] 1957, 178). Thus Polanyi was aware of the profound alienation from the land which exists under a market economy. As a resource and commodity the function of land is entirely different from securing a livelihood to small independent farmers.⁴

This underlying tension did not materialize until the expansion of the market economy in the nineteenth century (facilitated by the Industrial Revolution). Moreover the prospect of agricultural development of arid land also created the material conditions for this conflict to further reveal itself. Thus the particular conditions of the early nineteenth century allowed for this contradiction in land policy to remain unearthed and reinforced the agrarian ideal as a culturally accepted truth. Agricultural success in the East occurred with greater certainty on small plots of land than it did in the West. Eastern land had the advantage of adequate moisture and greater homogeneity than its western counterpart and could, with greater probability, provide a successful living to settlers. Thus in the East, especially before the expansion of markets brought on by the industrial revolution, the outcome of land policy would appear to be the lofty goal of providing land for the landless and the creation of a society of small yeoman farmers to ground our democracy as Jefferson and others envisioned. The veil of moisture and the immature development of market capitalism thereby hid from view the contradiction in land policy. Thus the coincidence of the agricultural success of individuals, as yeoman farmers, who took out government land claims in the East was mistaken as the natural consequence of government land policy and created the illusion that the stated intent of land policy was harmonious with its outcome.

The experience in the East thereby reinforced the social and cultural expectation that the purpose of land policy was to create an agrarian society of small independent farmers. This “habit of thought” becomes embodied in the agrarian rhetoric and stated purpose of land policy which persisted throughout the nineteenth and early twentieth centuries. But the outcome of land policy during this period had more to do with the economic imperative of market capitalism and its encroachment on the arid West than anything else. Thorstein Veblen spoke of this dynamic or social evolution in the context of the development of absentee ownership, but the framework he created can be applied here. Veblen stated:

So, by degrees the drift of changing conditions has been heading up in a new alignment of economic forces and of economic classes . . . So that the domi-

nant considerations . . . are no longer the same as they have been in the recent past . . . These matters are still spoken of in terms handed down from the past, and law and custom still run in terms that are fit to describe a past situation and conform to the logic of a bygone alignment of forces. (Veblen [1923] 1968, 4–5)

Perhaps if this had been more clearly understood the conflict between the rhetoric and outcome of land policy in the West would seem more logical. When the material conditions changed so that the link between the stated purpose of land policy and its actual consequences became more ambiguous, government policy increasingly became a matter of trying to fit a square peg in a round hole. The government did not easily adapt its thinking to the changing material conditions that presented themselves as markets expanded and settlement extended to arid land. It clung to an ideal that had lost the support of the unique material conditions which had allowed it to flourish in the East.

John Wesley Powell and Western Land Policy

The West amplified the tension between the stated purpose of land policy and its actual workings. This dynamic has been fundamentally misunderstood by both historians and nineteenth and twentieth century land reformers. In the latter case no one exemplifies this misunderstanding more profoundly than John Wesley Powell. Donald Worster told us that “from 1869 to 1881 Powell kept on striving for that comprehensive scientific vision of the West and eventually found it . . . What made this region strikingly different from the eastern part of the country . . . was the aridity” (1994, 9–10). Wallace Stegner reinforced this view: “When much of the country, and nearly all of the West, had elected to overlook the fact, or deny it, he [Powell] saw the West as arid land.” Stegner continued: “If one really believed in the small-freehold system, and Powell did, it was time to try saving the freeholder from a body of land law that was doing him in” (Powell 1962, viii–xi). Powell clearly understood aridity and the problems it created for the small free-holder as both Worster and Stegner pointed out, but he mistakenly presumed that it was possible to create an agrarian society of small landowning farmers or ranchers on arid land, without altering the economic foundations of the free-hold system.

Powell presented his “blueprint” for assuring success of the small farmer (rancher) and reasonable and sustainable use of the land in 1879 when he submitted his *Report on the Arid Region of the United States* to Congress. He extended this blueprint in later decades as head of the US Geological Survey and a participant in the Irrigation Congresses in the 1890s. Powell believed in the necessity of classifying lands according to whether they were pasturage, timber, or irrigable. He saw this as essential for assuring agricultural success to those taking up lands in the West. Moreover, Powell advocated that drainages be settled in a manner which would allow the greatest num-

ber of small farmers to succeed, would allow farmers to have sufficient capital to build reservoirs to tap the water resources of larger rivers, and would allow for the irrigation of, and best utilization of, land given the water source. These “commonwealths” would also be responsible for the management of watersheds and rangeland.

Worster described clearly what we can call Powell’s socio-economic belief system:

He believed enthusiastically in the idea of progress and he wanted to see progress come westward . . . As a means to progress, he accepted the private business corporation, along with modern technology, the industrial revolution, and science. But he did not want to see concentrated private interests completely rule the West . . . Powell wanted to see the West make progress in a different direction, toward a future securely in the hands of a self-governing agrarian population, men and women who were progressive in their thinking but not so intensely capitalistic in their motives. (1994, 12)

Although Powell questioned the capitalistic motives of land ownership and advocated a less laissez-faire orientation to land policy, he never questioned the underlying economic bedrock of those policies which under arid conditions and an expanding market economy predisposed land to its role as a commodity. Apparently Powell didn’t understand that a belief in progress, technology, and the basic institutions of a market economy would be antithetical to a self-governing agrarian society of small ranchers and farmers in the West. Moreover, his belief in an enlightened capitalism where people are sensitive to the limitations of the land, concerned about community, and motivated to engage in cooperative economic behavior is simply naive. The entire institutional framework of a market economy engenders the opposite; that is, individualism not cooperation, a motivation for profit and accumulation, and alienation from the land rather than sensitivity to it. Veblen captured this dynamic very well when he said: “The farm population . . . has nowhere and at no time been actuated by a spirit of community interest in dealing with any of their material concerns . . . They have habitually ‘carried’ valuable real estate at the same time that they have worked the soil of so much of their land . . . They have been cultivators of the main chance as well as of the fertile soil . . .” (1923] 1964, 132–135).

Thus Powell may have understood the aridity of the West and some of the problems it created for the establishment of an agrarian population of small independent farmers/ranchers, but he did not clearly understand the dynamic of market capitalism, which had as much to say about the outcome of land policy in the West as did aridity.

The Dynamics of US Land Policy West of the One Hundredth Meridian

One of the most salient features of western land was the uncertainty surrounding its agricultural potential. A limited growing season was one aspect of this uncertainty.

Much of the land in Wyoming, Idaho, Colorado, and Montana has an elevation of greater than 6,000 feet, thereby severely limiting the growing season. In areas with short growing seasons, even with adequate water the crops that can be planted are limited to hay and alfalfa. Without water, agricultural success (with the exception of grazing lands) is even more uncertain. Land with adjacent water resources might be suitable for irrigated pasturage or cropland (depending on elevation) while the next plot (without water) would not be suitable for growing anything except the native plants and hardy exotics adapted to extreme aridity. To add to the uncertainty, the climate and rainfall varied from year to year and from place to place.⁵

In the face of the uncertainty and complexity surrounding the agricultural development of western lands, the tension between the stated purpose of land policy and its outcome intensified. The proliferation of land acts west of the one hundredth meridian must be viewed against this backdrop. More specifically, the history and dynamic of land policy in the arid west can be characterized in the following way. First, to be agriculturally useful along agrarian lines western land required access to water. In order to accommodate the need for water in the nineteenth century laissez-faire environment, policies were enacted which promoted an individualistic approach to the development of water resources. But this approach never fully resolved the disjunction between water and land and thereby exacerbated the tension between the political rhetoric and actual workings of land policy. Government reclamation was finally sought as a way to mediate this tension. Second, in order to adapt land policy to arid conditions, accommodations needed to be made to allow for the amassing of parcels of various sizes. For example, ranching required fairly extensive land holdings and dry farming required plots larger than 160 acres. This was difficult to achieve while adhering to the agrarian framework of small independent farmers. On one hand the imperative to couch policies in agrarian terms destined many claimants for disaster since they couldn't make a living on the small plots they laid claim to. On the other hand, opening the door for access to larger parcels for legitimate agricultural purposes by mixing and matching policies simultaneously accelerated and reinforced the process of monopolization, speculation, and fraud already an inherent tendency in market capitalism.

Arid Land and the Disjunction of Water and Land

The disjunction of land and water makes no sense from the perspective of agricultural development of arid land along the lines of small independent farmers or even ranchers seeking irrigated pasturage. However, when settlement extended into arid land this is precisely the conundrum that presented itself to land policy. But the particular course of water development the government undertook exacerbated rather than mediated the tension between the stated purpose of land policy and its actual workings on arid land.

Theoretically the government had a number of options for water development. But the economic environment of nineteenth century *laissez-faire* capitalism influenced the way in which water development proceeded. In the mid nineteenth century the government was not prepared to create a bureaucratic agency which systematically tied land to water for both ideological and practical reasons. Substitution of government bureaucracy for individual effort was antithetical to the principles of *laissez-faire* capitalism, in which the object was to give people access to property and let the magic of self-interest weave a cloak of prosperity. In this context the government simply looked at water as another resource, like land, to be developed through individual incentive and private ownership. Western water law, according to Charles Wilkinson, developed in the following manner: “Miners used a simple, primitive rule of capture for water: ‘first in time, first in right’ . . . After the initial appropriation, the water right, like a mining claim, could be leased or sold. It was property—from the very moment it was first put to use” (1992, 231–233).

Eventually the doctrine of prior appropriations came to be embodied in state agencies. Thus the federal government administered the dispensation of land, and the state governments set about administering the dispensation of water. In 1890 Elwood Mead drafted Wyoming’s “water constitution,” and other western states followed. Wilkinson told us of the relationship between these state agencies and the principles of *laissez-faire*:

But western water agencies were unique and, by today’s lights, curious institutions . . . this government overlay was in no remote sense a regulatory system. The statutes setting up the water agencies made essentially no change in the underlying body of law. The new agencies existed solely for the purposes of issuing water rights according to the established *laissez-faire* doctrine and, after issuance, for enforcing the rights of record . . . Despite code provisions allowing the state engineer to deny applications on the basis of the public interest . . . state engineers in fact simply rubber-stamped all appropriations. (Wilkinson 1992, 240)

Thus the state agencies simply institutionalized water as private property. But this institutional arrangement made for a contradiction in the constitution of political power (with the water allocated by the state government and the land allocated by the federal government). This arrangement increased the risk associated with government land claims (a risk that lay squarely on the shoulders of individuals). Moreover, the problem for creating an agrarian society of small independent farmers, given the particular course of water development, was further exacerbated by the fact that now water ownership could also be monopolized and speculated on and individuals could come to control surrounding land by controlling water. This strategy was often used by ranchers to obtain grazing land without actually having to buy it.

The Desert Land Act (1877) can be seen as the embodiment of this *laissez-faire* approach to the development of water resources. Under the act, 640 acres could be

obtained by paying twenty-five cents per acre when you took out a claim and an additional one dollar per acre after three years. Desert land filings could be made on land that was as yet unsurveyed and did not require residence. The provisions of the act specified that land should be taken out in compact form and was supposed to be irrigated. The act was loosely formulated and enforced and defined reclamation in vague terms: “to make it an object for people to occupy the land” (Ganoe 1937, 156). Moreover, as John Ganoe told us: “Strictly speaking the Desert Land Act made no provision for reclamation except by individual effort”(151). Thus although the act ostensibly required that land be irrigated, the act itself provided no economic support to develop water resources nor any institutional support to connect land and water. This was left entirely up to the individual. Before 1890 water rights were adjudicated on a case by case basis, creating tremendous problems for acquiring water. After 1890 one had to maneuver his way through the morass of two government agencies in order to meet the vague requirements of the act and get clear rights to water. Furthermore, because of the capital-intensive nature of reclamation most individuals simply lacked the money to fully develop the water resources.

Under these circumstances it isn't surprising that the provisions of the Desert Land Act were loosely enforced and its actual workings deviated from its stated purpose. The act was punctuated by fraud, speculation, and the monopolization of land with only minimal reclamation. Worster referred to the act and its reclamation history in the following way: “Simply handing a settler, or purported settler, a square mile of desert with the requirement that he bring water to it, as the Desert Land Act did, was a snare and a delusion. It was mainly cattlemen who took advantage of that *laissez-faire* policy, along with speculators who accumulated vast tracts under the act and held them for future sale”(Worster 1985, 156). Thus instead of creating a society of small yeoman farmers the Desert Land Act resulted in monopolization of land (and water) for purposes of speculation and/or building a ranching operation. In fact it was frequently difficult to distinguish between the two. Furthermore, it was often the case that ranchers or speculators would take out claims which gave them the use of the land for twenty-five cents per acre for three years often with no intention of proving up. The data on the Desert Land Act reveal that the rate at which individuals proved up on their claims was quite low. From 1877 to 1925 only 29 percent of original Desert Land Act entries went to final patent (Report of the Commissioner of GLO 1925, 44). Finally, even if individuals proved up, access to water and monopolization of water allowed them the use of contiguous land without having to own it because no one else would be able to use it. Thus it allowed for the monopolization of land beyond what official statistics might reveal.

The revisions in the Desert Land Act embodied in the General Revision Act of 1891 did little to change this dynamic despite the rhetoric that they were directed at getting rid of fraud, speculation, and monopolization and intended to promote the settlement of the small farmer by promoting reclamation. After 1891 and the passage of the General Revision Act, the acreage under the Desert Land Act was reduced to 320

acres, state residency was required, and regulations for water development were more stringent. Claimants had to spend three dollars per acre after three years and were required to submit irrigation proposals with their land filings. But these revisions did little to more closely connect land and water or to change the incentives that existed for ranchers and/or speculators to use the act for other purposes. Nor did it provide the resources needed by individuals to carry out water development. Finally, the General Land Office did not have the resources to enforce the letter of the law. Thus little changed in the actual workings of the Desert Land Act, and the tension between the actual outcome and stated purpose of this policy continued unabated.

By the 1890s the government was becoming aware that it would have to be more systematically involved in reclamation. Private irrigation development had been disastrous both through the provisions of the Desert Land Act and the formation of private irrigation companies. Gates told us: “Most private irrigation projects early fell into difficulties . . . Ninety percent of the private irrigation companies were in or near bankruptcy by 1902” (1968, 651). My purpose here is not to rehash all the issues surrounding government reclamation, a subject which has been extensively and capably analyzed by Gates, Worster, and Marc Reisner to name but a few. I merely want to emphasize that government involvement in reclamation was motivated by the failure of private irrigation efforts and the realization that without the development of reclamation large scale agricultural development of the West was impossible. Thus government reclamation held the promise of resolving the ongoing tension between the stated intent and actual workings of land policy.

The rhetoric surrounding government reclamation was itself agrarian. William Smythe, one of the foremost spokespersons for government reclamation in his book *Conquest of Arid America*, extolled the virtues of irrigation. The book was written in the 1890s, at the height of the push for irrigation in the West. In 1905 (after the Reclamation Act of 1902 had been passed) Smythe wrote in the forward to the second edition of the book:

This book is for all the optimistic Americans, but especially, it is for those who have the courage of their optimism—for the homeseekers who, under the leadership of the paternal Nation, are to grapple with the desert, translate its gray barrenness into green fields and gardens, banish its silence with the laughter of children. This is the breed of men who make the Republic possible, who keep the lamp of faith burning through the night of corrupt commercialism . . . ([1905] 1968, x–xi)

We know of course now that government-sponsored reclamation did not create a Jeffersonian society of small farmers and did not resolve the conflict between the stated intent of land policy and its actual consequences.

Flexibility in the Face of Aridity

Adapting land policy to western conditions necessitated that individuals have the flexibility to create “farms” of larger size. But the exact size of plots needed to make it as small farmers and ranchers was not clear. Thus the government was in a position which necessitated it allow for larger acquisitions of land on one hand (though the exact size was unclear) but on the other hand not pander to the speculative and monopolistic tendencies that appeared to be the outcome of land policy. Thus rather than allowing directly for the acquisition of larger land holdings the government chose a more circuitous route. Gates has previously demonstrated that farms became progressively larger as one moved westward because of the flexibility in land acquisitions provided by the numerous land policies (1977, 109). Flexibility was provided by enabling individuals to mix and match land policies and also by the lax enforcement of those policies by the General Land Office. In this way the agrarian tenor of land policy would be retained while the irrationality in any one act as it applied to the agricultural development of arid lands could be diminished by its ability to function in tandem with other acts. The proliferation of land acts in the West must be seen in this context.

The mix of land policies used during the middle to late nineteenth century included but was not limited to the following. The Preemption Act was passed in 1841 and gave individuals the right to buy 160 acres of unsurveyed land that they had worked. The Homestead Act (1862) granted individuals 160 acres of land if they lived on the land and successfully cultivated it for five years. But individuals could commute a homestead after six months of residency for a cash payment. The Timber Culture Act was passed in 1873 and provided claimants 160 acres with the provision that they plant trees within ten years on forty acres. Later the acreage required for tree planting was reduced to ten acres and the number of years to eight. The purpose of the act was to grow trees for fencing and building material and to increase rainfall under the questionable notion that rain follows the plow. The specifics of the Desert Land Act (1877) have previously been discussed.

The ability to mix and match land policies coupled with their lax enforcement created flexibility to obtain larger land holdings. At any one time until 1891 the Homestead Act (1862) and the Preemption Act (1842) in addition to the Timber Culture Act (1873) and the Desert Lands Act (1877) were among the mix of policies one could use to obtain larger land holdings. For example, the Preemption Act was retained even after the passage of the Homestead Act. Gates commented on the assessment of the Preemption Act by historians: “Following the judgement of the Commissioners of the General Land Office who harped on the amount of fraud involved in preemption, they have given undue emphasis to this aspect and insufficient attention to the fact that preemption was consciously retained by Congress surely because of the greater flexibility it allowed settlers in adapting themselves to farming in the dryer portions of America . . .” ([1963] 1979, 40). The Timber Culture Act was added to the mix and according to Gates: “Without seriously compromising themselves they could get ownership of a preemption quarter in a year, could commute

a homestead entry in 6 additional months, and could make a timber culture entry for which they could easily sell a relinquishment if they needed the capital . . ." (415).

The Desert Land Act also contributed to the flexibility to adapt to arid land and was especially important for land amenable to stock raising. Since no direct accommodations had been made for acquisition of grazing land until the passage of the Stock Raising Homestead Act and, later, the Taylor Grazing Act, ranchers began the process of monopolizing grazing lands through fraudulent use of the Desert Land Act. Gates told us that though the land commissioner complained of the fraudulent use of the act, "the Governors of 4 western territories—Montana, Wyoming, Idaho and Utah were convinced the measure was a godsend, making possible economic units of land for grazing, if not for irrigation farming." Gates continued: "Thus in Wyoming between 1878 and 1888 inclusive, the desert land entries amounted to 1,592,295 acres while the homestead entries were 287,701 acres . . ." (1968, 640–643). This was a time when the open range began to fill up and competition among ranchers, and between ranchers and farmers, for land and water intensified.

The flexibility embodied in these policies opened the floodgates to monopolization and speculation despite the attempts to couch the policies in agrarian terms, thereby increasing the tension between the stated purpose of land policy and its outcome. Moreover, the extent of land privatized through these policies seemed limited relative to their success in more humid and less agriculturally diverse states. For example, by 1890 44 percent of the land in Nebraska and 86 percent of the land in Iowa was in farms, whereas only 3 percent of the land in Wyoming, 7 percent in Colorado, and 2 percent in Montana was in farms (Department of Commerce, Bureau of Census 1932, 52–57). Thus the government began a process of further revising land policies in an attempt to ameliorate these problems. The process of change began with the passage of the General Revision Act of 1891 and continued with the passage of the Kincaid Act, the Enlarged Homestead Act, and the Stock Raising Homestead Act in addition to the revisions in the Homestead Acts beginning in 1912.

The General Revision Act sought to change the Desert Land Act. From its inception in 1877 the Desert Lands Act had been problematic. It had led to little actual reclamation and settlement but rather promoted monopolization and speculation and control of land contiguous to Desert Land claims. According to Gates, Commissioner McFarland of the General Land Office "reasoned that most filings had been made for speculative purposes in violation of the restrictions of the law, and complained that the lands were being held for grazing without settlement and without costing more than the original 25 cents an acre paid when the application was made." Gates continued: "It appears that few of these entries were carried to title within the 3 years allowed for making improvements" (1968, 639–640).

The General Revision Act also repealed the Preemption and Timber Culture Acts. In the case of the Preemption Act the claim was that it was pandering to monopolistic elements by allowing individuals to buy land outright.⁶ The Timber Culture Act proved to be problematic as well. Under the Timber Culture Act land often got caught

in limbo, being neither private property nor public. Gates told us the land could be controlled for thirteen years without fulfilling the requirements and neither residency nor payment of property taxes was required during this time. Thus it gave individuals access to land without any tax burden for a long time.

The changes embodied in the General Revision Act were attempts, passed on the heels of the populist movement, to diminish the fraud, speculation, and monopolization which had punctuated the actual workings of land policy. In this way they can be envisioned as reasserting the agrarian purpose of land policy. Gates described the changes embodied in the General Revision Act in the following way: “Instead of trying the more courageous but politically dangerous way of reforming the land system through administrative action . . . Congress chose to remove the most criticized legislation. In doing so it eliminated much of the flexibility that had enabled persons in the High Plains to acquire control of 320 to 480 acres as conditions seemed to make necessary” (1968, 484). Gates continued: “It was later to be charged that by making the land system more rigid through the repeal of the preemption and timber culture laws Congress made it even more necessary for ranchers and others seeking to gain ownership of economic unit to resort to fraud in a more systematic way than they had before 1891” (486).

The problem was actually more fundamental than Gates seemed to recognize. While he fully acknowledged that aridity required larger land holdings, he did not fully appreciate the dynamic of market capitalism in creating the tendency for larger land holdings and promoting monopolization and speculation. Thus the necessities of agricultural development of arid land feed into this fundamental tendency of market capitalism. In this sense it isn’t clear that “administrative action” would have resolved the divergence between the rhetoric of land policy and its outcome unless by administrative action Gates meant changing the economic framework of fee simple ownership and market capitalism. But Gates was correct in claiming that the action the government took eliminated the flexibility necessary for agricultural development of arid land. In time the government attempted to compensate for this lost flexibility by introducing new policies that sought to more directly allow for the amassing of larger landholdings to accommodate western land conditions.

During the early twentieth century the government passed a series of land acts to fill the vacuum left by the General Revision Act and to mold land policy to the arid land clearly not targeted for reclamation while simultaneously maintaining its agrarian orientation. These new polices were added to the Desert Land Act and the 1862 Homestead Act. The passage of the Kincaid Act, the Enlarged Homestead Act, and the Stock Raising Homestead Act as well as the revisions in the Homestead Act can all be envisioned as part of this strategy. In 1904 the Kincaid Act was passed to settle northwestern Nebraska. A settler could obtain 640 acres with five years’ residency and one dollar and twenty-five cents per acre in improvements with the provision that the land must be unsuitable for irrigation. No commutation was allowed, and a settler who had previously taken out a 160-acre homestead could use the Kincaid Act only to make up

the difference. In 1909 the Enlarged Homestead Act was passed to settle people on nonirrigable land and was designed to promote dry farming. This act provided 320 acres after five years of residence to grow something other than native grasses. One eighth of the land had to be cultivated by the beginning of the third year. The Stock Raising Homestead Act, passed in 1916, was yet another attempt to transfer land not targeted for government reclamation into private hands and maintain its agrarian orientation. The act allowed for a settler to enter 640 acres of land that could not be irrigated. Three years of residence and improvements of one dollar and twenty-five cents per acre were required. Commutation was prohibited under the act. The intent behind the act was that individuals would use the land to graze livestock, but as Gates told us: "men with inadequate capital were trying to establish homestead . . . and even sowing some wheat, as the only farming they could do since they had not the capital to buy livestock . . ." (1968, 519).

The Stock Raising Homestead Act provides a good example of the attempts of the government to reassert the agrarian spirit on arid land in the period after the General Revision Act. In the 1923 report of the Commissioner of the General Land Office the commissioner wrote: "At the time when the present stock-raising homestead act was pending before Congress the proposition of establishing grazing "commons," or districts, on the public domain in lieu of the measure under discussion was urged . . . It was the view, however, of the department then, a view which found acceptance at the hands of Congress, that the man of small means who desired to engage in stock growing should be given the first opportunity . . ." (8). In addition to these specific acts more general changes in the provisions of all of the homestead acts were implemented after 1912. The most important change involved the residency requirement, which was reduced from five to three years but more importantly now allowed individuals to be absent from the homestead for five continuous months of each year.

It is important to note that the process of "classification" the government undertook for purposes of sorting out land for the Kincaid, Enlarged Homestead, and Stock Raising Homestead Acts as well as ascertaining land targeted for government reclamation was wholly inadequate from the perspective of relieving the settler of his or her role in determining the economic potential of the land. Again Gates pointed out: "Provisions in the Kincaid and Enlarged Homestead Acts limited entries under them to nonirrigable land implied a form of classification . . . but with no funds to carry out thorough classification of land these restrictions were not significant" (1968, 509). In part this was due to the institutional constraints of laissez-faire capitalism, which deemphasized the role for government and emphasized the role of the individual in ascertaining the economic potential of the land. Moreover, the imperative to frame land policy in agrarian language gave rise to a tendency in these policies to overemphasize the prospects for dry farming and underemphasize the acreage necessary for both dry farming and stock raising. Thus the irony was that although these policies were always cast in an agrarian mold they weren't really formulated to assure a liveli-

hood to individual settlers and, in fact, exacerbated the tension between the stated and actual workings of land policy.

For example, the Kincaid Act was targeted toward livestock raising but, as Gates told us, “Kincaid Homesteaders lacking the capital for stock ranching, had turned to grain farming and soon met with disaster . . .” (1968, 500). In Gates’ assessment, “If the purpose of the Kincaid Act was to hasten the closing of the public lands in Nebraska and to get them into the hands of private owners . . . it came near to achieving this result. But if the purpose of the law was to make possible the establishment of small stock raising homesteads of 640 acres on which the better land would be cropped, the record of success was not so clear.” The Enlarged Homestead Act was intended to promote dry farming. But as Gates pointed out, “Success of settlers on 320 acre dry farming tracks was spotty” (504). Technically speaking the possibilities of dry farming were not well understood and so the enlarged homesteaders provided the litmus test for its applicability in semiarid plains. The Stock Raising Homestead Act was similarly assessed by Gates: “The promise of 640 acres of land wore thin . . . but still was sufficient to keep them on the land until they could gain title and sell to some rancher” (519).

Revisions in the Homestead Act were also targeted at trying to retain the agrarian cloak of land policy on increasingly marginal land. By reducing the residency requirement on homesteads from five to three years and allowing individuals to be gone for five continuous months of each year this policy allowed individuals to work for wages while simultaneously trying to prove up on their homesteads.⁷ It was targeted at those who had taken out homesteads with the promise of reclamation where reclamation had not yet arrived but it also served to entice people to take out claims on land that was clearly marginal in providing a living. Thus both the uncertainty of proving up and the role of land as a commodity intensified.

The outcome of these policies was that they extended the arm of land commodification. For example, in the period between 1910 and 1914 the success rate on all homesteads (which included Kincaid homesteads) in Nebraska was 40 percent. In Wyoming between 1918 and 1920 the success rate was 42 percent. Between 1921 and 1923, 45 percent of stock raising homesteads went to final entry (Gates 1968, 499, 520; Larson 1965, 414–415).⁸

But this record of success is deceptive. It is important to note that more homesteaders failed than succeeded at their attempts to prove up during this period. And even those who managed to prove up could not be considered a success in the sense that their experience can be seen as the embodiment of the agrarian ideal on western land. Many simply sold out once they had successfully gained title to the land either because they could not make a living on the small plots to which they had gained ownership or they had never intended to make a living on the land in the first place but obtained it for speculative purposes. We can demonstrate that substantial consolidation of land holdings took place in the western United States during the early twentieth century, reinforcing the view that the land was increasingly performing its commodity

role. For example, between 1903 and 1910 in Nebraska, 9,071 final homestead entries were made but only 8,153 farms were created in the entire decade 1900–1910 (Gates 1968, 499; Bureau of Census 1932, 52–57). Moreover, in the decade between 1910 and 1920 Wyoming experienced an increase of only 4,761 farms despite the fact that the number of final homestead entries between 1915 and 1920 totaled 13,191 (Bureau of Census 1932, 52–57; Larson 1965, 414–415).

Conclusions

The basic thesis presented here is that arid land exacerbated the tension between the stated purpose of land policy and its outcome. More importantly, the analysis demonstrates that the history of this elevated tension on arid land is not explained by parochial motives and desires; that is, the explanation does not reside in a detailed enumeration of speculation, monopolization, fraud, and the misery of the individuals caught up in this drama. Nor can aridity itself explain the long history of this recalcitrant conflict. Rather, the explanation resides in understanding the interplay of material forces and cultural attitudes. Specifically, arid and agriculturally diverse land necessitates reclamation and flexibility in the sizing of agricultural units. These demands exacerbate the tendencies in agrarian capitalism toward concentration, speculation, and individual vulnerability. But the cultural moment of the nineteenth and early twentieth centuries remained stubbornly agrarian and this bent was reflected in the tenor of land policy which reflected this agrarian “habit of thought.” The sheer numbers of policies the government passed during this period were testament to the underlying difficulty in reconciling the outcome of land policy with its agrarian face.

Notes

1. Douglas North pointed out: “Speculation is endemic to any system of private ownership of assets” (1966, 132). This means that anyone, including “legitimate” homesteaders, can engage in speculation and most likely did.
2. Entails are legal restrictions on land ownership that prevent the owner from dispensing with the land in any way he or she wants. For example, primogeniture required that property be transferred to the first-born son. Entails stand in contrast to a system of fee simple ownership where there are no restrictions to the transfer of property. The Northwest Ordinance is the government document which outlined the way in which land would be surveyed and divided in order that it might be transferred into private ownership, thereby assuring the owner the clear legal rights to a specific plot of land. It established a system of rectangular surveying which divided land into square pieces.
3. It is important to note that Jefferson’s agrarian ideal encompassed more than just a political arrangement for democracy and voting. It finds its roots in natural law and thus shares common intellectual antecedents with *laissez-faire* capitalism. In this tradition the right to property ownership and the development of the market economy are viewed in the context of the unfolding of a natural order which gives them legitimacy. Jefferson’s agrarian philosophy

and his adherence to laissez-faire capitalism were connected and part of a worldview to which he clearly adhered.

4. As a commodity, the role of land is defined by the economic imperative of market capitalism. This function of land as a commodity depends in the first instance on institutional arrangements which allow for it to be bought and sold presently or held for future sale. In this context the value of land at any point in time will depend on its productive capabilities and also on expectations of future demand. Thus speculation (a bet on the future value of land) is an expected and natural corollary to the functioning of land as a commodity, especially in an expanding market economy where the possibilities for technological change and population growth are robust. The value of land based on its productive potential is also intimately tied to the dynamic of market capitalism because the competitive forces of market capitalism are constantly putting upward pressure on increasing output/acre and thereby increasing the value of the land. Access to this increased value may be tapped either through development of the productive capabilities of the land or through speculation. Moreover, for farmers themselves the increased value of land increases their capacity to invest in capital by borrowing on their land equity, thereby making them increasingly vulnerable to the economic volatility of agricultural markets. In a similar vein cattle barons in the West were forced as much by economic necessity as by greed to grab as much land as possible. They were angry with farmers for breaking up the range but what this really meant was that they didn't want the value of land they had accessed for free to be increased. But the only way to adapt to these changing circumstances was to participate by accessing as much land as they could for as little initial cost as possible. In these ways one can see that the contamination of land policies by speculation, fraud, and monopolization were in fact the direct result of the economic imperative of an expanding market economy.
5. Other problems, such as soil composition and drainage, also contributed to the agricultural complexity of this region.
6. Preemption was used in the late nineteenth century to gain valuable timberland and by the 1890s concern about the management of forestlands was arising because of their importance for watersheds. Thus the impetus for the repeal of the Preemption Act was also driven by this dynamic.
7. For example, in the basin where my grandfather homesteaded, virtually all of the homesteaders worked in the coal mines from November through April and then moved onto their homesteads in the spring and summer when work in the coal mines was slack.
8. In the period between 1905 and 1909, 27,125 original homestead entries were made in Nebraska for 11,935,471 acres. The average acreage per homestead was 440 acres. In the period from 1910 until 1914 (lagged five years from the original entries because this was the length of time allowed for proving up), 16,161 final entries were made on 7,201,560 acres of land. The average acreage per final entry was 440.3 acres (Gates 1968, 499). The fact that the acreage is much higher than 160 acres indicates a fair number owed to the Kincaid Act although since 160-acre homesteads are not disaggregated from Kincaid homesteads we don't know for sure what acreage owes to the Kincaid Act. The Enlarged Homestead Act also met with some success. In Wyoming between 1915 and 1917, 13,742 homestead claims were filed on 3,389,606 acres. The average claim was 246.6 acres. In the period from 1918 until 1920 (lagged three years) a total of 7,999 claims went to final proof on 1,890,000 acres, or 236.28 acres per final claim (Larson 1965, 414–415). Unfortunately it is impossible to disaggregate enlarged homesteads from 160-acre homesteads (although this period predates stock raising homesteads), but the fact that the average acreage is greater than 160 acres indicates that some portion of claims were for enlarged homesteads. From 1918 until 1920, 36,748 original entries on 14,024,263 acres had been made under the Stock Raising Homestead Act. Between 1921 and 1923 (lagged three years), 20,091 final entries on 6,760,169 acres had been made under this act (Gates 1968, 520). Original entries averaged 381.6 acres per entry while final entries averaged 336.5 acres per entry. The fact that the

acreage was smaller than 640 acres on average is explained by the fact that some individuals already had taken out 160-acre homesteads and land claims under the Enlarged Homestead Act as well and made up the difference with the Stock Raising Homestead Act.

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