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Author(s): SEYMOUR V. CONNOR

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Early Land Speculation in West Texas

SEYMOUR V. CONNOR
TEXAS TECHNOLOGICAL COLLEGE

THIS PAPER is merely a fragment of a larger study which attempts to analyse the role of land speculation in American history and to develop a general synthesis concerning the significance of this unique American phenomenon. So far, most of the work has been confined to Texas—not only because of the availability of material, but because Texas was the only state after the colonial era to retain ownership of its public lands and to develop its own land system.

The basic pattern of land history in West Texas was its alienation by the state, its acquisition by speculators, its accumulation into large, unified blocks, and finally its subdivision and sale to farmers, stockmen, and settlers. This paper is a summary of the first phase of speculative activity—the passage of the lands from the state into the hands of large operators. The second phase, the accumulation of the land in solid ranges, is a part of the history of the ranching industry which is already fairly well known; and this paper is much too brief to do more than mention the third phase, the break-up of the large holdings.¹

With but a few exceptions, the disposition of the public domain in West Texas occurred well after the Civil War. The legislature suspended all land sales in December 1863, and in 1866, during Presidential Reconstruction, a feeble attempt to raise revenue by the sale of land scrip at \$2.00 per acre was made by Throckmorton's government. Shortly after this act, the dark curtain of Reconstruction enshrouded the state, and for the next eight years there was no significant legislation concerning the sale of Texas land. Even grants to aid railroad construction were ended by the "Radical," but anomalous, Constitution of 1869.² During this period the lusty cattle industry crowded its

¹ Two solid works are available on the history of Texas lands, neither of which, unfortunately, is analytical of special problems or particular laws: Aldon S. Lang, *The Financial History of the Public Lands in Texas* (Waco: 1932) and Reuben McKittrick, *The Public Land System of Texas, 1823–1910* (Madison, Wisconsin: 1918).

² H. P. N. Gammel, *The Laws of Texas*, 12 vols. (Austin: 1899–1901), VII, 409.

long-horned herds over publicly-owned pastures to the very foot of the cap rock.

In 1873 a constitutional amendment permitted special land grants to encourage railroads and internal improvements, and the "Conservative" Constitution of 1876 specifically authorized such grants in aid.³ These grants, usually providing sixteen sections of land per mile of track built, were contingent upon actual construction, and a fairly rigorous system of inspection was established. The need for railroad transportation was real; the desire to induce companies to build in Texas was strong; and the state was forced to follow the example of the federal government, which of course was granting similar subsidies to lines elsewhere but could not in Texas. The general consensus of historical opinion is that the state needed railroads more than it did the land, that there was surprisingly little fraud and corruption involved, and that the policy on the whole was well advised.⁴ A point that has not received any investigation is the effect of these land grants on the railroad companies themselves, on the development of speculation, and on the settlement of West Texas, where the lands were located.

As a matter of fact, the Texas land bonus generally turned out to be a poor bargain for the railroad companies, which actually received scrip instead of land. The law required the company to locate this scrip in blocks in specific reservations of the public domain, to survey it in alternate sections, checkerboard fashion, and to bear these costs plus filing costs before a patent would be issued. The alternate sections of the checkerboard were cleverly reserved by the state which planned to take advantage of the free surveying as well as the development that it was supposed the railroad companies would undertake to sell their lands. Theoretically, the railroad grants would not only supply the state with needed transportation facilities, they would also more than double the value of the remaining public domain. But another provision of the railroad law tended to dim this happy prospect—the companies were required to dispose of their lands within eight years. Thus even those companies which might have afforded to hold the lands for a price rise and to expend funds in promotion and development were forced either to subterfuge or premature sales. Many railroads had plunged into construction with insufficient capital and even after their lines became operative, the state was still too underdeveloped for the realization of immediate profit. Consequently, a large number of the companies became bankrupt and sold their

³ *Ibid.*, VII, 676; VIII, 989.

⁴ E. T. Miller, *A Financial History of Texas* (Austin: 1916), pp. 325–360; S. G. Reed, "Land Grants and Other Aids to Texas Railroads," *Southwestern Historical Quarterly*, XLIX (1946), 518–523; Lang, *Financial History*, pp. 106–107, 113; McKittrick, *Public Land System*, pp. 70–71.

bonuses for a few cents an acre—a mere pittance of the cost of track construction.⁵

This situation set the stage for large speculative operations. Railroad and internal improvement companies usually followed one of three courses: one, they sold their land scrip unlocated to a speculator or a group of speculators who undertook the cost of surveying to secure a patent; or, two, they created a dummy holding company to which they transferred the land either before or after surveying; or, three, they surveyed and patented their own land and attempted to comply with the law which required them to alienate it within eight years.⁶

As a result of the first course of action, huge tracts of land—always in the checkerboard pattern—were surveyed and patented by individuals to whom the companies had transferred their scrip unlocated. It is difficult to ascertain from land records whether such men were operating on their own, or as agents for groups, or as trustees for the railroad companies themselves. Many who operated independently acquired large amounts of railroad scrip, contracted for the surveying, and then peddled the scrip to still other purchasers. O. W. Williams described a surveying expedition through West Texas in 1877 for three land prospectors who seem to have sold their scrip after location, but before its patent, in smaller tracts to others who then applied for the patent.⁷ Paris Cox acquired some of the land for his Quaker Colony at Estacado by similar means, as did E. E. Carhart, the founder of Clarendon, but apparently most of this type of sale and purchase was speculative rather than for actual settlement. With this survey-previous-to-sale, the speculative package was simply neater, more attractive, and usually smaller.

It is no easier to follow the operations of the companies to which were transferred the unlocated railroad scrip. Probably the biggest of them all was the Texas Land Company which patented the bonuses issued to the Houston and Great Northern in the Texas Panhandle area. This company, incorporated in Texas in 1870, had on its board of directors some of Texas' biggest land operators, including such men as S. M. Swenson, T. W. House, James B. Shaw, and Phineas De Cordova.⁸ The New York and Texas Land Company, acting for the Illinois and Great Northern, acquired nearly a million acres of bonus land, after patenting, in six counties in southwest Texas.

⁵ S. G. Reed, *A History of the Texas Railroads* (Houston: 1941), is an unusually good railroad history.

⁶ Based on a study of land patents issued in West Texas counties, made from manuscript records in the Texas General Land Office and from its *Abstracts of All Original Texas Land Titles Comprising Grants and Locations to August 31, 1941* (Austin: 1941-1942), Vols. 5, 6, and 7.

⁷ O. W. Williams, "From Dallas to the Site of Lubbock in 1877," *West Texas Historical Association Yearbook*, XV, 3-21.

⁸ Gammel, *Laws of Texas*, VI, 674.

Better capitalized than many, this company attempted long range plans, even employing a prominent geologist to make a survey of its property and publishing a prospectus of his findings.⁹

The result of the third course of action followed by the railroads—that of surveying and patenting their own land—was the inevitable sale of holdings before the end of eight years. Since these transactions must be traced in the deed records of the counties in which the land was located, much work remains to be done, but it is safe to generalize that most of these sales were in large acreages at low prices to speculators or ranchers, as circumstances dictated they would be. For the hopes of quick speculative profits by the railroads themselves, or the speculator to whom they sold, were soon dashed. The frontier of actual settlement lagged a number of years—in some regions two decades and longer—behind the frontier of surveying and patenting.¹⁰ The only prospective purchasers for the land were the “free rangers” who much preferred free grass to land purchase.

Other developments, however, were beginning to persuade the ranchers, particularly the far-sighted ones, that the days of free pasturage were numbered. One of these was the introduction of windmills and practical fencing, another was the massive grant of over three million acres to the Capitol Syndicate, and a third was the shifting land policy of the state legislature. This last development not only increased the pressure on the “free rangers,” but also occasioned additional speculation in Texas land.

In 1874 the state opened for sale its alternate tracts in the checkerboard railroad surveys at \$1.50 per acre.¹¹ These tracts, the even-numbered sections of the surveys, had been set apart for the public school fund. Needless to say, the school land found few purchasers at that time. In 1879 a major revision was made in policy. The minimum price of the school lands was reduced to \$1.00 per acre, with the maximum amount purchasable fixed at four sections.¹² At the same time, the unappropriated public domain, outside the areas reserved for railroad surveys, in a large group of unorganized West Texas counties was offered for sale in unlimited quantities at fifty cents per acre. The purchaser, of course, had to survey the land and submit field notes with his application for a patent. Rather than giving the school fund alternate sections, the legislature appropriated to it one-half the proceeds of this sale.¹³

These acts were a result of the conservative reforms of Governor O. M.

⁹ J. A. Udden, *Report on a Geological Survey of the Lands Belonging to the New York and Texas Land Company, Ltd.* . . . (Rock Island, Illinois: 1907). First issued in Augustana Library Publications, No. 6.

¹⁰ Based on a comparative analysis made by the author of the dates of the early land patents and the dates of organization of county government.

¹¹ Gammel, *Laws of Texas*, VIII, 144.

¹² *Ibid.*, IX, 55.

¹³ *Ibid.*, IX, 80. A persistent error, appearing in reports of some Commissioners of

Roberts' administration. Taking office in January 1879, the "Old Alcalde" found the state penniless and near bankruptcy, but committed to extravagant policies which he felt were hardly suited to a frontier state, especially one which had been drained by war and reconstruction. Among other measures, Roberts urged a substantial reduction in the appropriation for schools and the unrestricted sale of the public domain to supplement both the schools' income and the depleted revenue fund.¹⁴ The state's finances were in desperate condition and dramatic measures were necessary. Roberts' reforms ended the free-spending era begun during reconstruction and put the state on a sound financial basis, but his actions did not pass without protest. Among others, W. C. Walsh, the Commissioner of the General Land Office, was incensed about the Fifty Cent Law of 1879 which he felt squandered the state's land, deprived the public schools of revenue, and worked a hardship on potential settlers. Nearly a half century later he described in his memoirs the "saturnalia of speculation" which followed the passage of the act.¹⁵ Under its terms it was possible for a speculator who would file a set of field notes to reserve an unlimited amount of land for ninety days subsequent to filing while he looked for a prospective purchaser. At the expiration of the period, if the purchase price of fifty cents per acre was not paid, the claim was forfeited, but an associate of the speculator could then refile on the same claim with a sixty-day option to pay the purchase price. Under the law it was possible, thus, for a group to tie up immense tracts of land for an indefinite period at a relatively small cost. As soon as he discovered this mode of operation, Walsh "took the stand that the use of the word 'may' instead of 'shall' [in the law] certainly lodged some discretion in the Commissioner," and he refused to renew such files, thus reducing the option period to a maximum of ninety days.

Walsh maintained that by taking advantage of this technicality to circumvent both the law and the intent of the legislature, he "saved to the public domain between four and five million acres." Whether his course of action was justified or not, he made a determined stand to prevent the sale of the public domain to any but actual settlers. In his regular biennial report for 1882, he made a very strong appeal to the governor to cease selling Texas land to speculators and corporations.

the General Land Office, identifies this act as a land scrip act, which it definitely was not; section 2 of the act required the purchaser to have the land surveyed.

¹⁴ *Governors' Messages, Coke to Ross, 1874-1891* (Austin: 1916), p. 309.

¹⁵ W. C. Walsh, "Memoirs of a Texas Land Commissioner," *Southwestern Historical Quarterly*, XLIV (1941), 481-497.

If the State parts title to those lands, she not only loses her power to prevent large landed monopolies, but actually encourages their erection, and says in substance to toiling masses who are to follow us: "If you want homes, you must purchase from the capitalists to whom I have sold." . . . Why then should not the State, in the interest of the schools and of the home-seekers of the future, retain the ownership of these lands? . . . Let us . . . retain the power to say to the settler: "Here is a home on long time and easy terms." It is certainly better for the State to have five hundred families representing one thousand dollars each, than to have one man or syndicate, representing one million.¹⁶

The state's land policy became one of the principal issues in the next gubernatorial election. Roberts, having served two terms, did not run, and was succeeded by "Ox-cart John" Ireland, a man already known for his opposition to aid to railroad construction. In his first message to the legislature in January 1883, Ireland urged the adoption of land policies similar to those Walsh had recommended.¹⁷ Since the financial crisis had passed, the legislature was able to make some marked revisions in the land policy. All further grants to railroads were prohibited, and all of the public domain except the school lands was withdrawn from the market. A Land Board was created to classify the school lands as Agricultural, Pastoral, or Timbered, with or without fresh water, with a minimum price of \$3.00 per acre set for all watered or agricultural lands and \$2.00 per acre for unwatered pasture land. The lands were to be sold at written auction, with terms available of one-thirtieth down, thirty years to pay at five per cent interest, and actual settlers were to be given a priority to purchase. The maximum amount any one person could buy was eight sections, only three of which could be within five miles of the center of the county.¹⁸

With modifications, this became the land policy of the state from that time until the public domain was exhausted; during the four year period, 1879–1883, when the unrestricted Fifty Cent Law was in force, the state had become alarmed, perhaps unduly so, at the development of large, land-holding "monopolies." It was not so much the Fifty Cent Law, however, that produced this trend, but the character of the land in West Texas and method of its utilization. In this period before the general adoption of dry-farming techniques and irrigation, the only users of the land were ranchmen. Circumstances in the ranching industry had forced them to begin purchasing and enclosing pasture. Many had acquired alternate sections directly or indirectly from railroad companies and had taken advantage of the 1879 school

¹⁶ Texas, General Land Office, *Biennial Report, 1880–1882* (Austin: 1882), as quoted in Walsh, "Memoirs," p. 496.

¹⁷ *Governors' Messages*, pp. 477–478.

¹⁸ Gammel, *Laws of Texas*, IX, 263, 308, 309, 310, 391.

land law to solidify their ranges. A number of the persons who had acquired land from railroad grants for speculative purposes had been forced by the lack of a market to turn to ranching, and these, too, filled in their ranges. Of course, most of the land offered by the Fifty Cent Law was outside the surveyed areas, and here, both ranchers and speculators could acquire solid blocks. Despite Walsh's alarm over speculation, most of the land actually alienated during the four-year period was for ranching use.

It should be noted also that the low price on the public domain was a major factor in turning erstwhile speculators into ranch operators. Many had acquired their lands at prices two or three times higher than the state price during the 1879–1883 period. Hurt particularly were the railroad companies who in good faith had built track in exchange for land bonuses at appraised values of \$2.00 and \$3.00 per acre, and who had pioneered the surveying of West Texas counties in the eighteen-seventies at actual costs, including filing, of thirty to fifty cents per acre. These companies had to face the harsh fact that during four of the eight years they were allowed to dispose of this land the state was selling alternate and adjacent sections for a price less than the railroads' cost. The inability to realize a fair value for their bonus lands was a major factor in driving many of these companies into bankruptcy.

Nor was there to be much relief for the companies, or the speculators who had acquired their grants, in the years to follow. State laws continued to keep depressed the market price of land, and the generous terms of sale offered by the state, made it difficult for the private operator to compete. It is little wonder that the apparent profit in the cattle business proved attractive. Typical of this development was the Capitol Syndicate Company which had received a grant of slightly over three million acres for the construction of the Texas State House. It had been the original intention of the Syndicate to sell its lands to recover the costs of construction, which amounted to over three million dollars, but the total lack of a market forced the company to utilize its lands as the XIT Ranch. To make even a small profit on the construction and to offset the high interest charges that it had to pay on funds borrowed in London for construction costs, the Syndicate had to receive well over two dollars an acre for its lands. And, of course, it could not sell them at this price.

In 1887 the state expanded the terms of its sales to forty years at five per cent interest, one-fortieth down, and in 1895 decreased the minimum price to \$1.00 per acre and the interest to three per cent.¹⁹ The Capitol Syndicate held on, tenaciously; but others who had speculated went under. An interesting example of a complex, but typical, land speculation which failed, can be found in the Western Land and Livestock Company, whose history, incidentally, illustrates some of the difficulties of research in this problem. This com-

¹⁹ Gammel, *Laws of Texas*, IX, 881; X, 793.

pany was chartered in Davenport, Iowa, in 1884, by J. S. Keator, who served as its first president, and W. O. Kulp; its operations were financed by Stillman W. Wheelock, a wealthy capitalist of Moline, Illinois. The company acquired a large block of land in Lubbock County from this same Keator and Kulp and began operating the IOA Ranch. Keator and Kulp, Illinois land speculators, had apparently become interested in West Texas lands while the Fifty Cent Law was operative. In addition to their own purchases, they acquired a relatively solid block of over one hundred sections which had been assembled by members of the well-known manufacturing families of Stilson and Case. Eli Stilson and J. I. Case had first acquired about fifty sections of Gulf, Colorado and Santa Fe lands and, then, when the alternate school sections in their area were put on the market, had filed on these. In acquiring title to the Stilson and Case block, Keator and Kulp gave a first lien mortgage to Quincy Shaw, an investor of Boston, Massachusetts. Shaw, incidentally, was the cousin of Francis Parkman and had accompanied the historian on his trip through the West. The mortgaged lands were then sold by Keator and Kulp to the Western Land and Livestock Company, and although the necessary figures are not available, it may be assumed from the fact that Stilson and Case were paid nearly \$2.00 per acre that the two speculators made only a small profit, if any, on their equity and hoped to reap a larger return from the success of the company. The IOA Ranch was a business failure, however; the company had gone into cattle raising too late for the boom and just in time for the ruinous winter of 1886–1887 and the panic in the cattle industry which followed. Wheelock continued to put money into the venture, and in 1894, on his death, actual title to the lands was transferred to his estate. The IOA Ranch and the company were liquidated. In 1900 Shaw initiated foreclosure proceedings, and was awarded a judgment which he sold in 1901 at a substantial discount to T. C. Frost, a San Antonio banker. At the sheriff's sale, the land, carrying the judgment, was purchased for an undetermined price by the Kokernot brothers, San Antonio ranchers, who executed a note to Frost for the purchase. Since at this time the state was still selling land in the county at a minimum price of \$1.00 per acre, the market price paid by the Kokernots was probably not much higher. In summary, although exact figures cannot be found, it is apparent that nearly everyone involved in this particular speculation sustained losses, from the railroad company which first made the survey, to Quincy Shaw who was left holding an uncollectable mortgage.²⁰

Throughout West Texas, similar transactions were occurring, as hundreds

²⁰ Texas, General Land Office, *Abstracts*, VI, 617–628; Lubbock County Deed Records, II, 185, IX, 608 ff, XVI, 583 ff; Edward Noble, "Land Speculation in Lubbock County," seminar paper, Texas Technological College, 1956; Seymour V. Connor, "The First Settlers," in *A History of Lubbock, West Texas Museum Association Journal*, III (1959), 45–67.

of individuals such as George Littlefield, the Kokernots, the Slaughters, and Isaac Ellwood, and companies such as the Matador Land and Cattle Company, the Espuela Land and Cattle Company, the St. Louis Land and Cattle Company, the Kentucky Land and Cattle Company, and others began acquiring large unified tracts of land on which ranching operations were conducted. In 1887, the state restricted all land purchases to actual settlers and required proof of three-years' occupancy to complete the title. Although this ended the era of rampant speculation in large tracts, it neither stopped speculation entirely nor prevented the big operators from continuing to solidify their ranges, for cowhands on the ranches suddenly became "actual settlers" and homesteaders frequently made handsome profits by selling their claims to adjacent ranches.²¹

The state's disposition of its lands in West Texas had forced cattlemen reluctantly to become land speculators²² and land speculators to turn cattlemen. In time the cattle business declined, taxes rose, and many of these holders of large tracts began to try to extricate themselves by waging promotional and sales campaigns to bring settlers and land buyers into West Texas. Thus another stage of speculation followed, of more importance to the development of the state but too involved for inclusion in this paper.

To summarize the early stage, it may be said that in the two decades following the Civil War, a series of erratic land laws had invited wild speculation and had alienated over fifty per cent of the public domain in West Texas. Neither the state nor the speculators accomplished their objectives. The land sales brought little revenue directly to the state treasury, attracted few settlers, and tended to discourage rather than encourage permanent capital investment and development. The speculators, on the other hand, had little opportunity for profit, either during that period or for a quarter of a century to follow, as land prices were kept depressed, and the state's policy of low prices and easy terms was more inviting to small, individual purchasers. Few, if any, who speculated in West Texas lands made much money, and many who became involved lost heavily. The principal result of the early speculative period was the forcing of the large land operators either to enter the ranching business or to sell their lands in large tracts to ranchers. One might almost conclude that, since large scale ranching was the only practical utilization of the land at the time, the result was inevitable, no matter what course the state or the speculator had followed.

²¹ W. C. Holden's "The Problems of Maintaining the Solid Range on the Spur Ranch," *Southwestern Historical Quarterly*, XXXIV (1931), 1-19, is a splendid study of this aspect of the problem.

²² Whether the rancher who acquired large tracts of land may be deemed a "speculator" in this early stage is open to question; the last phase of speculation in West Texas lands, however, focused directly on the big ranches' effort at land sales and land promotion—certainly speculative activity.