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DECISION MAKING AND THE PUBLIC LANDS

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WHO GOVERNS THE PUBLIC LANDS WASHINGTON? THE WEST? THE COMMUNITY?

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Decision Making and the Public Lands

Summary

Public land decision making has never had an operative model. It hasn't worked. From colonial times through the westward movement to modern scientific environmentalism, decisions have left a trail of failure. The failures have broken people, ruined resources, squandered the federal budget and created deep divisions in the body politic.

The resulting stalemate may be a symptom of demoscclerosis, a progressive political disease caused by too much success by interest groups in accumulating and defending subsidies and benefits. To identify the culprit, look in the mirror.

The solution may rest on discovering the values or theological differences that separate us and resolving them through discovery and debate. One might hope that a superior theology could result. The alternative, which has been honored many times in the history of religion, is schism. This would mean breaking up the public lands so that decision making would devolve upon smaller, more distinctly homogeneous groups.

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OUTLINE

I. Decision Making on the Wilderness Frontier

- A. From earliest colonial times resources at the frontier were free to users who were "fustest with the mostest."
- B. Settlers established rules of possession which preceded formal control.
- C. The squatter's pattern was to settle, establish some capital values, sell out and move on.

- D. Tension between the frontier and centers of influence were endemic and would lead to more than one rebellion.
- E. Several of the original colonies ceded their western land claims to the federal government.
- F. National public land policy was established by Congress in the Ordinances of 1785 and 1787 and subsequent Acts.
- G. Except for a system of rectangular survey, reservation of lands for public purposes and plans to enrich the treasuries with revenues from the sale of lands, the occupation of western lands was planless.
- H. The Louisiana Purchase opened vistas of territorial advance to the Pacific. It was followed in rapid succession by Texas, half of the Oregon Country and a large part of Mexico.

II. The Nineteenth Century: An Era of Mal-administration

- A. The continuing battle between the lawmakers and squatters and trespassers resulted in tougher laws.
- B. Congress capitulated in 1841 with a general preemption law recognizing squatter's rights.
- C. Difficulty in making payments for land resulted in laws granting relief.
- D. 1862 Homestead Act ratified the established practices: preemption and free land.
- E. Problems with the Homestead Act were consistently ignored.

1. Most of the lands suited to homesteading had already been occupied.
2. In 1875 the Commissioner of the General Land Office warned that many of the unoccupied lands were unsuitable for cultivation.
3. In 1878 Powell's Report on the Arid Lands suggested a minimum homestead of 2,560 acres for pastoral lands.
4. In 1879 a Public Lands Commission suggested leasing or disposal of arid lands in large tracts.

F. Congress' tolerance of the situation has several explanations.

1. Congress had been burned by the generous railroad land grants of the 1860's.
2. Fears of monopolization of lands by syndicates financed by "foreign" capitalists were a common bogey.
3. Local boosters were not willing to relinquish the dream of a countryside teeming with 160-acre agrarians.
4. Desert Land Sales Act of 1877 allowed tracts of 640 acres to be patented, an object of much abuse.
5. Smaller plots generated more work for employees of the Public Land Office.

6. The Timber and Stone Act of 1878 supplied the demand for timber tracts in California, Oregon, Nevada and Washington.
7. The 1872 Mining Act formalized procedures for patenting of mineral deposits.
8. Liberalization of homestead allowances did occur, but not until 1909 and 1916, first to 320 acres and then to 640 acres. (The Kinkaid Act of 1904 allowed 640 acre homesteads in the Sandhills of Nebraska.)
9. Congress requires 60 years to respond to a deficiency in public land laws.
10. Deficiencies in the laws for disposal of the public domain invited much fraudulent behavior and abuse of resources.
11. Stockmen made a logical response to uncontrolled grazing by fencing the range. The Illegal Enclosures Act of 1885 established Congress' disapproval of fencing.

III. The Evolution of Progressivism and the Gospel of Efficiency.

- A. Great surveys of the American West by Hayden, King, Powell, and Wheeler created much scientific interest in western resources.
- B. Creation of National Park reserves and forest reserves grew out of concern for unprotected resources.

- C. George Perkins Marsh's Man and Nature published in 1864 created interest in exhaustion of natural resources and conservation.
 - D. Scientific management or "Taylorism" became widely influential.
 - E. In 1896 a National Academy of Sciences committee recommended a national forestry policy.
 - F. President McKinley signed the Forest Reserve Act of 1897 creating the Bureau of Forestry in the Department of Agriculture with Gifford Pinchot appointed chief in 1898. Pinchot represented scientific forestry and the "gospel of efficiency."
 - G. "The crux of the gospel of efficiency lay in a rational and scientific method of making basic technological decisions through a single, central authority." (Hays)
- IV. The Rise and Decline of Scientific Management in the Forest Service.
- A. Pinchot, the master political strategist created the myth that the Forest Service was dedicated to scientific management when in reality it was dedicated to political management.
 - B. The Forest Service had many failures by the standards of a scientific organization dedicated to rational analysis and self criticism.
 - 1. The predicted timber famine failed to materialize. Trends have been in an opposite direction (Clawson).

2. It pushed for regulatory powers over private forestry, only to see parts of the industry surpass it some years later in regeneration success (Nelson 1995).
3. Policies on fire suppression and watershed hydrology ignored science for many years (Schiff).
4. It failed to read public demand for parks, wilderness areas and recreational use of forests.
5. Instead of treating the multiple-use concept ratified by Congress in the 1960 Act as a problem solvable by science, it used it as a license for anything it wished to do (Nelson 1995).
6. Its nondeclining even-flow policy led to silly and unreasonable timber harvesting implications (Nelson 1995).
7. It became so hidebound that it had to invent an elaborate procedure called "new perspectives" to discover what it should have been learning from its experiences.
8. It continues to get "dunked" by its own "witch hunts" (High Country News, 8 Aug, 1994).

V. The Bureau of Land Management and the Search for Stewardship.

- A. Western rangeland suffered the ravages of uncontrolled grazing except where stockmen were able to establish individual rights, sometimes extralegally.

- B. Most of the damage of overgrazing had been done by 1900 (U.S. Department of Agriculture 1902).
- C. The visions of the Homestead Act were finally abandoned in 1934 with the passage of the Taylor Grazing Act. The Grazing Service inherited a frightening melange of private and public rights for management.
1. The adjudication process as overseen by grazing advisory boards under the Taylor Act formalized preference rights to grazing allotments - occasionally using the extralegal fences to define allotment boundaries.
 2. The adjudication brought to the stock owners on the public domain formal, near proprietary rights which were to last for nearly 30 years (Libecap 1981).
 3. As a sign of stewardship investment by permittees in their BLM allotments was higher after 20 years of the Taylor Act than on Forest Service allotments. It may be supposed that the regulatory methods employed by the Forest Service to reduce grazing pressure also weakened private incentives for stewardship (Gardner 1963).
 4. Commencing in 1959 the BLM began to publicize the poor condition of its rangelands and to take steps which reduced the certainty of its permittees preference rights. Consequently the incentives for stewardship were diminished (Libecap 1981).

5. Passage of the Federal Land Policy and Management Act in 1976 (FLPMA) consolidated bureaucratic control of the public domain grazing lands in the BLM.
6. Passage of the Public Rangelands Improvement Act of 1978 (PRIA) further elaborated the BLM charge to "manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values."
7. PRIA also set up an initiative to explore innovative grazing management policies and systems that might provide permittees with incentives to improve range conditions. Environmental interests objected to the program as conducted by BLM and the courts agreed in NRDC, Inc. v. Hodel (Huffaker and Gardner 1987).
8. NRDC and the courts believe it is best to keep permittees under threat of cancellation or restriction rather than to promote permittee self-management and secure tenure as the BLM program proposed to do.
9. The opposing view was stated by Kelso in 1952: "As long as the public land manager insists on absolute liberty to alter the use to which grazing land is committed or to change the user to which it is rationed, the private firm user... will distort his inputs toward short-run returns, including deterioration of the land resource."

V. The Illusion of Planning

- A. All of the public land agencies come under The National Environmental Policy Act of 1969 (NEPA) requirement that the government "utilize a systematic, interdisciplinary approach ... in planning and decision making."
- B. The Forest Service derives its mandate from the National Forests Management Act of 1976 (NFMA) and from the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA).
- C. The BLM mandates and criteria for planning come from FLPMA and PRIA.
- D. Both agencies have borrowed their concepts and methods of planning from the schools of land use planning.
- E. Planning in both bureaus suffers from some common problems (Nelson 1995).
 - 1. It has been impossible to develop systems of planning that satisfy the field manager's desire for autonomy as well as central manager's desire for control.
 - 2. Systems of national prices which could establish national priorities are rejected as infringing upon professional judgment.
 - 3. It has proven difficult to avoid "hollow" plans which skirt the critical issues and resolve nothing.

4. Planning does not control budgeting, which can nullify the best plans.
5. Investment planning for resource improvements is a separate stage from the master plan, raising further issues of coordination and consistency.
6. Congress seems disinterested in decisive agency planning; if it were decisive, agency planning would infringe upon Congressional and interest group powers.
7. Planning driven by court mandates fits an idealized concept of decision making and offers little flexibility for new directions from lessons learned.

VII. Advancing Demosclerosis

- A. The broadening interest in the public lands, opening of bureau procedures to public participation, perfection of the professional talents of public interest litigation, lobbying and fund raising have increased the burden of public land administration.
- B. By contrast, when Ferry Carpenter took the lead in drafting the first set of public land grazing regulations, it was between him and a group of livestockmen-meeting in Grand Junction, Colorado in 1938.
- C. Demosclerosis is post war government's loss of the ability to experiment and to adapt. It is directly related to the rise of a "large, sophisticated, professionalized, and to a considerable extent self-

serving" industry dedicated to accumulating and defending subsidies and benefits (Rauch 1994).

- D. Many of the difficulties of public land decision making are indicative of demosclerosis.
- E. The ongoing experience with Range Reform '94 is symptomatic of the disease. After some false starts due to pressure tactics, a detailed package was released and coalition began to work out some details only to result in eventual stalemate (High Country News, 1993 and 1994, especially June 27, 1994)
- F. The ruling paradigm of public land management, the progressive faith or scientific management, may invite demosclerosis due to its logical inconsistencies.

VIII. Scientific or Free Choice Environmentalism?

- A. Scientific management has been adopted by the environmental movement to such an extent and environmentalism has been sufficiently adopted by the bureaus that we can speak of scientific environmentalism as a dominant preference in public land management (see Loomis).
- B. Scientific environmentalism has faith in science and public administration. It supports professionalism, decisive planning and bureaucratic control of the public lands in the public interest, with oversight from the judiciary as needed.
- C. Scientific environmentalism suffers the same flaws as the progressive movement.

It cannot accommodate the daily reality of political interference.

It cannot recognize that the public interest exists only as a collection of private interests.

1. It is a logical impossibility because it cannot be justified economically. As practiced it rejects economic science.
- D. A free choice model for management of the public lands offers an alternative to the scientific model.
1. It would recognize that the public lands user is the ultimate manager of the resource and it would seek systems of rights that would give the user secure opportunities to manage resources on the public lands.
 2. In the free choice model grazing permits would be freely transferable (Gardner 1962, 1963)
 3. Range Reform '94 makes a beginning by broadening the eligibility conditions for holding a grazing allotment and by broadening the uses which can be made of the forage on the allotment.
 4. Range Reform '94 also contains the potential to greatly weaken the allotment holders' security of tenure and consequently their incentives to be good stewards. This continues a trend of the past 30 years with BLM permits and of 95 years with Forest Service permits.

5. The free choice model would look for ways to enfranchise a wider variety of user classes for the hands-on management of allotments.
6. Free choice approaches range science with humility as lacking the answers to issues of range health and sustainable forage management.
7. It recognizes that the properly enfranchised user has a low cost system for gathering information on range management and developing management strategies. It encourages a diversity of management systems, which induces a greater accumulation of knowledge.
8. The free choice model elevates private decision making and initiative to a prominent role in public land management.
9. Public land management by the states has generally placed more reliance on private operators than does the federal model and it has produced net revenues for the state treasuries.

IX. A Question of Theological Differences

- A. Public land decisions are in considerable degree decisions about social values. If we cannot have a set of science based prices that reflect social values, then all decisions become political decisions which strike a balance among competing values.
- B. As a matter of choosing among alternative values, political decisions begin to deal with theology, albeit a mostly secular theology.

- C. Public lands decisions have been affected in the past two centuries by many of the great secular theologies.
1. Agrarian fundamentalism.
 2. Manifest destiny.
 3. Populism.
 4. Scientific management.
 5. Conservation and the gospel of efficiency.
 6. Park preservation.
 7. Wilderness preservation.
 8. Deep ecology.
 9. Biological conservation.
 10. Sustainability.
- D. Faith in scientific environmentalism or in free choice environmentalism is based on theology.
- E. Until we can discuss the theology of public land management and make a choice among competing theologies that will seem to lead to a better path, we will continue to stew in a divisive, costly, damaging muddle of decisions on public land management.
- F. In the end we may decide upon the course of breaking up the public lands into separate fiefdoms. Schism is a time-honored response to irreconcilable religious differences.