

american Landmark Legislation

PRIMARY MATERIALS

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volume 1

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Manufactured in the United States of America

To my Harvard Law School 1950 classmates :
Herbert Glaser, Richard K. Fink, Gerald Halpern
and Robert B. Ross on the occasion of our
twenty-fifth anniversary, 1975.

INTRODUCTION TO THE SERIES

The legislative background of our country reflects its past, its critical events, conflicts, and problems. More than this, legislation has a central place in America's governmental system. Acts of Congress increasingly control every citizen's political, social, and economic life. In selecting the laws for this series of Landmark Legislation, the editor used two criteria. The first of these was the important national significance they had at the time Congress passed them. Secondly, these laws carry principles that continue to be of great import to one dimension or another of American life. Even when particular laws are no longer in effect, either because they accomplished their purpose (*viz.*, the Homestead Act of 1862) or were declared unconstitutional at a later point by the judiciary (*viz.*, the Civil Rights Act of 1875), their legislative history helps us deal with contemporary issues. Thus public land use and civil rights have something of their genesis in the Homestead and Civil Rights Acts of the nineteenth century.

This series will provide general readers and students, as well as professional workers, with primary legislative materials not now readily available except in the largest library systems. And even there, the task of sifting out and distilling the specific and relevant materials takes skills, time, and energy a very limited number of people have. Hopefully, the Landmark Legislation series will make a study or investigation of these important pieces of legislation a pleasurable as well as a viable pursuit.

Reproducing as we have the actual legislative and judicially-related materials will give readers a sense of authenticity as well as "flavor" that cannot be conveyed with ordinary narrative texts.

The full, unabridged, and unedited primary sources are offered for each of the statutes covered. Editing or abridging would have resulted in selection, which in turn reflects an editor's point of view. While unedited accounts require the reader to wade through more than he may be looking for or wants to know, they have the advantage of alerting him to information he did not know existed and should have! In any case, the full reproduction of the congressional debates during the session of the Congress that passed the law is a feature of this series that distinguishes it from anything presently available.

Each "landmark" statute is preceded by a detailed narrative legislative history prepared either by the editor or adapted from an authoritative source. Following the statute are a variety of pertinent documentary sources. In addition to the complete congressional debates already mentioned, there are committee reports,

presidential messages, **contemporary news or editorial** accounts, and finally, judicial decisions that either interpret the legislation or some part of it or deal with its constitutionality. Together, such a set of materials relating to America's leading legislative enactments will fulfill a great variety of needs and purposes among our citizenry.

Irving J. Sloan
Scarsdale, New York

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THE HOMESTEAD ACT OF 1862

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Introduction

For many who immigrated to the United States, plentiful and fertile land was the prime consideration for undertaking the uncertain and perilous journey across the Atlantic. Commonly accepted as true was an international fallacy that in America a parcel of land could be obtained merely by settling on it. In that very rudimentary presumption lies the genesis and foundation of the free-land concept in the United States.

For those wide-eyed immigrants and restless Americans who swept through and beyond the Appalachian Mountains, vast and unpopulated land only validated the wondrous stories they had heard over and over and encouraged squatting as well as requests for free land. Somewhere underfoot as these people moved westward were the beginnings of the agitation in and out of Congress for free land during the first half of the nineteenth century.

The boundless expanses of uncultivated and seemingly ownerless land invited preemption, or as it was often called--squatting. This became a customary means of establishing a prior right to a parcel of land by thousands of settlers. As early as 1776, in writing about squatters, Thomas Jefferson prophetically observed:

The people who will migrate to the Westward . . . will be a people little able to pay taxes . . . By selling the lands to them you will disgust them, and cause an avulsion of them from the common union. They will settle the lands in spite of everybody,--I am at the same time clear that they should be appropriated in small quantities.

During this early period, Congress recognized the rights of the "ancient inhabitants" of the old Northwest and other parts of America settled by citizens who did not have clear title to the land. This was a very early recognition of the rights of squatters.

Between 1801-1854, Congress, recognizing the difficulty of controlling squatters, passed a series of laws legalizing preemption of public lands. In each successive law, the regulations concerning squatting became progressively more liberal, until in 1854-1855 preemption was even allowed ahead of survey. The laws did require an eventual payment of the minimum prevailing statutory price for the land. Inherent in the settlers' locating on the land without a title, however, was the fact that many assumed a natural right to a part of the unlimited supply of fertile land and felt that only by squatting could they hope to raise enough money to make the required

payment for the land. This premise that the land belonged to the people and that they had every right to a small parcel was one of the principal arguments later used in advocating passage of a Homestead Act.

Also, a part of the early history of the free land concept in America was the various petitions to Congress for donations of land. In 1797, a body of citizens in Ohio asked the Congress for an outright grant of land. In exchange they would agree to settle, cultivate, and improve it. This became a rather popular, but not always successful, method of attempting to obtain free title to land, particularly between 1797 and 1840.

On October 2, 1790, a group of citizens from Natchez, Mississippi Territory, petitioned the Congress for a sizable grant of free land. They wrote:

We . . . Pray that the Honorable Congress will be pleased to pass an act confirming to the citizens of this Territory all grants of land legally, fairly, and justly, obtained, prior to the final ratification of the late Treaty with Spain --and that a reasonable portion of the land as to your honourable Body shall deem proper be granted to all occupants, actual settlers, as well as immigrants since the Treaty, as those long settled by permission of the Spanish Government--on the law and easy terms of the customary fees of office and survey--.

The Natchez petition is especially important for an understanding of the growth of the homestead concept, because the residents of that unsettled territory presented two arguments that would often be used in later years in defense of the "free land" legislation. The "Natchez" argued that a grant of land would be of special benefit to the nation. Secondly, they asserted, the availability of free land would act as an incentive to settlement in that unsettled region and that settlement would in turn assure to the nation the necessary manpower to protect the territory against Indians as well as foreign attacks. Both arguments were meritorious and logical at that particular moment in American history.

There did exist an Indian problem on the frontier. Furthermore, Spain held the area west of the Mississippi that we would one day acquire by the Louisiana Purchase. Its presence was generally looked upon as a constant, if latent, threat to the bordering states and territories. Within one year after the Natchez petition, France was injected into our expansion and internal affairs picture when Napoleon obtained Louisiana from Spain. President Jefferson and others foresaw the possibility of a British invasion of Napoleon's province, and to evade such an issue we bought Louisiana, doubling the size of the United States territory at once.

Petitions similar to the Ohio and Mississippi pleas were frequently sent to Congress. Alabama was notably persistent in requests for land donations. Arkansas sent a rather elaborate petition to Washington in 1833 spelling out in some detail the wisdom of free land grants. They informed Congress:

Believing, as we do, that a dense population is the most efficient barrier against a savage foe, we will suggest the utility of making donations of land to actual settlers who have or may remain for the term of five years... This would be a means of drawing to our border large numbers of hardy pioneers... (and) obviate the necessity of keeping up the military posts on our frontier... A dense population on our frontier that would be permanent, will greatly enhance the value of the adjacent lands, and, indeed, add much to their value throughout the Nation.

Still, the irony is that during the 1830s the southern states, which would later oppose free-land legislation, most frequently petitioned Congress for land donations.

In the early 1840s, Congress eventually recognized the value of giving free land as an incentive to settlement and made liberal donations, first in Florida, then at later dates in Oregon, Washington, and New Mexico.

From time to time during the thirty years following the Revolutionary War, Congress gave free grants for specific purposes to individuals. Such was the case in grants to General Lafayette, Lewis and Clark, Daniel Boone, and others. Land, not medals, was the nation's recognition of its heroes. The individual grants generally were given as a reward for outstanding service to the nation. These early practices of the Congress would be the precedents for those proponents of the homestead law who would argue that land should act as a reward to those risking the uncertainties of the wilderness frontiers in opening the country to settlement and eventually developing the area for the common good of the whole nation.

Each of the early free grants of land had numerous underlying factors. But the very fact that they were given during a period when the public land was primarily considered as a source of revenue foreshadowed the possibility that a universal law for free land distribution would some day come about.

A petition to Congress from citizens of Ohio might suggest the feelings of a growing number of Americans in the post-Revolutionary War period. The petition noted: "... we are poor and suffering while thousands of acres of land the property of the United States are lying unoccupied."

This simple plea--whether true or not, whether extensive or

in self-interest--expressed a feeling countless thousands of landless citizens throughout the country would share. The great expanses of unoccupied land stood as an unexplainable phenomenon that seemed to demand an answer to the question: "Why can't I settle on the unbroken land and make it productive?" It was a question elected officials found difficult to answer. To immigrants, who experienced the scarcity of land in Europe, the thought of allowing the fertile soil to remain uncultivated seemed wrong. Of course, the questions went unanswered and the settlers contended themselves with pre-emption and free land petitions.

Some politicians recognized a political value in the increasing demands for land by the citizens and built a political career on the cry for a liberal land policy. Perhaps no man in public life during the first half of the nineteenth century, with the exception of Andrew Johnson, devoted himself more consistently to the question of a graduation in the price of the public land and free homesteads than did Thomas Hart Benton of Missouri.

Benton, constant in his efforts for a liberalization of the United States land policy, became the champion of the western land-conscious electorate. In this respect, he was the first member of Congress to advocate legislation similar to the Homestead Act of 1862. During his thirty years in Congress, he laid the foundation for the popular acceptance of the idea of free land.

In the late 1820s three plans for the disposition of the public lands were introduced in Congress. Their sponsors were Henry Clay of Kentucky, John Calhoun of South Carolina, and Benton.

Henry Clay, by birth a frontiersman and by inclination a friend of the industrial East, tenaciously asked Congress to consider and pass a plan for the distribution of the proceeds to the states from the sale of the public land. While Clay was successful in obtaining passage of a distribution plan in 1841, President Jackson's "specie circular" of 1836 had for all practical purposes destroyed any hope of getting a profit from public land sales.

John Calhoun, who opposed distribution of the revenue, and price graduation, advocated cession of the public land to the states for whatever purpose they would deem practicable and in the interests of the nation. Calhoun was never successful in accomplishing passage of his cession plan. Like Clay and Benton, he was a victim of the growing sectionalism that was becoming a part of the national political scene, a sectionalism that was to play a significant role in the course of affairs in public land legislation in general and the homestead movement in particular.

To all three, for different reasons, the public land was extremely important. Calhoun best expressed what obviously must have been the sentiment of the three men when he said, "I regard the question of the public lands next to that of the currency." Each of

the three might have been charged with attempted use of the public land as a political lever.

Calhoun at one time was willing to vote with the West for a liberalization of the land laws in return for support of a low tariff. Clay compromised certain of his earlier demands in successfully pressing the important land act of 1841 through Congress. The West, while in the minority, enjoyed the rather enviable position of holding the balance of power in Congress over the two older established sections.

But of the three, it perhaps was Benton who most influenced the course of events leading up to the passage of the Homestead Bill. In his autobiography, he wrote:

I do not know how old, or rather, how young I was, when I first took up the notion that sales of land by a Government to its own citizens, and to the highest bidder, was a false policy, and that gratuitous grants to actual settlers was the true policy, and their labor the true way of extracting national wealth and strength from the soil. It might have been in childhood when reading the Bible, and seeing the division of the promised land among the children of Israel: It might have been later, and in learning the operating of the feudal system in giving land to those who would defend them; it might have been in early life in Tennessee, in seeing the fortunes and respectability of many families derived from the 640-acre head-rights which the State of North Carolina had bestowed upon the first settlers... And when I came to the then Territory of Missouri in 1815 and saw land exposed to sale to the highest bidder, and lead mines and salt springs reserved from sale, and rented out for the profit of the Federal Treasury, I felt repugnance to the whole system and determined to make war upon it whenever I should have the power.

Benton secured the necessary power when he was elected to Congress in 1820. Five years later he introduced a resolution asking the Committee on Public Lands to consider investigating the possibility of granting free land to settlers. In his resolution of inquiry, Benton suggested that land that the government had put on the market and that remained unsold for a certain number of years should be granted to settlers. He also informed the Congress that he intended to introduce a bill to the same effect.

This he did in March, 1826, thirty-six years before the Homestead Act was passed. In introducing this bill, he told Congress:

The bill which I have introduced, embraces two principles--sales upon fair terms, and donations to actual settlers. They are intended to accomplish the double purpose of paying off the public debt, and increasing the population and wealth of the country.

The approbation of these principles, though rapidly advancing upon the public mind, is not yet universal. Some objections are . . .

1. That the settled States will be depopulated
2. That speculators will be encouraged
3. That monopolies will be created
4. That former purchases will be injured
5. That it is better to wait for a rise (in price of land)
6. That the lands are pledged to public creditors.

Benton's bill called for a graduation in the price of land in proportion to the amount of time it had remained on the market and unsold. He proposed the remaining unsold lands should then be given to settlers. In his speech, he answered each of the six objections to free land, but they are not as important as are the list of objections, because by and large these same six remained as the principal reasons the opponents of free-land legislation used in blocking passage before 1862.

The bill aroused little or no interest in Congress, and with the exception of merciless criticism by his fellow senator, Thomas Barton of Missouri, the Benton bill went almost unnoticed. Barton, in a Senate speech, flayed the Benton plan and called it "a compound of electioneering and speculation." He was successful in ordering that the bill be laid aside.

While Congress exhibited little interest at the time in the Benton proposal, it caught on outside of Washington, and several states notified Congress of their support. Missouri, apparently siding with Benton rather than Barton, was quick to forward a formal document from the state legislature strongly supporting the bill. Rather pointedly, Missouri informed Congress:

This General Assembly assures your honorable body that the passage of such a law would, in their opinion, not only promote the strength and prosperity of this frontier state, but the happiness of thousands who from want of pecuniary means are compelled to remain in an anti-republican state of dependence on rich landlords . . .

Those in favor of price graduation and land donations were further encouraged in 1828 when the House Public Lands Committee favorably reported Benton's earlier resolution. The committee recommended:

That small tracts of eighty acres be given to the heads of such families as will cultivate, improve, and reside on the same for five years. This proposition has recommended itself to the consideration of your committee by a knowledge of the fact that there are many families who are neither void of industry nor of good moral habits, who have met with the usual share of the difficulties always accompanying the settlement of a new country, and who, living very remote from market, never expect to see the day arrive when they will be enabled to save enough, with all their efforts, from their means of support, to purchase a farm and pay for it in cash. Besides, your committee believes that such small earnings applied to the improvement and cultivation of small tracts, scattered through the public domain, would be as advantageous to the public as though they should be paid directly into the treasury. No axiom in political economy is sounder than the one which declares that the wealth and strength of a country, and more especially of a republic, consists not so much in the number of its citizens as in their capability of bearing arms, and of sustaining the burdens of taxation whenever the public exigencies shall require it . . .

The committee, some thirty years ahead of the times, recommended, in essence, what was later to become the Homestead Act. The report, while not accepted by the Congress, did much to encourage further action on the part of those in favor of free land.

During the early 1830s, Clay, Calhoun, and Benton intensified their feud over the public land question. However, in spite of the widespread opposition to graduation and donations in Congress, there was considerable popularity among the electorate of the western states, in labor circles, and among various groups scattered throughout the East.

Indicative of the subdued but relentless interest in a more liberal federal land policy was President Jackson's message to Congress in 1833. The presidential recommendations on the public lands embraced an old idea. It gained stature now because never before had it been publicly espoused by a president of the United States. Jackson suggested:

It seems to me to be our true policy that the public lands shall cease, as soon as practicable, to be a source of revenue, and that they be sold to settlers in limited parcels, at a price barely sufficient to reimburse to the United States the expense of the present system and the

costs arising under our Indian compacts . . .

The adventurous and hardy population of the West, besides contributing their equal share of taxation under our import system, have, in the progress of our Government, for the lands they occupy, paid into the Treasury a large proportion of forty millions of dollars, and, of the revenue received therefrom, but a small part has been expended amongst them. When, to the disadvantage of their situation in this respect, we add the consideration that it is their labor alone which gives real value to the lands, and that the proceeds arising from their sale are distributed chiefly among states which have not originally any claim to them, and which have enjoyed the undivided emolument arising from the sale of their own lands, it cannot be expected that the new states will remain longer contented with the present policy, after the payment of the public debt. To avert the consequences, which may be apprehended from this cause, to put an end forever to all partial and interested legislation of the subject, and to afford to every American citizen of securing an independent freehold, it seems to me, therefore, best to abandon the idea of raising a future revenue out of the public lands.

A year before Jackson's startling policy proposal, the Commissioner of the General Land Office, Elijah Hayward, in a statement to Congress on donations of land, noted that more than 224,000 acres had been granted to individuals. This was but a fraction of 1 percent of the total public lands held by the federal government. He told the Congress that the lands had to be considered as more than a revenue agent for the Treasury; there was every indication that he was in favor of the "development" concept in public land administration. This concept was simply one, whether in the form of donations to individuals for settling on and improving the land or to private corporations for internal improvements, that would use the lands as an incentive to development of the unpopulated western part of the country.

American labor, in the process of organizing, joined in the demand for free land. One of the first signs of labor's interest in free-land legislation appeared in a short booklet by a utopian labor leader, Thomas Skidmore. In a volume entitled The Rights of Man to Property for Its Equal Transmission to Every Individual of Each Succeeding Generation, on Arriving at the Age of Maturity, Skidmore recommended a free-land-distribution theory, much of which was later to be used extensively by organized labor. It was the first of a series of books, circulars, and pamphlets distributed by labor