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The Unequal West

Looking back...looking forward. The rural kids were right.

By Stephen L. Wilmeth

Suggesting that the forces arrayed against the American West have been and are in the process of destroying its former self is no longer a suggestion. It is a truism.

The story must start without reference to date or time, but change their names and the actors will remain the same. Kids raised in the country in the mid-20th century are good choices for the leading roles because they represented a measurable remnant of independent Americana that is now much depleted.

They were prone to say “Yes, Ma’am” or “No, Sir” without being prompted. They packed their own pocketknives by the time they were nine years old. They were taught gun etiquette from the time they were even younger. They witnessed moments of death and life in real time. They learned to drive with or for their grandparents before they

could reach the pedals. They washed their faces and hands and combed their hair before they sat down to eat dinner. They ate what was put in front of them. Through it all they learned to trust and rely on each other, and they always knew their lives were better than those poor souls who lived in the city. In fact, those city kids could just stay there. Having to entertain them was as bad as taking a whipping. They just didn’t understand the rural way of life, much less arriving and trying to enter that realm as equals.

Of course, they were warned by threat to their lives to be nice when those naïve outsiders arrived to visit, but the nagging realization was always that being city stupid had real-life consequences.

Looking Back...Looking Forward

The question of how many Founders under-

stood the scope and intent of the Constitution is a good one. That question posed today would get an answer, but it is generally realized that professional office holders are constitutionally illiterate. That conclusion could be debated, but the ownership of the West has priority. Statehood is the place to start.

Too few words are written about the process of becoming a state. Leadership after the Revolution still had contact with the Founders who were raised under the tyranny of King George. That was important. Initially, the process to statehood was hit and miss, but in 1787 a writ for a minimum population of 60,000 was set. The populous needed to be capable of managing a state government, they had to create a constitution, and they had to enlist federal legislators to carry the action through Congress.

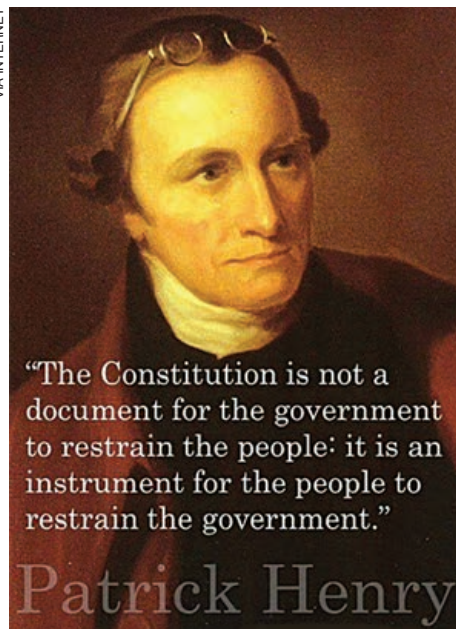
In an era that abhorred debt, the demand

was to create an economy, grow it to support themselves, and then contribute to the reduction of debt. This concept elevated the citizenry to sovereign status with their freedom being manifested by the accrual and rights of private property. Land transfers in various forms were critical.

When Congress attempted to alter course and withhold lands to the citizenry of the Northwest Territories (consisting of Illinois, Indiana, Michigan, Ohio and Wisconsin as well as part of Minnesota), the people stood their ground and declared they would go on their own if that breach of promise was upheld. Washington blinked and those territories became free and equal states.

Adherence to originality continued until California was admitted into the Union in 1850 (remember, Texas had arrived in 1845 under the demand it would come only based on complete and full title to its lands). Califor-

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nia accepted what became a federal sleight of hand and entered the Union with 42 percent of its sovereign ground held in trust by the United States.

In 1864 all promises were ended when the Republicans needed three electoral votes to secure another Lincoln term. Perhaps more sinister was too many congressmen learned that silver was discovered in Nevada. Such treasure could never be entrusted to mere citizenry, and the state was welcomed with hooch and banners into the Union with fewer than 40,000 free and willing souls. The United States further incubated the Silver State's wealth by withholding 81 percent of its lands from private ownership.

The floodgates were opened, and all pre-



ABOVE: Country kids often learned to drive with their grandparents before they could reach the pedals.

tense of free and equal states ensued in the formation of all other states west of the 100th meridian. That included Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. Whereas governments in states east of the 100th meridian own about 4.5 percent of the land surface, the conditional territorial and unequal states of the West can boast only 39 percent of their footprint in sovereign private ownership. Government claims 61 percent of the land.

What that means to tax harvest, collateralized ownership potential, and those tenets that the Founders envisioned in the Constitution is a body of citizenry that has woefully underperformed in the promise of growth in their own economy and the collective reduction of debt. It is a breathtaking betrayal.

As a result, the American model and its framework has evolved from originality to a collage of free and equal versus territorial and unequal states. It all happened over a period of 85 years. The changes are ongoing, but arguments can be made that the Forest Reserve Act

of 1891 allowed President Theodore Roosevelt to declare forest reserves without limits by executive power. That was a watershed event and that president shocked his most conservative supporters with the declaration of almost 150 forests totaling over 150 million acres.

His unilateral crusade was finally halted in 1907 in the General Revision Act (GRA) when it was ordered that any further designation would be undertaken only by congressional action. Unfazed, a cadre of legislators led by Iowa's John Lacey initiated debate and closed-door discussions to craft another authority by the president's office to designate protections by executive order. The Antiquities Act of 1906 was passed. The objects were changed from forest reserves and forests to national monuments. It was then carefully couched in congressional debate to be intended only for singular objects and/or purposes as opposed to the wholesale recruitment of thousands, and even millions, of acres. Lacey assured his colleagues the GRA was intended only "for those old cliff dwellers."

Section 2 of the Antiquities Act was pur-

posely crafted to assuage such concern when it authorized the president “to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned and/or controlled by the government of the United States to be national monuments.” Furthermore, these objects were to be protected by reservation of “the smallest area compatible with the proper care and management of the objects to be protected,” setting forth in clear terms that only the minimum land necessary to protect the relevant historic or scientific features was intended.

The ink was barely dry on the parchment before the legislative promise was breached and he was off continuing his unilateral, massive acreage withdrawals across the West.

Before Roosevelt left office, he continued removing grand swaths of federal lands in the West from trespass when he designated the 61,000-acre Petrified Forest National Monument in 1906 and the 800,000-acre Grand Canyon in 1908. The process continued unabated into the modern era with 140 national monuments designated and an unknown acreage, although one estimate puts the tally at over half a billion acres of combined territorial and marine surface acres. The entirety of these designations was done without congressional hearings, without a single National Environmental Policy Act compiled, or even a congressional vote cast. It has come by the stroke of a presidential pen.

The consequences are well known to the American West. It has been both the genesis and the ever-expanding center of this extra-constitutional and extra-legal environmental-socioeconomic thievery. The environmental community will always refer to the Property Clause of the Constitution as the authority for the government to retain lands. Indeed, the clause gives Congress “power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.”

The residents of the territorial and unequal states of the West, however, should remember that Section 8 [17] of Powers Granted to Congress limits federal ownership to a parcel 10 miles square (District of Columbia) as a seat of government of the United States, “and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings.” There is no enumerated power to hold

millions of acres of lands within states. Only territories are subject to such wholesale retention.

This brings up a huge issue. By definition, a territory is a subnational administrative entity that is overseen directly by government. It has no sovereignty unto itself. It is overseen by federal agencies with no elected official sanctioned by the citizenry.

Noted hereinabove, though, 61 percent of the West is overseen by unelected federal officials. Until the recent Supreme Court ruling on the Chevron Deference, agencies wielded great and substantial authority to write their own versions of rules and regulations. In effect, their enforcement actions can only be described as practicing territorial law over the majority of all those lands. If it doesn't carry



Nothing exists in straight lines in nature. Isn't it interesting a nearly straight line framed around the 100th Meridian clearly separates the free and equal states of the Union to the East from the territorial and unequal states of the West?

territorial status, such governance must be recognized as extra-constitutional. There was good reason why the Framers didn't want government in the land business.

Wolves Come in Different Clothing

The absence of the dominion of private property in the West only strengthened the authority of government land agencies. They filled voids. They enlisted allies. Entire industries evolved as the protectionist groups found willing partnerships with what today is the environmental movement. Although the impact of the role of Washington bureaucrats was known, only recently has the curtain been drawn to reveal the full measure of evil.

The recent revelations around USAID have shocked any objective thinkers. At the time this was written, it was known that taxpayer money distributed by the now-gutted agency went out to upwards of 1,300 non-governmental organizations largely aimed at denigrating and dismantling all multiple use on these lands. As these power brokers gained authority, they became integral with agencies

and like-minded elected officials to conceptualize, recommend, support, and write white papers and laws for myriads of antagonistic private property causes. They long ago became a robust growth industry. In the absence of the strength of sovereign citizens, such work evolved to form the bases of policies, laws and regulations governing every aspect of land management. The same process has funded and garnered support and propaganda leverage through the media (an example is the millions of dollars of allied print subscriptions paid by USAID).

Through layers of bureaucracy, the funds were farmed out through grants and direct payments. The labyrinth of distribution schemes was, in part, a purposely remote or unsupervised system that started long ago but gained normalcy status in 1946. That was the last year a sitting president and/or his staff had access to any audit or control measures of the Treasury's payment process. With the billions of dollars that have been spent to install this ensconced kingdom by taxpayer money, the citizenry and physical features of the West have suffered irreparable damage.

Perhaps the best example of what has taken place on western lands by the federal dominion is to briefly draw attention to the Federal Land Policy & Management Act of 1976. This was the act that altered promised disposal of federal lands upon statehood to the environmental dream of retaining the majority of the West for unelected management. It was done by complicit representation without a constitutional amendment. Implicit in this isn't the fact that 61 percent of those lands are held by government in one form or the other, but what the requisite model requires to achieve such an ephemeral summit of environmental Valhalla. It is a treatise on full protectionism. The clue is what it allows on public lands as opposed to what it prohibits. A word count reveals that only three percent of the text sets forth what is allowed by free Americans. The remaining 97 percent can be argued as to what they cannot do.

It now appears that those elders demanding rural kids to be nice to their stupid city counterparts should have taken a different tact. ■

Stephen L. Wilmeth is a rancher from southern New Mexico. He says: "It is objectively possible that the American West not only accelerated the environmental movement, but it could be the genesis. There are implications. There can be no representative republic if there is no dominion by private property and holders of private property rights."