A Review of Public Land Policy: How Federal Control is Detrimental to the States

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Currently, the United States of America is the third largest country in the world, following Russia then Canada, with over three million square miles that contain many natural resources. While much of this land is held by the respective states or by private entities, the federal government holds a vast portion as well. In fact, the federal government owns almost a third of the total landmass of the United States of America, over six hundred million acres (O’Toole, 1999). These holdings by the federal government are disproportionally located in the western states. According to Nelson (2012), the federal government’s holdings are about fifty-eight million acres in Nevada, (83% of the state), forty-five million in California, (45%), thirty-four million in Utah (65%), thirty-three million in Idaho (63%), and more than twenty-five percent in New Mexico, Arizona, Colorado, Montana, Oregon, and Wyoming. These holdings by the federal government seem to place the western states in an inferior status compared to the eastern states, relative to the amount of control a state has over the land within its borders. With such a vast area of land, the federal government has come up with ways to manage the land by enacting land policies through Congress. Many of these policies predate the creation, or even territorial possession, of the states mentioned above, as land policies date to before the creation of the Constitution. These original policies were in practice for the early part of American history. However, beginning in the late nineteenth century and culminating in 1976 under the Federal Land Policy & Management Act, the United States Congress has slowly but drastically altered the land policies to the point where they would look foreign to the Founding Fathers who laid out the original land policies. This essay will show how the land policies of the federal government have undergone transformation over time and will explore the implications of such changes.

At the time of the American Revolution, the British claims in North America extended beyond the western borders of the thirteen colonies all the way to the Mississippi River. Subsequently, an issue arose between the states in the Continental Congress regarding the claims of some of the original states to these western lands. Seven of the original states had land claims that extended westward, and many were overlapping. On the other hand, the six smaller states had no western claims and were fearful of domination by the larger states. Consequently, Maryland objected by refusing to sign the Articles of Confederation unless these western claims were abandoned. This issue threatened the cohesion of the Union. As a result, New York became the first state to agree to cede its western claims to the central government of the Untied States in March 1780, later to be accepted by Congress October 29, 1782. To facilitate this issue “a committee of the Continental Congress prepared a resolution which implored those States still asserting claims to western wastelands to follow New York’s lead and cede their claims to the United States as well” (Howell & Redd, 2005, p. 43). In response to New York’s cessions, Maryland signed the Articles of Confederation, and shortly thereafter, the Continental Congress adopted the Resolution of October 10, 1780, in which the United States laid out the beginnings of federal land policy.

Eventually, all the other states claiming western or crown lands ceded their claims to the United States central government at various times between 1782 and 1802, in benefit of the Union as a whole. “Thus the wide western domain became the common property of the states and a bond of union at a times when the life of the new nation depended upon a harmonious relation of its parts” (Hibbard, 1965, p. 9). This land made up the original public domain and was held as territories of the United States, not full members of the Union with all that entitles. That is not to say that these territories were to be held in such inferior status perpetually, as the territories were to organize then apply for statehood. The Continental Congress further passed a series of measure during the 1780’s regarding the public domain and qualifications for statehood. In particular, the Northwest Ordinance of 1787 set forth federal policy in respect to the territories of the United States.

The Continental Congress enacted *An Ordinance for the government of the Territory of the United States* *northwest of the River Ohio*, more widely known as the Northwest Ordinance, on July 13, 1787. While the title may be misleading in that it refers to the land northwest of the Ohio River, it nevertheless became the basis of territorial governance throughout the expansion of the United States. The Northwest Ordinance laid out criteria on territorial governance and eventual statehood. First, the Northwest Ordinance called for temporary federal governance over the territory. In Sections 1, 7, & 12, the Ordinance stated that the territorial government of the public land was to be temporary. Second, the ordinance provided for admission of new states made from this territory into the Union of States on equal terms. “Whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever…” (*An Ordinance*, Art. 5, 1787). This establishes the ground rule for admission of new states in the Union.

Furthermore, in Article 4, the Northwest Ordinance calls for the eventual disposition and extinguishment of federal title to the land. “The legislature of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers” (*An Ordinance*, Art. 4, 1787). Clearly, the Northwest Ordinance did not intend for the federal government to retain ownership of all the land that was ceded to the Union during those early days of the Republic. In fact, the Ordinance intends the exact opposite, it intends for the federal government to eventually turn over ownership in a variety of ways. Additionally, the Ordinance calls for all future states admitted into the Union to be equal with respect to their rights and sovereignty as the original thirteen states that claimed independence from Britain. Yet, as noted previously, the western states seem to be unequal to the eastern states when referring to the jurisdiction over the land within their borders because the federal government has not disposed of their holdings as was required. Moreover, as shall be shown, the federal government has come to declare that it will retain all public land in federal ownership indefinitely. However, before examining such changes, the United States Constitution should be examined.

Just two months after the passage of the Northwest Ordinance, the states’ delegates held a convention to revise the Article of Confederation; instead the delegates ended up discarding the Articles of Confederation and drawing up a new constitution. So far, this essay has examined documents from before the adoption of the Constitution on September 17, 1787. The fact that these land ordinances predate the creation of the Constitution may call into question the legality of such ordinances under the new government and constitution. However, this is not the case as can be shown by examining the Constitution. First off, the Debts and Engagements clause provides that, “all debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the Untied States under this Constitution, as under the Confederation” (US Const., art. VI § 1). Certainly, the resolutions passed regarding the public domain, like the Northwest Ordinance, are prior engagements the states entered into, therefore under Article VI of the Constitution they are still valid.

Furthermore, certain parts of the Constitution can be seen to reflect these pre-constitutional engagements. Regarding the creation of new states out of the territories, the Admissions clause says “new states may be admitted by the Congress into this union” (U.S. Const., art. IV § 3.1) and that “the United States shall guarantee to every state in this union a Republican form of government” (U.S. Const., art. IV § 4), which was specified under the original agreement to cede the western claims to the federal government.

Additionally, that the federal government is to dispose of title can be seen in the Property Clause which states “the Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory of other property belonging to the United States” (U.S. Const. art. IV § 3.2). Importantly, while the Property Clause grants the federal government the power to make all needful rules and regulations respecting the territories, that power must be in concordance with the disposal of the land from federal title, just as the earlier ordinances specified. Certainly, the original land policies adopted during the Confederation continue to hold true under the Constitution as well. Therefore, the land ordinances still applied to the land, with few exceptions, that was acquired throughout the expansion of the United States.

Obviously, the landmass of the United States has greatly increased since Independence from Britain. Some land was bought, some gained by treaty, and right of conquest won other land. While the story of westward expansion is widely known to Americans a brief review is still merited, as most of this land became part of the public domain. The first acquisition of land by the federal government after the original ceded land from the States was the Louisiana Purchase. In 1803, President Thomas Jefferson purchased the Louisiana territory from France, almost doubling the size of the United States and gaining the valuable port of New Orleans. Eventually, all or parts of thirteen states were created from this purchase. Similarly, the United States purchased land from Spain, that sold what is today Florida in 1819. However, the next acquisition came about in a different way.

Texas was originally part of Mexico but revolted after much American settlement and became independent, and “wanted to join the Untied States at once, but arguments over slavery in the Congress held up acceptance of the treaty until 1845. In the meantime, Texas was an independent republic” (Clawson, 1968, p. 40). Since Texas was its own sovereign country, it was able to negotiate terms on entering the Union. One was that little of the land within the State was to be ceded to the federal government, but over ninety-eight percent would stay in the possession of Texas. Thus, Texas was never a public domain state, though Texas did sell some of its western and northwestern land upon statehood to the United States, which became part of the public domain. Eventually, the land sold by Texas became parts of New Mexico, Oklahoma, Kansas, Colorado, and Wyoming. While Texas was irregular, the next addition was more conventional.

The Pacific Northwest was sought after by the United States and Britain; however, in 1846 the two concerned parties signed a treaty giving control of the northwest to the United States. Eventually, the Pacific Northwest became the states of Washington, Oregon, Idaho and parts of Montana and Wyoming. Additionally, the United States gained the Southwest from Mexico after winning the Mexican-American War when the Treaty of Guadalupe-Hidalgo was signed. Though the war was won, the United States still paid Mexico for the land that was gained. A few years later, the United States initiated the Gadsden Purchase with Mexico, which added a small strip of land on the southwest border. The land acquired from Mexico eventually became the States of California, Nevada, Utah, and large parts Arizona, New Mexico, Colorado, and Wyoming. The last large acquisition of land by the United States was Alaska, which was purchased from Russia in 1867. Interestingly, the last state, Hawaii, “was an independent nation which joined the United States at its own request” (Clawson, 1968, p. 43), similar to Texas. The above-mentioned land acquisitions account for the fifty states, however, the United States has acquired more land other than the states.

Other additions were made to the United States as well. Puerto Rico, Guam, and for a time the Philippines were all a result of the Spanish-American War in 1898. The Virgin Islands, islands in the Pacific were acquired as well. However, “these extra-continental possessions (including Hawaii) never had a public domain in the sense that the public land laws were applicable to them” (Clawson, 1968, p. 43). Clearly, over the course of American history the federal government expanded its territory all the way to the Pacific Ocean and beyond. However, as previously shown, the original intent was for the federal government to relinquish ownership of the land eventually.

Undoubtedly, the obligation of the federal government is to transfer the public domain to private ownership or to the states as fast as possible. This is exactly what the federal government did for more than a century in a variety of ways. “In the disposition of the public domain, Congress has enacted land laws which may be roughly divided into five categories-land grants, cash policy, settlement policy, disposal to veterans, and general land laws” (The policy for disposing, 1961, p. 291). Initially, land grants were given to states made up from the public domain for various public purposes, namely, education and internal improvements. Educational grants were used by the states to fund their public school system by the ability to tax or to sell the land for profit to be used for education. In addition, grants were given for the creation of higher educational institutions; each State has a land-grant university. In Illinois the land grant college is the University of Illinois at Urbana-Champaign designated in 1867. Furthermore, many states have agricultural and mechanical (A&M) colleges as a result of these land grants. Education was not the only reason land grants were made.

Additionally, grants were made for internal improvement projects such as wagon roads, canal construction, river improvements, reclamation of swamplands, and desert irrigation, among others (The policy for disposing, 1961). However, not all land grants were made to the states, for instance, grants made to build railroads across the country were given directly to the private railroad companies. Furthermore, cash policy was a way to gain revenue. After Independence, the new nation was heavily in debt but owned a lot of land, so the federal government went about selling land to add to the federal treasury. According to Clawson (1968), “by the middle of the 1830’s, land sales accounted for over 40 percent of the income of the national government” (p. 56). With such national debt today, this could very well help create a balanced budget, especially with all the resources in the west that could be capitalized upon by private companies or state governments that would be willing to purchase or develop such land. Regardless, cash policy was not the only was the land was disposed of.

Another form of land disposal was settlement policy. Most remembered of the settlement policies is the Homestead Act of 1862, which granted settlers 160 acres of land at no charge as long as they improved and resided on the land for at least five years. Later, the Homestead Act was changed to include 320 acres and required only three years of occupation instead of five years. Before long, other enactments were made to induce westward settlement, including The Timber Culture Act of 1873, the Desert Land Act of 1877, and the Carey Act of 1894 among others. Continuing with the disposal of the public domain, grants were also giving to veterans for their service and this practice actually pre-dates the Revolutionary War, as many colonies would grants land to induced enrollment in the state armies/militias. With this practice well established, when the War of Independence broke out the “Congress turned almost at once to the unoccupied land as a means of inducing enlistments in the army” (Hibbard, 1965, p. 117). Once again, the nation turns to land as payment as land was in abundance. Surprisingly, military land bounties continued for veterans up to the First World War. Lastly, let us not forget that land was set-aside for Native American Reservations, who are often forgotten about in the history of westward expansion. In the end, the federal government has been shown to fulfill their trust obligation of land disposal for about the first century of the nation's existence. However, that policy began to change during the end of the nineteenth century as society began to change.

During the Progressive Era, new ideas were emerging regarding the role government was to play in American society and economy. The late eighteen hundreds and early nineteen hundreds was a time of the working class, labor unions, and the beginning of environmentalism. The National Forest system expanded under the Presidency of Theodore Roosevelt, as thirty-three million acres in 1905, then another thirty million in 1906 were added. The rise of socialist ideals diminished people’s faith in laissez-faire policies. Remember, socialism and communism call for the abolishment of private property. Regardless, the Progressive Era brought federal government expansion with the creation of bureaucracies and contrived responsibilities that reached into many facets of America. As for public land policy, “the Progressives are notable for their reversal of a long-standing federal policy of disposing of federal lands to the states, settlers, and other private landowners. Instead they reserved hundreds of millions of federally owned acres from sale or disposal to private properties” (O’Toole, 1999, p. 73). Clearly, the federal government succumbed to populist sentiment and terminated the disposal of the public domain. However, the federal government is under obligation to dispose of the public lands, yet has disregarded that mandate to the detriment of the states and the people. Apparently, this change in federal land policy all began in 1891. Coffman (2012) states that:

Congress…passed the Forest Reserve Act of 1891 that reversed a hundred years of U.S. policy and ignored the Constitution’s severe limitations to federal landownership. The Forest Reserve Act gave the president vast powers to “set apart and reserve, in any state or territory having public land bearing forest...as public reservations.” In addition to violating the constitutional limitations, it also trumped the Equal Footing Doctrine and effectively sacked the 10th Amendment (p. 43).

This reversal of long held policies was just beginning with the passage of the Forest Reserve Act. Soon other Congressional enactments created land bureaucracies and encroached upon Constitutional land policies. Briefly, the Transfer Act of 1905 created the Forest Service to manage the national forests. The Weeks Act of 1911 allowed the Forest Service to purchase and create national forests in eastern states. The Taylor Grazing Act of 1934 created another bureaucracy, the U.S. Grazing service that was eventually rolled into the Bureau of Land Management along with the Forest Service, among others greatly expanding the control the federal government has over the public lands within the States of the Union (Coffman, 2012). While these acts are contrary to the obligations of laid forth in the original compacts, it was not until the 1970’s that the federal government stated it will not hold itself to the obligations of land relinquishment. Leading up to this breach of contract was the Supreme Court case named Kleppe v. New Mexico, 426 U. S. 529, 1976. According to Howell & Redd (2005), “the Kleppe court utterly vanquished independent State sovereignty upon public lands within State borders leaving only an embarrassing, subordinate jurisdictional gratuity in its place” (p. 115). This case is significant because it laid the groundwork for the Federal Land Policy & Management Act of 1976, just four months after the Kleppe decision was made, almost as if it was planned.

The Federal Land Policy & Management Act, or FLPMA for short, was the figurative nail in the coffin on the obligations of Congress respecting the disposition of the public domain. For the Federal Land Policy & Management Act (1976) states, “the Congress declares that it is the policy of the United States that the public lands be retained in Federal ownership” (Sec. 102(a) 1). This Act renders permanent the territorial governance of the remaining public lands, even though this stance is in direct violation of previous obligations. Consequently, the western states are most affected by this rendering, as the public lands are predominantly located in those western states. Therefore, they are not being held on an equal footing with the other states. The Equal Footing doctrine has been shown to be an essential condition to statehood, and can further be shown in certain United States Supreme Court cases. For instance, Bolln v. Nebraska (1900) states, “upon the admission of a state it becomes entitled to and possess all the rights of dominion and sovereignty which belonged to the original states” (173 U.S. 83). Yet, according to the Federal Land Policy & Management Act, these western states shall not have all the rights of dominion and sovereignty equal to the original thirteen states over their land.

Furthermore, Pollard v. Hagan (1845) says, “Whenever the United States shall have fully executed these trusts, the municipal sovereignty of the new states will be complete, throughout their respective borders, and they, and the original states, will be upon an equal footing, in all respects whatever” (44 U.S. 212). Clearly, the Constitution and the land ordinances meant for the states to be equal in all respects and the U.S. Supreme Court has said as much. Yet, it is evident by the amount of federal land in the western states that they are on an unequal footing with the eastern states. Furthermore, when territories became states, a contract was made between the state and the federal government. These contracts are the state Enabling Acts, which reiterate the Equal Footing Doctrine.

When a territory met the conditions of statehood, the people of said territory would apply to Congress for statehood. The people of the territory would contract with the United States in Congress assembled that authorized the territory to create a state constitution and their own state government. Under these state Enabling Acts, states were admitted in to the Union on an equal footing with the original thirteen states. Each state has an enabling act that admits the new state into the Union equally. Howell & Redd (2005) note, “each State enabling act compact required that the paternalism of federal territorial supervision be terminated and also that the laws of the United States within the new State, from that date forward, be the same as in the original States” (p. 63). Repeatedly it has been shown that the states are to be equal. By examining the early land ordinances, the Constitution, Supreme Court interpretations and state enabling acts makes clear the original intentions of a union made of equal members.

Furthermore, the states' enabling acts called for the disposition of public lands. For instance, Utah’s Enabling Act(1894) not only says that Utah will be admitted equally but also “that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States” (Sec. 3). Clearly, the obligations in the enabling acts reflect the principles evident in the early land ordinances and the Constitution. However, more than sixty-five percent of Utah is still held by the federal government. And, according to the Federal Land Policy & Management Act of 1976, that land in Utah will stay in the hands of the federal government, not to be turned over. Consequently, Utah is at a disadvantage and an unequal footing with the original states. That is not to say that there does not exist some necessary reasons for federal ownership.

Obviously, the federal government needs to look at the defense of the nation and perform other functions such as the postal service that would require the federal government to own land within a state. This is provided for in the Enclave Clause in Article I § 8, which states,

The United States shall exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten square miles) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchase 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 building (US Const., art. I § 8.17).

Notice that the places ceded or sold to the federal government must be agreed upon by both Congress and the state legislature, just like the original thirteen states agreed to cede their western claims to the national government. Plus, there must be a good reason that the federal government would need to own such land like forts, dockyards, and other needful things. However, the reversal of long held land policies by the Federal Land Policy & Management Act of 1976 were not agreed upon by the state legislatures. Furthermore, The federal government does not need the millions of acres now in its possession to fulfill its enumerated powers. According to modern interpretations, the vast tracts of land in the West will stay in federal ownership to the impairment of the states without state consent. This seems to hold the western states in a somewhat colonial or inferior stature, further disregarding the principle of equal footing among all states in the Union. Notonly are the western states unequal but they also bare other costs of federal land ownership.

The western states also bear economic costs of federal control. When Pennsylvania tried to tax the National Bank early in American history, the Supreme Court established that states could not tax federal land or institutions. While this may be of little significance in the east where the federal government owns little land, in the West where the federal government holds vast tracts of land the significance is great. The western states are at a disadvantage regarding tax receipts, even though they do receive some payments in lieu of taxes from the federal government. Additionally, the states cannot capitalize on all the resources contained within the public lands within their boundaries. Many of the western states contain natural resource that could create jobs and boost local economy if able to pursue yet they cannot because the federal government controls the land. An example is the Grand Staircase Escalante National Monument in Utah where former President Clinton set aside some 1.6 million acres as a national monument. Coincidently, that area contained the worlds largest clean coal deposits that now are off limits. Interestingly, the second largest clean coal deposits are in Indonesia and are owned by the Lippo Group, which contributed millions to Clinton’s 1992 and 1996 campaigns through the family that owns the company (Coffman, 2012). Nevertheless, the example shows how the states are not able to reach their full potential in face of federal land control. Imagine the boost to the state economy and the jobs that would be created if Utah could access the vast resources located within the state. These burdens are not the only ones as further impacts are evident as well.

As noted previously, one reason the federal government disposed of the public domain was for education. States could either sell or tax land granted to them for the purpose of funding the public education system within the state. However, with the vast tracts of land in the west locked up in federal control, the western states are at a disadvantage when it comes to funding public education. “There was a almost direct correlation-the more land the national government controlled in a state, the less money for education that a state had. Education in the West is harmed by existing federal land holdings and policies” (Bishop, 2012, p.51). Not only do the modern land policies hold the western states unequal but also negatively affect the children in those states. “When Utah law makers and others did some research on these impacts, they found that 12 of the 15 states with the slowest growth in education funding were in the West” (Bishop, 2012, p. 51). Clearly, the impacts of federal land control are greater than first apparent. The western states have had to allocate more of their budget to education and had to tax their citizens at a higher rate to fund education. In a nation that promotes education such as the United States, the way the western states are less able to fund public education is perplexing. This should upset all Americans as the nation’s future depends on our children. All children should have all the opportunities to receive a quality education, regardless of modern views on land policy. Nevertheless, besides the afore mentioned challenges facing the western states, the people of those states face physical dangers associated with the mismanagement of the public lands as well.

In recent years, wildfires in the West have made headlines. Enormous fires swept across states destroying vast sections of forests and even towns. Evacuations took place as the fire raced towards communities, people leaving much of their belongings to the possibility of being consumed by fire. These fires also caused great damage to the ecology of the area and are a direct result of management practices. According to Nelson (2012), “past mismanagement has turned many national forests into flammable tinderboxes where intense crown fires reaching to the top of the trees-once a rarity-consume entire forests” (para. 6). The incompetency of the land agencies is another insult to add to the others inflicted upon the western states. New environmental policies that promote no human maintenance of the forests led to conditions that eventual destroyed the habit they were trying to protect. By failing to thin the forests and keep them back from towns led to disaster. Since the federal government holds most of the land, neither states nor communities have a say in the management of the land and forests they live near. Consequently, their livelihood is at risk because some bureaucrat hundreds of miles away knows what is best. Likewise, in usual governmental fashion, bureaucracies have emerged to management the public lands.

With the land holdings of the federal government reaching into the millions of acres, someone had to manage that land. Therefore, federal agencies were created to carry out the management of the public domain. The Forest Service, the National Park Service, the Fish and Wildlife Service and the Bureau of Land Management are responsible for managing the land controlled by Congress. In addition, like many other governmental agencies they have become incompetent money vacuums. While these agencies were once highly regarded and created profit, now they have become another expense of the federal government. These agencies have become more centralized since their inception and their mission changed to a more environmental mindset instead of land management. O’Toole (1999) notes, “one result was that, far from earning a profit on the national forests, the Forest Service began to lose $1 billion per year through the 1980’s and $2 billion per year in the 1990’s” (p. 2). Furthermore, “the Park Service loses well over $1 billion per year, the Bureau of Land Management close to $1 billion, and the Fish and Wildlife Service over $500 million managing their respective land bases” (O’Toole, 1999, p. 3). Clearly, the land agencies are no longer profitable and they continue to mismanage the land. With the federal government running towards a so-called fiscal cliff every option should remain open including reforming land policies and management practices. Even the federal government could benefit from reexamining land policies. Regardless, it is clear that the western states face many impacts from the continued federal control of the public lands. Therefore, something needs to be done to allow the West to reach their full potential.

As noted, modern land policy is far removed from the policies that were enshrined during the beginning of the nation. Current policies hurt the states’ economy and children, hold those western states unequal, and create fire hazards to the communities nearby. Therefore, a real effort at reexamining the original intent of federal land policy is needed to fix the problems. Obviously, the Kleppe v. New Mexico decision could by reviewed and overturned by the Supreme Court leading to the abolishment of the Federal Land Policy & Management Act and a reassertion of original intent on the disposition of the public domain. Of course, achieving such would be an enormous task that the federal government would doubtfully initiate itself.

On the other hand, western states (hopefully with their eastern brethren) could force the issue somehow. Howell & Redd (2005) suggest that the states could bring suit against the federal government for breaching the contracts that are the State Enabling Acts. The authors note that since the federal government has not fulfilled the terms of the Enabling Acts, “these States, therefore, have grounds for legal action on this and every other term of their respective enabling act compacts which remain faithlessly unfulfilled by the United States and their agent Congress” (p. 379-80). If the United States of America is a nation of law, and contracts being law than the federal government should respect their obligation. Since the federal government has not turned over the land, holding those states unequal, violate not only the enabling acts but also the original trust compacts created when the original states ceded their claims to the federal government. If even just the western states affected united in suit against the United States would be a monumental case that probably would go to the Supreme Court.

Likewise, the states could possibly file suit on grounds that the federal government is in violation of the Tenth Amendment in that current land management powers were not delegated to the United States, but are reserved to the states. Another argument could claim civil rights violations as “the people of that State are denied republican self-governance or, that is, political rights, equivalent to those of the original States” (Howell & Redd, 2005, P. 383). Nevertheless, any of these arguments would shake the current political foundation, but may be necessary to preserve federalism in face of growing national power. Regardless, other remedies exist to the states as well.

Besides filing suit against the federal government, the state could act on their own initiative within their borders. The original thirteen states guarded their sovereignty jealously, which continued throughout American history. This tradition continues today in the West where the states are seeking to control all the land within their borders, aside from the properly ceded small tracts of land the federal government needs to fulfill basic functions. Several western states have initiated measures to solve the problem of federal land control. For instance, the *Los Angles Times* (2010) reported “the Utah House of Representatives… passed a bill allowing the state to use eminent domain to take land the federal government owns and has long protected from development” (Riccardi, p. 1). This will no doubt spark a long legal battle between Utah and the United States that may spread to other states. In fact, Arizona just recently voted on Proposition 120 in November, which called for similar measures to gain control the public land within the state and reaffirm equal footing. Arizona made exemptions from the proposition for the Native American Reservations within the state and with land properly ceded to the United States. However, the proposition failed to pass in Arizona but doubtfully did the issue fade. Other states have also shown interest in such measures as a possible solution to the problems they are facing. Clearly, the public land policy is a big issue in the West but not so much elsewhere.

Many easterners know nothing about the issue facing the western states, much less grasp how land policies actually affect people in the West. But, the issue affects all states for if the federal government discriminates against one state what is to say that it cannot do the same to all the states. The situation is a real test for federalism. Are the states to be slowly subjugated to a centralized national government or are the states going to retain their rights? The Founding Fathers knew the dangers of centralized power and established a new nation in a way to best contain the ambitions of tyrants. Besides, most of the resources are located in the West so it would do well for the eastern states to support the western states if they continue to want goods that come from the West. Regardless, “the only real solution is giving states greater control over their destiny” (Bishop, 2012, p. 51). The current land policy creates a volatile situation that could be easily solved by looking back to the original principles of the Constitution. As has been discussed, the original intent was for the federal government to dispose of the land to newly created states or private entities. Some may say that the original land policies are outdated and no longer are applicable. However, looking at the mismanagement by the federal government and the disadvantage placed on the western states, following original intent cannot by any worse. In fact, many states already have their own land management agencies but little land to manage compared to that of the federal government in western states. The United States should follow the original obligations and dispose of the public domain to the states or to private entities.

Over the course of American history, the nation’s borders grew and the land policies changed right along with. From the original practice of disposal to the modern retention policy the view on property rights has altered. Today, the federal government owns close to a third of the land in the United States, mostly in the West. This essay has examined the implications of federal ownership. The western states are being held on an unequal footing with the eastern states contrary to original intent. They are not able to capitalize on resources within the state and are not able to tax the federal land within their borders. Educational impacts are present as well, as public school funding suffers. Moreover, under the Federal Land Policy & Management Act, the federal government said it would no longer dispose of the public domain. However, this essay has shown that this policy is against the original obligations of the United States. The Founding Fathers feared a tyrannical government, and held property rights in high regard. Is this federal breach on land policy an attempt to acquire more power? The Founding Fathers also knew that locals could better govern and manage themselves better than a distant authority. Likewise, they supported federalism as “federalism is rooted in the core belief that local governments are better suited to address local issues than a distant, out-of-touch federal government” (Bishop, 2012, p. 51). Today, Washington is dictating land policies to locations far away with little success. A real review of public land policies is in order if these problems are to be solved. Ultimately, the federal government needs to fulfill its obligations and dispose of the public domain to the states or private entities, except the Native American Reservations and needful federal enclaves. Only then will all the states be able to reach their full potential as members of the this great Union of States.

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