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THE FIGHT FOR THE PRE-EMPTION LAW OF 1841*

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I

As the American West developed after the Revolutionary War, it followed as its political leader, Thomas Jefferson of Virginia. When the democratic movement under Jefferson began to gather momentum, the agrarian program crystallized into four specific demands: smaller tracts of land, more local land offices, easy credit terms, and recognition of pre-emption (squatter's) rights.

Pre-emption was a policy, promulgated by the West, which would allow men who had settled on public land before it was opened to sale to purchase it at the minimum price without competitive bidding. Jefferson believed that if the Western pioneers, who fought the Indians and enhanced the value of the land by settling it, were forced to pay for it, they might become disgusted with the Union and join with Spain who held land along the Mississippi.¹

Opposition to pre-emption developed first in old Federalist strongholds along the Atlantic coast where, as the frontiersmen put it, the aristocratic class ruled. They opposed pre-emption not only because it deprived the national treasury of needed revenue, but because it might aid in developing the West into a strong political unit which would deprive the East of its traditional political power. Too, pre-emption developed lawlessness and many thought a rather low type of uneducated, uncivilized citizen. What would happen to the nation if lawless pre-emptors were elected to formulate the laws of the nation? Besides, if pre-emptors were allowed to take up land in the West, the price of land in the East would diminish.

The advance guards of the Westward movement, either because they lacked sufficient funds to pay for lands or because they were unwilling to be delayed while Indian titles were being extinguished and surveys completed, moved far out into the West and selected for themselves the best lands they could find. Some of these pre-emptors were not honest. They worked with speculators with the purpose in mind of laying claims on the choice lands in a disgraceful manner.² But the honest hard-working squatter resented, sometimes to the point of armed resistance, the attempts of speculators and others to procure for a small price the improvements he had made on his claim.

That pre-emption was becoming exceedingly important to the American West was illustrated by petitions and memorials sent to territorial governors and to the national Congress. An illustration is a communication received by Governor St. Clair of the Northwest Territory in 1790 from the inhabitants

¹Paul L. Ford (ed.) *The Works of Thomas Jefferson* (12 vols., New York, 1904), II, 239-240.

²Payson Treat, *The National Land System 1785-1820* (New York, 1910), Chapter IX.

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of Illinois. They prayed that he might grant them pre-emption rights on land they had held since 1783.³ The applications for pre-emption rights by the people of Illinois, and many others of a similar nature, were answered in the negative by Congress in 1796. The reasons given were that illegal settlements ought not to be given encouragement because they would interfere with the general provision for the sale of public lands.⁴ However, in 1799, the Federal government did recognize the pre-emption rights of the people who had acquired land from John Cleve Symmes, located between the Great and Little Miami Rivers in the Northwest Territory, land which Symmes had no lawful right to grant or contract for because he did not own it.⁵ There was an attempt to include the principle of pre-emption in the Harrison Land Act of 1800, but Eastern congressmen voted it down.⁶

When Ohio, the first public land state, was admitted to the Union in 1802 the Federal government adopted the plan of retaining all ungranted land within the state boundaries, except a donation of one section in each township to a state fund for education. The same year John Randolph of Virginia introduced a bill in Congress to prevent intrusion on the public lands.⁷ On March 3, 1807, an act was passed by Congress to prevent settlements being made on lands ceded to the United States until authorized by law.⁸ For the first time sectional lines appeared on the land question. The North and the West favored the pre-emptor and the South opposed him. The pre-emptor in the South was in the way of the plantation system.⁹

The law of 1807 was unenforceable because the frontier army was made up in part of pre-emptors who would not enforce a law against themselves. The law was partially repealed within seven years, but most of it remained on the statute books for several decades.¹⁰ After 1807 pre-emptions were allowed in state after state for one reason or another.¹¹ Between 1804 and 1830 there were sixteen acts passed in Congress granting pre-emption rights in limited forms to certain groups in territories and states. Most of these grants were made to settlers who had received land from foreign countries before the land had become a part of the United States. It was believed by the Federal government that if these disputed titles were adjusted, the way would be cleared for a uniform land system.¹²

³ Clarence Carter (ed.), *The Territorial Papers of the United States* (Washington, 1934), II, 252.

⁴ *American State Papers, Public Lands* (Washington, 1834), I, 60.

⁵ *Public Statutes at Large of the United States of America* (Boston, 1845), I, 728. Hereafter cited as *Statutes at Large*.

⁶ *Treat, National Land System*, p. 94.

⁷ *Annals of the Congress of the United States* (Washington, 1834), 7 Cong., 1 Sess., 421. Hereafter cited as *Annals of Congress*.

⁸ *Annals of Congress*, 9 Cong., 2 Sess., 1288.

⁹ Benjamin H. Hibbard, *A History of Public Land Policies* (New York, 1924), pp. 147-148. Hereafter cited as Hibbard, *Public Land Policies*.

¹⁰ Roy Robbins, "Preemption: a Frontier Triumph," *M.V.H.R.*, XVIII (December, 1931), 338-339. Hereafter cited as "Preemption: a Frontier Triumph."

¹¹ Hibbard, *Public Land Policies*, p. 151.

¹² "Preemption: a Frontier Triumph," 338.

II

In the two decades following the War of 1812 there were a number of significant developments in the economic and political fields which profoundly affected the point of view of the nation and the Federal government toward pre-emption. The horde of settlers which poured into the West greatly increased its political and economic strength. Within three years after the Treaty of Ghent an economic panic of considerable scope swept over the United States and its effects caused the Federal government to take a more sympathetic attitude toward the problems of Western agriculture. The Panic of 1819, as it was called, deprived thousands of industrious Western yeomen of their farms and savings. This economic catastrophe was followed by urgent demands from the West to alter the Land Law of 1800.¹³ Western requests were met in 1820 when a more liberal land law was passed by Congress. The Land Act of 1820 did not include pre-emption because the Eastern opponents of it were still able to produce enough votes to defeat it. But more pressure for pre-emption soon came from the new and powerful political party machine under the leadership of Andrew Jackson and composed predominantly of Eastern workers and Western farmers who elected representatives to Congress who favored pre-emption.

Also in the political field came the Missouri Compromise which precipitated a sectional controversy in which the South assumed a defensive position to fend off expected encroachments by the national government against slavery. In this defense of slavery the South's strategy was to oppose a high tariff, internal improvements, and distribution of the receipts from the sale of land to the states, because each of the three tended to give more power to the national government. The South feared that the Federal government might use that power to do away with slavery. They, therefore, wanted a weak Congress and strong state governments. The sectional struggle resolved itself into a three-way contest between the South, West, and Northeast with each of the three trying to entice one of the others over to its side. The South tried to win an alliance with the West by backing pre-emption and liberal land laws in the hope that the West would aid in lowering the tariff.¹⁴

While Andrew Jackson's Democratic party was gaining in strength and the sectional struggle was developing, the outer periphery of the United States was being pushed farther and farther away from the protective wings of the Federal government. This movement which carried settlers into isolated sections of Mississippi, Iowa, Arkansas, and Alabama had the effect of intensifying the arrogance and individualism of the American frontiersman. Veritable swarms of pre-emptors staked out claims along the far-flung outposts of the Western frontier states. They formed into claim or land clubs which in many cases became a law unto themselves by holding

¹³Ray Billington, *Westward Expansion* (New York, 1949), pp. 349-350.

¹⁴Ray Billington, *Westward Expansion*, pp. 352-355.

private land sales which were designed to give pre-emptors a fair deal.¹⁵ The activities of these organizations, which sometimes numbered thousands, convinced the Federal authorities that concessions to honest pre-emptors were far better than revolution.

Gradually after 1830 the older states north of the Ohio began to reconsider their points of view on pre-emption. The rise of an industrial laboring class resulted in a strong workingmen's interest in the land question. The workingmen looked upon the Western lands as a safety valve for the crowded labor market of the East, where competition for jobs was being aggravated by increased immigration. Many immigrants, too, with memories of land monopoly and oppressive landlordism in Europe, were inclined to favor pre-emption. In the Northeast, opposition to pre-emption slowly diminished because of two reasons: first, the Northeast wanted to gain the support of the West in opposing slavery, and second, the Northeast was gaining commercial profits from the expansion of settlements into the Northwest which had been made possible by improvements in the communication between the two regions.¹⁶ These developments tended to strengthen the ties between the Northeast and the West and to soften the attitude of Northeast leaders such as Daniel Webster toward pre-emption.

By 1828, due perhaps to the rise of the political power of the West and the demand for a more equitable land system by Thomas Hart Benton of Missouri, the Public Lands Committee began to change its views on pre-emption. States also took favorable action on pre-emption. The state governments of Arkansas and Illinois allowed pre-emption on tracts of specified lands.¹⁷ Petitions to Congress from the state legislatures of Louisiana, Indiana, Arkansas, and Alabama, all urged a national pre-emption law.¹⁸

In 1830, through an alliance of the West and South, Congress enacted the first general pre-emption law which was to remain in effect one year. The law of 1830 allowed pre-emption of one hundred and sixty acres by a settler who had occupied and cultivated it during the preceding year.¹⁹ The pre-emption law of 1830 was renewed in 1832²⁰ and again in 1834.²¹ During these years pre-emption and the general land question became interwoven with distribution and the tariff.

The nullification controversy developing out of the tariff in 1832 broke up the South and West alliance which had made possible the pre-emption act of 1830. The West, an extremely nationalistic section, did not believe in nullification and was slowly moving into an economic union with the Northeast.

As the year 1840 approached, land legislation was the greatest single interest in the West. It was the most important topic of discussion in the

¹⁵"Preemption: a Frontier Triumph," 344.

¹⁶L. C. Gray, *History of Agriculture in the Southern United States to 1860* (2 vols., Washington, 1933), II, 628.

¹⁷Public Lands, V, 401-402.

¹⁸*Ibid.*, VI, 10, 33.

¹⁹Statutes at Large, IV, 420.

²⁰*Ibid.*, 603.

²¹*Ibid.*, 678.

state legislatures, in the speeches of Western congressmen, and in the settlers' cabins. The Western pioneers believed that it was to the interest of all sections to settle the new territories as soon as possible with industrious people²² and a permanent pre-emption law would speed up this process.

The conservative Eastern states were opposed to such a plan for several reasons. They were hesitant about accelerating the growth of the West whose social, economic, and political interests were so vastly different from their own. The Eastern farmer's economic position deteriorated when Western land drew his sons and neighbors away and the competition of the Western lands and produce reduced the value of his farm and lowered the price of his crops. The businessman of the East was against pre-emption because it diminished his profits when he had to pay higher wages to employees in order to keep them from going West. The power of the West in Congress was rapidly increasing so a policy which would ruin the East politically in order to build up the West was opposed. The East was further concerned about pre-emption because it attracted too many aliens who introduced into America different languages, religions, and customs which they thought might cause changes in American institutions.²³

After the panic of 1837, which ruined many Western farmers, congressmen from the West renewed their agitation for a permanent pre-emption law. The prospects for such a law brightened considerably during the presidential election campaign of 1840 because the West was the section both the Democrats and the Whigs needed to carry them to victory. Before the election of 1840, the Democratic party pledged itself to support pre-emption. William Henry Harrison, the Whig candidate, advocated disposing of the public lands so as to create the greatest number of free-holders.²⁴ Therefore, as the presidential campaign of 1840 got under way, it was taken for granted that the Democrats were openly for pre-emption and William Henry Harrison was for a liberal land system.

When Congress convened after the election of William Henry Harrison in 1840, the Democrats, led by Senator Thomas Hart Benton, planned to force the Whigs' hand on pre-emption. They did not believe that the Whigs would live up to their campaign promises. On February 2, 1841, the "Log Cabin Bill," so called because it required that a log cabin be built on pre-empted land, a permanent pre-emption bill, was passed by the Senate. However, the measure had been adopted too late to be considered in the House.²⁵ The vote on the "Log Cabin Bill" in the Senate was 31 to 19. Seventeen Whigs and two Eastern Democrats voted nay.²⁶

²²George M. Stephenson, *The Political History of the Public Lands from 1840 to 1862* (Boston, 1917), p. 20. Hereafter cited as Stephenson, *Public Lands from 1840 to 1862*.

²³Stephenson, *Public Lands from 1840 to 1862*, p. 24.

²⁴*Ibid.*, p. 39.

²⁵Billington, *Westward Movement*, p. 379.

²⁶*Ibid.*, p. 379.

III

In 1832 Henry Clay submitted a report to the Senate in which he attacked the land schemes of the West and made a strong plea for the distribution of the proceeds from sales of the public lands among the states according to their Federal ratio.²⁷ Clay's plan envisaged keeping the tariff high to please the manufacturers, by distributing funds from the national treasury to the states for internal improvements. Westerners were hostile to distribution because they believed that in order to gain large shares of the land funds for their states, congressmen from old Eastern states would vote to postpone the land sales from year to year in order to raise the price of land, thereby slowing down settlement. By 1841 the Democrats in the Southwest and West were still attacking distribution while at the same time bringing pre-emption before the Congress.

Henry Clay introduced a distribution bill in the Senate on June 10, 1841.²⁸ Several days later Senator Robert J. Walker, Democrat of Mississippi, introduced resolutions directing the committee on public lands to consider reporting the bill with amendments requiring permanent pre-emption, reduction and graduation of public land prices, and the discontinuance of distribution when any import should be raised above twenty per cent or the provisions of the tariff of 1833 violated in any manner.²⁹

The Senate was almost equally divided on distribution but in the House of Representatives distribution would pass if approximately fifty Western Whigs would vote for it. This contingent of Whigs realized that if they did not add pre-emption to their program they would endanger their own political lives.³⁰ Henry Clay knew that the South, which would not alter its views on the tariff, would vote against distribution. He, therefore, had to gain the support of the West in some way or his distribution bill would not be passed. To meet the situation Clay's men in the House of Representatives wrote a combination Distribution-Pre-emption Bill which was introduced into the House on June 24, 1841.³¹

This bill was a bribe to the West and was recognized as such by them. The debate in the House was especially bitter. The Democrats offered more than one hundred amendments to the bill but without success.³² The vote in the House on the combination Distribution-Pre-emption Bill was one-hundred sixteen to one-hundred eight. The great majority of the Whigs voted for the bill and the Democrats almost solidly against it. This was not an expression of sentiment on the pre-emption part of the bill. The Democrats

²⁷ Thomas Hart Benton, *Thirty Years' View* (2 vols., New York, 1854), I, 276. Hereafter cited as Benton, *Thirty Years' View*.

²⁸ Cong. Globe, 27 Cong., 1 Sess., 38.

²⁹ *Ibid.*, 50.

³⁰ Stephenson, *Public Lands 1840-1862*, pp. 56, 57.

³¹ Cong. Globe, 27 Cong., 1 Sess., 156, 157.

³² Billington, *Westward Expansion*, p. 380.

wanted to vote for pre-emption, but they refused to take distribution along with it.³³

In the Senate the Distribution-Pre-emption Bill met with formidable opposition. Senator Benton, aided principally by Senators Robert Walker and Clement C. Clay of Alabama, fought for pre-emption separate from distribution.³⁴ When the debate turned to the effect of distribution on the tariff that was to be framed in 1842, the Southern Whigs joined with the Democrats and forced a compromise. After resisting for a time, Clay accepted a compromise that distribution would not go into effect while duties were above twenty per cent.³⁵ The final vote on the Distribution-Pre-emption Bill was twenty-five to eighteen.³⁶ Not one of the twenty-five affirmative voters was a Democrat and only one Whig voted in the negative. It was approved by President Tyler September 4, 1841.

In addition to its distribution features the Distribution-Pre-emption law provided for a right of pre-emption to the heads of families, widows, and single men over twenty-one, who were citizens or had declared their intentions of becoming citizens. They were allowed one-hundred and sixty acres of surveyed land on the condition that they would construct a dwelling and cultivate the land. The right of pre-emption was forbidden to those who had abandoned their own land in the same state or territory, to those who owned three-hundred and twenty acres of land, and to those who had already taken advantage of the law.³⁷

The Distribution-Pre-emption Law of 1841 was the most important agrarian measure ever passed by Congress. It terminated the conservative land policy established in 1785, democratized the American land system, and placed the actual settler on an equal basis with the speculator.³⁸ The law made it legal for an individual to stake a claim upon public surveyed land to the exclusion of all others. The frontiersmen were particularly well pleased when in 1842 the tariff raised above the twenty per cent level and Clay's distribution program was dropped.³⁹ However, the pre-emption section of the law was not regarded as perfect in the West because it had been passed through the work of Henry Clay, a Whig, who had stolen the glory from Thomas Hart Benton of the West. The part of the law restricting the privileges to citizens or those having declared their intentions of becoming citizens was unpopular. The Westerners believed that the alien who had taken no steps toward citizenship might eventually become a good citizen.⁴⁰ A third complaint was directed at restricting pre-emption privileges to those settling on surveyed land because surveying was a mere detail of convenience to the frontiersman.⁴¹ A fourth objection was leveled against

³³Hibbard, *Public Land Policies*, p. 157.

³⁴Stephenson, *Public Lands 1840-1862*, p. 58.

³⁵Billington, *Westward Expansion*, p. 380.

³⁶Cong., *Globe*, 27 Cong., 1 Sess., 369-370.

³⁷*Statutes at Large*, V, 453-458.

³⁸"Preemption: a Frontier Triumph," 349.

³⁹*Ibid.*, 348, 349.

⁴⁰Hibbard, *Public Land Policies*, pp. 164-165.

⁴¹*Ibid.*, p. 165.

the article in the law which stated that people holding three-hundred and twenty acres of land in any state or territory were excluded from pre-emption rights. The West held that it was wrong to exclude people who held barren and worthless land from pre-empting land in the fertile West.⁴²

The fundamental objective of the pre-emption law of 1841, to protect the settler from the speculator, was achieved. The law did not deter speculation, but speculators could no longer infringe upon settlers' pre-emption rights. The ultimate goal of the West, a pre-emption law which would prevent all speculation by setting aside or reserving all public lands for actual settlers, became interwoven with the homestead theory which captivated the West by 1850. By an act of 1862 all unsurveyed lands were thrown open to pre-emption. The pre-emption law remained in force until March, 1891, about the date which marked, coincidentally, the end of the frontier in the United States.⁴³

⁴² *Ibid.*, p. 165.

⁴³ Stephenson, *Public Lands from 1840-1862*, pp. 71, 72.