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“The Waters . . . Belong To The People”: Populist Victory Over Big Business And
Progressive Federal Policy In The Nevada Water Law Of 1913

A Dissertation submitted in partial satisfaction
of the requirements for the degree of

Doctor of Philosophy

in

History

by

Richard Alan McFarlane

March 2011

Dissertation Committee:

Dr. Clifford Trafzer, Chairperson

Dr. Rebecca Kugel

Dr. Ralph Crowder

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The Dissertation of Richard Alan McFarlane is approved:

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DEDICATION

To my parents, my wife, and children for their love, support, understanding and encouragement to research and write.

ABSTRACT OF THE DISSERTATION

“The Waters . . . Belong To The People”: Populist Victory Over Big Business And
Progressive Federal Policy In The Nevada Water Law Of 1913

by

Richard A. McFarlane

Doctor of Philosophy, Graduate Program in History
University of California, Riverside, March 2011
Dr. Clifford Trafzer, Chairperson

This dissertation is an examination of the passage of the Nevada Water Law of 1913 in the light of the conflict between populism and progressivism, the tragedy of the commons, and boosterism. It demonstrates that aridity was not the overriding factor in the development of the Western United States, especially Nevada. Rather, aridity was merely a technical problem to be solved by technical experts such as lawyers and engineers.

Table of Contents

| | |
|---|-----|
| Introduction. | 1 |
| The Industrial Revolution. | 29 |
| Collectivism and Socialism. | 55 |
| Progressivism. | 78 |
| Progressive Irrigation in the West. | 93 |
| Populism. | 137 |
| The Tragedy of the Commons. | 163 |
| Nevada Boosterism. | 197 |
| Nevada Water Law of 1913. | 229 |
| Conclusions. | 256 |
| Bibliography. | 266 |

PREFACE

To write history without putting any water in it is to leave out a large part of the story.

Human experience has not been so dry as that.

— Donald Worster (1985)

It is impossible in a book of moderate size to more than touch upon some of the important

points. . . . This is because . . . the problems are far reaching and

involve not only the application of natural laws

but also the modification of man-made laws and court findings.

— Frederick H. Newell (1920)

From the alfalfa fields near Reno to the golf courses near Las Vegas, Nevada is utterly dependent on irrigation. For the past one hundred seventy years, this fact has colored the entire historiography of Nevada, and, for that matter, of the American West. Many authors have written about aridity being the overriding factor in the West. For example, in 1992, Donald Pisani wrote in his monumental *To Reclaim a Divided West: Law, and Public Policy, 1848-1902*, “Since 1931, when Walter Prescott Webb published *The Great Plains*, many historians have considered the influence of aridity on the history

of the western United States.”¹ They are incorrect. Aridity had some influence on Western American or Nevadan history, but all history, including the history of the American West, is the story of people, of who, what, where, when, why and how. Like Monument Valley in a movie by director John Ford, aridity is but a part of the scenery against which the drama is played. The history of the West was much more influenced by, first, the competing philosophies of Jeffersonianism-Jacksonianism-populism and collectivism-socialism-progressivism, second, the tragedy of the commons, and, third, boosterism.

Whether the United States would continue in the tradition of Thomas Jefferson and Andrew Jackson, or abandon it to follow a new path was the major social and political debate during the later nineteenth and early twentieth centuries, though not framed in those terms. America chose to find a new path. This choice made possible all the social programs of the Progressive Era, New Deal, and Great Society, including irrigation. In the summer of 2009, I was visiting the Carson City-Reno area to use collections at the Nevada State Library and Archives and Nevada State Historical Society. At the time, President Barack Obama’s health care bill was pending in Congress. While driving through the ranch country between the two cities, I noticed several signs spray painted on plywood. The signs proclaimed “Stop Socialism. Stop Obamacare,” and the like. I thought, “Ignorant fools! By some definitions as least, the United States is a

¹ Donald J. Pisani, *To Reclaim a Divided West: Water, Law, and Public Policy, 1848-1902* (Albuquerque: University of New Mexico Press, 1992) xiii.

socialist country, has been for over a century, and we Americans like it. You all are absolutely dependent on the federal government for the water that grows your alfalfa and waters your livestock. Even the land you swear to protect until someone pries your gun from your cold dead fingers was given you, or your predecessor in interest, by Uncle Sugar.” Part of my objective in choosing this dissertation topic is to examine and demonstrate that America is socialist country, and that we Americans like it. The competition between the Jeffersonian-Jacksonian-populist view and the collectivist-socialist-progressive view is key to understanding the history of the United States generally, and of the American West specifically. Without understanding this competition, one cannot understand the history of the twentieth century which follows. Therefore, chapters two through five, inclusive, provide a detailed analysis of the competition.

The phrase “tragedy of the commons” was coined by Garrett Hardin in his 1968 article, “The Tragedy of the Commons” published in *Science*.² In simplest terms, the tragedy of the commons is that a resource owned in common is owned by none, and, therefore, all members of the community have access to it and a right to use it, but no one has the responsibility to manage it wisely. The tragedy occurs as each user seeks to maximize his or her personal gain from the commons, it consumed and destroyed. Hardin observed that technical solutions are not sufficient to resolve the tragedy; rather

² Garrett Hardin, “The Tragedy of the Commons,” *Science* n.s. 162, no. 3859 (Dec. 12, 1968): 1243.

people must fundamentally change their behavior and expectations. In the Western United States, water was a “commons.” Residents of this arid region, whether Native Americans, Hispano-Mexicans, or Anglo-Americans, applied several technical solutions, including irrigation, to problem, all of them more or less successful in the short run, but all of them destined to fail in the long run. At no time did they alter their behavior and expectations to bring them into line with their natural environment. A second part of my objective in choosing this topic is to examine the inescapableness of the tragedy of the commons and how it effects the history—and the future—of the West. Chapter six examines the tragedy of the commons as it applies to water in the American West.

Boosters in the Western states and territories, cities and towns were both a manifestation of the tragedy of the commons and a independent factor in the history of the American West. The boosters wanted to bring more and more population to their locales in the hope that this would improve the economy generally, and, since boosters were usually business owners and speculators, their own fortunes specifically. However, while this increase in population increased real estate values and economic activity, it negatively impacted the tragedy of the commons. In the short run—the “short run” being defined as the last century and a half, plus maybe another decade or two—the boosters have been successful. Millions of people have migrated to the western states and built huge cities in the desert and semi-desert—Los Angeles, Las Vegas, Phoenix—however, in the long run these cities are doomed to failure as Chaco Canyon and Mesa Verde before them. Chapter seven examines the effects of boosterism, especially in Nevada, to

bring population to the western states and territories, and the effect of that migration on the demands for natural resources, especially water.

In 1913, the Nevada state legislature passed an extensive revision of its water code. The Nevada Water Law of 1913 declared that, “The water of all sources of water supply within the boundaries of the state whether above or beneath the surface of the ground, belongs to the public.”³ This statute and the sections which followed were an attempt to draft a comprehensive solution to Nevada’s multiple problems of the tragedy of commons and boosterism. In addition, this act was passed against the background of the debate between populism and progressivism. In passing the 1913 water law, the Nevada Legislature tried to stall the advance of progressivism, but ultimately progressivism and boosterism won and the tragedy of the commons continued. Chapter nine examines the legislative history of the Water Law of 1913 in the light of the three factors examined in the previous chapters.

In his study *Alfalfa Country: Nevada Land, Water and Politics in the 19th Century*, which began as a dissertation, John M. Townley wrote, “A study of the period after 1903 is long overdue.”⁴ The Nevada Water Law of 1913 was a very important piece of legislation. It was a worthy attempt to deal with the problems of the tragedy of the

³ Water Law of 1913, ch. 140, § 1, *Statutes of the State of Nevada* 1913: 192 codified at *Nevada Revised Statutes Annotated* (2010) § 533.025.

⁴ John M. Townley, *Alfalfa Country: Nevada Land, Water and Politics in the 19th Century* (Reno: University of Nevada, n.d.) 212.

commons and of boosterism. This act also marked a short-lived victory of populists over socialist-progressivism. Although amended from time to time over the last century and together with federal legislation including the Carey Act⁵ and the Newlands Act,⁶ the 1913 act remains the basis of Nevada's water regime. The Western United States is indeed arid, but aridity was a mere technical problem to be solved by the technical expertise of lawyers and engineers.

⁵ *Carey Act*, ch. 561, *U.S. Statutes at Large* 26 (1891): 1066 amended by *Rivers and Harbors Act*, ch. 301, § 4 *U.S. Statutes at Large* 28 (1894): 422.

⁶ *Newlands Reclamation Act*, ch. 1093, *U.S. Statutes at Large* 32 (1902): 388.

Chapter 1

Introduction

The Spirit of the West is optimism and progress.

—C.J. Blanchard (1910)

The Nevada Water Law of 1913⁷ was the result of three distinct influences that operated independently, and, in one case, anonymously. None of these was the aridity of the Great Basin. Aridity was a mere technical problem to be solved by the application of the technical expertise of lawyers or engineers. The three distinct influences that were braided together to produce the 1913 water law were the Later Industrial Revolution, the Tragedy of the Commons, and Western boosterism. Past authors have over emphasized aridity in analyzing development in Nevada specifically and in the American West generally. In doing so, they have assumed a fact not in evidence, namely, that Nevada would have been or ought to have been developed beyond its mining potential in the first place. This assumption was first made by Nevada boosters, both Populists and Progressives. This assumption has been unquestioned by historians over the last hundred

⁷ Water Law of 1913, ch. 140, *Statutes of Nevada* 1913: 192 codified as amended at *Nevada Revised Statutes Annotated* (2010) § 533.060(2).

years. However, as the centenary of the Nevada Water Law of 1913 approaches, the wisdom of boosterism and development in Nevada specifically, and the Arid West generally, becomes more and more questionable.

Except for the area west of the Cascade Range in Washington, Oregon, and northwestern California, the Sierra Nevada Mountains in California and Nevada, and the Bitterroot Range along the Idaho and Montana border, North America west of the Missouri River is indeed arid.⁸ Precipitation in this area is generally less than ten inches per year, and that is usually confined to the higher elevations in the form of snow.⁹ ‘This

⁸ Most authors mark the area of aridity as being west of the 100th meridian of west longitude. See e.g. E. V. Smalley, “The Future of the Great Arid West,” *The Forum*, June 1895, 466. Some mark the beginning of the arid region at the 99th meridian, see e.g. Frederick Irving Anderson, *The Farmer of To-morrow* (New York: The Macmillan Co., 1913), 50, or the 98th meridian, see e.g. A. M. Simons, “Preface to Second Edition,” *The American Farmer*, 2nd ed. (Chicago: Charles H. Kerr and Co., 1908), 63. Joseph R. Long places the eastern boundary of the arid region at the Missouri River. Joseph R. Long, *A Treatise on the Law of Irrigation*, 2nd ed. (Denver: W. H. Courtwright Publishing Co., 1916), 3. I prefer to mark the beginning of “The West” and the “Arid Region” at the Missouri River which crosses the 96th meridian of west longitude between Omaha, Nebraska and Sioux City, Iowa. This is about 267 miles east of the 100th meridian, but has the advantage being an actual, physical feature on the ground, instead of being, literally, a mere line on the map, and I will use this definition consistently throughout this dissertation.

⁹ Average Annual Precipitation Western United States. Western Regional Climate Center. Desert Research Institute. Nevada System of Higher Education. Online. http://www.wrcc.dri.edu/pcpn/westus_precip.gif. Accessed: October 18, 2010. Frederick Irving Anderson, writing in 1913, defined aridity, “Arid land means less than ten inches [of precipitation] a year. Semi-arid land means less than twenty. . . . Nine per cent. of the area of continental United States has less than 10 inches of rain; thirty per cent. less than 20 inches and more than 10 inches; thirty-three per cent, between 20 and 40 inches, and twenty-seven per cent, over forty.” Anderson, 98-99.

. . . substantial aridity . . . prevails throughout its vast proportions [of the West],” wrote William Ellsworth Smythe.¹⁰ In Nevada, the annual average precipitation is 9.50 inches per year.¹¹ Smythe continued, “Nevada was, and is, the driest State in the Union. But as Nevada is very arid, having but ten inches of rainfall, and but little of that in the growing season, the extent of the water supply is the measure of its capacity to support population.”¹² The lack of precipitation places natural limits on the type, quantity, and location of the region’s flora and fauna, and, in prehistoric times at least, on human habitation as well.

Prehistorically, Native Americans prospered in the arid region especially during the Medieval Warm Period (circa 800 to circa 1300). The peaceful, noble savage living in perfect harmony with nature is a myth created by Europeans and European-Americans beginning in the mid-eighteenth century, first as a motif of the “man in a state of nature” praised by Jean-Jacques Rousseau and other Enlightenment philosophers, and then as a counterpoint for the Industrial Revolution.¹³ In truth, Native Americans were neither savage nor all that noble. If their environmental impact was less than the

¹⁰ William Ellsworth Smythe, *Conquest of Arid America* (New York: Harper and Brothers Publishers, 1900), 30.

¹¹ Average Statewide Precipitation For Western U.S. States. Western Regional Climate Center. Desert Research Institute. Nevada System of Higher Education. Online. <http://www.wrcc.dri.edu/htmlfiles/avgstate.ppt.html>. Accessed: October 18, 2010.

¹² Smythe, *Conquest of Arid America*, 198-199

¹³ Steven A. LeBlanc with Katherine E. Register, *Constant Battles: The Myth of the Peaceful, Noble Savage* (New York: St. Martin’s Press, 2003), 12-13.

Europeans—and this is by no means certain pre-Industrial Revolution—it is because the Native Americans lacked the technology to exploit their environment fully. Native Americans were not innocents living in some sort of idyllic Garden of Eden; they were humans who altered their environment to suit themselves.

Native Americans in the Southwest developed three strategies to deal with the lack of water. The Mogollon dwelt at higher elevations where rainfall was more abundant and more predictable.¹⁴ The Mogollon people covered an area incorporating Arizona and New Mexico south to Chihuahua and Sonora. The Mogollon developed deep planting and flood water irrigation techniques suitable for their environment. By 1350, no doubt due to the effects of the Little Ice Age, maize-based agriculture began to fail and the Mogollon began to leave their homeland for, literally, greener fields. By 1450, their villages were deserted.¹⁵

The Hohokam built the most extensive pre-Columbian irrigation system in America outside of Peru. The Hohokam lived in south-central Arizona, specifically the lower Colorado River and the Arizona Upland, between modern-day Phoenix and Tucson. They became archaeologically recognizable about the time of Christ. Around A.D. 800-1000, they expanded up the Gila and Salt Rivers, developed more extensive

¹⁴ Jared Diamond, *Collapse: How Societies Choose to Fail or Succeed* (New York: Penguin Group, 2005), 160.

¹⁵ Colin G. Calloway, *One Vast Winter Count: The Native American West Before Lewis and Clark* (Lincoln: University of Nebraska Press, 2003), 81-82

irrigation systems, made more elaborate pottery, and built platform mounds and ball courts, probably indicating increased interaction with the Toltec of Mesoamerica. The Hohokam grew maize, beans, and squash, perhaps getting two harvests a year: one from the spring runoff and one from the summer rains. They also grew tobacco, and cotton.¹⁶ The Hohokam irrigation system began with simple systems to capture rainwater and direct it to the fields, and storing it in reservoirs and catchment basins. By 800, the Hohokam built more complex canal systems with a main canal and a few branch canals. By the thirteenth century, the system had grown to over 360 miles of main canals, some of them ten feet deep and eight feet wide, and 1,000 miles of lateral canals and distribution channels. The Hohokam trading network connected them with the Anasazi of Chaco Canyon to the north, Mesoamerica to the south and California to the west.¹⁷ Ironically, the Hohokam, who built their whole society around managing scarce water in an arid environment, were destroyed by too much water. In 1358, a major flood destroyed the Hohokam's canal system. They struggled for a few decades more, but by 1400 the Hohokam settlements were abandoned. The name "Hohokam" comes from a Pima phrase meaning "all used up."¹⁸

¹⁶ *Ibid.*, 75-78.

¹⁷ *Ibid.*, 69-70

¹⁸ *Ibid.*, 80.

“Anasazi” is a Navajo name meaning “Ancient Ones.” They lived and flourished in the Four Corners Region of Arizona, Colorado, New Mexico, Utah. The Anasazi began living in Chaco Canyon, New Mexico, in about AD 600. In about 700, they began to build sandstone structures. They developed their building techniques independently of Mexico. Eventually, by around 920, they began to build two-story buildings, then over the next two centuries the buildings now called Pueblo Bonito went up to five or six stories with 600 rooms and roofing logs up to 16 feet long and weighing up to 700 pounds.¹⁹ These structures were the largest buildings in North America until the Chicago steel-girder skyscrapers in the 1880s.²⁰ By 1050, Chaco Canyon had a population of about 5,500, and was the focus of at least seventy other Communities dispersed over more than 65,000 square miles.²¹ In addition to the impressive “Great Houses,” the Anasazi at Chaco Canyon built dams, ditches, canals, and reservoirs to collect water and transport it to their fields. The water-collecting system was mostly on the north rim of the Canyon where a large expanse of bedrock provided runoff.²² The Anasazi at Chaco Canyon developed extensive trading networks. Not only were at least 200,000 logs imported for construction from fifty miles away, but food, pottery, stone for making tools,

¹⁹ Diamond, 144.

²⁰ *Ibid.*, 136.

²¹ Brian Fagan, *The Long Summer: How Climate Changed Civilization* (New York: Basic Books, 2004), 226.

²² Calloway, 85.

turquoise for making jewelry, macaw feathers, copper bells and seashells as luxury goods.²³ The population of Chaco Canyon may have exceeded 5,000 people.²⁴ The end of Chaco Canyon came with a drought that began about 1100, and lasted fifty years. By 1200, Chaco Canyon was abandoned. Anasazi continued to live at other sites such as Mesa Verde, Colorado.²⁵ Another major drought hit the area between 1276 and 1299, and the climate seems to have fluctuated wildly between 1250 and 1450. Colin Calloway wrote:

These climatic changes all affected peoples' ability to sustain agriculture in certain areas and prompted movements by others, for instance, from upland area to lower elevations where farming was less risky in cold weather. . . . Environmental stress generated new levels of competition and conflict. When the climate took a turn for the worse, it reduced the carry capacity of the land and intensified competition for access to limited resources in areas where previously favorable climate had increased the carry capacity and generated population growth.²⁶

The Anasazi are the ancestors of the Hopi and Zuni, who continued to live a settled life based on irrigated agriculture into historical times.²⁷ However, the Hopi and Zuni lived in smaller settlements than Chaco Canyon, and most of the other Native American nations in the arid region enjoyed a nomadic or semi-nomadic lifestyle.

²³ Diamond, 149.

²⁴ *Ibid.*, 148-149.

²⁵ Fagan, *The Long Summer*, 226.

²⁶ Calloway, 90.

²⁷ Diamond, 137.

Hispano-Mexican settlers also built a society based on irrigation. Before the English successfully settled along the well-watered Chesapeake Bay, the Spanish began irrigating at San Juan, New Mexico. Along the Rio Grande and elsewhere in New Spain and, after 1810, in Mexico, Hispano-Mexican settlers created communal water distribution systems called *acequias*. Under this system, a village official called the *mayordomo* was responsible for maintaining irrigation canals and ditches, and for allocating and distributing water.²⁸

To Anglo-Americans, the entire West was terra incognita. Thomas Jefferson, whose Louisiana Purchase first extended the United States' domain toward and into the West, "thought that the great inland territory west of the Mississippi would be of comparatively little value of the United States. . . . But there was no real knowledge of this country at the time of Jefferson."²⁹ It was labeled "The Great American Desert" on many early nineteenth century maps.³⁰ A. M. Simons, writing in 1908, described it as "a stretch of country whose history is filled with more tragedy . . . than perhaps any other

²⁸ Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York: Pantheon Books, 1985), 75-76

²⁹ Frank W. Blackmar, "The Mastery of the Desert," *The North American Review*, 182, no. 594 (May 1906): 676.

³⁰ *Ibid.*, 679. See also C.V. Lavoisne et al., *A Complete Historical, Chronological, and Geographical American Atlas* (Philadelphia: H.C. Carey and I. Lea, 1827); S. Augustus Mitchell and J.H. Young, *An Accompaniment to Mitchell's Reference and Distance Map of the United States* (Philadelphia: Mitchell and Hinman, 1835); Thomas G. Bradford, *An Illustrated Atlas, Geographical, Statistical and Historical, of the United State and the Adjacent Countries* (Boston: William D. Ticknor, 1838).

equal expanse of territory within the confines of the Western Hemisphere.”³¹ William Ellsworth Smythe, one of the irrigation’s most dedicated apostles, wrote, “To the popular mind ‘arid’ means only ‘rainless,’ and ‘rainless’ is synonymous with ‘worthless.’”³² The area was viewed by Anglo-Americans as a place to avoid entirely, or to cross as quickly as possible on the way to more fertile lands in Oregon or California. A notable exception was the Mormon settlements on the shore of the Great Salt Lake and along the Wasatch Front, but the Mormons were seeking solitude and seclusion.

This perception began to change with the explorations of Major John Wesley Powell. Powell was born in 1834 in New York. A small man—five feet, six-and-a-half inches tall and weighing 120 pounds—he lost his right arm in April 1862 fighting for the Union at the Battle of Shiloh. Powell was also a trained geologist.³³ In 1869 and 1871, Powell led expeditions down the Colorado River. Powell’s biographer Edward Dolnick wrote, “Powell’s Grand Canyon trips were the most exciting and glamorous events of his life, but perhaps not the most important. Fittingly Powell’s place in American history is as marked by paradox as was his character.”³⁴ Powell used the celebrity he gained from

³¹ Simons, 63.

³² William Ellsworth Smythe, “The Conquest of Arid America,” *The Century*, 50, issue 1 (May 1895): 85.

³³ Edward Donlnick, *Down the Great Unknown: John Wesley Powell’s 1896 Journal of Discovery and Tragedy Through the Grand Canyon* (New York: HarperCollins, 2001), 2.

³⁴ *Ibid.*, 290.

his explorations of the Colorado River and the Grand Canyon to lobby Congress for further surveys of the Arid West. Powell also lobbied for the development of irrigation, and of tying water to the land it was supposed to service.³⁵ His *Report on the Lands of the Arid Region of the United States*, first published in 1878 with a second edition in 1879, became the point of departure for debate on irrigation policy in the West for the next forty years.

Powell's enthusiasm inspired others, including William Ellsworth Smythe, Elwood Mead, Frederick Newell, and Francis G. Newlands. Powell, Smythe, Mead, Newell and Newlands' quest for irrigation fit nicely into the new progressive interpretations of the United States constitution and American society at the end of the Long Nineteenth Century.³⁶ At the beginning of the Long Nineteenth Century, the ideal of Jeffersonian democracy was ascendant. In 1790, 3 percent of the population lived in

³⁵ Institute for Government Research, *The U.S. Reclamation Service: Its History, Activities and Organization* (New York: D. Appleton and Co., 1919), 8; Elwood Mead, *Irrigation Institutions: A Discussion of the Economic and Legal Questions Created by the Growth of Irrigated Agriculture in the West* (New York: Macmillan and Co., 1903), 347.

³⁶ The Long Nineteenth Century lasted from March 4, 1801, the inauguration of President Thomas Jefferson to April 6, 1917, the declaration of war by the United States on Germany in World War I. These two events nicely bookend shifts in American attitudes from those which are clearly eighteenth century to those which are nineteenth century and then from those which are clearly nineteenth century to those which are clearly twentieth century. The last approximately one-third of this period, from 1877 to 1917, is the Gilded Age.

rural areas.³⁷ The hero of the Jeffersonian ethic was the independent yeoman farmer, working for himself and his family on a relatively small, nearly self-sufficient farm.³⁸ On the day the Long Nineteenth Century began, “Jefferson congratulated his fellow citizens on ‘possessing a chosen country with room enough for our descendants to the thousandth and thousandth generation.’ The country which Jefferson spoke of in such expansive language extended only to the Mississippi’s east bank and was cut off from access to the Gulf of Mexico by Spain’s Florida”³⁹ Yet Jefferson felt it necessary, notwithstanding his principles of a strict construction of the Constitution, to acquire the Louisiana Purchase, an “enormous domain of unsettled land . . . [which] meant that many generations would elapse before the vacant lands would be all taken up and the people of the United States turned from agriculture to the demoralizing and destructive pursuits of finance, manufacturing, and commerce.”⁴⁰ Powell, Smythe, Mead, Newell and Newlands saw themselves as carrying out this dream. However, the dream was more of a mirage.

³⁷ Michael R. Haines, “Population Characteristics,” in *Historical Statistics of the United States*, Richard Sutch and Susan B. Carter, gen. eds., millennial ed. (New York: Cambridge University Press, 2006), 1:22.

³⁸ Charles Beard, *Economic Origins of Jeffersonian Democracy* (New York: The Macmillian Co., 1915), 423.

³⁹ Charles M. Harvey, “Epic of the West’s Expansion,” *The North American Review*, 186, no. 618 (July 5, 1907): 519.

⁴⁰ Beard, *Economic Origins*, 439.

By the close of the Long Nineteenth Century, most Americans were urbanites living in cities of 2,500 people or more.⁴¹ Michael Haines, in an essay included in *Historical Statistics of the United States*, wrote, “For most of the nineteenth century, migration flows westward were consistent with the land availability hypothesis discussed in connection with the fertility transition Rural migrants moved west to secure cheaper, good-quality land. Frederick Jackson Turner’s thesis that the frontier was a demographic “safety valve” in nineteenth-century America remains a durable view. Nevertheless, late in the century, rural-to-urban flows assumed the dominant role.”⁴² Alan L. Olmstead and Paul W. Rhode, also in an essay in *Historical Statistics of the United States*, wrote:

The size of the agricultural sector continued to grow rapidly during the late nineteenth and early twentieth centuries while the country was industrializing. Of course, the farm sector’s relative size fell over this period as the nonfarm sector grew even more rapidly. As one indication of these crosscutting trends, the farm population increased from 22 million people in 1880 to 32 million people in 1910 whereas the sector’s share of the national population declined from 44 percent to 35 percent during this period.⁴³

⁴¹ According to U.S. Census data for 1920, 51.4 percent of Americans lived in urban areas. “Urban and rural territory—number of places, by size of place: 1790–1990” in Sutch and Carter, table Aa716-775, 1:105.

⁴² Michael R. Haines, “Population Characteristics,” in Sutch and Carter, 1:21.

⁴³ Alan L. Olmstead and Paul W. Rhode, “Farms and Farm Structure,” in Sutch and Carter, 4:10.

Not only was the Long Nineteenth Century a period of profound demographic change, it was also a period of dynamic and fundamental change in American constitutionalism and politics unlike any other in American history. If Increase Mather (1629-1723) were to return in 1799 from the afterlife to Boston, he might find the idea of independence from Great Britain strange—although given experiences during the English Civil War and his involvement in securing the Massachusetts colonial charter of 1692 he might not have found it that strange—nevertheless, he could not help but notice the strong family resemblance between the English constitution and the United States Constitution of 1787. Similarly, if Theodor Roosevelt (1858-1919) or Woodrow Wilson (1856-1924) were to make a return today to Washington from the afterlife, they would find it much as they left it with the President setting the national agenda for Congress to approve while delegating the day-to-day running of the government to various boards and commissions of professional civil servants and experts, some of whom are known informally in the press as “tsar,” as well as the extremely broad reach of federal authority over the lives of American citizens. However, if Thomas Jefferson (1743-1826) were to return to 1917 from the afterlife to Washington, he would not recognize the government ruling the United States as the same one he had served as the third President. After the Civil War decisively redefined the relationship of the federal government to the states and to the people, Americans began to look to their government to help solve their problems, or even to solve them outright. All of the great “questions” of the Gilded Age—the money question, the Negro question, the tariff question, the immigration question, the

Mormon question, etc.—revolved first around the question of whether the federal government could or ought to exercise its power to alleviate some social ill or other. In most cases, the federal government acted without any clear constitutional mandate—a clear abrogation of the Jeffersonian understanding of constitutional interpretation, if not of Jefferson’s. Walter Weyl referred to this practice as “amendment by interpretation.”⁴⁴ Although the Supreme Court sometimes managed to slow this process, for example in *Lochner v. New York*,⁴⁵ the Court more often aided and accelerated the process, for example in *Muller v. Oregon*.⁴⁶ “The period in American history running from 1890 to 1920,” wrote Gene Clanton, “has been appropriately labeled the ‘Age of Reform.’ From that era’s reassessment and attempt to reshape American society emerged a variety of social, economic, and political responses.”⁴⁷ John D. Burnker wrote, “The first two decades of the twentieth century witnessed so many fundamental alterations in the American system of politics and government that the period has sometimes been referred to as ‘the second founding.’”⁴⁸ “Between 1877 and 1937, then,” wrote William J. Novak,

⁴⁴ Walter E. Weyl, *The New Democracy*, rev. ed. (New York: The Macmillan Co., 1914), 108-109.

⁴⁵ *Lochner v. New York*, 198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 (1905).

⁴⁶ *Muller v. Oregon*, 208 U.S. 412, 28 S. Ct. 324, 52 L. Ed. 551 (1908).

⁴⁷ Gene Clanton, “‘Hayseed Socialism’ on the Hill: Congressional Populism, 1891-1895,” *The Western Historical Quarterly*, 15, no. 2 (Apr., 1984): 139.

⁴⁸ John D. Burnker, *The Gilded Age and Progressive Era, 1877-1920* (Acton, Mass.: Copley Publishing Group, 2002), 579-580.

“American conceptions of state power, individual rights, and the rule of law were fundamentally transformed.”⁴⁹

Both the demographic transformations and the political and constitutional transformations were a response to the economic and social stresses, strains, and dislocations of the Later Industrial Revolution.⁵⁰ A full and complete discussion of the effects of the Industrial Revolution is beyond the scope of this work. However, the Industrial Revolution wrought so profound a change on every aspect of human society, humanity is still sorting out the implications. In regards to agriculture, the Industrial Revolution (1) brought about an increase in mechanization on the farm and in the distribution of farm produce which (2) increased production of food which (3) drove down farm prices leading to financial ruin of many farmers while (4) at the same time increasing the population and therefore the demand for food which (5) required an increase in the use of farm machinery and in land under cultivation and (6) so forth.

⁴⁹ William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 1996), 247.

⁵⁰ I divide the Industrial Revolution in to an Early period and a Later period. The Early period began in 1775 when James Watt invented a steam engine with a separate condenser cylinder. The Later Industrial Revolution began January 10, 1870 when John D. Rockefeller and his business partners incorporated Standard Oil of Ohio and continues to the present. The Early Industrial Revolution was characterized by the replacement of human, animal, wind, and water power with steam power; the introduction of the factory system and interchangeable parts, and the introduction of mechanization and technology into previously manual processes. The Later Industrial Revolution is characterized by an acceleration of the three elements of Early Industrial Revolution, but more especially with the introduction of financial, legal, and organizational innovation that led directly to trusts, and monopolies, and increased social and political dislocations in response thereto.

Although this cycle forestalled Thomas Robert Malthus' predicted demographic collapse at least for the time being, it placed greater stress on farmers. This stress increased as the Later Industrial Revolution saw the formation of trusts and monopolies, especially in transportation, but also companies such as International Harvester founded in 1902, and the nationalization and globalization of markets for farm products. Inasmuch as farms in the humid East were working at full capacity or in some cases declining due to overuse, new farmland could only be found in the arid West, and farming there required irrigation. Samuel P. Hayes summed up the problem, "Farmers, no longer as relatively self-sufficient as formerly, were now involved in a worldwide economic network and the impersonal price-and-market system. They soon learned to cope with these new circumstances, to calculate costs and prices with businesslike efficiency, and to join together to deal with powerful market forces."⁵¹

The second strand influencing the 1913 Nevada Water Law was the tragedy of the commons. The tragedy of the commons was first identified in a thought experiment by Garrett Hardin in 1968.⁵² Generally speaking, Hardin's thesis is that certain problems, such as overpopulation and nuclear weapons proliferation, have no technical solution, which he defines as "one that requires a change only in the techniques of the natural

⁵¹ Samuel P. Hays, *The Response to Industrialism, 1885-1914* 2nd ed. (Chicago: University of Chicago Press, 1995), 78.

⁵² Garrett Hardin, "The Tragedy of the Commons," *Science* n.s. 162, no. 3859 (Dec. 12, 1968): 1243.

sciences, demanding little or nothing in the way of change in human values or ideas of morality.”⁵³ His thought experiment concerned a hypothetical pasture owned in common by a group of herders:

Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactorily for centuries because tribal wars, poaching, and disease keep the numbers of both man and beast well below the carrying capacity of the land. Finally, however, comes the day of reckoning, that is, the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates tragedy.

As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, “What is the utility *to me* of adding one more animal to my herd?” . . .

Adding together the component partial utilities, the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to her herd. And another, and another. But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit—in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believed in the freedom of the commons. Freedom in a commons brings ruin to all.⁵⁴

To avoid the tragedy of the commons, Hardin suggests several possible solutions:

We might sell them [the commons] off as private property. We might keep them as public property, but allocate the right to enter them. The allocation might be on the basis of wealth, by the use of an auction system. It might be on the basis of merit, as defined by some agreed-upon standard. It might be by lottery. Or it might be on a first-come, first-served basis, administered in long queues. These, I think, are all the

⁵³ *Ibid.*, 1243.

⁵⁴ *Ibid.*, 1244.

reasonable possibilities. They are all objectionable. But we must choose.⁵⁵

Although the term “tragedy of the commons” would have been strange to Powell, Smythe, and their associates, the concept was well understood. Sarah F. Bates and her coauthors wrote, “Law is sometimes painted as value-neutral, but in most cases law is value-laden, and it ought to be, for societies lodge many of their highest philosophical ideals, collective objectives, and passions in their laws.”⁵⁶ Powell, Smythe and other irrigation enthusiasts were faced with a “commons” in the form of the rivers, streams, and even small creeks available for irrigation purposes. This commons took the form of riparian rights. The “inherent logic of the commons” forced Westerners to make a choice. They chose to keep the waters as public property, but allocate the right to enter them on the basis of merit, as defined by beneficial use and on the first-come, first-served basis known as prior appropriation. These were reasonable choices; nevertheless, these technical solutions have not solved the problem of aridity, except in the very short term.

These technical solutions to the problem of aridity may be grouped under the concept of *conservation*. Roy M. Robbins complained, “No nation in world history had so wasted its natural resources or opened up its national treasure to unbridled exploitation

⁵⁵ *Ibid.*, 1245.

⁵⁶ Sarah F. Bates et al., *Searching Out the Headwaters: Change and Recovery in Western Water Policy* (Washington: Island Press, 1993), 129.

as had the United States of America.”⁵⁷ Conservation went hand-in-glove with reclamation. Unused water ran that ran to the sea or into desert sinks and salt lakes was almost by definition wasted. The conservation movement wanted to conserve these wasted waters and use them to reclaim the equally wasted arid lands. Men such as Gifford Pinchot viewed this as a moral crusade. However, as Thomas Wellock pointed out, “Conservation became a means to expand federal, especially executive, authority and convince the public to embrace a more robust central authority. . . . The twin and often conflicting elements of economics and morality were constantly in play in conservation outcomes, and often conservationists were not on the side of the people.”⁵⁸

The most influential strand was the final element: Western boosterism. Since at least the 1840s, Americans believed in Manifest Destiny, the notion that the United States of America was called by God to subdue the entire continent. To this end, America purchased the Louisiana Territory and Alaska, annexed Texas and Florida, negotiated a settlement of the Oregon boundary with Great Britain, and conquered northern Mexico. Horace Greeley urged, “Go West, young man.” In his Frontier Thesis, Frederick Jackson Turner intellectualized American expansion in semi-religious terms of renewal. To think otherwise was un-American, if not treasonous. As France and Great Britain were setting

⁵⁷ Roy M. Robbins, *Our Landed Heritage: The Public Domain, 1776-1936* (Princeton: Princeton University Press, 1942), 335.

⁵⁸ Thomas Wellock, *Preserving the Nation: The Conservation and Environmental Movements, 1870-2000* (Wheeling, Ill.: Harlan Davidson, Inc., 2007), 15.

up colonial empires in Africa and Asia, the United States did so in western North America. William Ellsworth Smythe made the analogy plain, “What Africa is to the nations of Europe, Arid America is to the people of the United States.”⁵⁹ Elsewhere, Smythe wrote, “The economic greatness of the United States is the fruit of a policy of *peaceful conquest* over the resources of a virgin continent.”⁶⁰ “In many ways,” Donald Pisani wrote, “federal reclamation was the last stage of Manifest Destiny—the process of creating an integrated nation that stretched from sea to sea.”⁶¹

What “Manifest Destiny” was on the national and international levels, “boosterism” was on the local level. Americans are nothing if not optimistic. We seem to be born optimistic. Optimism is part of our national civic religion. Optimism is enshrined in the holy writ of this national civic religion: the Declaration of Independence, the Constitution, and the Gettysburg Address. We sing hymns to optimism. Our optimism is for the future. Yesterday was good. Today is better. Tomorrow will be best of all. This optimism is at the heart of boosterism. Boosters needed others to heed their claims, to go west, and come to—as in this case—Nevada. The arid regions were not worthless without water, they were worthless without people willing to come and buy the

⁵⁹ William Ellsworth Smythe, “The Stepchild of the Republic,” *The North American Review*, 163, issue 476 (July 1896): 37

⁶⁰ Smythe, *Conquest of Arid America*, 3. Italics added.

⁶¹ Donald J. Pisani, *Water and the American Government: The Reclamation Bureau, National Water Policy, and the West, 1902-1935* (Berkeley and Los Angeles: University of California, 2002), 273.

land. Having invested their capital in land, in water and ditch companies, in businesses hoping to cater to an established, local clientele, boosters needed customers. As Vernon L. Parrington wrote:

Its [boosterism's] social philosophy, which it found adequate to its needs, was summed up in three words—preemption, exploitation, progress. Its immediate and pressing business was to dispossess the government of its rich holdings. Lands in the possession of the government were so much idle waste, untaxed and profitless; in private hands they would be developed. They would provide work, pay taxes, support schools, enrich the community. Preemption meant exploitation and exploitation meant progress. It was a simple philosophy and it suited individualism of the times. The Gilded Age knew nothing of the Enlightenment; it recognized only the acquisitive instinct.⁶²

Boosters made the most astonishing claims to induce Easterners to follow Greeley's advice and go west. William Ellsworth Smythe, again, wrote, "Aridity is not a curse, but a blessing."⁶³ Elsewhere, he wrote, "The element of aridity not only fosters health, but moderates and makes more readily bearably the summer's heat and winter's cold."⁶⁴ C.J. Blanchard told his fellow countrymen, "The desert . . . holds a promise of freedom and independence to the careworn and discouraged. It offers the uplift to unmeasured distances and the individual home with that broader freedom of action which

⁶² Vernon L. Parrington, *The Beginnings of Critical Realism in America, 1860-1920* (New York: Harcourt, Brace and World, Inc., 1930), 9-10.

⁶³ William Ellsworth Smythe, "The Twentieth Century West," *Out West* 17 (July. 1902-Dec. 1902): 624.

⁶⁴ Smythe, *Conquest of Arid America*, 25.

comes with life in the open.”⁶⁵ Elaborate irrigation schemes were merely a way to attract settlers and not coincidentally raise real estate prices and increase business, as were the railroads.

These three strands were braided together into the 1913 Nevada Water Law, which, with some minor amendments, continues to govern water right in the Silver State. It was a political victory of populist forces over progressive forces, but it had very little to do with aridity. Populism and Progressivism are often viewed simply as two reform movements of the late nineteenth and early twentieth centuries. The conventional literature views Populism as the parent of Progressivism. This is incorrect. Populism was essentially a conservative movement.⁶⁶ It was the last stage of development or evolution of the Jeffersonian-Jacksonian ideal. Progressivism was a liberal movement looking forward to a new world. It rejected the Jeffersonian-Jacksonian ideal and adapted Leninist socialism to the American context. Both Populism and Progressivism were

⁶⁵ C. J. Blanchard, “The Call of the West: Homes are Being Made for Millions of People in the Arid West,” *National Geographic Magazine* 20 (May 1909):403.

⁶⁶ I am borrowing the definitions used by Gene Clanton in his book *Populism: The Humane Preference in America*: *Reactionary* represents “efforts to stop change and decrease the power of lower-class and minority groups”; *conservative* represents “attempts maintain and empower the political and class status quo closely associated with the dominate economic system”; *liberal* represents “efforts to promote social changes which do not challenge in a fundamental way the existing class and economic system”; and *radical* represents “efforts to advance political, economic, and social democracy which often, though not always, see the capitalist system as the cause of problems. Gene Clanton, *Populism: The Humane Preference in America, 1890-1900* (Boston: Twayne Publishers, 1991), xvii.

reactions to the effects of the Civil War and the Industrial Revolution, but reached very different conclusions about how to do this. Although superficially similar, the two movements were actually opposites in their goals, and in their basic assumptions of human nature and the nature of the Constitution of the United States. Understanding the opposition of Populism and Progressivism is critical to understanding their different approaches to development in the American West, especially in irrigation and water issues.

The assertion that aridity was the reason that the West generally, and western water law specifically developed in the manner in which they did assumes as a fact the proposition that the arid portion of North America could be and ought to be densely settled. This is by no means certain. The Arid West—Nevada, in particular—could have been left sparsely populated and perhaps should have been. The assumption that Nevada should be populous finds its basis in Manifest Destiny, boosterism, and capitalism, and has been repeated and passed on from the boosters and capitalists of the Long Nineteenth Century to the historians of later generations without question. According to Donald J. Pisani, “Since 1931, when Walter Prescott Webb published *The Great Plains*, many historians have considered the influence of aridity on the history of the western United States. . . . Webb regarded the ‘retreat’ of the desert as the last, heroic chapter in the advance of American civilization.”⁶⁷ But Marc Reisner responded, “[A] place that

⁶⁷ Donald J. Pisani, *To Reclaim a Divided West*, xiii.

receives seven inches or less—as Phoenix, El Paso, and Reno do—is arguably no place to inhabit at all.”⁶⁸ Donald J. Pisani wrote, in 1987:

The failure to recognize the adaptability of common law has contributed to the assumption that nature dictated the evolution of western water law. Robert Dunbar, the foremost student of western water law, flatly declares: “Climate has been the determining factor in the development of western water law.” And Gordon Bakken, who has written the best general surveys of law in the West, states: “Pioneer legislators and judges in the Rocky Mountain States created the law of prior appropriation to deal with this problem of aridity.” Certainly, many court decisions sustain this interpretation.⁶⁹

In 2002, Pisani wrote, “Historians have neglected the relationship between natural resources and the nature of American government in the early twentieth century.”⁷⁰ Sarah F. Bates and her coauthor wrote:

Because law can be described as societal values codified or decreed, careful students of law and public policy never study the face of a law in isolation. Instead, they look to the interests and ideas that propelled the law into existence. They understand law and public policy by understanding their sources as well as their text.⁷¹

Andrew P. Morriss wrote in 2001 in an article published in the *Oregon Law Review*:

⁶⁸ Marc Reisner, *Cadillac Desert: The American West and Its Disappearing Water* (New York: Penguin Books, 1986), 3-4.

⁶⁹ Donald J. Pisani, “Enterprise and Equity: A Critique of Western Water Law in the Nineteenth Century,” *The Western Historical Quarterly*, 18, no. 1 (January 1987):20. See also Robert Dunbar, “The Adaptability of Water Law to the Aridity of the West,” 57; Gordon Morris Bakken, “The Influence of the West on the Development of Law,” *Journal of the West*, 24 (January 1985): 67.

⁷⁰ Pisani, *Water and the American Government*, 282.

⁷¹ Bates et al., 129.

Water law and policy often are cast as the fundamental organizing principle of the American West. In some accounts, the bringing of water to the arid lands is billed as a triumph over recalcitrant nature. Innovative institutions like the prior appropriation doctrine are celebrated. More recently, however, western water law has been cast as a central part of an oppressive class system.⁷²

Donald Worster would agree with this assessment. In his book *Rivers of Empire: Water, Aridity and the Growth of the American West*, Worster described the West “as a modern *hydraulic society*, which is to say, a social order based on the intensive, large-scale manipulation of water and its products in an arid setting.”⁷³

Each of these authors focused on the technical solution—irrigation—of a mere technical problem—the arid climate. Aridity and irrigation had nothing more to do with the settlement of the West, than digging Summit Tunnel through the Sierra Nevada. Despite Worster’s bad pun about history not being so dry, water or the lack thereof, in and of itself, has very little to do with the history of the West. The history of the West, like all history, is the history of human beings living their lives. Neither Frederick Jackson Turner’s Frontier Thesis nor Patricia Limerick Nelson’s New Western History has water, aridity or technical dominance as a theme.⁷⁴

⁷² Andrew P. Morriss, “Lessons from the Development of Western Water Law for Emerging Water Markets: Common Law vs. Central Planning,” *Oregon Law Review* 18 (Fall 2001): 866-867.

⁷³ Worster, 7. (Italics in the original.)

⁷⁴ *Ibid.*, 11. See also Frederick Jackson Turner, *The Frontier in American History* (New York: Henry Holt and Co., 1920); Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: Norton, 1987).

Natural resources, whether water, fertile soil, mineral deposits or the lack thereof, simply exist waiting to be used or not. People, whether acting individually or collectively through corporations or government or the like, must act upon the natural resources. People choose to use their natural resources and establish laws, customs, and institutions to do so. Natural resources do not establish laws, customs, or institutions. In other words, the nature of American government and the Industrial Revolution had more to do with forming Western water laws than aridity.

Chapter Two

The Industrial Revolution

“The Republic is ruled by the Almighty Dollar.”

— William Ellsworth Smythe (1905)

Farmers experienced the Industrial Revolution “with one foot in the world of Jeffersonian yeomanry and the other in the complex economy of J.P. Morgan.”⁷⁵

Economic historian John Steele Gordon wrote:

In the half century between the end of the Civil War and the beginning of World War I in Europe, the American economy changed more profoundly, grew more quickly, and became more diversified than at any earlier fifty-year period in the nation’s history. In 1865 the country, although already a major industrial power, was still basically an agricultural one. Not a single industrial concern was listed on the New York Stock Exchange. By the turn of the twentieth century, a mere generation later, the United States had the largest and most modern industrial economy on earth, one characterized by giant corporations undreamed of in 1865. The country, an importer of capital since its earliest days, had become a world financial power as well, the equal of Great Britain.⁷⁶

⁷⁵ Steven J. Diner, *A Very Different Age: Americans of the Progressive Era* (New York: Hill and Wang, 1998), 102.

⁷⁶ John Steele Gordon, *An Empire of Wealth: The Epic History of American Economic Power* (New York: HarperCollins, 2004), 205.

The period from after the Civil War to the United States' entry into World War I was America's Later Industrial Revolution, and "although nobody in 1870 suspected it, the United States was entering upon a new phase of its economic career; a new economy was bringing with it radical social changes."⁷⁷ J. Allen Smith wrote, "The so-called industrial revolution has accomplished sweeping and far-reaching changes in economic organization. It has resulted in a transfer of industrial power from the many to the few."⁷⁸

With the Industrial Revolution, wrote William Ellsworth Smythe:

individual man continued to shrink as a factor in economic progress. He no longer worked for himself and collected the full fruit of his labor. He no longer consumed what he produced nor produced what he consumed. . . . Each new marvel of labor-saving machinery . . . tended to minimize him as an economic factor.⁷⁹

Herbert Croly added, "The net result of the industrial expansion of the United States since the Civil War has been the establishment in the heart of the American economic and social system of certain glaring inequalities of condition and power."⁸⁰ Walter Weyl summed up the effect of the Industrial Revolution, "We Americans, it is true, have

⁷⁷ Herbert Croly, *The Promise of American Life* (New York: Macmillan Co., 1912), 101.

⁷⁸ J. Allen Smith, *The Spirit of American Government* (New York: MacMillan Co., 1915), 307-308.

⁷⁹ William Ellsworth Smythe, *Constructive Democracy: The Economics of a Square Deal* (New York: Macmillan Co., 1905), 12, 15.

⁸⁰ Croly, 116.

surrendered some of our former aggressive egalitarianism. We have borrowed some of the class distinctions of Europe, and have evolved some upon our own account.”⁸¹

Most work on the Industrial Revolution, whether the Early Industrial Revolution (circa 1775 to 1870) or the Later Industrial Revolution (1870 to the present), takes the adjective “industrial” at face value. These works concern themselves with the rise of monopolies and trusts, the plight of factory workers, the excesses of robber barons and so forth. The effects of the Industrial Revolution on agriculture are largely neglected. An important exception to this rule is Donald J. Pisani’s *From the Family Farm to Agribusiness: The Irrigation Crusade in California and the West, 1850-1931*.⁸²

Nevertheless, the Industrial Revolution affected agriculture profoundly in six distinct ways. First, industrialization made farm mechanization possible. Second, farm mechanization and the application of “scientific” farming methods led to increased production both directly and indirectly. Third, the increased production allowed for an increase in population, both rural and urban. Fourth, farm mechanization and the application of scientific farming methods decreased the number of farm workers necessary, freeing the rest for factory or other work. Fifth, steam-powered transportation and electromagnetic communication forced farmers into national and international

⁸¹ Walter Weyl, *The New Democracy*, rev. ed. (New York: Macmillan Co. 1914), 156.

⁸² Donald J. Pisani, *From the Family Farm to Agribusiness: The Irrigation Crusade in California and the West, 1850-1931* (Berkeley: University of California Press, 1984).

markets. Finally, farmers were disadvantaged by capitalist organizations, specially trusts and monopolies.

Farm mechanization began early in the Industrial Revolution. Eli Whitney patented his cotton gin in 1794. This event is as important as the invention of the steam engine and a valid alternative date for the beginning of the Early Industrial Revolution. This machine made large-scale cotton production commercially viable for the first time and provided the raw material for the first fully-automated, mechanized manufacture of consumer goods, textiles. Cyrus McCormick patented his mechanical reaper in 1834. John Deere invented the steel plow in 1837, which made farming in the Great Plains possible. That same year John Avery and Hiram Abiel Pitts received a patent for an improved threshing machine. By the 1860s, combined harvesters, or combines, were reaping and threshing grain in one mechanical operation. Early models were powered by horses or mules, but practical, steam-powered traction engines, or tractors, to power these machines were also introduced in the 1860s. From 1860 to 1920, the value of farm machinery increased from \$246 million to \$3,595 million, 1,461 percent.⁸³ Karl Marx wrote, “In the United States, it is as yet only virtually that agricultural machines replace

⁸³ Sutch and Carter, table Da 14-27, 4:43.

laborers; in other words, they allow of the cultivation by the farmer of a larger surface, but do not actually expel the laborers employed.”⁸⁴

In addition to the use of farm machinery, farmers began to employ “scientific” farming. Walter E. Wyle called farming in early nineteenth century America “superficial and ineffectual.” He continued, “The tools were rude; the plow was essentially that which Herodotus had seen in Egypt. The farmers were neither ambitious nor scientific. The one-crop system prevailed, fertilizers were unused, and the land was subjected to the most exhausting tillage.”⁸⁵ Marx wrote, “The irrational, old-fashioned methods of agriculture [were] replaced by scientific ones.”⁸⁶ To overcome these problems, many states established agricultural colleges beginning with Michigan State University in 1855. In 1862, Congress passed the Morrill Land-Grant Act of 1862.⁸⁷ Under the act, Congress granted land to each State, excluding the Confederate States which were “in a condition of rebellion or insurrection,” so that the State might build an institution to “to teach such branches of learning as are related to agriculture and the mechanic arts.”⁸⁸ Iowa was the

⁸⁴ Karl Marx, *Capital*, Frederick Engels, ed. (1886), vol. 50 of *Great Books of the Western World*, Robert Maynard Hutchins, ed. in chief, Samuel Moore and Edward Aveling, trans. (Chicago: Encyclopedia Britannica, 1953), 249.

⁸⁵ Weyl, 26.

⁸⁶ Marx, 249.

⁸⁷ *Morrill Land-Grant Act*, ch. 130, §§ 1-9 *U.S. Statutes at Large* 12 (1862): 503 codified as amended 7 *U.S. Code* 7 (2010), §§ 301-309.

⁸⁸ *Ibid.*, § 4 codified as amended *U.S. Code* 7 (2010), § 304.

first state to take advantage of the Morrill Land-Grant Act of 1862 by founding Ames College, now Iowa State University. The United State Department of Agriculture was organized May 15, 1862, and elevated to Cabinet status April 15, 1889. Several States also set up their own Departments of Agriculture. State and federal appropriations for state agricultural research stations increased 1,288 percent from 1889, the first year for which figures are available, and 1920.⁸⁹

In addition to governmental help, interested private individuals set up various congresses and other organizations to propagate the new methods. Although better known for their political activities on behalf of farmers, the National Order of the Patrons of Husbandry, or Grange, also established a “National Intelligence Office” to keep farmers informed of conditions and prices, and to foster the farmer’s “intellectual improvement.”⁹⁰ If the Grange was a political organization that provided technical assistance, other societies and congresses provided more technical assistance with their lobbying activities. For example, the International Dry Framing Congress was “a popular scientific agricultural society.”⁹¹ The congress held “annual conventions for the discussion of agriculture” and worked “with newspapers and magazines carrying on an

⁸⁹ Sutch and Carter, table Da 1244-1252, 4: 220.

⁹⁰ Edward Winslow Martin, *History of the Grange Movement* (Chicago: National Publishing Co., 1874), 464, 470.

⁹¹ John T. Burns to Tasker L. Oddie, September 28, 1911, Governors’ Papers, box GOV-0006, folder 42, Nevada State Archives, Carson City, Nev.

active propaganda resulting in the . . . open discussion of not only dry-farming, so-called, but better tillage and business methods for the farm. It also [published] its own magazine, ably edited.”⁹² The International Irrigation Congress was organized in 1891 in Salt Lake City, Utah to promote the science of irrigation.⁹³ “We want to call attention to the value of this practical school of the farmer,” wrote A.J. Wells. He continued, “The settler need not experiment. He cannot afford to. This little farm, managed by experts on scientific principles, will do it for him. Here time is given to study, to testing soils and seeds, grains and grasses, fruits and roots, cows and horses, for Nevada soil and climate.”⁹⁴ In addition to the technical assistance and practical advice provided to irrigating farmers through its journal *Irrigation Age*, edited by William Ellsworth Smythe, the International Irrigation Congress aggressively lobbied the State and federal governments for support for irrigation projects in the arid West. By 1921, there were 7,374 agricultural cooperatives in the United States.⁹⁵

With machines and scientific techniques, farmers became more effective and efficient producing more food per acre. Rebecca Edwards wrote, “In the 1830s, twenty bushels of wheat (roughly one acre’s yield) had taken more than sixty hours of human

⁹² *Ibid.*

⁹³ Worster, 132.

⁹⁴ A. J. Wells, *The New Nevada: What It Is and What It Is To Be: The Era of Irrigation and the Day of Opportunity* (San Francisco: Southern Pacific Railroad, 1906), 31-33.

⁹⁵ Sutch and Carter, table Da647-660, 4: 86.

labor to grow; by the late 1880s and 1890s the same yield took less than four hours.”⁹⁶ In the Mid-West, farmers were able to bust the sod on the Great Plains and bring new lands into production. Between 1860 and 1920, the number of farms increased from 2,044,000 to 6,454,000, or 316 percent, and the amount of acreage under cultivation also increased from 407,213,000 acres to 958,677,000, or 234 percent.⁹⁷

During the decades from 1870 to 1920, the United States population increased by 48,339,000 from natural increase alone, that is discounting immigration.⁹⁸ This is 121 percent of the total population in 1870, and 72.6 percent of the total population increase of 66,556,000 over that half century. In other words, the number of births over deaths during the fifty years between 1870 and 1920 more than doubled the population of the United States. The relationship between increased food production and increased population is well established, but whether population growth drives food production, or food production drives population growth has been much debated.⁹⁹ The relationship between food production and population growth was first recognized by Thomas Robert Malthus in his celebrated book *An Essay on the Principle of Population*, originally

⁹⁶ Rebecca Edwards, *New Spirits: Americans in the Gilded Age, 1865-1905* (New York: Oxford University Press, 2006), 43.

⁹⁷ Sutch and Carter, table Da14-27, 4: 43.

⁹⁸ *Ibid.*, table Aa9-14, 1: 31.

⁹⁹ Tom Standage, *An Edible History of Humanity* (New York: Walker and Co., 2009), 225.

published in 1798 in London.¹⁰⁰ Simply stated, Malthus' thesis is that "population has this constant tendency to increase beyond the means of subsistence, and that it is kept to its necessary level by these causes," that is "various forms of misery, or the fear of misery, by a large portion of mankind."¹⁰¹ In regards to America, Malthus wrote, "If America continues increasing, which she certainly will do though not with the same rapidity as formerly, the Indians will be driven further and further back into the country, till the whole race is ultimately exterminated."¹⁰² "Malthus thought that this predicament," wrote Tom Standage, "which is now known as a 'Malthusian trap,' was inescapable."¹⁰³ Many in the Gilded Age worried that this was true. In 1891, A. O. Atwater asked rhetorically, "Is the evil time coming when population will exceed the capacity of the earth for production and the ever-fiercer struggle for existence will leave the weakest for starvation?"¹⁰⁴ President Theodore, among others, recognized the coming trap, "The time is not far distant when the problem of supplying food will become pressing. It will be necessary to obtain much larger crops by better farm practice and

¹⁰⁰ Thomas Robert Malthus, *An Essay on the Principle of Population*, 1st Am. ed., 2 vols. (Washington: Rodger Chew Wiegman, 1806).

¹⁰¹ *Ibid.*, 1:4.

¹⁰² *Ibid.*, 1:9-10.

¹⁰³ Standage, *An Edible History*, 127.

¹⁰⁴ W. O. Atwater, "The Food-Supply of the Future," *The Century* 43, issue 1 (Nov. 1891): 101. *See also* Malthus, generally.

better plants, with less soil erosion and insect damage.”¹⁰⁵ The *Los Angeles Times* opined, “The whole world is filling up with people . . . Before a great many decades, unless something occurs to control the growth of population in the world, every arable acre of ground above sea-level will be seriously tilled.”¹⁰⁶ John L. Cowan wrote in 1910, “The amount of productive land being limited, and the increase in the number of months to be fed being unlimited, it follows that some day, sooner or later, there will be more people than can be fed.”¹⁰⁷ The solution was obvious: grow more food on irrigated, arid land. Cowan continued, “If the world’s half-deserts can be farmed and made to produce food crops of economic importance, the gaunt word, Hunger, will be banished for at least a thousand years—without the intervention of the Malthusian panaceas of war, famine and pestilence, and without the necessity of a general resort to ‘race suicide.’”¹⁰⁸ The arid regions—the “half-deserts,” as Cowan phrased it—were indeed farmed, and Hunger was banished without war, famine, or pestilence, at least so far, by the Industrial Revolution, specifically by increased production due to mechanization and scientific agriculture, and by bringing more land into production through irrigation.¹⁰⁹

¹⁰⁵ Theodore Roosevelt as quoted in “Conserving Natural Resources Is Imperative, Says President,” *Wall Street Journal*, January 23, 1909, 4.

¹⁰⁶ “The Magic Touch of Water,” *Los Angeles Times*, December 15, 1912, VI12.

¹⁰⁷ John L. Cowan, “The Conquest of the Half-Desert,” *Overland Monthly and Out West Magazine*, 55, no. 5 (May 1910): 530.

¹⁰⁸ *Ibid.*, 531.

¹⁰⁹ Atwater, 101-104.

Farm mechanization and the application of scientific farming methods, including irrigation, decreased the number of farm workers necessary freeing the rest for factory or other work. Although the population in general increased, the percentage of population employed in farm work decreased from 6,790,000 workers out of a total population of 39,903,000, or 17 percent, in 1870 to 10,790,000 agricultural workers out of a total population of 106,461,000, or 10 percent, in 1920.¹¹⁰ Thus, fewer people were feeding many more, and the surplus population was free to seek employment as wage workers in the growing cities. Marx observed, “In the sphere of agriculture, modern industry has a more revolutionary effect than elsewhere, because it annihilates the peasant . . . and replaces him with the wage laborer.”¹¹¹ A.M. Simmons complained, “On of the most characteristic facts of modern social evolution has been the exodus of population from the rural neighborhoods to the great cities.”¹¹² Simons further complained that the migration to the cities led ultimately to the “retention of the unfit” in the country, because cities were, “like a great vampire, . . . sucking away the best blood of the rural communities” therefore “must . . . place the country in a condition of intellectual, physical and economical inferiority to the city.”¹¹³ In 1897, George E. Girling complained, “For many years there has been a steady and rapid increase in the population of the cities,” but was

¹¹⁰ Sutch and Carter, table Aa6-8, 1: 28-29; table Ba814-830, 2: 110.

¹¹¹ Marx, 249.

¹¹² Simons, 63.

¹¹³ *Ibid.*, 65.

hopeful that the “turn of the tide has come. ‘Back to the land’ is the cry and we may confidently look for in the near future to a broad and deep stream of homeseekers flowing out of the factory towns and cities searching for locations.” Although the ratio of farm wages to nonfarm wages remained almost the same in 1919 as it was in 1870, 41.0 percent versus 40.1 percent,¹¹⁴ many commentators complained that Americans were becoming “wage slaves.”¹¹⁵ William Ellsworth Smythe complained:

Individual man continued to shrink as a factor in economic progress. He no longer worked for himself and collected the full fruit of his labor. He no longer consumed what he produced nor produced what he consumed. As serfdom had evolved from slavery and tenantry from serfdom, so the wage system developed as a means of exploiting labor under the new conditions which had arise. . . . Individual man continued to shrink in relative importance. Each new marvel of labor-saving machinery, each new application of natural forces, tended to minimize him as an economic factor.¹¹⁶

“Forty-three percent of our agricultural class, embracing nearly eighty thousand families, is tenant farmers, and many of these are paying an enormous rate of interest upon chattel mortgages.”¹¹⁷ A. Whitney Griswold stated, “The fact was, there were too many farmers in relation to rapidly improving productive techniques and a relatively fixed demand for

¹¹⁴ Sutch and Carter, table Ba4280-4282, 2: 265; table Ba4234-4243, 2: 260.

¹¹⁵ Diner, 6.

¹¹⁶ Smythe, *Constructive Democracy*, 12, 15.

¹¹⁷ L. D. Lewelling, “Problems Before the Western Farmer,” *The North American Review*, 160, issue 458 (January 1895): 16-17.

food.”¹¹⁸ Walter Weyl summed up the problem, “We Americans, it is true, have surrendered some of our former aggressive egalitarianism. We have borrowed some of the class distinctions of Europe, and have evolved some upon our own account.”¹¹⁹

The fifth factor effecting agriculture during the Gilded Age was the increase in transportation and communication technology, specifically in the form of railroads and steamships, and the telegraph, forced farmers into national and international markets. Between 1830 and 1860, the amount of railroad track in the United States increased 133,256 percent from a mere 23 miles to 30,626 miles, most of it in the North.¹²⁰ In 1862, Congress passed and President Abraham Lincoln signed the Pacific Railway Act.¹²¹ Construction began in 1862 and was completed in 1869 despite the Civil War.¹²² According to Donald J. Pisani, “The event that first kindled interest in federal aid to irrigation agriculture was completion of the ‘transcontinental’ railroad after the Civil War.”¹²³ Between 1860 and 1920, the amount of railroad track in the United States

¹¹⁸ A. Whitney Griswold, *Agriculture and Democracy* (New York: Harcourt Brace and Co., 1948), 8.

¹¹⁹ Weyl, 156.

¹²⁰ Gordon, 148.

¹²¹ *Pacific Railway Act of 1862*, ch.120, *U.S. Statutes at Large* 12 (1862): 489.

¹²² Vincent P. DeSantis, *The Shaping of Modern America, 1877-1920*, 3rd ed. (Wheeling, Ill.: Harlan Davidson, 2000), 21-23.

¹²³ Pisani, *To Reclaim A Divided West*, 127-128.

increased by 1,325 percent, from 30,262 miles to 406,580 miles, including four transcontinental lines.¹²⁴

“Two generations ago,” marveled Arthur T. Hadley in his classic work of economics, *Railroad Transportation*, published in 1886, “the expense of cartage was such that wheat has to be consumed within two hundred miles of where it was grown. Today, the wheat of Dakota, the wheat of Russia, and the wheat of India, come into direct competition. The supply in Odessa [Russia] is an element in determining the price in Chicago.”¹²⁵

Railroads made transporting wheat, corn, cattle, hogs, cotton or many other farm products across the country cheap and efficient. The cost of rail transportation dropped from 1.236 cents per ton-mile to 0.927 cents per ton-mile between 1882 and 1890.¹²⁶ Rebecca Edwards wrote, “A Midwestern farmer no longer bagged his wheat in burlap sacks clearly identifiable as his own product and liable to rot as it waited for shipment by wagon or barge. Instead, he sent it by rail to a steam-powered grain elevator in Chicago or another hub.”¹²⁷ For some farmers, like citrus growers in California, Arizona or southern Nevada, rail transportation opened extremely lucrative winter markets in the North and Northeast. However, other farmers, such as wheat farmers in the Midwest and cotton farmers in the South, were thrust into national markets for which they were ill suited to compete.

¹²⁴ Sutch and Carter, table Df927-955, 4: 923.

¹²⁵ Arthur T. Hadley, *Railroad Transportation—Its History and Its Laws* (New York: G.P. Putnam’s Sons, 1886), 65 as quoted in Gordon, 148-149.

¹²⁶ Sutch and Carter, table Df901-910, 4: 921.

¹²⁷ Edwards, 43.

Steamships, together with the repeal of England's Corn Laws,¹²⁸ made global trade in agricultural products more profitable. Exports of wheat, for example, rose from four million bushels at a total value of \$4,000,000 in 1860 to 218 million bushels at a total value of \$597,000,000 in 1920.¹²⁹

The telegraph, the "Victorian internet" as Tom Standage called it, made the transmission of business information, especially closing prices of securities and commodities, near instantaneous.¹³⁰ In 1867, E.A. Callahan invented the stock ticker tape machine, and in 1872 Western Union Telegraph Co. began to offer telegraphic money orders to the public.¹³¹ In 1866, a transatlantic telegraphic cable was laid between Europe and North America allowing near instantaneous communication between New York and London.¹³²

Nayan Chanda wrote, "Information, combined with easy transportation via trains and steamships, enabled the emergence of a truly global market."¹³³ The Chicago Board

¹²⁸ *Importation Act 1846*, 9 and 10 Vict. c. 22.

¹²⁹ Sutch and Carter, table Ee569-589, 5: 546-548.

¹³⁰ Nayan Chanda, *Bound Together: How Traders, Preachers, Adventurers, and Warriors Shaped Globalization* (New Haven: Yale University Press, 2007), 62. See also Tom Standage, *The Victorian Internet: The Remarkable Story of the Telegraph and the Nineteenth Century's On-line Pioneers* (New York: Walker and Co., 1998).

¹³¹ Chanda, 62.

¹³² *Ibid.*, 63.

¹³³ *Ibid.*, 62.

of Trade was organized in 1848, and traded its first futures contract on March 23, 1851. The New York Produce Exchange, New York Cotton Exchange and the New Orleans Cotton Exchange were organized in 1870. The Chicago Mercantile Exchange was founded in 1898 as the Chicago Butter and Egg Board.¹³⁴ Commodities futures trading has been, and occasionally still is, vilified as “mere gambling,” commodities futures speculators as “parasites,” and “profits from speculation as somehow immoral.”¹³⁵ Richard J. Teweles and Frank J. Jones observed, “It was easy for the farmers, who believed that they were paying too much for their food and clothing, to blame speculators, who appeared to be making considerable money without growing or producing anything tangible.”¹³⁶ Theoretically, these markets ought to have been a boon to farmers by allowing them to contract in advance for the sale of their crops at opportune times and at the best possible prices. Unfortunately, as Steel observed, these markets placed farmers in Kansas in direct competition with farmers from the Dakotas in a national market, and from Canada, Argentina and Australia in a world market. During the Gilded Age, agricultural imports as a percentage of total production rose by a lot. Steven J. Diner wrote, “Entrepreneurs in fact, if not in self-image, farmers found their autonomy and economic security challenged by remote institutions: the railroads on which they shipped

¹³⁴ Richard J. Teweles and Frank J. Jones, *The Futures Games: Who Wins? Who Loses? Why?* 2nd ed. (New York: McGraw-Hill Co., 1987), 9-10.

¹³⁵ *Ibid.*, 11-12.

¹³⁶ *Ibid.*, 13.

their products to market, the currency and credit system, the corporations which manufactured and sold agricultural machinery, and most important, the invisible hand that determined the price of farm commodities.”¹³⁷

Finally, farmers perceived this invisible hand, not gently leading them to unintentionally promote the interest of society through them seeking to promote their self-interests, but grasping them by the throat and squeezing hard. Far from being the hardy, independent yeoman of Jeffersonian myth, Gilded Age farmers were cogs in an economic machine. They were enthralled by national banks. Derisively referred to as the “Money Trust,” national banks and financial firms by their “power of extending or withholding credit, [could] decide what new enterprises will or will not be initiated.”¹³⁸ The banks refused to lend money, except at usurious interest rates.¹³⁹ Interest rates in the West rose from already usurious 10.30 percent in 1880 to 13.11 percent in 1893 to a high of 15.66 percent in 1896 before falling to more reasonable levels.¹⁴⁰ Even so, banks would only make loans secured by a mortgage and were reluctant to take agricultural land as security.¹⁴¹ In 1910 the number of farm owners who had mortgages on their farms was

¹³⁷ Diner, 102.

¹³⁸ Amos Pinchot, *What's the Matter With America: The Meaning of the Progressive Movement and the Rise of the New Party* (n.p.:n.p., 1912), 34.

¹³⁹ DeSantis, 61-62.

¹⁴⁰ Sutch and Carter, table Cj1198-1222, 3: 816. Fifteen point sixty-six percent interest was not exceeded until the prime rate reached 18.1 percent in 1981. *Ibid.*

¹⁴¹ DeSantis, 61-62.

1,311,264, or almost exactly one-third of all farm owners.¹⁴² Although beyond the scope of this work, farmers felt much abused by the “currency question,” that is, the debates over the gold standard, bimetallism, demonitization of silver, or alternatively the free coinage of silver, and the issuance of greenbacks. Theodore Roosevelt admitted, “The question of rural banking and rural credits is also of immediate importance.”¹⁴³ Amos Pinchot accused, “Because it has not felt the scope and dignity of its responsibilities, it [the Money Trust] is today, perhaps justly, recognized as a public enemy.”¹⁴⁴ L. D. Lewelling declared, “He [the farmer] believes the prime cause of all his woes is the manipulation of this money system of the country by unscrupulous and mercenary interests.”¹⁴⁵ Farmers were also burdened by an antiquated and unfair tax system which taxed ownership of real property by farmers, but not the wages and salaries (income) of

¹⁴² S.J. Duncan-Clark, *The Progressive Movement: Its Principles and Its Programme* (Boston: Small, Maynard and Co., 1913), 192.

¹⁴³ Theodore Roosevelt, “A Confession of Faith,” (Address, National Convention of the Progressive Party, Chicago, Ill., August 6, 1912) reprinted in Theodore Roosevelt, *The Works of Theodore Roosevelt*, Herman Hagedorn, ed., memorial ed. (New York: Charles Scribner’s Sons, 1925), 17: 379

¹⁴⁴ Amos Pinchot, 38.

¹⁴⁵ Lewelling, 20.

factory and office workers.¹⁴⁶ C. M. Harger, writing in 1896, identified the problem of the West as was “the burden of indebtedness and taxation.”¹⁴⁷

In addition to the loss of financial security and social standing, farmers feared monopoly. Ezra S. Carr wrote in 1875, “In America, though land is abundant and cheap, and suffrage universal, the centralization of the power of capital has created . . . monopolies, which, having obtained a controlling influence in the government, are equally subversive of the interests of the people.”¹⁴⁸ Nineteen years later, Richard T. Ely wrote, “The history of the world teaches us that private monopoly is a menace to the public. Men are not good enough to be intrusted with such a despotism as that which monopoly confers.”¹⁴⁹ Beginning with the organization of Standard Oil on January 10, 1870, the American economy came increasingly under the thrall of monopolies and trusts. In addition to oil, trusts were organized in sugar, tobacco, salt, whisky, matches, crackers, wire and nails. J.P. Morgan organized International Harvester in 1902, which controlled

¹⁴⁶ DeSantis, 62.

¹⁴⁷ C. M. Harger, “A Problem of Aridity,” *The North American Review*, 163, issue 481 (December 1896): 711-712.

¹⁴⁸ Ezra S. Carr, *The Patrons of Husbandry on the Pacific Coast* (San Francisco: A.L. Bancroft and Co., 1875), 18.

¹⁴⁹ Richard T. Ely, “Natural Monopolies and the Working Man: A Programme of Social Reform,” *The North American Review*, 158, issue 448 (March 1894): 296-297.

80 percent of the market in farm machinery, and therefore directly effected farmers.¹⁵⁰

John Pierpont Morgan hated uncertainty. Morgan believed, in the words of biographer Jean Strouse, “that the combination of rival interests into huge, stable systems was preferable to the boom-and-bust cycles [typical of the Gilded Age economy], price wars, waste, and speculative recklessness of internecine competition.”¹⁵¹ Although not as wealthy as his contemporaries John D. Rockefeller, Andrew Carnegie, Frederick Weyerhaeiser, Jay Gould, Marshall Field, and Edward Henry Harriman—Klepper and Gunther rank him as the twenty-third richest American in history—he was by far the most powerful from the resources he controlled.¹⁵² By 1904, there were 318 trusts, three-fourths of them were organized between 1898 and 1904.¹⁵³ The situation was so bad that, despite the trust-busting efforts of the Theodore Roosevelt and Taft administrations, Amos Pinchot, brother to Chief Forester Gifford Pinchot during the Theodore Roosevelt administration, lamented, “Thus, we must face the fact that, in America, we have

¹⁵⁰ Michael Klepper and Robert Gunther, *The Wealthy 100: From Benjamin Franklin to Bill Gates—A Ranking of the Richest Americans, Past and Present* (Secaucus, N.J.: Carol Publishing Group, 1996), 102; Jean Strouse, *Morgan: American Financier* (New York: Random House, 1999), 5-6, 469-470.

¹⁵¹ Strouse, 6.

¹⁵² Klepper and Gunther, 98-103.

¹⁵³ DeSantis, 154.

permitted an uncontrolled industrial oligarchy to assume, and use for its own purposes, a tremendous and arrogant power.”¹⁵⁴

Railroads were a major concern of farmers for two reasons. First, railroads had a monopoly on transportation. Under the trunk-and-branch system which had many branch lines feeding into a few trunk lines, competition existed along the trunk lines that connected the major cities, but not necessarily along the branch lines which connected small cities, towns and villages to the trunk lines. Farmers were at the mercy of the branch line operators who could, and did, charge exorbitant and discriminatory rates.¹⁵⁵ Railroads charged four times the rate to ship freight a given distance in the West, than to ship it the same distance in the East.¹⁵⁶ It was cheaper for Minnesota farmers to send freight to New York, than to St. Paul.¹⁵⁷ Second, the huge grants of public land given to the railroads under the Pacific Railway Act of 1862 and the various railway acts which came after it made the railroads major land owners. By 1871, railroads controlled a total of 131,350,513 acres of land through grants authorized by the various railway acts.¹⁵⁸

Second, in the Arid West, farmers feared land and water monopoly more than any other. S.M. Jelly wrote in 1888, “Land monopoly is shown by history to be the bane of

¹⁵⁴ Amos Pinchot, 36.

¹⁵⁵ DeSantis, 61.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ Sutch and Carter, table Df890, 4: 919.

the world.”¹⁵⁹ “No monopoly of natural resources,” wrote William Ellsworth Smythe, “could be fraught with more possibilities of abuse than the attempt to make merchandise of water in any arid land.”¹⁶⁰ Elsewhere, Smythe warned water monopoly “would create a system essentially feudal since ownership of the water in an arid region is practically equivalent to ownership of the land.”¹⁶¹ However, John Wesley Powell discounted the possibility, “Monopoly of land need not be feared”¹⁶² And Senator William M. Stewart of Nevada opined, “Irrigated land cannot be monopolized, because it requires so much personal attention and supervision that hired laborers will not produce the best results.”¹⁶³ Regardless of whether Jelley or Stewart was ultimately correct, the *fear* of land and water monopoly was the motivating factor in the minds of Westerners, and they would take steps to avoid it during the Gilded Age.

¹⁵⁹ S.M. Jelley, *The Voice of Labor* (Philadelphia: H.J. Smith and Co., 1888), 26-27.

¹⁶⁰ William Ellsworth Smythe, “The Struggle for Water in the West,” *The Atlantic Monthly* 86, no. 517 (Nov. 1900); 648.

¹⁶¹ *Ibid.*, 649.

¹⁶² John Wesley Powell, *Report on the Lands of the Arid Region of the United States*, 2nd ed. (Washington: Government Printing Office, 1879), 40-41.

¹⁶³ William M. Stewart to Nelson Thomasson, Dec. 12, 1891, Stewart Papers, Nevada State Historical Society, Reno, Nevada as quoted by Lawrence B. Lee, “William Ellsworth Smythe and the Irrigation Movement: A Reconsideration,” *Pacific Historical Review*, 41, no. 3 (Aug., 1972): 301.

Afflicted as they were from six sides, farmers were quick to notice that the rewards of the Industrial Revolution were not evenly or equitably distributed across society. Croly wrote in 1912:

After 1870, the pioneer farmer was much less dependent than he had been upon local conditions and markets, and upon the unaided exertions of himself and his neighbors. He bought and sold in the markets of the world. He needed more capital and more machinery. He had to borrow money and make shrewd business calculations. From every standpoint his economic environment had become more complicated and more extended, and his success depended much more upon conditions which were beyond his control.¹⁶⁴

S.M. Jelly observed, “Farming today is not the paying vocation it has been, and the true wealth of the nation is suffering. . . . Linked with the interests of our farmers are the interests of trade, manufacturing, commerce, and the welfare of the entire country.”¹⁶⁵

“With the rise of capitalism,” wrote Vernon L. Parrington, “farming was no longer a socially prestigious occupation “peculiarly suitable to gentlemen.”¹⁶⁶ Whitney Griswold wrote

They [the farmers] did not understand their troubles as the inevitable results of the industrial revolution . . . What they noticed were falling prices, unmarketable surpluses, rising costs of living, high rents and interest rates—symptoms, not causes. They demanded protection against the impact of the industrial revolution on agriculture, preferring to make

¹⁶⁴ Croly, 102.

¹⁶⁵ Jelly, 313-314.

¹⁶⁶ Vernon L. Parrington, *The Beginning of Critical Realism in America, 1860-1920* (New York: Harcourt, Brace and World, Inc., 1930), 264.

the best of their own *status quo*—as farmers—rather than participate in any other way in the economic progress of the nation as a whole.”¹⁶⁷

Ezra S. Carr observed in 1875, “The American farmer tills his own [land] at starvation prices, while the rich are growing richer, and the poor poorer, and the separation of society into antagonistic classes, is becoming more and more complete.”¹⁶⁸ Thirty-seven years later, Herbert Croly cried, “Reform must restore to the people the opportunities and power of which they have been deprived.”¹⁶⁹ About a generation later, the situation had not changed for the better. Morris Hillquit complained, ““The farmer is dominated, controlled and exploited by the power of capitalism just as much as the other producing classes.”¹⁷⁰ “In the early 1890s,” wrote historian Steven J. Diner, “middle-class Americans began looking to government to do something about these wrenching changes in America’s economy and culture.”¹⁷¹

In short, farmers were scared and angry.

¹⁶⁷ A. Whitney Griswold, *Farming and Democracy* (New York: Harcourt Brace and Co., 1948), 8.

¹⁶⁸ Ezra S. Carr, *The Patrons of Husbandry on the Pacific Coast* (San Francisco: A.L. Bancroft and Co., 1875), 18.

¹⁶⁹ Croly, 147.

¹⁷⁰ Morris Hillquit, *Socialism Summed Up* (New York: The H.K.Fly Company, 1913) 20-21.

¹⁷¹ Diner, 5.

Chapter Three

Collectivism and Socialism

“Government ownership implies use for general social purposes,
and not merely exploitation for dividends.”

— Richard T. Ely (1894)

As pointed out in the last chapter, the Industrial Revolution challenged demographic, social, economic and political assumptions held dear by Americans since the founding of the Republic. Pre-Industrial Revolution, or before the American Civil War at least, the Western frontier provided a sort of a social “safety valve to drain off surplus labor and keep up wages”¹⁷² by permitting both native-born Americans and new immigrants to go West and make new homes, which is to say new farms. This is, in short, “the old, much-handled frontier theory of Frederick Jackson Turner.”¹⁷³ Although much criticized in recent decades, especially by the New Western historians led by Patricia Nelson Limerick, Turner’s Frontier Thesis still has merit in explaining the

¹⁷² Pisani, *To Reclaim A Divided West*, 287.

¹⁷³ Worster, 11.

westward migration of Anglo-Americans. As the more desirable lands filled up after the Civil War, Americans faced a choice.

In simplest terms, the choice faced by Americans during the Gilded Age was one of individualism or collectivism. Individualism means an attitude of competition; a belief and a desire to achieve one's own goals regardless of the long-term consequences to others because, as economist John Maynard Keynes said, "in the long term we are all dead."¹⁷⁴ Individualism means "Every man for himself, and the Devil take the hindmost." Individualism is a boxer in the ring trying to knockout his opponent. Collectivism means an attitude of cooperation; a belief and a desire to work together for a common goal regardless of immediate self-sacrifice because, in the long run, all participants will benefit more. Collectivism means "We're all in this together." Collectivism is a football team working together to move the ball across the other team's goal line.

Poet Robert Frost wrote, "Two roads diverged in a wood, and I, / I took the one less traveled by, / And that has made all the difference."¹⁷⁵ America has confronted profoundly diverging roads—faced choices—three times. The first time was the American Revolution. During the American Revolution, Americans were faced with the choice of whether to remain loyal subjects of the British Empire or to form an

¹⁷⁴ John Maynard Keynes, *A Tract On Monetary Reform* (London: Macmillian Co., 1923), 80.

¹⁷⁵ Robert Frost, "Two Roads Diverged in a Yellow Wood," *Collected Poems, Prose and Plays*, Richard Poirier and Mark Richardson, eds. (New York: Library of America, 1995), 103, ll. 18-20.

independent republic. The second time was the American Civil War. During the American Civil War, Americans were faced with the choice of what sort of republic the United States of America would be. The third time was subtle and peaceful, but no less profound. During the Gilded Age, Americans faced the choice of how to react to the economic, social and political ramifications of the Industrial Revolution. Between about 1870 and 1920, Americans made their choice by drastically altering the nature of their society and government. The individualist Jeffersonian/Jacksonian ideal of limited government was irrevocably abandoned in favor of the collectivist technocratic/elitist/not-quite-Marxist/sort-of-Leninist ideal of expansive government which they called “progressivism.”

But, what is progressivism and how did it effect the passage of the Nevada Water Act of 1913? In his book, *The Anatomy of Fascism*, Robert O. Paxton demurred to begin his study with a definition. Rather, he begins with a “strategy.”¹⁷⁶ I propose to follow his example. My strategy will be to first examine collectivism in the American experience, focusing especially on collectivism in agriculture. Next, I will examine how collectivism was perceived and received by Americans. Finally, I will examine collectivist attitudes toward conservation, reclamation, and irrigation, especially in the West.

American history is full of conflict between individualism and collectivism. Patrick Henry proclaimed, “Give *me* liberty, or give *me* death!” Thomas Jefferson stated,

¹⁷⁶ Robert O. Paxton, *The Anatomy of Fascism* (New York: Random House, 2004), 15.

“All men are created *equal*. They are endowed by their Creator with certain inalienable rights that among of these are life, liberty and the pursuit of happiness.” Herbert Corly concluded that the typical Jacksonian American “disliked specialization, because, . . . it narrowed and impoverished the individual: and he distrusted permanent and official forms of organization, because . . . they hampered the individual. His whole political, social, and economic outlook embodied a society of energetic, optimistic, and prosperous democrats.”¹⁷⁷ L. H. Bailey proclaimed, “The person who works his own land for a living is usually a strong individualist.”¹⁷⁸ On the other hand, Benjamin Franklin urged the Thirteen Colonies to “Join, or Die” in 1754 during the French and Indian War. Later, Franklin warned the delegates to the Second Continental Congress, “We must all hang together, or surely we will all hang separately.” The Articles of Confederation was a collectivist act which declared that “the Union shall be perpetual.” The Constitution was a collectivist act “to form a more perfect Union.”

During the 1830s and 1840s, Americans experimented with several collectivist programs. David S. Reynolds counted “around sixty utopian communities . . . with a total membership approaching one hundred thousand.”¹⁷⁹ Daniel Walker Howe described

¹⁷⁷ Croly, 103-104.

¹⁷⁸ L. H. Bailey, *The State and the Farmer* (New York: The Macmillian Co., 1908), 1-2.

¹⁷⁹ David S. Reynold, *Walking Giant: America in the Age of Jackson* (New York: HarperCollins, 2004), 157.

this period in American history, “In the early republic, many utopian communities flourished, religious and secular, imported and native, each struggling to demonstrate the millennium, literal or figurative, here and now.”¹⁸⁰ These communities flourished briefly before disbanding. Although each was unique in its details, communal ownership of property and collectivist economic enterprises were typical. Howe concluded, “The interest aroused by communitarian social experiments in the United States on the eve of the industrial revolution revealed . . . [Americans’] . . . willingness to entertain a broad range of social and economic possibilities.”¹⁸¹ These collectivist communities included, among others, the Shakers, the Owenites, the Harmony Society, the Oneida Community, and the Mormons.¹⁸²

The Mormons called their collectivist experiments the law of consecration and stewardship, or the law of consecration, or the Order of Enoch, or the United Order. The Prophet Joseph Smith, Jr. instituted the “law of consecration” among his followers in the winter of 1831 in Kirtland, Ohio, then the headquarters of the Church of Jesus Christ of Latter-day Saints. The law of consecration was a communitarian program under which members of the Church donated or “consecrated” their earthly possessions to the Church and received again a “stewardship.” The stewardship might be a farm, a business such a

¹⁸⁰ Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (Oxford: Oxford University Press, 2007), 292.

¹⁸¹ *Ibid.*, 296.

¹⁸² *Ibid.*, 292-304; Reynold, 157-169.

smithy, store or tannery, or a job such as being a teacher; it was often the exact same property consecrated in the first place.¹⁸³ As a steward, not as an owner, Church members were expected to wisely manage their stewardships, to make them profitable, and to consecrate the surplus profits back to the Church. For a number of reasons, including greed, jealousy, dissension within, and persecution from without, this communitarian experiment failed.¹⁸⁴ Brigham Young attempted to revive the law of consecration after the Mormons migrated to Utah, but met only very limited success.¹⁸⁵ One of the successes was in regard to water law and irrigation. George Thomas concluded that the Mormons “were among the first in the United States to develop rules, regulations, practices, customs and laws, pertaining to and governing the use of water.”¹⁸⁶

After the murder of Joseph Smith, June 27, 1844, Brigham Young assumed the leadership of the Mormons and organized their evacuation from Illinois during the winter of 1846. Young personally led the first company of Mormon pioneers from their refugee camps along the Missouri River at Council Bluffs, Iowa to the Great Salt Lake Valley in

¹⁸³ *Doctrine and Covenants* 42:30-39; Daniel H. Ludlow, ed., *Encyclopedia of Mormonism*, (New York: Macmillan Publishing Co., 1992), s.vv. “consecration,” “stewardship”; Richard Lyman Bushman, *Joseph Smith: Rough Stone Rolling: A Cultural Biography of Mormonism’s Founder* (New York: Alfred A. Knopf, 2005), 154-155.

¹⁸⁴ Bushman, 181-183, 219; Donna Hill, *Joseph Smith: The First Mormon* (Garden City, N.Y.: Doubleday and Co., 1977), 131, 137-138, 186.

¹⁸⁵ Leonard J. Arrington, *Brigham Young: American Moses* (New York: Alfred A. Knopf, 1985), 377-381, 388, 392; Ludlow, s.v. “United Order.”

¹⁸⁶ George Thomas, *The Development of Institutions Under Irrigation With Special Reference to Early Utah Conditions* (New York: Macmillan, 1920), 14.

the spring of 1847. An advance party led by Orson Pratt entered the Great Salt Lake Valley on the morning of July twenty-second. After a prayer of thanksgiving, the group immediately began plowing and planting—and irrigating. The first furrow was turned at noon. The men worked in four-hour shifts daily from four o’clock in the morning until eight o’clock in the evening until the project was completed.¹⁸⁷

Once the Mormons arrived in the Great Salt Lake Valley, they established a collectivist regime over the control of water resources, which was unique, despite some reciprocal borrowing from the England common law, the law and customs of California miners, and the Spanish and Native Americans.¹⁸⁸ John Wesley Powell remarked that the Mormons were among the “three notable exceptions” to the tendency toward water monopoly in the West. Powell continued, “The Mormons, settling in Utah, borrowed the Mexican system. The lands in small tracts were held in severalty by the people, but the waters were controlled by bishops of the Church.”¹⁸⁹

¹⁸⁷ Arrington, *Brigham Young*, 145.

¹⁸⁸ Edwin Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830-1900* (Urbana: University of Chicago Press, 1988), 314.

¹⁸⁹ John Wesley Powell, “Institutions for the Arid Lands,” *The Century*, 40, issue 1, (May 1890): 112. The other two exception were the Mexican pueblos or irrigating municipalities, and certain communities in southern California with municipally owned water companies. *Ibid.*

The first and most important element of Mormon water law was collective ownership.¹⁹⁰ Soon after entering the Great Salt Lake Valley, Brigham Young declared, “There shall be no private ownership of the streams that come out of the canyons, nor the timber that grows on the hills, These belong to the people, all the people.”¹⁹¹ Although Young, recognized by the Mormons as a prophet of God, ruled by divine decree, the same principle was duly enacted into law by the legislature of the provisional State of Deseret, and re-enacted by that of the Territory of Utah.¹⁹² “With 20,000 Mormons en route and the anticipation that thousands would follow,” wrote Firmage and Mangrum, “it was obvious that a first-come, first-served policy would seriously jeopardize a cooperative community effort. . . . If settlers miles away from the water source could obtain water for domestic and agricultural purposes by public grant, then entire valleys could be settled rather than just the river banks.”¹⁹³ The result was that the “early development of Utah’s industries was significantly free from the competitive friction of individualism. Co-

¹⁹⁰ Firmage and Mangrum, 315.

¹⁹¹ B. H. Roberts, *Comprehensive History of the Church of Jesus Christ of Latter-day Saints* (Salt Lake City: Deseret Book Co., 1930), 3:269; Firmage and Mangrum, 315.

¹⁹² *An Act in Relation to the Assessment, Collection and Expenditure of a Tax for Road and Other Purposes Within Incorporated Cities* (June 4, 1853), § 3, *Acts and Resolutions of the Territory of Utah* (1853): 147; This principle continues today, see *Water and Water Rights Act* (March 3, 1919), ch. 67, § 1, *Laws of the State of Utah* 1919: 177-203 codified as amended *Utah Code Annotated* (1989), § 73-1-1. The early history of Utah water law is traced in *Little Cottonwood Water Co. v. Kimball*, 76 243, 260-261, 289 P. 116 (1930) (Hansen, J., concurring in part and dissenting in part).

¹⁹³ Firmage and Mangrum, 315.

operation was a leading principle of Mormon activity, and unity of action marked every early undertaking in the desert colonies beyond the Rockies.”¹⁹⁴

The next element of Mormon water law, and this one is truly unique to them, is the use of ecclesiastical authorities and councils to administer water rights and adjudicate disputes.¹⁹⁵ This state of affairs is perfectly logical and understandable. Ownership by the “people; all the people” effectively meant Church control. For the first three years the Mormons lived in the Great Salt Lake Valley, or Deseret as they called it (1847-1850), there was no secular authority whatsoever, and, even after the Territory of Utah was organized, secular authority was more nominal than real until the Utah War in 1857. Even after county courts were organized by the territorial government, church members tended to resort to church authorities to resolve disputes between themselves. Edwin Brown Firmage and Richard Collin Mangrum contend, “The importance of the ecclesiastical court system cannot be overemphasized.”¹⁹⁶ In a recently published paper in the *Utah Historical Quarterly*, Clinton Brimhall and Sandra Dawn Brimhall examined the case of a dispute over water rights between Goshen, Utah and the neighboring town of Mona, Utah in which, because they chose to litigate the matter in civil court rather than

¹⁹⁴ Ralph H. Hess, “The Beginning of Irrigation in the United States,” *The Journal of Political Economy*, 20, no. 8 (October 1912): 813.

¹⁹⁵ Firmage and Mangrum, 314-321. Quotation is at page 312.

¹⁹⁶ *Ibid.*, 314, 315-316, 317.

resolve it before ecclesiastical authorities, the participants were excommunicated from the Mormon Church.¹⁹⁷

The final element of Mormon water law was cooperative irrigation. The Mormons were the first Anglo-Americans to use irrigation in North America.¹⁹⁸ Brigham Young told his followers, “Our object is to labor for the benefit of the whole.”¹⁹⁹ Donald J. Worster commented, “They [the Mormons] used the bee and its hive as a symbol of their industry, but a more appropriate one would have been the beaver, for control over water became ecological basis of their society.”²⁰⁰ Firmage and Mangrum describe the Mormon system thus:

Early high councils directed the construction of canals and ditches to carry water from the canyon rivers and streams to the various wards in the valleys. The bishops then directed the division of these ditches to each block in their wards and ultimately to each user. The users were

¹⁹⁷ Clinton Brimhall and Sandra Dawn Brimhall, “The Goshen and Mona Water Dispute, 1873-1881: A Case Study of the Struggle between Ecclesiastical and Secular Authority in Utah,” *Utah Historical Quarterly* 78, no. 4 (Fall 2010): 326-343.

¹⁹⁸ Worster, 74-75.

¹⁹⁹ Brigham Young, May 7, 1874, in David W. Evens, ed., *Journal of Discourses*, (Liverpool: Albert Carrington 1875), 17:57 as quoted in Hamilton Gardner, “Communism Among the Mormons, *The Quarterly Journal of Economics*, 37, no. 1 (Nov. 1922): 159. On communism among the Mormons in Utah, see generally Hamilton Gardner, “Communism Among the Mormons, *The Quarterly Journal of Economics*, 37, no. 1 (Nov. 1922): 134-174.

²⁰⁰ Worster, 77.

responsible for maintaining past of the ditch, depending on the acreage held and intended use.²⁰¹

Leonard Arrington described the Mormons' irrigation scheme as "one of the greatest and most successful community or cooperative undertakings in the history of America."²⁰²

Ralph H. Hess observed the Mormons and wrote in 1912, "The early development of Utah's industries was significantly free from the competitive friction of individualism. Co-operation was a leading principle of Mormon activity, and unity of action marked every early undertaking in the desert colonies beyond the Rockies."²⁰³ William Ellsworth Smythe saw the Mormons as an object lesson to be emulated by all would-be colonists in the West:

Probably the Mormons owed their escape from the misfortune of private irrigation works mainly to the fact that this feature of their institutions [communal irrigation] was established at a time when none of their people possessed sufficient private capital to engage in costly enterprises. They started upon a basis of equality, for they were equally poor. They could buy water-rights only with their labor. This labor they applied in cooperation, and canal stock was issued to each man in proportion to the amount of work he had contributed to the construction. This, in turn, was determined by the amount of land he owned.²⁰⁴

²⁰¹ Firmage and Mangrum, 315-316. A Mormon high council is a governing body of intermediate authority between the local bishop and the Church's Quorum of Twelve Apostles.

²⁰² Leonard J. Arrington, *Great Basin Kingdom: An Economic History of the Latter-day Saints, 1830-1900* (Cambridge, Mass.: Harvard University Press, 1958) 53.

²⁰³ Hess, 813.

²⁰⁴ William Ellsworth Smythe, "Utah as an Industrial Object-Lesson," *The Atlantic Monthly*, 78, issue 469 (November 1896): 612.

Smythe continued, “The Utah system was clearly the outgrowth of the peculiar conditions with which the Mormons dealt. They were so far removed from all centers of production as to make self-sufficiency an imperative condition of existence.”²⁰⁵

Although universal poverty and abject isolation no doubt helped, the roots of Mormon collectivism can be found more in a shared religious belief and a common experience of persecution. In addition to the law of consecration, Mormons deeply believed that their church was a restoration of Jesus Christ’s primitive church; that His Second Coming was imminent; and that Christ would personally reign over a renewed and paradisaical Earth. In such a society, of course, all things would be held in common and there would be no poor among them.²⁰⁶ Thomas Alexander wrote, “Strongly communitarian, [the Mormons] sought to build the Kingdom of God on earth; and, . . . they expected . . . to refashion the arid west both as a fit place for Christ's second coming and as an earthly home.”²⁰⁷ Thus, collectivism, co-operation, and communitarianism were religious obligations. Further, the shared experience of mobbings, persecution and pillage, from New York, to Ohio, to Missouri, to Utah, often at the hands of respected members of the wider community and with the implicit or explicit support of law

²⁰⁵ *Ibid.*, 613.

²⁰⁶ Acts 4:32-35; *The Book of Mormon*, 4 Nephi 1:2-3; *The Pearl of Great Price*, Moses 7:18-19; *The Doctrine and Covenants*, 51:1-20; 78:1-12.

²⁰⁷ Thomas G. Alexander, “Stewardship and Enterprise: The LDS Church and the Wasatch Oasis Environment, 1847-1930,” *The Western Historical Quarterly*, 25, no. 3 (Autumn 1994): 344.

enforcement and secular courts, that drove them out of the humid East fostered a collective we're-all-in-this-together, it's-us-against-them attitude once they arrived in the arid West. Irrigation was a matter of survival and anyone who shirked his responsibilities to the collective not only risked starvation for himself and his family, but also for the community at large, as well as risking his immortal soul. William Ellsworth Smythe wrote, just as Utah was being admitted to the Union:

It is true that the Mormons in Utah have had no trouble in building irrigation canals, and acquiring lands under the Homestead and Desert Land Laws. This is explained by the fact that with them the church was practically the state; and, so far as purely industrial and commercial affairs are concerned, the Mormon church has been a kind and considerate mother to her children. In their matters of irrigation and settlement, the Mormons have had state control to the verge of socialism.²⁰⁸

Although Mormon collectivism continues to exist, after a fashion, in Utah's water law, once the transcontinental railroad effectively ended Utah's isolation the Mormon's collectivist institutions gradually withered away between 1870 and 1920. This is ironic because collectivism was never stronger than it was during this fifty-year period.

During the last fifty years of the Long Nineteenth Century, socialism of various kinds was introduced into America from Europe despite Morris Hillquit's assertion that many "American statesmen and social philosophers" believed socialism "will never take root in American soil."²⁰⁹ They were mistaken. Socialism did indeed take root in

²⁰⁸ Smythe, "The Stepchild of the Republic," 40.

²⁰⁹ Hillquit, 95.

American soil, but it was an American socialism, not a European socialism, that took root, grew and bore fruit.

The term “socialism” was coined in 1827 in Britain, but it still eludes a precise definition.²¹⁰ In once sense, socialism is like Christianity. In its broadest terms, Christianity may be defined as, “The religion of Christ; the Christian faith; the system of doctrines and precepts taught by Christ and his apostles.”²¹¹ Be this as it may and notwithstanding St. Paul’s admonition of “one Lord, one faith, one baptism,”²¹² the religion of Christ is riddled with division: Roman Catholicism, Eastern Orthodoxy, Protestantism, and Mormonism, to name only the four largest divisions. Each of these divisions may be further subdivided into a bewildering array of denominations and sects. For example, Protestantism is perhaps the most diverse including, among other sects, Baptists, Methodists, Anglicans/Episcopalians, Presbyterians, Lutherans, Evangelicals, Pentecostals, and Congregationalists. These groups are sometimes mutually exclusive. The members of the various sects sometimes consider one another schismatics, apostates, heretics, and blasphemers. Historically, the antagonism has led to violence and open warfare. Nevertheless, all are in some sense or other Christian. Socialism is much the same in that there are many sects and denominations of socialism, many shades of pink,

²¹⁰ Howe, 295.

²¹¹ *Oxford English Dictionary* (2010), s.v. “Christianity.”

²¹² Eph. 4:5

some revolutionary, some evolutionary, some mutually exclusive. Thus, a definition of socialism is illusive.

In the opening sentence of the article “Socialism: Where We Cannot Work With Socialists,” Theodore Roosevelt wrote, “It is always difficult to discuss a question when it proves impossible to define the terms in which that question is to be discussed.”²¹³

Richard T. Ely agreed with the President, “The word ‘socialism,’ which has come into use in the present [the nineteenth] century, has already acquired a variety of meanings.”²¹⁴

A. M. Simmons complicated matters when he asserted, “Socialists are bound by no fixed formula, plan or doctrine.”²¹⁵ William Ellsworth Smythe defined socialism in “two ways.

One definition would describe it as a great, vague, something— more or less terrible to timid souls—which proposes to revolutionize the whole foundation and fabric of society.”²¹⁶ “But,” Smythe continued, “a saner definition is that which recognizes Socialism as one of the principles of government, and as a scientific principle. In this

²¹³ Theodore Roosevelt, “Socialism: Where We Cannot Work With Socialists,” *The Outlook*, March 20 and 27, 1909, reprinted in *The Works of Theodore Roosevelt*, 18: 551.

²¹⁴ Richard T. Ely, *Socialism: An Examination of Its Nature, Its Strength and Its Weakness, With Suggestions for Social Reform* (New York: Thomas Y. Crowell and Co., 1894), 3.

²¹⁵ Simmons, 210.

²¹⁶ William Ellsworth Smythe, “Socialism and Construction,” *Out West* 16 (Jan. 1902-June 1902): 538.

latter aspect all men are Socialists, to a greater or less degree.”²¹⁷ John Humphrey Noyes, founder of the Oneida Community in the 1840s, wrote in 1870, “The great idea of the Socialists was the regeneration of society, which is the soul's environment.”²¹⁸ Morris Hillquit wrote, “Socialism is distinctly a modern movement. Contrary to prevailing notions, it has no connection, historical or intellectual, with the Utopias of Plato or Moore, or with the practices of the communistic sects of former ages.”²¹⁹ William English Walling thought the “only possible definition of Socialism is the Socialist movement.”²²⁰ Walling then quotes the New York newspaper, *The Independent*, “It [socialism] is a political party, an economic creed, a religion, and a stage of history.”²²¹ Ely believed that socialism had “four main elements:

The first of these is the common ownership of the material instruments of production. . . . The second element in socialism is the common management of production. . . . The third element is the distribution of income by the common authority The fourth element in socialism is private property in the larger proportion of income.²²²

²¹⁷ *Ibid.*

²¹⁸ John Humphrey Noyes, *History of American Socialisms* (Philadelphia: J. B. Lippincott and Co., 1870), 26.

²¹⁹ Hillquit, 9.

²²⁰ William English Walling, *Socialism As It Is: A Survey of the World-Wide Revolutionary Movement* (New York: The Macmillan Co., 1912), ix.

²²¹ *The Independent* (New York), April 1910, as quoted in Walling, x.

²²² Ely, *Socialism*, 9-18.

These four elements combine to provide Ely with a definition of socialism as “the rejection of the doctrine of selfishness as a sufficient social force and the affirmation of altruism as a principle of social action. Socialism . . . means that society is not a mere aggregation of individuals, but a living, growing organism.”²²³ S. J. Duncan-Clark believed “Socialism may mean almost anything.”²²⁴ The *Oxford English Dictionary* defines “socialism”:

A theory or system of social organization based on state or collective ownership and regulation of the means of production, distribution, and exchange for the common benefit of all members of society; advocacy or practice of such a system, esp. as a political movement. Now also: *any of various systems of liberal social democracy which retain a commitment to social justice and social reform, or feature some degree of state intervention in the running of the economy.*

The range of application of the term is broad. It is typically understood to involve the elevation of the social position and interests of the working class, especially through redistribution of land or wealth, nationalization of industry and services, and the creation of workers' cooperatives. It is sometimes used synonymously with (especially Soviet) Communism, although in some Marxist contexts it is used specifically to denote a transitional stage between the overthrow of capitalism and the realization of Communism.²²⁵

This bewildering array of possible definitions points out the difficulty of precisely understanding a term as broadly applied as socialism.

²²³ *Ibid.*, 3.

²²⁴ Duncan-Clark, xvi.

²²⁵ *Oxford English Dictionary* (2010), s.v. socialism (emphasis added.).

Perhaps the root of the problem of defining socialism, in the American context at least, is the lack of class consciousness. Walter Weyl believed, “We Americans, it is true, have surrendered some of our former aggressive egalitarianism. We have borrowed some of the class distinctions of Europe, and have evolved some upon our own account.”²²⁶ Karl Marx and Frederick Engels open their manifesto with the declaration, “The history of all hitherto existing society is that of class struggles.”²²⁷ Marx and Engels wrote of “freeman and slave, patrician and plebeian, lord and serf, guild-master and journeyman, in a word, oppressor and oppressed [standing] in constant opposition to one another.”²²⁸ Walter E. Weyl thought this dichotomy a “fictitious simplicity,” and warned that the “real facts of our economic life are too bewilderingly intricate to be covered exactly by any rigid formula.” He cautioned:

The more complex society is (and it becomes more complex yearly), the greater is the difficulty dividing the community into two mutually exclusive groups, with clear-cut antagonistic philosophies. The ideals of men tend more or less to coincide with their industrial [economic] interests, but the result is affected by prejudices, antipathies, sympathies, and traditions; and prepossession is nine points of belief. Nor are industrial interests themselves so simple or easily classifiable.²²⁹

²²⁶ Weyl, 156.

²²⁷ Karl Marx and Frederick Engels, *Manifesto of the Communist Party* (1848) in vol. 50 *Great Books of the Western World*, Robert Maynard Hutchins, ed. in chief, Samuel Moore, trans. (Chicago: Encyclopedia Britannica, Inc., 1952), 419.

²²⁸ *Ibid.*

²²⁹ Weyl, 325-326.

Weyl is undoubtably correct. American society *is* too complex to lend itself to simple divisions of bourgeoisie and proletariat. But more to the point, notwithstanding that social or economic classes may or may not exist in fact, Americans do not *believe* in social classes. Michael Kazin wrote, “Class barriers, according to the national creed, are not supposed to exist in the United States.”²³⁰ Regardless of his or her station in life, every American believes that he or she may become successful and wealthy. This is the American Dream. During the Long Nineteenth Century, the American Dream often took the form of a farm. Donald J. Pisani wrote, “There was little need to centralize power in the United States, which lacked rigid social classes wedded to the economic status quo. . . . Government was expected to provide equal access to wealth, not to protect one class from another. . . . Governmental favoritism, not fear of governmental intervention in the economy per se, caused the deepest concern.”²³¹ Michael Kazin wrote,

“The producer ethic was decidedly *not* an Americanized version of the class consciousness Marx and other European thinkers saw as the inevitable results of the Industrial Revolution. While many advocates of producerism arose from the growing ranks of wage earners, they cast a moral net over society instead of dissecting it with an analytical scalpel in the Marxist fashion. Besides the urban proletariat, the ranks of “producers” typically included craftsmen (some of whom owned their own shops), small merchants and manufacturers, and farmers of all regions and incomes. Until the sectional crisis took center stage in the mid-1840s, even slaveholding planters who planned and supervised the raising of crops embraced the title. To qualify as a producer, one had only to be

²³⁰ Michael Kazin, *The Populist Persuasion: An American History* (New York: Basic Books, 1995), 2.

²³¹ Pisani, *To Reclaim a Divided West*, 1-2.

willing to rise or fall primarily on one's own efforts; intentions mattered more than results.²³²

Frederick Emory Hayes wrote, "There is thought to be some natural opposition between socialism and the American spirit. . . . It is assumed that socialism has not yet entered the domain of practical politics. I believe that such a position is untenable."²³³

At the time Hayes wrote in 1896, the Socialist Labor Party, organized in 1877 as the Workingman's Party, nominated Charles Horatio Matchett for President and Matthew Maguire for Vice President. The Matchett-Maguire ticket received only 36,356 popular votes and no electoral votes. Neither did the party win any seats in the House of Representatives. Nevertheless, from this inauspicious beginning, socialist candidates polled increasingly well. By 1908-1909, socialism was particularly strong in the West, especially Nevada. According to David R. Berman, "In Nevada, a state with only 82,000 people, one in every 39 people voted for the [Socialist] party, one of every 54 persons had a subscription to the [Socialist periodical] *Appeal*, and one of every 341 people belonged to the party."²³⁴ The Nevada Socialist gubernatorial candidate in 1910, Henry F. Gegax, received 1,393 votes, and, according to Berman split the Democratic vote helping to elect

²³² Kazin, 13-14.

²³³ Frederick Emory Haynes, "The New Sectionalism," *The Quarterly Journal of Economics* 10, no. 3 (Apr. 1896): 291-292.

²³⁴ David R. Berman, *Radicalism In The Mountain West, 1890-1920: Socialists, Populists, Miners, and Wobblies* (Boulder: University of Colorado, 2007), 179-180.

Republican Tasker Oddie.²³⁵ Nineteen twelve seemed to be the high point of socialist electoral fortunes. That year, the Socialist Party elected nine members to the House of Representatives, and their presidential ticket of Eugene V. Debs and Emil Seidel received 901,551 votes, 6 percent of the vote. That same year, the separate Socialist Labor Party nominated Arthur Elmer Reimer and August Gilhaus. The Reimer-Gilhaus ticket won 29,324 votes. In 1920, Eugene V. Debs polled 913,693 votes, or 3.4 percent of the popular vote, from his prison cell. The Socialists also lost one of two House seats, that of Meyer London of New York, in a general landslide for the Republicans.²³⁶ The Socialists managed to hold on to their one other House seat that of Victor L. Berger of Wisconsin, until 1928.²³⁷ At first glance, one might think that socialism had run its course by 1920, and was a spent force. P. Orman Ray wrote:

It may never come to pass that a party boldly assuming the Socialist name and pledged to the full program of Socialism will gain possession or control of the Government by displacing the two great parties of today. But there is much tending to produce the conviction that a gradual, an unconscious, but steady, socialistic permeation of the old parties is actually taking place at the present time, and that in the future this tendency will move at an accelerated pace. This unconscious trend towards Socialism is perhaps the most striking and significant feature of recent American politics.²³⁸

²³⁵ *Ibid.*, 192.

²³⁶ Seymour Martin Lipset and Gary Marks, *It Didn't Happen Here: Why Socialism Failed in the United States* (New York: W.W. Norton and Co., 2000), 45.

²³⁷ *Ibid.*

²³⁸ P. Orman Ray, "The Unconscious Trend Toward Socialism," *The Sewanee Review*, 16, no. 4 (Oct., 1908): 479.

In fact, socialism had already won and become national policy; it just had a different name: Progressivism.

Chapter Four

Progressivism

“Be progressive. A great democracy has got to be progressive,
or it will soon cease to be either great or a democracy”

— Theodore Roosevelt (1910)

The last chapter examined socialism as a response to America’s Later Industrial Revolution. Socialism, with its European origins, had very little chance of gaining a popular foothold in nativist Gilded Age America. However, the socialist ideals of cooperation and collective action, and of government intervention in the economy, under the less-threatening name of progressivism, took a firm hold in America and came to dominate both major political parties in the Gilded Age.

The similarity between progressives and socialists was noted during the Gilded Age. In 1908, P. Orman Ray wrote, “There is a serious possibility of [progressives] becoming good Socialists without knowing it.”²³⁹ Ray continued, “If we were to venture upon the role of prophet, it would be for the purpose of suggesting that, to the future

²³⁹ Ray, 472.

historian of American politics, . . . Mr. [Samuel] Gompers, Mr. [William Jennings] Bryan, Mr. [William Howard] Taft and Mr. [Theodore] Roosevelt, . . . may appear as unconscious Socialists.”²⁴⁰ Socialist Morris Hillquit practically accused the Progressive Party of plagiarism, “The platform of the Progressive Party teems with ‘principles’ and ‘issues’ inspired by the Socialist program.”²⁴¹ This alleged slide toward socialism was denied by other commentators,²⁴² but at its base seems to revolve mostly around the definition of “socialism.”

Progressivism, like socialism, has a confusing set of definitions. Later historians have all agreed that Progressivism was a watershed movement in United States history. John D. Burnker wrote, “The first two decades of the twentieth century witnessed so many fundamental alterations in the American system of politics and government that the period has sometimes been referred to as ‘the second founding.’”²⁴³ Robert H. Wiebe wrote, “Progressivism was the central force in a revolution that fundamentally altered the structure of politics and government early in the twentieth century.”²⁴⁴ Michael Wilrich wrote that progressivism “overturned nineteenth-century understandings of individual

²⁴⁰ *Ibid.*, 481.

²⁴¹ Hillquit, 86.

²⁴² Charles S. Glead, “The True Significance of Western Unrest,” *Forum*, 16 (Oct. 1893): 251-260.

²⁴³ Burnker, 579-580.

²⁴⁴ Robert H. Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967), 181.

autonomy, liberalism, and the rule of law in America, laying the . . . seedbed for the modern administrative welfare state. [Progressivism was a] bold social, cultural, and legal transformation [with] troubling consequences for human liberty.”²⁴⁵ Jonah Goldberg wrote:

Philosophically, organizationally, and politically the progressives were as close to authentic, homegrown fascists as any movement America has ever produced. Militaristic, fanatically nationalist, imperialist, racist, deeply involved in the promotion of Darwinian eugenics, enamored of the Bismarckian welfare state, stateist beyond modern reckoning, the progressives represented the American flowering of a transatlantic movement, a profound reorientation toward the Hegelian and Darwinian collectivism imported from Europe at the end of the nineteenth century.²⁴⁶

Persons directly and personally involved in the progressive movement had difficulty defining progressivism for themselves. Amos Pinchot, a close associate of Theodore Roosevelt, wrote in 1912, “The Progressive Movement is not a political movement, or for or against any man. . . . It will go on because it is not a movement to destroy, but to rebuild our government. The Progressive Movement is radical, because it has real problems to solve.”²⁴⁷ Theodore Roosevelt, the *über*-progressive of his generation, claimed the Progressive Party’s “purposes and . . . principles are those of Abraham Lincoln and of the Republicans of his day. All we have done has been to apply

²⁴⁵ Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (Cambridge, Eng.: Cambridge University Press, 2003), xxi.

²⁴⁶ Jonah Goldberg, *Liberal Fascism: The Secret History of the American Left from Mussolini to the Politics of Meaning* (New York: Doubleday, 2007), 12.

²⁴⁷ Amos Pinchot, 37.

these principles to the living problems of today.”²⁴⁸ Robert LaFollette defined progressivism “in a single sentence. It comprehends the aspirations of the human race in its struggle from the beginning down to the present time.”²⁴⁹ Benjamin Parke DeWitt, a leading Progressive in his own right, explained the Progressive Movement thus:

It is the embodiment and expression of fundamental measures and principles of reform that has been advocated for many years by all political parties. Although differences in name, in the specific reforms advocated, and in the emphasis placed upon them, have obscured the identity of the movement, the underlying purposes and ideals of the progressive elements of all parties for the past quarter of a century have been essentially the same.²⁵⁰

Part of the difficulty defining progressivism is that the progressives were pragmatists who could and did use any means at their disposal to achieve their aims. Roosevelt proudly said that the progressives “are not wedded to any particular kinds of machinery, save solely as means to the end desired.”²⁵¹

But, what *is* progressivism? Benjamin Parke DeWitt correctly points out, “The term ‘progressive movement’ has been so widely used, so much discussed, and so

²⁴⁸ Theodore Roosevelt, “Introduction,” in Duncan-Clark, xiv.

²⁴⁹ Robert M. LaFollette, Address at the Republican Platform Convention, 1910, in Robert M. LaFollette, *The Political Philosophy of Robert M. LaFollette*, comp. by Ellen Torelle, Albert O. Barton and Fred L. Holmes (Madison, Wis.: The Robert M. LaFollette Co., 1920), 182.

²⁵⁰ Benjamin Parke DeWitt, *The Progressive Movement: A Non-Partisan. Comprehensive Discussion of Current Tendencies in American Politics* (New York: The Macmillan Co., 1915), vii.

²⁵¹ Theodore Roosevelt, “What A Progressive Is,” (Address, Louisville, Ky., April 3, 1912) reprinted in *The Works of Theodore Roosevelt*, 19: 241-242.

differently interpreted that any exposition of its meaning and principles, to be adequate, must be prefaced by careful definition.”²⁵² Because of the difficulty defining progressivism, I will again follow Robert O. Paxton’s example and employ a strategy rather than a definition. My strategy will be to examine, compare and contrast certain elements common with both socialism and progressivism. These elements will be attitudes toward private property, attitudes toward the upper class, or the rich; attitudes toward constitutionalism and democracy, attitudes toward elites among themselves, and finally attitudes toward morality.

The progressives parted company from most socialist, and from Marxist socialists in particular, in regards to private property. Marx and Engels wrote in the *Communist Manifesto* quite explicitly, “In a word you reproach us with intending to do away with your property. Precisely so; that is just what we intend.”²⁵³ Richard T. Ely identified the “first of [socialism’s four main elements] is the common ownership of the material instruments of production.”²⁵⁴ In contrast, Theodore Roosevelt said, “The Constitution guarantees protection to property, and we must make that promise good. . . . The true friend of property . . . is he who insists that property shall be the servant and not the

²⁵² DeWitt, 3.

²⁵³ Marx and Engels, 426.

²⁵⁴ Ely, *Socialism*, 9.

master of the commonwealth.”²⁵⁵ Progressives knew that the basic tenant of Marxist socialism—the public ownership of the means of production—was not acceptable to most Americans; therefore, they sought to achieve the functional equivalent through government regulation.²⁵⁶ Karl Marx and Frederick Engels would have dismissed the Progressives as *bourgeois socialists*, “A part of the bourgeoisie [that] is desirous of redressing social grievances in order to secure the continued existence of bourgeois society.”²⁵⁷ Marx and Engels wrote disparagingly:

Free trade: for the benefit of the working class. Protective duties: for the benefit of the working class. Prison reform: for the benefit of the working class. These are the last words and the only seriously meant words of the bourgeois Socialism. It is summed up in the phrase: the bourgeois for the bourgeois—for the working class.²⁵⁸

Socialists, Marxist socialists in particular, decried the influence of the bourgeoisie; progressives decried the influence of the plutocracy. Marx and Engels wrote, “The bourgeoisie, whenever it has got the upper hand, has put an end to all feudal, patriarchal, idyllic relations . . . and has left no other bond between man and man than naked self-interest, than callous ‘cash payment.’”²⁵⁹ Richard T. Ely in *Socialism: An*

²⁵⁵ Theodore Roosevelt, “The New Nationalism,” (Speech, Osawatomie, Kan., August 31, 1910) reprinted in *The Works of Theodore Roosevelt*, 19: 17.

²⁵⁶ See for example, Weyl, 170-191.

²⁵⁷ Marx and Engels, 432.

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*, 425.

Examination of Its Nature, Its Strength and Its Weakness, With Suggestions for Social Reform, complained about “a class of mammon worshipers, whose one test of conservatism, or radicalism, is the attitude which one takes with respect to accumulated wealth.”²⁶⁰ For their part, progressive Walter E. Weyl wrote, “The plutocracy is the chief objective of our social agitation. It, and it alone, unites in opposition factory workers, farmers, shopkeepers, professional men. The plutocracy creates between the few and the many a cleavage which for the time being obscures all other divisions.”²⁶¹ Wyle continued, “The plutocracy is more and more opposed by an ever larger number of social groups and individuals, not for what it does and for what it is, but for the deeper economic tendencies which it represents.”²⁶²

Progressivism was a rejection of the Jeffersonian-Jacksonian ideal and an adaption of a sort of Leninist socialism to the American context.²⁶³ Progressivism’s relationship with Jeffersonianism-Jacksonianism will be explored in a later chapter. At this point, it is enough to note that both Jeffersonianism and Jacksonianism were strongly individualistic. On the other hand, progressivism was strongly collectivistic. While progressives must have been aware of Marx’s ideas, they surely were not aware of Lenin

²⁶⁰ Ely, *Socialism*, viii.

²⁶¹ Weyl, 244.

²⁶² *Ibid.*, 249.

²⁶³ V. I. Lenin, *What Is To Be Done? Questions Of Our Movement*, (1902; Peking: Foreign Languages Press, 1973).

and his ideas, at least by name. Vladimir Ilyich Lenin added to socialism the need for a cadre of professional revolutionaries to lead the masses. During the Progressive Era in America, Lenin lived in exile in Western Europe, mostly in Switzerland, and in Russia, and wrote his tracts in Russian for Russians.²⁶⁴ His major work *What Is To Be Done?*—in which Lenin called for a cadre of professional revolutionaries to lead the masses—was published in 1902, after the Progressive Movement was well underway. The Progressives came to the same conclusions as Lenin independently.

Lenin longed for a cadre of professional revolutionaries to lead the proletariat. The progressives viewed themselves as the “professional revolutionaries”—to use Lenin’s phrase—and longed for a government by experts. The progressives were a self-selected elite from within society’s elite. For the most part, progressives were college-educated, professionals and thus—in their own eyes at least—uniquely qualified to govern the United States, and thence the world. Historian Jeff Taylor wrote, “Elitists do not trust the common people, believing that a relatively small group of individuals must manage society because the masses do not understand what is best for them and the world. . . . Elitists are condescending if not contemptuous in their relations with the common people.”²⁶⁵ By adopting elitism, the progressives abandoned the Jeffersonian-

²⁶⁴ Robert Service, *Lenin – A Biography* (Cambridge, Mass.: Harvard University Press, 2000), 129-146.

²⁶⁵ Jeff Taylor, *Where Did The Party Go?: William Jennings Bryan, Hubert Humphry, and the Jeffersonian Legacy* (Columbia: University of Missouri Press, 2006), 47-48.

Jacksonian paradigm. All men may have been *created* equal, but professional training and a university education, preferably resulting in graduate degrees awarded by elite institutions, *made* some men and women more equal than others. Democracy was abolished and replaced by technocracy—rule by experts. In other words, the Progressive Era was a coup d’etat by one group of elites—university-educated, professionally-trained experts—against another group of elites—the plutocrats.

Nevertheless, the progressives saw themselves as sincere democrats. Roosevelt said

Are the American people fit to govern themselves, to rule themselves, to control themselves? I believe they are. . . . I believe in the right of the people to rule. I believe the majority of the plain people of the United States will, day in and day out, make fewer mistakes in governing themselves than any smaller class or body of men, no matter what their training, will make in trying to govern them. I believe, again, that the American people are, as a whole, capable of self-control and of learning by their mistakes.²⁶⁶

The Progressive Party’s platform contained the following plank:

We hold with Thomas Jefferson and Abraham Lincoln that the people are the masters of their Constitution, to fulfill its purposes and to safeguard it from those who, by perversion of its intent, would convert it into an instrument of injustice. In accordance with the needs of each generation the people must use their sovereign powers to establish and maintain equal

²⁶⁶ Theodore Roosevelt, “The Right of the People to Rule,” (Address, Carnegie Hall, New York City, New York, March 20, 1912) reprinted in *The Works of Theodore Roosevelt*, 19: 200.

opportunity and industrial justice, to secure which this Government was founded and without which no republic can endure.²⁶⁷

Theodore Roosevelt said in a speech, “Our country . . . means nothing unless it means the triumph of a real democracy, the triumph of popular government, and, in the long run, of an economic system under which each man shall be guaranteed the opportunity to show the best that there is in him.”²⁶⁸

The progressives’ target and their tool was the United States Constitution. Walter E. Weyl spoke for many progressives when he complained that the Constitution “is a stiff, unyielding, and formidable . . . obstacle to a true democracy, and a strong bulwark of the plutocracy. It stands firm largely because of an unlimited admiration, which forbids adverse criticism, and almost precludes discussion.”²⁶⁹ Weyl specifically, and the Progressives generally, believed that “Most undemocratic feature of all, the Constitution furnishes no adequate opportunity for popular amendment.”²⁷⁰ The alternative of “amendment by interpretation” was unacceptable because “is carried out not by direct

²⁶⁷ “Declaration of Principles of the Progressive Party” reprinted in George Henry Payne, *The Birth of the New Party, Or Progressive Democracy* (n.p.: n.p., 1912), 303.

²⁶⁸ Theodore Roosevelt, “The New Nationalism,” (Speech, Osawatomie, Kan., August 31, 1910) reprinted in *The Works of Theodore Roosevelt*, 19: 10.

²⁶⁹ Weyl, 108-109.

²⁷⁰ *Ibid.*, 109.

representatives of the people, but by the Supreme Court, a body of nine honorable, estimable, and politically irresponsible jurists.”²⁷¹ Roosevelt said,

The object of every American constitution worth calling such must be what it is set forth to be in the preamble to the National Constitution, “to establish justice,” that is, to secure justice as between man and man by means of genuine popular self-government. If the constitution is successfully invoked to nullify the effort to remedy injustice, it is proof positive either that the constitution needs immediate amendment or else that it is being wrongfully and improperly construed.²⁷²

S.J. Duncan wrote:

From the political standpoint the Progressive movement declares that the government belongs to the people; that freedom and justice can be conserved only by a self-controlled democracy acting through its chosen representatives; that the people must be the court of last resort on legislation involving constitutional interpretation as it affects the police power of individual states; that they must be given the power to veto or to initiate laws directly when their representatives fail to act in accordance with their wishes; that all elective officers must be nominated directly and elected directly by the people, and must be subject to recall if negligent or disloyal in office; and that no sex barrier must be allowed to exist at the ballot box.²⁷³

Duncan continued, “The aim of the Progressive movement is not to destroy, but to conserve and direct the great forces of industrial and political life so that they may contribute of their best to the happiness and prosperity of the people.”²⁷⁴ Walter E. Weyl

²⁷¹ *Ibid.*, 108-109.

²⁷² Theodore Roosevelt, “A Charter of Democracy” (Speech, Ohio Constitutional Convention, Columbus, Ohio, February 21, 1912) reprinted in *The Works of Theodore Roosevelt*, 19: 166.

²⁷³ Duncan-Clark, 15-16.

²⁷⁴ *Ibid.*, 30.

wrote, “Finally the altering of the Constitution was surrounded with almost insuperable difficulties, so that today less than one fortieth of the voters could conceivably frustrate the wish for amendment of thirty-nine fortieths. This threw the real power of amendment into the hands of the interpreting body, the same Supreme Court, intended by its composition and the manner of choice and the life tenure of its members to be the most remote of all governmental agencies from the operation of popular control. Popular rights were presumably, for all time, bottled up.”²⁷⁵

The progressives favored a marked increase in the government involvement in social and economic conditions. Roosevelt admitted as much, but believed Americans “have got to face the fact that such an increase in governmental control is now necessary.”²⁷⁶ Roosevelt continued, “The right to regulate the use of wealth in the public interest is universally admitted. Let us admit also the right to regulate the terms and conditions of labor, which is the chief element of wealth, directly in the interest of the common good.”²⁷⁷ Roosevelt also said:

Our aim, the aim of those of us who stand for true progress, for true Nationalism, for true democracy, is not only to give the people power, but, ourselves as part of the people, to try to see that the power is used aright,

²⁷⁵ Weyl, 14-15.

²⁷⁶ Roosevelt, “The New Nationalism,” reprinted in *The Works of Theodore Roosevelt*, 19: 20.

²⁷⁷ *Ibid.*, 24.

that it is used with wisdom, with courage, with self-restraint, and in a spirit of the broadest kindliness and charity toward all men.²⁷⁸

In an echo to Marx's couplet, Roosevelt said, "The fundamental thing to do for every man is to give him a chance to reach a place in which he will make the greatest possible contribution to the public welfare."²⁷⁹

What made the progressives radical was their belief that the "rules [should be] changed so as to work for a more substantial equality of opportunity and of reward for equally good service."²⁸⁰

The Progressives viewed their cause as a moral one and believed that morality extended beyond humanity's social, political or economic relations to humanity's relationship with Earth and the natural environment. The progressives' ideas on the environment were collectively referred to as "conservation." W.T. McGee wrote, "The conquest of nature, which began with progressive control of the soil and its products and passed to the minerals, is now extending to the waters on, above and beneath the surface. The conquest will not be complete until these waters are brought under complete control."²⁸¹

²⁷⁸ Theodore Roosevelt, "Nationalism and Democracy," *The Outlook*, March 25, 1911, reprinted in *The Works of Theodore Roosevelt*, 19: 147.

²⁷⁹ Roosevelt, "The New Nationalism," reprinted in *The Works of Theodore Roosevelt*, 19: 24.

²⁸⁰ *Ibid.*, 16.

²⁸¹ W. T. McGee, "Water as a Resource," *Annals of the American Academy of Political and Social Science*, 33, no. 3 (May 1909): 39.

Chapter Five
Progressive Irrigation in the West

Irrigation will be practiced as a matter of course,
wherever water is obtainable, and millions of acres
now unproductive will yield rich harvests.

— J.M. Rusk (1893)

The last chapter examined progressivism and its similarity with socialism, and concluded that progressivism was in fact, if not in perception, a species of the genus *Socialism*. Notwithstanding the fact that progressives were socialists, they were neither wild-eyed revolutionaries nor dreamy-eyed utopians, but steely-eyed technocrats ready to answer the questions society presented. To the progressives everything was a *question*—the *money question*, the *tariff question*, the *Mormon question*, the *immigrant question*, the *Negro question*, and so forth. Indeed calling every social or political dispute a *question*, implied that there was a correct answer, and that the progressives had the correct answers to these questions.

Progressives believed that by answering all the questions correctly society could be perfected, and not just society, but the human species itself. Government was their

preferred tool. Some progressive ideas were good, such as women's suffrage, the direct election of senators, trust-busting, the Pure Food and Drug Act, and opposition to child labor. Some progressive ideas were mixed, such as the income tax, initiative, recall, and referendum. Some progressive ideas were silly, such as prohibition. Some progressive ideas were frightening, such as eugenics. Irrigation was a mixed idea. Irrigation is a mixed idea because, in the beginning, in the early twentieth century, irrigation was seen, correctly, as a way of developing the arid Western States and territories economically, politically, and socially, and as a way of continuing the function of the Western frontier as a social safety value. However, a hundred years later, at the beginning of the twenty-first century, the environmental tradeoffs inherent in wide spread irrigation have become obvious.

Of course, irrigation in itself is nothing new. The ancient Egyptians, Assyrians, Babylonians, Romans, and Peruvians all used irrigation. During the Long Nineteenth Century, irrigation was used in the British colonies of Egypt, India, South Africa, and Australia. Chapter one examined briefly irrigation among the Hohokam, Mogollon, and Anasazi, and chapter two examined briefly irrigation among the Mormons in Utah. Progressives frequently cited these examples as precedent for their schemes and plans.²⁸²

²⁸² See e.g. Hanbury Brown, *Irrigation: Its Principles and Practice as a Branch of Engineering* (New York: D. Van Nostrand Co., 1907), 1-11; Clesson S. Kinney, *A Treatise on the Law of Irrigation and Water Rights*, 2nd ed. (San Francisco: Bender-Moss Co., 1912), 1:101-327.

What was new about irrigation, in the United States at least, was using irrigation as a means of social engineering.²⁸³ Donald J. Pisani complained that “historians have largely ignored reclamation as a tool of social reform during the ‘Progressive Era.’”²⁸⁴ Pisani made the first contribution to this problem in his essay, “Reclamation and Social Engineering in the Progressive Era,” published in the January 1982 issue of *Agricultural History*.²⁸⁵ Pisani wrote, “Arid land reclamation was nostalgia for a simpler rural past, the pipe dream of western visionaries and cranks, sheer political cant, and a smokescreen for land speculators and businessmen bent on lining their pockets.”²⁸⁶ “Yet, whatever the impracticality of this movement, whatever the element of fantasy,” Pisani wrote, “the passions it generated and the boldness of its objectives gave it the greatest potential of all the Progressive dreams.”²⁸⁷ Pisani’s essay of 1983 examined “the intellectual foundation of the reclamation movement and the movement’s effort to use irrigation to remold American institutions.”²⁸⁸ Alas, his essay falls far short of the goal, devolving into a mere

²⁸³ Donald Worster examined irrigation as a means of social control through a hydraulic society in three phases: “the local subsistence mode,” the “agrarian state mode,” and the “capitalist state mode.” He saw the modern American West as a hydraulic society in the third, or “capitalist state mode.” Worster, 7, 19-60

²⁸⁴ Donald J. Pisani, “Reclamation and Social Engineering in the Progressive Era,” *Agricultural History*, 57, no. 1 (January 1983): 46.

²⁸⁵ *Ibid.*, 46-63.

²⁸⁶ *Ibid.*, 46.

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

narrative of the early years of the Reclamation Service without the examination of the irrigation movement's intellectual origins. As shown in the previous chapter, progressives' intellectual origins were in socialism.

Progressives used irrigation to solve two social questions. First, progressives wanted to populate the sparsely populated western states for political reasons. In this, the progressives were no doubt influenced by “nostalgia [and] . . . the pipe dream of western visionaries and cranks,” to use Pisani’s phrase, but also sought to solve a real political problem. Ninety percent of the United States population lived east of the Missouri River, therefore the balance of power in the House of Representatives and in the Electoral College was east of the Big Muddy.²⁸⁹ This imbalance was noted at the time. The *Daily Nevada State Journal* editorialized, “The recently published census statistics show that nine-tenths of the population of the United States is in the eastern half and only one-tenth in the western half. Consequently the East eclipses the West in all things from political influence to commercial prosperity.”²⁹⁰ More population in the West would shift this political balance. Second, progressives wanted to relieve the demographic pressure on eastern cities. This desire harkens back to Frederick Jackson Turner’s Frontier Thesis, which, notwithstanding its lack of favor among historians today, was widely accepted

²⁸⁹ *Ibid.*, 49. Pisani has rounded up. The actual number is 86.3 percent. Sutch and Carter, table Aa36-92, 1:37; table Aa3581-3643, 1:242; table Aa4499-4549, 1:287; table Aa5143-5193, 1:316; table 5291-5341, 1:322; table Aa5701-577, 1:341; table Aa5872-5934, 1:348.

²⁹⁰ “To Benefit the West,” *Daily Nevada State Journal*, August 22, 1902, 3.

among Turner's contemporaries. A general feeling of unease, if not outright panic, among American elites brought on by the unrest associated with the Panic of 1893 and the economic depression which followed—Coxey's Army, the Pullman Strike, bank failures, unemployment, home foreclosures, etc.—required some sort of federal government action. The fact that the government took some action, rather than rely solely on market forces, demonstrated the abandonment of Jeffersonian/Jacksonian constitutional strict constructionism and the socialistic tendencies of progressivism, and foreshadowed the New Deal of the 1930s. Progressives were not concerned with aridity per se; it was a mere technical problem to be solved by engineers and lawyers, that is, university-educated, professionally-trained technocrats such as themselves.

Progressives wanted to populate the sparsely populated Western States to redress political imbalances between the West and the East. As a result of the Treaty of Guadalupe Hidalgo which ended the War With Mexico in 1848, the United States took possession of 525,000 square miles of mostly arid territory. For the next twenty years or so, other than the mining areas in the Sierra Nevada, the region was mostly ignored by Americans, other than the Mormons seeking solitude and security along the shore of Great Salt Lake and the Wasatch Front. Until the transcontinental railroad was completed in 1869, the region's remoteness discouraged all but the hardiest immigrants from

entering. In 1860, only 1,364,075 people lived in the West; by 1890, the population had increased 634.7 percent to 8,658,852.²⁹¹

Between 1848 and 1900, fourteen states were formed from the territory west of the Missouri River. Oklahoma, Arizona and New Mexico remained territories until the twentieth century. Of course, as new states entered the Union, the make-up of the Electoral College and the House of Representatives changed slightly, but political power remained in the East. For example, in the election of 1888, Republican Benjamin Harrison carried twenty out of thirty-eight States, and received 233 Electoral College votes out of 401 votes cast.²⁹² Of these, Harrison received thirty-one votes from six States west of the Missouri River. Harrison could have spotted these votes to Democrat Grover Cleveland, and still won the election.²⁹³ In the rematch, the election of 1892, Cleveland carried twenty-three out of forty-four States and received 277 Electoral College votes out of 444 votes cast.²⁹⁴ Of these, Cleveland received only twenty-four electoral votes from three States west of the Missouri River: California, eight; North Dakota, one, and Texas, fifteen.²⁹⁵ Cleveland could have spotted his Western votes to Harrison and

²⁹¹ Sutch and Carter, table Aa36-92, 1:37; table Aa3581-3643, 1:242; table Aa4499-4549, 1:287; table Aa5143-5193, 1:316; table 5291-5341, 1:322; table Aa5701-577, 1:341; table Aa5872-5934, 1:348.

²⁹² *Ibid.*, table Eb149-153, 5:174.

²⁹³ *Ibid.*, table Eb154-207, 5:180-183

²⁹⁴ *Ibid.*, table Eb149-153, 5:174.

²⁹⁵ *Ibid.*, table Eb154-207, 5:180-183

still won the election too. In the election of 1896, Republican William McKinley was elected with an Electoral College vote of 271 out of 447 votes cast.²⁹⁶ Of these 271 electoral votes, only twelve (4 percent) came from two States west of the Missouri River, California and Oregon. By contrast, New York and Pennsylvania delivered 36 and 32 electoral votes, respectively, to McKinley. McKinley carried twenty-two states; William Jennings Bryan carried 23.²⁹⁷ No President would be elected from a State west of the Missouri River until Lyndon B. Johnson in 1964. Representation in the House was also concentrated in the East. For example, by the apportionment based on the 1870 census, 276 Representatives came from States east of the Missouri River out of a total House membership of 292, or 94.5 percent. By 1900, 331 Representatives came from States east of the Missouri River out of a total House membership of 386, or 85.6 percent.²⁹⁸ One hundred years later, according to the apportionment based on the 2000 census, 294 Representatives come from States east of the Missouri River out of a total House membership of 435, or 67.5 percent, despite the fact that California has the largest delegation in Congress, fifty-three members.²⁹⁹ Only the equal suffrage of States in the Senate prevented the Western States from being completely dominated.

²⁹⁶ *Ibid.*, table Eb149-153, 5:174.

²⁹⁷ *Ibid.*, table Eb154-207, 5:180-183

²⁹⁸ *Ibid.*, table Eb1-56, 5:161-163

²⁹⁹ *Ibid.*

Some historians and some contemporaries came to view the disparity between the East and the West as a form of colonization. George H. Maxwell wrote in 1898, “While we hear so much about ‘annexation’ would it not be well for the people of this country not to lose sight of the fact that we have an empire right in our midst”³⁰⁰ In 1902, *Irrigation Age* editorialized, “Never, since the Declaration of Independence was rung out to the world has there been so great and pressing a necessity for freedom not that foreign enemies are crushing us, but our home Tories are more dangerous than open foes because they are more insinuating.”³⁰¹ The idea that the West was a colony of the East became well established early in Western historiography. Frederick Jackson Turner wrote, “The East has always feared the result of an unregulated advance of the frontier, and has tried to check and guide it.”³⁰² Pisani wrote that it had “its root in the Populist revolt against bankers and railroads in the 1890s, and it continued to draw support for a long while thereafter, so much so that it has become, . . . a major generalization for dealing with the western experience.”³⁰³ Richard White stated explicitly, “For a good part of the late nineteenth century the federal government administered much of the American West as a

³⁰⁰ George H. Maxwell, “Annex Arid America: ‘In Union There Is Strength.’” *Irrigation Age*, 12 (Oct. 1897-Sept. 1898), 339.

³⁰¹ “The Pioneers of National Irrigation: Land and Water For the People: The Reclamation of a Desert; The Creation of an Empire: To Whom Shall It Belong,” *Irrigation Age*, 18 (Nov. 1902-Oct. 1903), 329

³⁰² Frederick Jackson Turner, *The Frontier in American History* (New York: Henry Holt and Co., 1921), 33.

³⁰³ Worster, 14.

colony of the United States.”³⁰⁴ Others, both contemporaries and historians, viewed the problem in terms of an East/West sectionalism very similar to the North/South sectionalism during the antebellum period.

Turner wrote, “By sectionalism I do not mean the struggle between North and South which culminated in the Civil War. . . . But there are older, and perhaps in the long run more enduring examples of the play of sectional forces than the slavery struggle, and there are various sections besides North and South.”³⁰⁵ “The new sectionalism,” Frederick Emory Hayes wrote, “. . . represents a cleavage among the states which divides the older and wealthier states of the East from the younger, less populous, and less wealthy states of the West and South.”³⁰⁶ This new sectionalism differed from the older, antebellum sectionalism in particulars, but not in generalities, slavery aside. Both instances saw conservative, agrarian section of the Union—the South in 1840s and 1850s, the West and the South in the Gilded Age—opposed to the modernized, industrialized, capitalistic Northeast. In both instances, agrarian discontent led to political activism. In the antebellum South, political activism expressed itself ultimately in secession and the War Between the States. In the Gilded Age West, political activism expressed itself in

³⁰⁴ Richard White, *“It’s Your Misfortune and None of My Own”: A New History of the American West* (Norman: University of Oklahoma Press, 1991), 155.

³⁰⁵ Turner, 158.

³⁰⁶ Haynes, 269.

the Grangers, the Farmers' Alliances and the Populist Party.³⁰⁷ As Charles S. Gleed concluded, "All they [the Westerners] ask is the society they have always known, with the prosperity they have from time to time enjoyed. This is not socialism."³⁰⁸ It is conservatism, or even reactionarism. Populism will be examined in a later chapter. Here it is enough to point out that the new sectionalism and Populism were cause for concern among the progressive elites of the Northeast.

Dismissing the possibility of a second war of secession, there were only two ways to address the political imbalance and the new sectionalism: constitutional reform amounting to a total abandonment and rewriting of the Constitution of 1787—for which there was no support—or encouraging population to move West. The *Daily Nevada State Journal* editorialized, "But, if the West has a population equal to that of the East—and it could easily sustain such a population—the West could thrive vastly and San Francisco would become one of the largest cities and greatest markets of the world."³⁰⁹

Closely related to the problem of East/West political imbalance was the problem of demographic pressure in the Eastern cities. Although progressivism was an urban movement, or perhaps because it was, progressives viewed cities as cesspools of vice, corruption, crime and depravity. Indeed, the very purpose of the progressive movement

³⁰⁷ *Ibid.*, 270.

³⁰⁸ Gleed, 260.

³⁰⁹ "To Benefit the West," *Daily Nevada State Journal*, August 22, 1902, 3.

was to solve these problems, to answer these questions. In addition to programs such as settlement houses for the poor, prohibition of alcohol, and women's and children's courts, progressives saw the West as a place for social renewal. So long as the *frontier* represented an area to which people could flee, social pressures could be deferred. This idea was popularized by Frederick Jackson Turner, president of the American Historical Association in 1910 and a leading progressive in his own right, in his 1893 essay "The Significance of the Frontier in American History" and expanded in his 1921 book, *The Frontier in American History*. In *The Frontier in American History*, Turner wrote, "Whenever social conditions tended to crystallize in the East, whenever capital tended to press upon labor or political restraints to impede the freedom of the mass, there was this gate of escape to the free conditions of the frontier."³¹⁰ Later, Turner complained about the closing of the frontier, "A new national development is before us without the former safety valve of abundant resources open to him who would take."³¹¹

Notwithstanding the alleged closing of the frontier in 1890, progressives also looked at the West as a social "safety value." Internal migration from the urban centers of the East to the rural West was seen as a way to inculcate virtues such as thrift, hard work, collectivism, cooperation and patriotism; provide a form of permanent unemployment insurance, and dilute and assimilate immigrant communities. In an 1897 issue of

³¹⁰ Turner, 259-260.

³¹¹ *Ibid.*, 280.

Irrigation Age, George H. Maxwell quoted Republican Governor James Atwell Mount of Indiana,

A policy that would furnish to the idle remunerative employment, and fruitfulness to our desert places, would prove a blessing to humanity and a boon to our country. A policy that would relieve the congested cities and supply the crowded inmates with homes that would develop manhood and womanhood, furnishing employment, teaching habits of industry and frugality, would be building for our nation's future on the solid rock. The country is the nation's hope. Rural life is conducive to purity of character.³¹²

In a similar vein, Smythe wrote, “By the same token it [irrigation farming] makes near neighbors and high social conditions. . . . Here we have the elements of a new society, one where the independence which goes with ownership of the soil and the social advantages inseparable from neighborhood association, will be happily combined.”³¹³ At the time the Newlands Bill was pending before the House, Thomas Walsh wrote in *Irrigation Age*, “It means the restoration of those automatic-social conditions which in past generations relieved the pressure of population upon the old centers and constantly extended the frontiers of civilization toward the North, the South, and the West.”³¹⁴

Farms in the West also helped dilute and assimilate immigrants. Thomas Donaldson wrote, “For ten years past, Europe had furnished much of the largest number

³¹² James G. Mount, as quoted in Maxwell, 340.

³¹³ William Ellsworth Smythe, “The Struggle for Water in the West,” *The Atlantic Monthly* 86, no. 517 (Nov. 1900): 653-654

³¹⁴ Thomas F. Walsh, “The Humanitarian Aspect of National Irrigation,” *Irrigation Age*, 17 (Jan. 1902-Oct. 1902): 366-367.

of settlers, whilst our people continued to congregate in the cities. A wise colony-law will enable many of our citizens to obtain homes, and become producers.”³¹⁵ On January 30, 1912, in a speech at a “banquet given by leading Hungarians of Cleveland,” President William Howard Taft urged immigrants to settle in rural areas rather than in cities.³¹⁶ Reclamation was seen as a necessary outlet of both immigrants and, after World War I, returning doughboys—no doubt both an echo or cultural memory of the Homestead Act and various soldiers’ bounties act of the nineteenth century and a premonition of the G.I. Bill of Rights of the World War II-era and later.³¹⁷

It was also just good business because an increased Western population would provide a high return on investment through increased tax revenues and stimulated domestic markets. Ray P. Teele wrote, “Large outlays of labor and capital are necessary before any crops can be raised. For this reason the arid West cannot be settled, as was the middle West, by an army of poor men. The capitalist must go with the settler or precede him, and build the ditch, and keep the settler while the land is being brought into

³¹⁵ Thomas Donaldson, “The Public Lands of the United States,” *The North American Review*, 133, issue 297 (August 1881): 210.

³¹⁶ *Reno Evening Gazette*, “Immigrants for the Country: President Taft Says They Should Settle on Farm Land,” January 30, 1912, 2.

³¹⁷ See e.g. Allan McLaughlin, “The Immigrant, Past and Present,” *Popular Science Monthly*, 65 (July 1904): 224-226; Editorial, “Big Plan for a Big Future,” *The Rotarian* 13, no. 2 (Aug. 1918): 65 (regarding Secretary of the Interior Franklin Knight Lane’s (1864-1921, served 1913-1920) scheme using returning soldiers to reclaim lands which would then become their homes.)

condition for cultivation, and give him time to pay for his rights in the ditch.”³¹⁸ The *Daily Nevada State Journal* editorialized, “Eastern manufacturers and merchants . . . , see the possibility it contains of an enormous enlargement of our home markets and internal trade through the creation of new population in the West.”³¹⁹

As will be examined in a later chapter, America was initially founded as an agricultural nation. Thomas Jefferson believed that the yeoman farmers were “the chosen people of God, if ever He has a chosen people.”³²⁰ Owning a farm was considered almost a civil right. In 1888, S. M. Jelley wrote, “The right to the soil is as much an inalienable right as that of working for bread. Depriving a man of either, is a violation of both moral and secular laws.”³²¹ An editorial in the trade publication *Irrigation Age* asserted, “The time is near at hand when the people of the United States must deal with the problem of reclaiming the arid lands. . . . All our eras of colonization have taken their impulse from men who sought homes rather than from localities that sought settlers.”³²² In 1895, Ben F. Clayton wrote, “The farm is the true source of wealth to the people of the United

³¹⁸ Ray P. Teele, “Water Rights in the Arid West,” *The Journal of Political Economy*, 8, no. 4 (Sep., 1900): 526.

³¹⁹ *Daily Nevada State Journal*, “To Benefit the West,” August 22, 1902, 3.

³²⁰ Thomas Jefferson, *Notes on the State of Virginia* (1782) in Thomas Jefferson, *The Life and Selected Writings of Thomas Jefferson*, Adrienne Koch and William Peden, eds. (New York: Random House, 1944), 280.

³²¹ Jelley, 26-27.

³²² “The Progress of Western America,” *Irrigation Age* 7, no. 1 (July 1894): 1.

States. The product of the soil, the raw materials gathered from the field, the forest, and the mines, constitute the foundation upon which rest every occupation.”³²³ William Ellsworth Smythe wrote, “The arid region of the United States is a stupendous public property. It is the heritage of the next generation of American citizens. To conquer and subdue it to the uses of civilization will be one of the mighty tasks of the twentieth century.”³²⁴

Progressives first and foremost saw themselves as secular messiahs bringing a sort of earthly salvation to humanity. This messianic vision inspired most of the progressive reforms, from juvenile court systems to prohibition. In each case, the progressives believed that if they could change certain behaviors, such supervising youthful offenders to they could divert them from careers in crime or preventing the consumption of alcohol, they could prevent major social problems. Farms were viewed as another way to accomplish this. Francis Peabody wrote, “If the social circulation will not complete itself by natural means, then it must be artificially stimulated, as by the colonization of the unfit. The colonizing—or rather the domesticating—of children away from the downdraft of the city, is the essence of child-saving charity.”³²⁵ In 1909 near the height of the progressive era, Frederick H. Newell declared that “citizenship attached to the soil

³²³ Ben. F. Clayton, “Politics and the Farmer,” *The North American Review*, 160, issue 459 (February 1895): 167.

³²⁴ Smythe, “The Stepchild of the Republic,” 37.

³²⁵ Francis G. Peabody, “Colonization as a Remedy for City Poverty,” *The Forum*, March 1894, 55.

and with [it] the incentives to the highest patriotism.”³²⁶ In 1910, Gifford Pinchot wrote “The man on the farm is valuable to the Nation, like any other citizen, just in proportion to his intelligence, character, ability, and patriotism; but unlike other citizens, also in proportion to his attachment to the soil.”³²⁷ In 1918, Elwood Mead wrote, “The most satisfactory social progress and the greatest advances in agriculture are found where patriotism has its roots in the soil. . . . This plan of rural development is the greatest agrarian reform of the last century. . . . A new and better civilization is being born.”³²⁸ Historian Richard Lowett wrote, “To eastern intellectuals depressed about what was occurring in urban, industrial, ethnic America, irrigation agriculture allowed for a playing out of traditional virtues, where the values eastern intellectuals saw disappearing in vast sectors of American life were alive and flourishing.”³²⁹ Pisani wrote, “It [irrigation] promised to provide land for the landless, to redistribute surplus workers to open new markets for eastern manufacturers and railroads, to shore up cherished American values, and even to serve as a laboratory for the construction of model rural communities.”³³⁰

³²⁶ Frederick H. Newell, “What May Be Accomplished By Reclamation,” *The Annals of the American Academy*, 33, issue 3 (May 1909): 179.

³²⁷ Gifford Pinchot, *The Fight for Conservation* (New York: Doubleday, Page and Co., 1910) 22-23.

³²⁸ Elwood Mead, “Government Aid and Direction in Land Settlement,” *The American Economic Review*, 8, no. 1 (Mar., 1918): 75.

³²⁹ Richard Lowitt, “Henry A. Wallace and Irrigation Agriculture,” *Agricultural History* 66, no. 4 (Autumn 1992): 9-10.

³³⁰ Pisani, “Reclamation and Social Engineering,” 49.

Unemployment was a critical problem in America's cities, especially among immigrants and during the various economic downturns. Unemployment was 3.97 percent in 1890, and rose to a high of 9.27 percent in 1896.³³¹ Whether to redress political imbalances or relieve demographic pressure on eastern cities or both, Congress passed a series of laws offering free or very inexpensive land for settlers to encourage internal migration: the Homestead Act of 1862,³³² the Timber Culture Act,³³³ the Desert Land Act,³³⁴ Stone and Timber Act,³³⁵ and the Carey Act.³³⁶ These efforts culminated in the Newlands Reclamation Act of 1902.³³⁷ The assumption in each case was that Americans and newly-arrived immigrants would settle on this free land and make farms.

However, after a century or so of disposing of the public lands, all the most desirable land had passed to private hands, often the hands of speculators. Historian Roy M. Robbins wrote, "No nation in world history had so wasted its natural resources or opened up its national treasure to unbridled exploitation as had the United States of

³³¹ Sutch and Carter, table Ba470-477, 2:82.

³³² *Homestead Act*, ch. 75, *U.S. Statutes at Large* 12 (1862): 392.

³³³ *Timber Culture Act*, ch. 277, *U.S. Statutes at Large* 17 (1873): 605.

³³⁴ *Desert Land Act*, ch. 107, *U.S. Statutes at Large* 19 (1877): 377.

³³⁵ *Stone and Timber Act*, ch. 151, *U.S. Statutes at Large* 20 (1878): 89.

³³⁶ *Carey Act*, ch. 561, *U.S. Statutes at Large* 26 (1891): 1066 amended by *Rivers and Harbors Act*, ch. 301, § 4, *U.S. Statutes at Large* 28 (1894): 422.

³³⁷ *Newlands Reclamation Act*, ch. 1093, *U.S. Statutes at Large* 32 (1902): 388.

America.”³³⁸ In the same work already cited, Jelley complained that during the twenty years between 1868 and 1888 there had been “no proper management of public lands, but our national legislators have actually given away to corporations, in a spirit of prodigality without parallel in the world's history, more land than is contained in the states of Illinois, Iowa, Ohio and Michigan combined.”³³⁹ With so much land tied up, there was very little land left for *actual settlers* to find home sites. The land that remained was in the West, and most of that was unsuitable for farming without irrigation. It was nearly an article of faith among progressives that waters running to the sea or into desert sinks needed to be *conserved* so that the vacant lands could be *reclaimed*. Once the water had been conserved and the land reclaimed, people could be settled on the land in new homes, by which progressives meant farms.

Progressives all agreed that federal government aid was necessary. Irrigation promoters did not see themselves as socialists. Frederick H. Newell wrote, “The Nation has entered upon an experiment unique in its scope and character. It has been variously declared to be socialistic or paternalistic, but by the majority it is regarded as good business.”³⁴⁰ Blackmar wrote, “The management of the water is finally given back into the hands of the people where it rightly belongs. The Government becomes merely a

³³⁸ Robbins, 335.

³³⁹ Jelley, 29-30.

³⁴⁰ Frederick H. Newell, “Reclamation: The Work of the Government in Providing Irrigation for Arid and Hitherto Useless Lands in the West,” *Outlook*, 83, no. 17 (August 25, 1906): 933.

temporary promoter of wealth, aiding and abetting its citizens in legitimate industry.”³⁴¹

Blackmar’s phrase “temporary promoter of wealth” sounds suspiciously like Lenin’s “withering away of the State.” Senator William M. Stewart, of Nevada, wrote, “The successful reclamation of the arid region of the United States requires an harmonious and appropriate system of laws to be enacted by Congress and the several States and Territories where irrigation is necessary.”³⁴²

At this point the progressives encountered two technical problems preventing settlement in the West: distance and aridity.³⁴³ Distance was solved by the transcontinental railroads and the many branch railroads built during the Gilded Age. The aridity problem had two components: the demands of physically moving water from one place to another, and the Western law of waters. *Water is the thing with value, land without water is worthless*, or words to that effect, became almost a mantra among irrigation enthusiasts. Bringing water from the few available streams required large outlays in capital. Marc Reisner, in his seminal book *Cadillac Desert*, wrote, “For the first time in their history, Americans had come up against a problem they could not begin to master with traditional American solutions — private capital, individual initiative, hard

³⁴¹ F. W. Blackmar, “Economics and Politics of the Reclamation Service,” *Forum*, 38, no. 1 (July 1906): 136.

³⁴² William M. Stewart, “Reclaiming the Western States,” *Forum*, April 1889, 203-204.

³⁴³ The first problem was distance. This problem was solved by the transcontinental railroad in 1869 and in the years following.

work — and yet the region confronting the problem happened to believe most fervently in such solutions.”³⁴⁴

Other than the Mormon communitarian irrigation projects in Utah, the first irrigation schemes in the United States were privately financed. Smythe wrote favorably of the Mormon experience, “Probably the Mormons owed their escape from the misfortune of private irrigation works mainly to the fact that this feature of their institutions was established at a time when none of their people possessed sufficient private capital to engage in costly enterprises.”³⁴⁵ In 1888, Francis Griffith Newlands, then a prominent attorney for mining interests and as well as an investor and entrepreneur in Comstock Lode mining ventures and not yet holding public office, launched the Truckee Irrigation Project, a private venture. Marc Reisner called this project “one of the most ambitious reclamation efforts of its day.”³⁴⁶ Alas, the project failed costing Newlands \$500,000 “not because it was poorly conceived or executed (hydrologically and economically, it was a good project),” concluded Reisner, but because squabbles among its beneficiaries and the pettiness of the Nevada legislature ruined its hopes.”³⁴⁷ In addition to the money, Newlands lost “whatever faith he had in the ability of private

³⁴⁴ Reisner, 115.

³⁴⁵ Smythe, “Utah as an Industrial Object-Lesson,” 612.

³⁴⁶ Reisner, 116.

³⁴⁷ *Ibid.*

enterprise to mount a successful reclamation program.”³⁴⁸ Thus, Newlands knew whereof he spoke when, in 1901 as a Congressman from Nevada, he told his colleagues:

As to private enterprise, under existing laws it is utterly impossible to make reclamation, for the reason that any reclamation scheme involves a very large expenditure in the storage of water, a very large expenditure in the main canals, and a very large expenditure in the diverting ditches, and it is absolutely essential to obtain the control and the ownership of large areas of land in order to make a storage and reclamation enterprise profitable or even compensatory of the expenditure made.³⁴⁹

Nevertheless, others would try to raise money in private bond and equity markets for a few more years. For example, On March 29, 1890, the *Wall Street Journal* announced that the “Kraft Irrigation District, near Colusa, California [would] sell . . . \$50,000 of gold 6 percent bonds not below 90.”³⁵⁰ Most private irrigation companies went bankrupt. For example, *The Irrigation Age* reported that the “Arizona Improvement company controlling the largest irrigation system in the Southwest, will pass tomorrow [November 17, 1897] into the hands of a receiver.”³⁵¹ W.G. Mount, also in *The Irrigation Age*, wrote, “Judging from the almost complete cessation of irrigation enterprises, by ditch and reservoir companies, it would appear that a statement lately made by the the [sic] State Engineer of Wyoming [Elwood Mead] in his report, was correct, namely, that

³⁴⁸ *Ibid.*

³⁴⁹ U.S. House. Committee on Irrigation of Arid Lands. *Hearings on the Reclamation of the Arid Lands of the United States*, 56th Cong., 2nd sess., 1901, 8. cited hereafter “House Hearings (1901).”

³⁵⁰ “Bonds to be Issued,” *Wall Street Journal*, March 29, 1890, 4.

³⁵¹ “Pulse of the Irrigation Industry,” *The Irrigation Age*, 12 (December 1897),76

their security for any return on their investment was so very slight that it caused them to hesitate before engaging in that kind of enterprise.”³⁵² In 1896, the editor of *The Irrigation Age* complained, “Before the close of 1892, capital had begun to flow freely in this direction, where it gave promise of exceptional returns from investment. Since that time not only have no new investments been undertaken, but many of the greater works which were unfinished have been left in such a state as to involve heavy loss and to preclude any possible profit from the amounts already expended.”³⁵³ Frederick H. Newell wrote, “Instead of fat dividends and huge profits, receiverships and ultimate bankruptcy, with the loss of every dollar invested, have been the common results of speculation in irrigation securities.”³⁵⁴ Thomas Wellock summed up the situation, “By the time of the Roosevelt administration, Western states were frustrated with private irrigation schemes.”³⁵⁵

One of the earliest attempts at federal government aid to irrigation was introduced by Representative James Mitchell Ashley of Ohio. In 1865, Ashley “introduced a bill to develop and reclaim public lands requiring irrigation in the Territories of Idaho, Colorado, Arizona and Montana, and the State of Nevada, which was referred to the

³⁵² W.G. Mount, “The Cessation of Irrigation: The Causes That Have Led To It And the Remedies Proposed,” *The Irrigation Age*, 12 (March 1898):160

³⁵³ “The Progress of Western America,” *The Irrigation Age*, 10 (August 1896): 55; see also Pisani, “Reclamation and Social Engineering,” 47.

³⁵⁴ Newell, “Reclamation: The Work of Government,” 938.

³⁵⁵ Wellock, 41.

Committee on Public Lands.”³⁵⁶ The bill died in committee. Look in the Congressional Globe for more on this. In 1877, Congress passed the Desert Land Law.³⁵⁷ The Act permitted married couples to purchase 640 acres, one square mile, of arid, public land for \$1.25 per acre, on condition that the purchaser irrigate the land. Single men could purchase one-half that amount, or 320 acres. According to Wellock, “Fraud rather than vegetables grew from this law. Speculators simply dumped a barrel of water on land and had a witness sign that it was irrigated.” Wellock concluded, “The Desert Lands Act proved a hard truth. Even with the lure of almost free land, private enterprise did not have the resources to irrigate desert land. Only the federal government had the money, expertise, and disregard for the bottom line to do it.”³⁵⁸ At the time the Newlands Act was pending in Congress, Alfred G. North wrote in *The Irrigation Age*, “The financial failure of these private ventures has been due mainly to the great cost, the slow returns, and to the fact that the projectors could not own and control both the land and the water supply.”³⁵⁹ Newell wrote,

Millions of dollars raised by selling irrigation stocks and bonds in the East and in Europe have been invested in large works, and corporations formed for the purpose have made hundreds of farms in every arid State and Territory of the West. Unfortunately, the success which in the majority of

³⁵⁶ “House of Representatives,” *The New York Times*, December 12, 1865, 1.

³⁵⁷ *Desert Land Act*, ch. 107, *U.S. Statutes at Large* 19 (1877): 377.

³⁵⁸ Wellock, 41.

³⁵⁹ Alfred C. North, “Irrigation: Government Irrigation,” *The Irrigation Age*, 17 (Jan. 1902-Oct. 1902): 304.

cases attended the efforts of individuals and co-operative associations, almost without exception has failed to reward the corporation. Instead of fat dividend and huge profits, receiverships and ultimate bankruptcy, with the loss of every dollar invested, have been the common results of speculation in irrigation securities. Communities have grown up under these works and have prospered, but the capitalist who constructed them has reaped no profits from his investment.³⁶⁰

Irrigation is expensive and requires large capital outlays, hence “settlers of limited means cannot engage in them and small land-holding is discouraged.”³⁶¹ F. W. Blackmar defended passage of the Newlands Act in 1906, “But why should the Government have undertaken this irrigation project? Why not have left it to private investment? Because private investment had about reached the limit of its development.”³⁶² Blackmar continued, “It [irrigation] can no longer be done by individuals or by groups of individuals, but only through the unifying and directing agency of the Government. It is the true province of government to aid citizens wherein they cannot help themselves.”³⁶³ When the private sector failed, Americans turned to the government for help. Pisani noted another problem with private irrigation companies, “Private irrigation companies did try to monopolize water—they had to—and that led to baneful results.”³⁶⁴

³⁶⁰ Newell, “Reclamation: The Work of the Government,” 938.

³⁶¹ George P. Marsh, “Irrigation: Its Evils, The Remedies, and The Compensations,” in U.S. Department of Agriculture, *Report of the Commissioner of Agriculture for the Year 1874* (Washington: Government Printing Office, 1875), 369-370.

³⁶² Blackmar, 135.

³⁶³ *Ibid.*, 136.

³⁶⁴ Pisani, *To Reclaim A Divided West*, 107.

The first direct federal aid to irrigation was the Carey Act of 1891, named for Senator Joseph M. Carey (R-Wyo.).³⁶⁵ This law awarded each State in the arid region one million acres of federal land, on condition that the State provide irrigation works within ten years. Seven eligible States accepted the challenge of irrigation. Of these, five States passed laws requiring actual settlement and cultivation of the land, thereby preventing speculative claims; limited filings to 160 acres, attached the water right to the land, and provided for the ultimate ownership by the irrigators of the ditches on which they depend.³⁶⁶ In 1901, the Congress extended the time for entrymen to reclaim their lands from ten years to fifteen.³⁶⁷ The Carey Act filled “the gap between what the individual settler is able to do by his own efforts in reclaiming a single homestead or desert-land entry on the one hand, and the great undertakings of the Government on the other.”³⁶⁸ Unfortunately, the Carey Act was little used in Nevada,³⁶⁹ the State did not even accept the provisions of the Act until 1909, seven years after the passage of the Newlands Reclamation Act.³⁷⁰ Most State-level irrigation schemes during the 1880s and 1890s

³⁶⁵ *Carey Act*, ch. 561, *U.S. Statutes at Large* 26 (1892): 1066 amended by *Rivers and Harbors Act*, ch. 301, § 4, *U.S. Statutes at Large* 28 (1894): 422.

³⁶⁶ Mead, *Irrigation Institutions*, 24.

³⁶⁷ *Ibid.*, 26.

³⁶⁸ C. A. Norcross, *Agricultural Nevada* (San Francisco: Sunset Magazine Homeseekers Bureau, 1911) 23.

³⁶⁹ House Hearings (1901), 66.

³⁷⁰ Kinney, 4: 3441.

failed, due to “inadequate budgets, insufficient knowledge of hydrography and irrigation agriculture, nonexistent or limited engineering staffs, defective water laws, and shortsighted legislatures.”³⁷¹

The progressive irrigation movement, or as Lawrence B. Lee names it the “organized irrigation movement,” began in 1891 with the publication of *The Irrigation Age* in April, and the founding of the national irrigation congress in Salt Lake City, September fifteen through seventeenth. William Ellsworth Smythe, editor of *The Irrigation Age*, soon emerged as the movement’s leader.³⁷² Lee described the movement as “an unusual blending of idealism and dollars and cents promotionalism.”³⁷³

At the International Irrigation Congress held October 10-15, 1893 in Los Angeles, California, William Ellsworth Smythe announced:

Gentlemen: We have adopted a radical platform. I know that some interests will be pained and shocked when they read our declaration. They will feel that it is an attack upon their irrigation stocks and land enterprises.

“But there is something in this world more precious than ditch stock and irrigated land. It is human liberty. It is the progress of the race. We are laying today the cornerstone of the Republic of Irrigation. It shall not be laid in avarice and cemented with greed. That would not be fitting; for a people living in sunlit valleys guarded by eternal mountains have ever been the defenders of liberty. We will lay the superstructure of this edifice by the plumbline of justice and equity. We will write upon its white

³⁷¹ Pisani, *To Reclaim A Divided West*, 169

³⁷² Lee, 295-297.

³⁷³ *Ibid.*, 300.

cornerstone ‘Sacred to the Equality of Man.’ We inscribe upon its massive arch those two synonymous terms, ‘Irrigation and Independence.’”³⁷⁴

Unfortunately, the economic fallout from the Panic of 1893 “discouraged investment in water companies.”³⁷⁵ “Under conditions of economic adversity,” Lawrence B. Lee wrote, “the organization [the International Irrigation Congress] began to come apart and break into its constituent elements.”

Between 1890 and 1906, Congress, both the Senate and the House of Representatives, held a series of hearings on irrigation. These hearings provided fora for partisans to present their views. Newlands, Mead, Newell, Supervising Engineer in Charge of Nevada Works L.H. Taylor, and many local dignitaries and officials testified before the committees. Nearly all the witnesses were in favor of irrigation, and the purpose of the hearings was to build public support for government involvement in irrigation. In this they eventually succeeded.

After the passage of the Carey Act, irrigation generally languished. Enthusiasts such as Maxwell, Smythe and Mead continued to lobby for government involvement in reclamation, or at least government financing through congresses and the pages of *The Irrigation Age*. Maxwell published several magazines devoted to irrigation and social reform, notably the *California Advocate*, *National Advocate*, and *National Homemaker*.³⁷⁶

³⁷⁴ William Ellsworth Smythe, *Official Proceedings*, (Los Angeles: International Irrigation Congress, 1893) 106-107 as quoted in Lee, 305.

³⁷⁵ Lee, 306.

³⁷⁶ Pisani, *To Reclaim A Divided West*, 287

“Maxwell’s greatest triumph was nationalizing the irrigation issue—something Smythe, Warren, and Newlands had been unable to do. He began by approaching the directors of the West’s railroads. In 1913, railroad baron James J. Hill of the Great Northern and Northern Pacific railroads took personal credit for the Reclamation Act of 1902, pointing out that it had been his idea to hire Maxwell as a lobbyist. Hill, a Jeffersonian with a deep faith in the family farm, was convinced that one day Montana and the Dakotas would be the granaries of the world. The Great Northern and Northern Pacific would carry the region’s crops to harbors on the Pacific coast for transport to China and the Far East.”³⁷⁷ The political will simply did not exist. That is until Theodore Roosevelt succeeded to the Presidency on September 14, 1901 after the assassination of William McKinley. Roosevelt was both the *über*-progressive of his generation and a Westerner, in spirit and by adoption, if not by birth. After the deaths of his first wife and his mother within hours of each other February 14, 1884, Roosevelt went West to live the life of a rancher and cowboy. He returned to New York in 1886 and began a public service and political career that would elevate him to the vice-presidency in 1901. Leon Czolgosz’s bullets catapulted Roosevelt to the White House.

A few weeks after Roosevelt became President, Senator Henry Clay Hansbrough (R-N.D.) called on Roosevelt at the White House. Hansbrough urged Roosevelt to support federal aid to irrigation in his State of the Union message. This was the first time

³⁷⁷ *Ibid.*, 288.

anyone had called Roosevelt's attention the problems of irrigation "in a concrete manner."³⁷⁸ Harold Rowland, an early biographer of Roosevelt, related a slightly different set of events. According to Rowland, Gifford Pinchot and Frederick H. Newell met with Roosevelt "on the first Sunday after he reached Washington as President, before he had moved into the White House" and discussed with the new President "the twin policies [conservation and reclamation] that were to become two of the finest contributions to American progress of the Roosevelt Administrations."³⁷⁹ Regardless of whether Roosevelt took advice from Hansbrough, or Pinchot and Newell, or all three, in his first State of the Union message to Congress, December 1, 1901, he wrote:

The western half of the United States would sustain a population greater than that of our whole country today if the waters that now run to waste were saved and used for irrigation. The forest and water problems are perhaps the most vital internal questions of the United States. . . . Great storage works are necessary to equalize the flow of streams and to save the flood waters. Their construction has been conclusively shown to be an undertaking too vast for private effort. Nor can it be best accomplished by the individual States acting alone. Far-reaching interstate problems are involved, and the resources of single States would often be inadequate. It is properly a national function, at least in some of its features. It is as right for the National Government to make the streams and rivers of the arid region useful by engineering works for water storage as to make useful the rivers and harbors of the humid region by engineering works of another kind. The storing of the floods in reservoirs at the headwaters of our rivers is but an enlargement of our present policy of river control, under which levees are built on the lower reaches of the same streams.

³⁷⁸ W. W. Jermaine, "Irrigation Plans," *The Irrigation Age*, 17 (Jan. 1902-Oct. 1902): 225-226.

³⁷⁹ Harold Rowland, *Theodore Roosevelt and His Times: A Chronicle of the Progressive Movement* (New Haven: Yale University Press, 1921), 131.

The Government should construct and maintain these reservoirs as it does other public works. Where their purpose is to regulate the flow of streams, the water should be turned freely into the channels in the dry season to take the same course under the same laws as the natural flow.

The reclamation of the unsettled arid public lands presents a different problem. Here it is not enough to regulate the flow of streams. The object of the Government is to dispose of the land to settlers who will build homes upon it. To accomplish this object water must be brought within their reach.³⁸⁰

With the presidential blessing bestowed, Congressional work on irrigation began in earnest. Two bills were introduced in the first days of the first session of the Fifty-Seventh Congress. One bill was introduced in the House of Representatives by Francis G. Newlands (D-Nev.).³⁸¹ The other bill was introduced in the Senate by Hansbrough. *The Irrigation Age* quoted Hansbrough saying, "Congress is going to be liberal with the West in dealing with irrigation questions, and I believe that President Roosevelt will also be most liberally disposed. I believe that the government should give the proceeds of the sale of public lands to irrigation purposes."³⁸² Hansbrough told *Forestry and Irrigation*, "To say that the national government cannot, within the Constitution, do its part in the development of the [West] is to discredit the genius of the American people. To say that

³⁸⁰ Theodore Roosevelt, "First Annual Message," Dec. 3, 1901. Online. University of California, Santa Barbara. The American Presidency Project. <http://www.presidency.ucsb.edu/ws/index.php?pid=29542>. Accessed: Feb. 26, 2010.

³⁸¹ "Forestry and Irrigation in Congress: Measures Introduced in the First Session of the Fifty-Seventh Congress," *Forestry and Irrigation* 8 (1902): 75.

³⁸² "A Friend of National Irrigation," *The Irrigation Age*, 16 (Oct. 1901-Dec. 1901): 58

we may not utilize the waste waters . . . is to admit that national progress has reached the end.”³⁸³

In December 1901 during an after-dinner speech at the Willard Hotel in Washington, Secretary of the Interior James “Taka Jim” Wilson “spoke for a broad, prompt, energetic Governmental policy in the interest of such development of the West as would increase the greatness of the nation and extend our home market.”³⁸⁴ “‘The United States have in the arid and half-arid States and territories,’ he [Wilson] said, ‘immense areas of lands chemically capable of yielding incalculable wealth if irrigated; and we have in the same regions tremendous quantities now going to the sea, without having done any good to man. It is beyond the range of individual enterprise to wet these dry lands with these waste waters; but to do this great work is a legitimate function of the Government.’”³⁸⁵

Both the Newlands Bill in the House and the Hansbrough Bill in the Senate were substantially the same. Both provided “for the setting aside of the proceeds from the sale of public lands in the arid States and Territories as an ‘arid land reclamation fund.’”³⁸⁶ Money from the fund would then be “used for building such reservoirs, and that the cost

³⁸³ H. C. Hansbrough, “A National Irrigation Policy,” *Forestry and Irrigation* 8 (1902): 102.

³⁸⁴ “Great Wealth in the Arid Lands of the West,” *Daily Nevada State Journal*, January 7, 1902, 3.

³⁸⁵ *Ibid.*,

³⁸⁶ “Irrigation In Congress,” *Irrigation Age*, 15 (Oct. 1900-Sept. 1901): 298.

of such construction shall be put upon the land reclaimed by them, and the land then offered for sale by the Government in small tracts to bona fide settlers, upon easy terms.”³⁸⁷

The bills faced some opposition, mostly from cattle interests in Wyoming,³⁸⁸ and from “several of the more prominent of the great newspapers, the *New York Sun* among them” on the grounds that a national irrigation scheme would “impoverish the national treasury.”³⁸⁹

President Roosevelt made full use of his bully pulpit and big stick to secure passage. When Representative Joseph Gurney Cannon (R-Ill.) and Representative Sereno Elisha Payne (R-N.Y.) opposed the bill, Roosevelt “took them in hand, and finally they yielded to him to the extent of being willing to refrain from speaking against the bill. . . . Other influential republican members from the eastern states were controlled in a similar way.”³⁹⁰ In addition to the lobbying efforts of Smythe, Mead, and Newell, the *Denver* (Colorado) *Republican* credited Newlands with “an entirely unique method of using

³⁸⁷ *Ibid.*

³⁸⁸ Jermane, 226.

³⁸⁹ *Ibid.*, 224

³⁹⁰ *Ibid.*, 226.

photographs and the magic lantern,” that is, a slide projector, in lobbying for legislation.³⁹¹

The opposition to reclamation mostly came from the mid-West and mid-Atlantic States,³⁹² and was based on two grounds. One “principal objection to the bill has arisen upon the ground of constitutionality, it being held that the government could not improve its own lands, or exercise the privileges of a landowner in removing obstacles to development.”³⁹³ Newlands defended the bill’s constitutionality, “The United States owns the great area in the States mentioned in our bill . . . and by virtue of that ownership has an unassailable right to do whatever addresses itself to Congress as proper to make that land of value for settlement.”³⁹⁴ Hansbrough also defended reclamation’s constitutionality, “To say that the national government cannot, within the Constitution, do its part in the development of the latent wealth that exists in a region that is nearly one-third of the total area of the United States is to discredit the genius of the American people.”³⁹⁵ The United States would ultimately agree with Newlands. The Newlands

³⁹¹ *Denver (Colorado) Republican*, September 14, 1902, as quoted by “Press Comment on the Irrigation Proposition,” *Daily Nevada State Journal*, November 2, 1902, 3.

³⁹² Worster, 161.

³⁹³ “The Irrigation Bill,” *Forestry and Irrigation* 8 (1902): 232.

³⁹⁴ “Great Wealth in the Arid Lands of the West,” *Daily Nevada State Journal*, January 7, 1902, 3.

³⁹⁵ Hansbrough, 102.

Reclamation Act was declared constitutional in the cases *United States v. Arizona*, and *Kansas v. Colorado* from the provision, U.S. Const. art. IV, §3, conferring upon Congress the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.³⁹⁶ The passive acceptance of reclamation's constitutionality shows that the Jacksonian attitude opposing internal improvements was dead.

The other ground came from "the farmers' organization known as the Grange, from the fear that with the increase of tillable area in the West, farm values in the East would be reduced."³⁹⁷ This objection was summarily dismissed by reclamation's partisans, "This fear has been shown to be groundless, . . . The agricultural products of the West differ widely from those of the East, . . . In short, the opposition from this source has been based wholly upon ignorance of the true condition."³⁹⁸

Opposition was not universal. *Forestry and Irrigation* cited several Eastern newspapers supporting reclamation, including the Boston *Herald*, *Scientific American*,

³⁹⁶ *United States v. Arizona*, 295 U.S. 174, 55 S.Ct. 666, 79 L.Ed. 1371 (1935); . *Arizona v. California*, 283 U.S. 423, 51 S.Ct. 522, 75 L.Ed 1154 (1931); *Kansas v. Colorado* 206 U.S. 46, 27 S.Ct. 655, 52 L.Ed. 956 (1907), see also Jack K. Levin, "Irrigation," *American Jurisprudence*, 2nd ed., (St. Paul, Minn.: West, 2007) 45: § 84; Long, 560.

³⁹⁷ "The Irrigation Bill," *Forestry and Irrigation* 8 (1902): 232.

³⁹⁸ *Ibid.*

the New York *Commercial*, the Syracuse, New York *Post-Standard*, and the Philadelphia *Inquirer*, among others.³⁹⁹

With the President's active support, passage of some form of reclamation act was a foregone conclusion. The Senate version of the bill named for Senator Harbrough was passed on March 1, 1902 without a dissenting vote.⁴⁰⁰ Donald Worster reported, "In the Senate, there was hardly any debate, and the individual vote went unrecorded."⁴⁰¹ The breakthrough in getting the reclamation act passed was reached on April 2, 1902, at a White House conference between President Roosevelt, Representatives Frank Wheeler Mondell (R-Wyo.), Newlands, George Sutherland (R-Utah), Victor Howard Metcalf (R-Calif.), and Senator Charles Henry Dietrich (R-Neb.) and William Maxwell, chairman of the National Irrigation Association, and Gifford Pinchot, Chief Forester. According to the *Daily Nevada State Journal*, "The question discussed related to the withdrawal of irrigation lands and the State control section. Discussion developed the fact that all were agreed as to the purpose to be accomplished, but that they differed as to phraseology."⁴⁰² The breakthrough was suggested by Maxwell who suggested that Newland's language "would satisfactorily adjust differences as to construction and this view was generally

³⁹⁹ "Comment on the Irrigation Bill," *Forestry and Irrigation* 8 (1902): 278.

⁴⁰⁰ "The Irrigation Bill," *Forestry and Irrigation* 8 (1902): 231.

⁴⁰¹ Worster, 161.

⁴⁰² "Bill Has Been Amended: White House Conference Results in Change in Irrigation Measure," *Daily Nevada State Journal*, April 3, 1902, 1.

accepted.”⁴⁰³ Once the final language was worked out, Newlands moved that the Senate bill be substituted for his House bill. After this parliamentary maneuver The motion was carried. Next, the committee made several amendments to the bill which in effect rewrote it to be the former Newlands bill in substance.⁴⁰⁴ The final vote in the House was 146 for and 55.⁴⁰⁵ Roosevelt signed the bill into law on June 17, 1902. The pen with which Roosevelt signed the bill was given to Mondell. According to *Irrigation Age*, “Mr. Mondell, however, was almost as little entitled to that pen as one of the avowed opponents of the bill. But the gift of the pen was a small matter, and Mr. Mondell was permitted to bear it away in triumph.”⁴⁰⁶

Mondell was not the only person taking credit where it may not have been due. *The Carson (Nevada) News* tried to give credit for the passage of reclamation to Roosevelt and Hansborough, “insisting that Mr. Newlands had little or nothing to do with its enactment.”⁴⁰⁷ *The Daily Nevada State Journal* dismissed these allegations as the

⁴⁰³ *Ibid.*

⁴⁰⁴ “Substitution of the Irrigation Bill,” *Daily Nevada State Journal*, April 6, 1902, 1.

⁴⁰⁵ Worster, 161.

⁴⁰⁶ Jermane, 226.

⁴⁰⁷ “More Disagreements,” *Daily Nevada State Journal*, August 20, 1902, 3.

work of partisans of William Morris Stewart, one of Nevada's two United States Senators and a fierce political rival of Newlands.⁴⁰⁸

Passage of the Newlands Act was widely hailed as a great breakthrough. The national magazine *Harper's Weekly* opined, "There is some reason to believe that the unexpected strength which the irrigation bill displayed in Congress in its final stages was due to the particularly glowing picture which the happily named Representative Newlands of Nevada presented to the National imagination in his great speech in favor of the measure. realization comes to this promise."⁴⁰⁹ *Scientific American* commented, "According to Mr. Newlands, the Representative from Nevada, who has promoted the legislation of the subject this bill is very complete and comprehensive in its scope and automatic (so to speak) in its plan of action."⁴¹⁰ A "Nevadan" wrote to the Editor of the *Daily Nevada State Journal* on June 18, 1902 suggesting, "When the President signs the Irrigation Bill the people of Reno should immediately hold a great jubilee. . . . The irrigation bill is the greatest boon to the west and especially to Nevada. What a great region this will be when the deserts are watered and tilled by prosperous people!"⁴¹¹ Frederick Newell wrote, "The Nation has entered upon an experiment unique in its scope

⁴⁰⁸ *Ibid.*

⁴⁰⁹ *Harper's Weekly*, July 5, 1902, as quoted by "Press Comment on the Irrigation Proposition," *Daily Nevada State Journal*, November 2, 1902, 3.

⁴¹⁰ *Scientific American*, June 23, 1902, as quoted by *Ibid.*

⁴¹¹ "Wants to Celebrate," *Daily Nevada State Journal*, June 18, 1902, 1.

and character. It has been variously declared to be socialistic or paternalistic, but by the majority it is regarded as good business.”⁴¹² Smythe believed that June seventeenth should be kept as a “holiday” to remember the Theodore Roosevelt signing the Newlands Act.⁴¹³

Six months after Roosevelt signed the Newlands Act, he delivered his second State of the Union message to Congress

So far as they are available for agriculture, and to whatever extent they may be reclaimed under the national irrigation law, the remaining public lands should be held rigidly for the home builder, the settler who lives on his land, and for no one else. . . . The sound and steady development of the West depends upon the building up of homes therein. Much of our prosperity as a nation has been due to the operation of the homestead law. On the other hand, we should recognize the fact that in the grazing region the man who corresponds to the homesteader may be unable to settle permanently if only allowed to use the same amount of pasture land that his brother, the homesteader, is allowed to use of arable land. One hundred and sixty acres of fairly rich and well-watered soil, or a much smaller amount of irrigated land, may keep a family in plenty, whereas no one could get a living from one hundred and sixty acres of dry pasture land capable of supporting at the outside only one head of cattle to every ten acres.⁴¹⁴

⁴¹² Newell, “Reclamation: The Work of the Government,” 933.

⁴¹³ Smythe, *Constructive Democracy*, 375.

⁴¹⁴ Theodore Roosevelt, “Second Annual Message,” Dec. 2, 1902. Online. University of California, Santa Barbara. The American Presidency Project. <http://www.presidency.ucsb.edu/ws/index.php?pid=29543>. Accessed: Feb. 26, 2010.

By 1903, Roosevelt was able to report to the Congress, “The work of reclamation of the arid lands of the West is progressing steadily and satisfactorily under the terms of the law setting aside the proceeds from the disposal of public lands.”⁴¹⁵

Irrigation succeeded; one part of the technical problem of aridity was solved. The second part of the technical problem—water law—will be examined in a later chapter. Nevertheless, the progressives never lost sight that what was important was providing homes—that is farms—for settlers that thereby the political imbalance between East and West, and the demographic imbalances of the urban centers might be corrected. Smythe correctly wrote, “The true significance of the National Irrigation Law consists much less in the amount of money it will make available for domestic development than in the principle it establishes. While in one sense it is merely an extension of the homestead policy, in another and far more vital sense it marks the beginning of a new era in social legislation.”⁴¹⁶ Newell wrote, “The building of large structures for water conservation and for the reclamation of land is not, however, the ultimate object. These works in themselves are notable, but their importance to the nation comes from the fact that they make possible opportunities for the creation of small farms and building of homes for an independent citizenship.”⁴¹⁷ Blackmar wrote,

⁴¹⁵ Theodore Roosevelt, “Third Annual Message,” Dec. 7, 1903. Online. University of California, Santa Barbara. The American Presidency Project. <http://www.presidency.ucsb.edu/ws/index.php?pid=29544>. Accessed: Feb. 26, 2010.

⁴¹⁶ Smythe, *Constructive Democracy*, 376-377.

⁴¹⁷ Newell, “What May Be Accomplished,” 176.

No other act of Congress in recent years has been so radical in its departure from older methods of governmental administration, and no other has been of greater service to the far West or more promising of real good, than the Reclamation Act of June 17, 1902. The newness of the act consists in the governmental policy inaugurated for the disposition of public lands, on the one hand, and the new species of government service to the people, on the other.⁴¹⁸

Pisani concluded, “Maxwell also played on such fears because he knew that irrigation could not pay for itself: it *had* to be justified as a social reform because the collapse of private reclamation had already demonstrated that water projects could no longer be regarded as profitable business ventures.”⁴¹⁹

Later historians agreed with contemporary commentators. Lawrence B. Lee concluded, “The overwhelming vote registered in favor of Newland's bill in Congress was in some degree a measure of the success of William Ellsworth Smythe's propaganda which employed the venerated symbol of the homestead farmer as the agent for the conquest of arid America.”⁴²⁰ Gene M. Grassley wrote, “The Newlands legislation, as we now know, was an anomaly, cleverly conceived by a conservation-minded, politically astute president and a crusading Nevada congressman. Suddenly, his fellow western senators, who had long trumpeted the virtues of private enterprise, found themselves in

⁴¹⁸ Blackmar, 131.

⁴¹⁹ Pisani, *To Reclaim A Divided West*, 287.

⁴²⁰ Lee, 311.

the bastion of public subsidy.”⁴²¹ Pisani called the Newlands Act the “boldest piece of legislation ever enacted pertaining to the trans-Mississippi West.”⁴²² Donald Worster summed up the Newlands Act:

Historians have been explaining ever since why it [the Newlands Act] passed and what it reflected of American culture of the time. Their explanations generally follow one of two lines. First and more simply, it has been said that the act was the achievement of consummate political leadership, either that of Francis Newlands or of Theodore Roosevelt. Second and more abstractly, it has been argued that the act rolled through on a wave of something called ‘Progressivism’ or ‘Conservation.’ Neither theory is full convincing. They are either too narrow and dependent on personalities or too grandiose and abstract.⁴²³

There is nothing grandiose or abstract about it. The progressives wanted to create a perfect society, their secular “city on a hill.” Progressives saw the West as a place where this city, or at least its suburbs, might be built. Among others, two questions needed to be answered to accomplish this. These questions were the political imbalance between East and West, and the demographic pressure in the Eastern cities. The answer to both questions was to move people from the overpopulated East to the underpopulated West. Irrigation was a tool to solve one technical aspect of this answer. Irrigation permitted land in the arid region of the West to be subdivided and sold as farms, a nostalgic echo of an earlier time, and these new farmers would the learn or relearn the

⁴²¹ Gene M. Grassley, “Arthur Powell Davis, Reclamation, and the West,” *Agricultural History*, 42, no. 3 (Jul., 1968): 241.

⁴²² Pisani, *To Reclaim A Divided West*, 322.

⁴²³ Worster, 161-162.

values and virtues of thrift, hard work, collectivism, cooperation and patriotism; would have a permanent, independent means of support; and the immigrants among them would be assimilated.

Chapter Six

Populism

It is essential that we should know that the real
and final test of a government, as of a religion,
is the kind of man, and not the amount of money, it produces.

— J.L. Spalding (1886)

Understanding the differences between populism and progressivism is critical to understanding their different approaches to development in the American West, especially in irrigation and water issues. Both populism and progressivism were reactions to the effects of the Later Industrial Revolution, but reached very different conclusions about what ought to be done. Whereas progressivism was a liberal, or even radical, movement that embraced modernity, science, technology, and government intervention to make over society as imagined by the progressives, populism was a conservative, or even reactionary, movement that rejected modernity, and embraced government intervention as a means to protect and restore a nostalgic and vanishing status quo. Progressivism was rooted in socialism; populism was rooted in the Jeffersonian/ Jacksonian ideal of the

yeoman farmer. As Jeff Taylor pointed out, “Populism is an integral part of Jeffersonianism.”⁴²⁴

Taylor also wrote, “It should be clearly understood that the term *Jeffersonianism* does not signify merely the ideology of one individual; rather, it signifies the ideology of early American liberals.”⁴²⁵ Charles A. Beard correctly pointed out, “Jefferson never wrote anything approaching a treatise on government or political science, and his philosophy of politics must therefore, be sought among his letters and public papers.”⁴²⁶ Although Taylor identified twelve points in Jefferson’s political philosophy, it was in a word agrarian in its outlook, in its world view, in its ideology.⁴²⁷ Agrarianism, an almost religious belief in the propriety of an agricultural economy as necessary for the preservation of democracy, was the core value of both Jeffersonianism, Jacksonianism, and, later, populism. Jefferson’s democracy was “founded upon an economic system of small land-owning farmers—upon that wide distribution of property which was possible

⁴²⁴ Taylor, 17.

⁴²⁵ *Ibid.*, 2. Italics in the original.

⁴²⁶ Beard, 415-416.

⁴²⁷ Jeff Taylor summed up the “twelve main tenets of Jefferson’s political thought, or *Jeffersonianism*” as “democracy rather than aristocracy, political decentralization, strict constructionism, opposition to banking, legislative preeminence vis-à-vis executive, suspicion of the judiciary, protection of civil liberties, ethnic inclusiveness, frugal spending, low taxation, pacifism, and isolationism.” Taylor, 2. Italics in the original.

only where land was cheap and plentiful.”⁴²⁸ He “denounced the arts of the merchant and the financier, and declared the landowning farmer to be the only true hope of a republic.”⁴²⁹ In the only book Jefferson ever wrote, *Notes on the State of Virginia*, Jefferson “made it plain that the methods of capitalism were not only highly objectionable to him personally, but that, in his opinion, an extensive development of them was incompatible with the perpetuity of American institutions”⁴³⁰ and called yeoman farmers were “the chosen people of God, if ever He has a chosen people.”⁴³¹ In 1785, Jefferson wrote to John Jay,

We have now lands enough to employ an infinite number of people in their cultivation. Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independent, the most virtuous, and they are tied to their country and wedded to its liberty and interests by the most lasting bonds. As long therefore as they can find employment in this line, I would not convert them into mariners, artisans or anything else.⁴³²

Two years later, while the Constitution was pending before the State legislatures, Jefferson wrote to James Madison, “I think our governments will remain virtuous for many centuries; as long as they are chiefly agricultural; and will be as long as there shall

⁴²⁸ Beard, *Economic Origins*, 421-422.

⁴²⁹ *Ibid.*, 358.

⁴³⁰ *Ibid.*, 358.

⁴³¹ Thomas Jefferson, *Notes on the State of Virginia* (1782) reprinted in Koch and Peden, 280.

⁴³² Thomas Jefferson to John Jay, August 23, 1785, reprinted in Thomas Jefferson, *The Works of Thomas Jefferson*, Paul Leicester Ford, ed., Fed. ed. (New York: G.P. Putnum, 1904), 4: 449.

be vacant land in any part of America.”⁴³³ One hundred years later, Herbert Croly wrote, “During the next fifty years [that is, 1800 to 1850], the American democracy accepted almost literally this Jeffersonian [and Jacksonian] tradition.”⁴³⁴

Among those who propagated and distributed this new tradition, John Taylor published his *An Inquiry into the Principles and Policy of the Government of the United States* in 1814. Taylor provides the coherent treatise on Jeffersonian political thought which Jefferson himself could not or would not write. A century after publication, Beard called it “without doubt . . . the textbook of agrarian political science, conceived in opposition to capitalism and dedicated to a republic of small farmers.”⁴³⁵ Taylor believed that the “landed interest” or the “agrarian interest”—he uses the terms interchangeably—is the “enduring basis of democracy” and the “only true bases of democracy and the defender of the rights of private property.”⁴³⁶ He wrote, “In the United States, agriculture covers the interest of the vast majority.”⁴³⁷ Beard summed up Taylor’s thesis, “In spite of all the difficulties and discouragements confronting the American people, land is the real basis of democracy, the only genuine and enduring basis. It alone has no special, law-

⁴³³ Thomas Jefferson to James Madison, December 20, 1787, reprinted in Ford, 5: 337.

⁴³⁴ Croly, 48.

⁴³⁵ Beard, *Economic Origins*, 322.

⁴³⁶ *Ibid.*, 348 analyzing John Taylor, *An Inquiry into the Principles and Policy of the Government of the United States* (Fredericksburg, Va.: Cass and Green, 1814).

⁴³⁷ Taylor, 618.

made privileges, and seeks no favors from the government. It stands on an independent foundation.”⁴³⁸

A decade or so later, Jeffersonianism was replaced with Jacksonianism at a time of a “revival of aggressive Federalism.”⁴³⁹ Arthur M. Schlesinger called Jacksonianism “a revival of Jeffersonianism . . . strengthened by the infusion of fresh influences notably; notably the antimonopolistic tradition, formulated primarily by Adam Smith,” among others.⁴⁴⁰ Andrew Jackson came to the Presidency two and a half years after Jefferson’s death, and a generation after Jefferson’s retirement; nevertheless, he believed himself a staunch Jeffersonian.⁴⁴¹ Although some differences existed between Jeffersonianism and Jacksonianism, the two ideologies were much the same.⁴⁴² Like Jefferson, Jackson believed the federal government was “limited to a general superintending power to maintain peace at home and abroad, and to prescribe laws on a

⁴³⁸ Beard, *Economic Origins*, 347 analyzing and quoting Taylor, 260.

⁴³⁹ Croly, 63.

⁴⁴⁰ Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston: Little and Brown, 1945), 307-308.

⁴⁴¹ William J. Bennett, *America: The Last Best Hope* (Nashville, Tenn.: Thomas Nelson, 2006), 236.

⁴⁴² The core ideals of Jacksonian democracy include: (1) universal white male suffrage, (2) manifest destiny, (3) the spoils system, the policy of placing political supporters into appointed offices, (4) strict construction of the Constitution, (5) laissez faire economics. See generally Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston: Little and Brown, 1945).

few subjects of general interest not calculated to restrict human liberty, but to enforce human rights.”⁴⁴³

Although Jacksonianism was broader in that it included artisans and laborers, as well as farmers, as its *chosen people*, it was still overwhelmingly agrarian. In his fourth annual message, Jackson told the Congress, “The wealth and strength of a country are its population, and the best part of that population are the cultivators of the soil.

Independent farmers are everywhere the basis of society and true friends of liberty.”⁴⁴⁴

On another occasion, in his veto message dated December 4, 1833 concerning “An Act to Appropriate for a Limited Time the Proceeds of the Sale of the Public Lands for the United States,” Jackson admonished the Congress that “the just men who inhabit the new States” would prefer the “enduring wealth which is composed of flocks and herds and cultivated farms” to any form of government spending.⁴⁴⁵ “No temptation,” Jackson wrote, “will allure them from that object of abiding interest, the settlement of their waste lands, and the increase of a hardy race of free citizens, their glory in peace and their defense in war.” Finally, in his Farewell Address, Jackson said, “The planter, the farmer,

⁴⁴³ Andrew Jackson, “Fourth Annual Message to Congress,” Dec. 4, 1832, in Francis Newton Thorpe, ed., *The Statesmanship of Andrew Jackson* (New York: Tandy-Thomas Co., 1909), 199.

⁴⁴⁴ *Ibid.*, 190.

⁴⁴⁵ Andrew Jackson, “Veto Message—Public Lands,” December 4, 1833, in Thorpe, 323.

the mechanic, and the laborer . . . are the bone and sinew of the country—men who love liberty and desire nothing but equal rights and equal laws.”⁴⁴⁶

Although Jackson at least acknowledged the presence of “the mechanic and the laborer,” Jefferson’s democracy “did not embrace a working-class, as that term is conceived in modern life.”⁴⁴⁷ Jefferson recognized that an “urban proletariat” was incompatible with his concept of “equalitarian political democracy”; however, failing to find a solution, Jefferson chose to ignore the problem and hope that such a working class would never form in America.⁴⁴⁸ By contrast, progressives assumed the existence of an urban proletariat, and devoted their efforts to its relief, as well as to the relief of the rural poor.

Populists inherited Jeffersonian/ Jacksonian agrarianism and tried, unsuccessfully, to translate it to the post-industrial revolutionary world. In 1895, just as the Populist Party was passing its highest point, L. D. Lewelling wrote, “The Populist party, was and is in fact nothing more nor less than a defensive warfare for the preservation of the few privileges which remain to the agriculturalist.”⁴⁴⁹ A few years later, W. A. Pegger wrote that populists believed in “equal rights,” including a right to the “use of natural resources

⁴⁴⁶ Andrew Jackson, “Farewell Address,” March 4, 1837, in Thorpe, 512.

⁴⁴⁷ Beard, *Economic Origins*, 421-422.

⁴⁴⁸ *Ibid.*

⁴⁴⁹ L. D. Lewelling, “Problems before the Western Farmer “ *The North American Review*, 160, no. 458 (Jan., 1895): 18.

of subsistence, including a parcel of vacant land where he [the common man] may earn a livelihood,” that is a farm. At first blush this statement might sound like a socialistic land-reform policy worthy of Marx, or Lenin, or Mao, but on further examination is it not. Neither Germany, nor Russia, nor China had any tradition of an independent yeomanry such as existed in America, or more especially in America as envisioned by the Jeffersonian ethic.⁴⁵⁰ For its part, America had no hereditary, aristocratic landowning class as was found in Europe or China. The populists did not want to take land from rich aristocrats and redistribute it to the people; they wanted to distribute land already owned by *the people to the people*. “Land monopoly” was a major bugaboo to all populists. Francis G. Newlands reminded the House of Representatives Committee on Arid Lands, “The whole policy of the Government has been against land monopoly and has been intended to secure homes for actual settlers.”⁴⁵¹ This was true whether the monopolist was the railroad, some other company or corporation, or the Federal government itself. To the extent land monopoly existed, it was in the corporations or speculators who were seen, correctly in many cases, of taking unfair advantage of laws intended for the benefit of all. Kazin wrote, “Populist speakers in the United States voiced a profound outrage with elites who ignored, corrupted and/or betrayed the core ideal of American democracy:

⁴⁵⁰ The *kulak* class of Russia might be seen as the equivalent of the Jeffersonian yeomanry; however after the October Revolution of 1917, the Communist government persecuted and exterminated the *kulaks* as enemies of the people.

⁴⁵¹ Francis G. Newlands, “Statement before the Committee, House Committee on Irrigation of Arid Lands,” in 1901 Hearings, 8.

rule by the common people who expected their fellow citizens to advance by diligence, practical intelligence, and a faith in God alone.”⁴⁵² Clinton summed it up, “Populism was the popular name for a predominantly agrarian and decidedly democratic, social-political movement of the 1890s that was formally known as the People’s Party of America.”⁴⁵³ Populism was the last chorus of the Jeffersonian/ Jacksonian/ Populist/ Agrarian oratorio, but it was a loud, clear and powerful “Amen Chorus.”

Certain superficial resemblances between populism and progressivism need to be acknowledged, examined, and addressed. Both populism and progressivism were *reform movements*. Clanton defined reform as “the expression of a determination to make the real world conform to an ideal in the mind of the reformer.”⁴⁵⁴ He continued, “Reform to the reformer is consequently perceived as a righteous upward movement, an effort to realize the ‘good society.’”⁴⁵⁵ Both populists and progressives “partly from expediency and partly from conviction . . . demanded stern antitrust laws, discrimination in favor of state enterprise in such areas as activities of the large corporations.”⁴⁵⁶ But the resemblance ended there. It ended with different conceptions of what constituted the ideal society. Despite a superficial resemblance in some of their specific proposals,

⁴⁵² Kazin, 2.

⁴⁵³ Clanton, *Populism*, xi.

⁴⁵⁴ *Ibid.*, 3.

⁴⁵⁵ *Ibid.*

⁴⁵⁶ Wiebe, 180.

populism and progressivism were actually opposites in their approach, and in their basic assumptions of human nature and the nature of the Constitution of the United States. Goodwyn observed, “Populists dissented against the progressive society itself. . . . Populists dissented against the progressive society . . . because they thought that the mature corporate state would, unless restricted, erode the democratic promise of America.”⁴⁵⁷ Populists believed in the Constitution, but populists believed in the Declaration of Independence more.⁴⁵⁸ Had not their hero Jefferson declared a “self-evident” truth that “all men are created equal” and “endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness?”⁴⁵⁹ What Jefferson called “self-evident,” the populists considered “axioms.”⁴⁶⁰ The goal of the populists was freedom for individuals and human rights. In what amounted to a populist call to arms, J.B. Weaver claimed for all Americans “the most sacred and essential of these rights” the “liberty to occupy the soil in his own right, to till it unmolested, as soon as he has the strength to do so, and to live upon the fruits of his toil

⁴⁵⁷ Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America* (New York: Oxford University Press, 1976), xiv.

⁴⁵⁸ J. B. Weaver, “The Threefold Contentment of Industry,” *The People’s Cause* (Boston: Arena Publishing Co., 1892), 4.

⁴⁵⁹ Thomas Jefferson, “The Declaration of Independence,” July 4, 1776. Available online Yale University, Avalon Project. http://avalon.law.yale.edu/18th_century/declare.asp. Accessed: Mar. 2, 2010.

⁴⁶⁰ Weaver, 2-3.

without paying tribute to any other creature.”⁴⁶¹ In addition to their moral simplicities, populists were dedicated as agrarians as their Jeffersonian/ Jacksonian predecessors. In 1886, J.L. Spalding wrote, “We must return to the ideals of our forefathers, who preferred freedom, intelligence and strength to wealth, and who dedicated this land to higher manhood, and not the fatter mammonhood.”⁴⁶² In 1896, W. C. Fitzsimmons wrote, “It is equally true that the farmers have never yet, as a class, taken rank in the modern scheme of things in accordance with their importance and relative value.”⁴⁶³ A. J. Wells, no doubt shilling for the Southern Pacific Railroad which had many acres of irrigated land to sell but nevertheless striking a populist chord, wrote “‘A free home for every family’ is the American ideal. The natural unit of society is the family, and the homestead is the condition of independence.”⁴⁶⁴ Goodwyn observed that populism during the Gilded Age suffered from “nostalgia” for “Jacksonian . . . moral simplicities, in its obeisance to laissez faire, and in its reliance on quaint fixations about what constituted ‘sound money.’” The Jacksonian persuasion, however, carried a deeper, saving impulse—the feeling that a

⁴⁶¹ *Ibid.*, 3-4.

⁴⁶² J. L. Spalding, “Are We In Danger of Revolution?” *The Forum*, July 1886: 412.

⁴⁶³ W. C. Fitzsimmons, “The Farmers Niche in Our Civilization,” *Irrigation Age*, 10 (July-Dec. 1896): 170.

⁴⁶⁴ A. J. Wells, *Government Irrigation and the Settler: California, Oregon, Nevada and Arizona, Including a Description of the Imperial Valley Project* (San Francisco: Southern Pacific Railroad, n.d.), 9.

just republic served the needs of its just and hard-working ‘plain people.’”⁴⁶⁵ In contrast, progressives sought to benefit the plain people, but through a top-down, efficient, scientific, technocratic approach rather than the bottom-up Jeffersonian approach.

Unlike progressivism, which worked through the Democratic and Republican parties, populists formed a moderately, temporarily successful third party.⁴⁶⁶ The People’s or Populist Party was formed in 1887 from a fusion of various agrarian movements. In the summer of 1892, the Populist Party convened in Omaha, Nebraska. The resulting Omaha Platform called for various reforms, including the free coinage of silver, public ownership of railroads, telegraph, and telephone systems, postal savings banks and a graduated income tax. Under the heading “LAND,” the Omaha Platform demanded,

The land, including all the natural sources of wealth, is the heritage of the people, and should not be monopolized for speculative purposes, and alien ownership of land should be prohibited. All land now held by railroads and other corporations in excess of their actual needs, and all lands now owned by aliens should be reclaimed by the government and held for actual settlers only.⁴⁶⁷

⁴⁶⁵ Goodwyn, 379.

⁴⁶⁶ The Progressive Party, or Bull Moose Party, which nominated Theodore Roosevelt for the Presidency in 1912, was not a real third-party, but a dissident faction of the Republican Party. After Roosevelt’s failed bid for a third term, the Bull Moose Party gradually dissolved and its members reunited with the Republican Party. The Progressive Party disappeared by 1920.

⁴⁶⁷ Omaha Platform as quoted by Frank L. McVey, “The Populist Movement,” *Economic Studies* 1, no. 3 (Aug. 1896): 151.

Frank McVey, in his analysis of the Populist Party, called the Omaha Platform “the most advanced theories and demands of the new party. . . . a second Declaration of Independence.”⁴⁶⁸ The Populist Party reached its height in 1892 when Populist Presidential candidate James B. Weaver carried four States—Colorado, Idaho, Kansas, and Nevada—and received additional electoral votes from Oregon and South Dakota as well. Between 1887 and 1902, the Populist Party elected forty-five Representatives and Senators, all from Western or Southern States; and several governors, also from Western and Southern States. According to Frank Basil Tracy, “The votes cast for Mr. Weaver in 1892, and in the . . . congressional and gubernatorial elections of 1894, were those of men dissatisfied with the conditions, and who turned to the new party in the hope of obtaining some relief from the evils which they thought to exist.”⁴⁶⁹ However, the two-party system was too strong. An independent Populist Party could never achieve a fifty-percent-plus-one majority, or even a plurality, except locally and temporally. The Populist Party fused with the Democratic Party in 1896 by jointly nominating William Jennings Bryan. Bryan was defeated by Republican William McKinley, and the Populist Party soon disappeared. In contrast, the progressives consciously or unconsciously realized that more could be accomplished through the two-party system than outside it. Thus, both Republican Theodore Roosevelt and Democrat Woodrow Wilson correctly

⁴⁶⁸ McVey, 143.

⁴⁶⁹ *Ibid.*, 188-189.

may be called “progressives.” Their platforms, the New Nationalism and New Freedom, respectively, were interchangeable on most important points.⁴⁷⁰

At the time, populists were often accused of being socialists. Tracy accused the Populists of “wild and frenzied assaults upon the existing order of things” and “social lunacy.”⁴⁷¹ He stated explicitly, “The doctrinal basis of Populism is socialism.”⁴⁷² McVey observed, “In comparing the planks of the People’s Party [Omaha] platform [of 1892], we find that nine of them correspond closely to those of the socialists. Such a similarity is not an accident, but the result of thought along the same lines.”⁴⁷³ However, McVey also observed “Yet if the charge of socialism were brought against it, the defender of the platform could at once deny the assertion, and define the section attacked in such a way as to refute the statement.”⁴⁷⁴ Charles S. Gleed thought, “Every agency ever suggested by the People’s Party for the improvement of the condition of its members has been designed solely for the assistance of limited classes and of their attempts to prosper

⁴⁷⁰ See generally John Milton Cooper, Jr., *The Warrior and the Priest: Woodrow Wilson and Theodore Roosevelt* (Cambridge, Mass.: Harvard University Press, 1983). William Howard Taft’s sin was not progressive enough for the taste of Roosevelt and other progressives in the Republican Party; hence the split in the Party in 1912.

⁴⁷¹ Frank Basil Tracy, “Menacing Socialism in the Western States,” *The Forum*, May 1893, 332

⁴⁷² Frank Basil Tracy, “Rise and Doom of the Populist Party,” *The Forum*, October 1893, 244.

⁴⁷³ McVey, 184.

⁴⁷⁴ *Ibid.*, 182.

by present methods.”⁴⁷⁵ Gleed concluded, “All they [the Populists] ask is the society they have always known, with the prosperity they have from time to time enjoyed. This is not socialism.”⁴⁷⁶ Frederick Jackson Turner wrote, “In a word, the Populist is the American farmer who has kept in advance of the economic and social transformations that have overtaken those who remained behind.”⁴⁷⁷ Thus, populism is conservative, even reactionary. Its goal was not to change the social order, but to preserve it.

Despite the superficial resemblance, populism was neither progressive nor socialistic. W.A. Pegger, wrote, at the time the Populist Party had run its course, that the Populist Party “believed the earth is the people's heritage and that wealth belongs to him who creates it; that the work of distributing the products and profits of labor ought to be performed by public agencies; that money should be provided by the government and distributed through government instrumentalities.”⁴⁷⁸ “In view of the programs they supported,” Gene Clanton asked, “were the Populists proponents of socialism?”⁴⁷⁹ Clanton answered his own question conditionally, “If they were, they were advocates of a

⁴⁷⁵ Gleed, 259.

⁴⁷⁶ *Ibid.*, 260.

⁴⁷⁷ Turner, 239.

⁴⁷⁸ W. A. Pegger, “The Passing of the People's Party,” *The North American Review*, 166, no. 494 (Jan., 1898):12-13 .

⁴⁷⁹ Clanton, *Populism*, 129-130.

peculiar brand of socialism—the socialism of agrarianism or perhaps what one person, in another context, has called ‘grass-roots socialism.’”⁴⁸⁰ Clanton continued

Public ownership, to their way of thinking, was to serve the interests of millions of small-scale, land-owing farmers, businessmen, and wage-earning laborers. Their basic, structural reforms in finance, land, and transportation/communication, they sincerely—we might say naively—believed would render unnecessary a wholesale change in the existing arrangements regarding private property and private production.⁴⁸¹

However, as Michael Kazin observed, “To call populist only the People’s Party and its immediate antecedents is to neglect the potent tradition to which insurgents in the late nineteenth century added their own blend of economic dread and missionary zeal.”⁴⁸²

The populists, like the Jeffersonians and Jacksonians before them, worshiped the individual. George H. Maxwell prophesied, “Without a revival of the independence and individualism that once characterized rural America, the next depression [that is, the next one after the Long Depression of the 1890s] would touch off a massive war between the haves and the have nots.”⁴⁸³ Herbert Corly admired the “pioneer, [who] in spite of his aggressive uninformed individualism, was essentially a good citizen. He was building a

⁴⁸⁰ *Ibid.*

⁴⁸¹ *Ibid.*

⁴⁸² Kazin, 5-6.

⁴⁸³ Frederick H. Newell, *Irrigation in the United States* (New York: Thomas Y. Crowell and Co., 1902), 406 as quoted Pisani, *Water and the American Government*, 16-17.

society, and he was himself a social benefactor.”⁴⁸⁴ As Turner pointed out, “The frontier is productive of individualism.”⁴⁸⁵ Turner continued,

The democracy born of free land, strong in selfishness and individualism, intolerant of administrative experience and education, and pressing individual liberty beyond its proper bounds, has its dangers as well as its benefits. Individualism in America has allowed a laxity in regard to governmental affairs which has rendered possible . . . all the manifest evils that follow from the lack of a highly developed civic spirit.⁴⁸⁶

In contrast, progressives rejected individualism in favor of collectivism. Theodore Roosevelt once said, “Probably the chief obstacle in the way of taking such wise collective action lies in the mental attitude of those who still adhere to the doctrinaire theory of eighteenth-century individualism, and treat as a cardinal virtue the right to absolute liberty of contract.”⁴⁸⁷

For an agrarian program to work, land must be distributed as widely as possible. To do this, it must be plentiful and cheap. Jefferson’s greatest accomplishment was adding land to the United States, which he knew in time would be populated with yeoman farmers. The Louisiana Purchase of 1803 not only doubled the territory of the United States, but crossed the Mississippi River, America’s first natural border, and thereby setting a precedent that America had no natural border. Over the next fifty years, under

⁴⁸⁴ Croly, 96-97.

⁴⁸⁵ Turner, 30.

⁴⁸⁶ *Ibid.*, 32.

⁴⁸⁷ Theodore Roosevelt, “Nationalism and the Working Man,” *The Outlook*, February 4, 1911, reprinted in *The Works of Theodore Roosevelt*, 19: 104-105.

the rationalization of Manifest Destiny, the United States added Texas, Oregon, the Mexican Cession, and the Gadsden Purchase to its territory. “The acquisition of this enormous domain of unsettled land . . . ,” Beard wrote, “was wholly in line with the interests of the Jeffersonian party.”⁴⁸⁸ As Congress gathered lands through purchase, diplomacy, and conquest, it also disposed of this vast area, called the *public domain*, as quickly as possible.

To this end, the Congress passed a series of land acts which distributed the land to settlers for free or on very generous terms. For example, the Preemption Act of 1841 allowed American citizens, or those who intended to become American citizens, who had lived on public land for only fourteen months to purchase the land for \$1.25 per acre.⁴⁸⁹ This general policy would continue with various modifications until the Homestead Act of 1862 was finally repealed in 1976.⁴⁹⁰ David C. Schorr described the Homestead Act of 1862 as “the best-known example of the nineteenth-century Jeffersonian ideal enacted into law.”⁴⁹¹ According to Schorr, the Homestead Act “contained all the core elements of radical Lockean thought: widespread distribution, use requirements, and limits on

⁴⁸⁸ Beard, *Economic Origins*, 439.

⁴⁸⁹ *Preemption Act of 1841*, ch. 16, *U.S. Statutes at Large* 5 (1841): 453.

⁴⁹⁰ Federal Land Policy and Management Act, P.L. 94-579, *U.S. Statutes at Large* 90 (1976): 2743-2794 codified at *United States Code* 43 (2010): §§ 1701-1785.

⁴⁹¹ David B. Schorr, “Appropriation as Agrarianism: Distributive Justice in the Creation of Property Rights,” *Ecology Law Quarterly* 32 (2005): 28-29.

holdings.”⁴⁹² In 1896, Frank McVey wrote, “The result has been that land has been distributed liberally, even though without much regard to the ultimate possessor.”⁴⁹³

Elwood Mead complained that America’s land policy was “rashly wasteful” and that the “fertility of the virgin soil was recklessly exhausted because other land could be had farther west.”⁴⁹⁴

Notwithstanding the “waste” of which Mead complained, Jeffersonians believed that “many generations would elapse before the vacant lands would be all taken up and the people of the United States turned from agriculture to the demoralizing and destructive pursuits of finance, manufacturing, and commerce.”⁴⁹⁵ During the first decades of the Long Nineteenth Century, while lands available for settlement were available in the humid East, would-be settlers could take land under the Preemption Act and, relying on seasonal rains and hard work, expect to prosper. This was Jefferson’s and Jackson’s experience. Alas, far from being infinite, the territory between the Appalachian Mountains and the Mississippi River, the vacant lands of the Louisiana Purchase, and much more, were taken up in less than a century; other Americans turned to finance, manufacturing, and commerce immediately. The Industrial Revolution began in America

⁴⁹² *Ibid.*

⁴⁹³ McVey, 151-152.

⁴⁹⁴ Elwood Mead, *Helping Men Own Farms: A Practical Discussion of Government Aid in Land Settlement* (New York: The Macmillian Co., 1920), 27.

⁴⁹⁵ Beard, *Economic Origins*, 439.

at almost the same time as Jefferson's first inauguration. It only picked up steam—literally and figuratively—throughout the Long Nineteenth Century. By the Gilded Age, America was an industrial and financial giant. Only two generations after Jefferson and one generation after Jackson, “water was the essential ingredient in fulfilling the Jeffersonian ideal of allowing farmers and ranchers to settle new lands, lands where crops grew only if the settlers put water on the fields by means of irrigation.”⁴⁹⁶ Virgin agricultural land was still available, but it was arid and useless without irrigation.

Looking back on the Gilded Age, Gerald D. Nash wrote that during the last half of the nineteenth century the “old Jeffersonian ethic [and for that matter, the Jacksonian ethic as well] was in the throes of transformation—if not outright disintegration.”⁴⁹⁷ Vincent P. DeSantis wrote, “The rapid and vast economic expansion of the post-Civil War years brought far-reaching social and cultural changes. The most important was the transformation of the United States from a rural and agrarian nation to an urban and industrial one.”⁴⁹⁸ Robert H. Wiebe called late-nineteenth-century America “a society without a core.”⁴⁹⁹ Wiebe continued, “It lacked those national centers of authority and

⁴⁹⁶ Bates, 3.

⁴⁹⁷ Gerald D. Nash, “Rural Society in the Far West: A Comment on the Problem of Values,” *Agricultural History*, 49, no. 1 (Jan., 1975): 53.

⁴⁹⁸ DeSantis, 96.

⁴⁹⁹ Wiebe, 12.

information with might have given order to such swift changes” brought on by the Industrial Revolution.⁵⁰⁰

Industrialization allowed Americans to participate in national and international markets, but eliminated the cozy localism familiar to Americans living before the Civil War and existing as a fundamental axiom to Jeffersonian/ Jacksonian democracy. A generation before the Civil War, yeoman farmers borrowed money from the local banker, bought their tools from and had them repaired by the local blacksmith, and sold their produce to their neighbors at prices negotiated face-to-face, all whom they knew from church or lodge meetings and so forth. Thomas Jefferson would have recognized this milieu. A generation after the Civil War, the family farm was transforming into an agribusiness, the farmer borrowed money from bankers in New York, bought his tools from the International Harvester Trust, and shipped products to far distant markets by railroads to be sold at prices set in the trading pits of Chicago.

Neither Thomas Jefferson nor Andrew Jackson would have recognized or understood this new environment. Amos Pinchot summed up the state of union, “Thus, we must face the fact that, in America, we have permitted an uncontrolled industrial oligarchy to assume, and use for its own purposes, a tremendous and arrogant power.”⁵⁰¹ Turner remarked, “They see the sharp contrast between their traditional idea of America, as the land of opportunity, the land of the self-made man, free from class distinctions and

⁵⁰⁰ *Ibid.*

⁵⁰¹ Amos Pinchot, 36.

from the power of wealth, and the existing America, so unlike the earlier ideal.”⁵⁰²

Benjamin Parke DeWitt put it even more succinctly, “Slowly, Americans realized they were not free.”⁵⁰³ Populists and progressives tried to *free* Americans from the plutocracy, from industrialism, from whatever else ailed them during the last decades of the Long Nineteenth Century.

The populists supported small farmers because populists believed that small farmers were the fount of democratic virtue, as did Jefferson. Thus, as Michael Kazin wrote, the “the most basic and telling definition of populism [is] a language whose speakers conceive the ordinary people as a noble assemblage not bounded narrowly by class, view their elite opponents as self-serving and undemocratic, and seek to mobilize the former against the latter.”⁵⁰⁴ Kazin continued, “Populist . . . voiced a profound outrage with elites who ignored, corrupted and/or betrayed the core ideal of American democracy: rule by the common people who expected their fellow citizens to advance by diligence, practical intelligence, and a faith in God alone.”⁵⁰⁵ Lawrence Goodwyn called American Populism “more than a passing political creed, it was also less than a fundamental social theory.”⁵⁰⁶ Goodwyn admonished and warned, “It is essential to

⁵⁰² Turner, 239.

⁵⁰³ DeWitt, 14.

⁵⁰⁴ Kazin, 1.

⁵⁰⁵ *Ibid.*, 2.

⁵⁰⁶ Goodwyn, xi.

recognize that Populism appeared at almost the very last moment before the values implicit in the corporate state captured the cultural high ground in American Society itself.”⁵⁰⁷ Clinton wrote, “Although conventional wisdom would suggest that Populism was eventually implemented, the original national program championed by the People’s party as will be seen, certainly was not fulfilled.”⁵⁰⁸ Populism was a last gasp of this Jeffersonian/ Jacksonian ethic. Small farms owned and worked by independent yeoman were the salvation of the Republic, but, once the frontier had advanced beyond the Missouri River, farmers became “convinced that if the homestead law was to have any meaning . . . government must come to the aid of the settler, first in the adjudication of water rights, and second in the construction of the more costly irrigation works.”⁵⁰⁹ William Ellsworth Smythe, the apostle of irrigation, wrote, “A large farm under irrigation is a misfortune; a great farm, a calamity. Only the small farm pays. But this small farm blesses its proprietor with industrial independence and crowns him with social equality. That is democracy.”⁵¹⁰ Smythe continued, “Industrial independence is, in simplest terms, the guarantee of subsistence from one's own labors. It is the ability to earn a living under conditions which admit of the smallest possible element of doubt with the least possible

⁵⁰⁷ *Ibid.*, xii.

⁵⁰⁸ Clanton, *Populism*, xiv.

⁵⁰⁹ Katharine Coman, “Some Unsettled Problems of Irrigation,” *The American Economic Review*, 1, no. 1 (March 1911): 7.

⁵¹⁰ Smythe, *Conquest of Arid America*, 43.

dependence upon others. Irrigation fully satisfies this definition.”⁵¹¹ *The Irrigation Age*

editorialized

Again, the farmer who has the water of the irrigation ditch at his command is one of the most independent of men. His crops are assured. He diversifies his operations and produces all he and his family consume, with a surplus which can be exchanged for clothing or other necessary articles, or money to be reserved for old age. He is practically free from outside influences.⁵¹²

Mead wrote, “Where land can only be cultivated by means of the artificial application of water, and where that water is not under speculative control, it [the land] is owned in small holdings. . . . The result is a multitude of small proprietors working for themselves.”⁵¹³ As late as 1948, A. Whitney Griswold wrote that

men have been arguing that the nature of the American state requires the preservation of the small, owner-operated, family-sized farm. The argument brings into focus the general idea that the fate of democracy is somehow or other bound up with the fate of the agricultural community whence it emerged and that both may be sinking in an industrialized, collectivistic wave of the future.⁵¹⁴

Historian Thomas Wellock wrote, “By populating the West with small farmers, the [Newlands Reclamation] bill attempted to create an independent citizenry and reinvigorate democracy, while keeping out corporations, large operators, and land

⁵¹¹ *Ibid.*

⁵¹² “The Progress of Western America,” *Irrigation Age* 11 (Jan.-Mar., 1897):23.

⁵¹³ Elwood Mead, *Rise and Future of Irrigation in the United States* (n.p.: n.p., 1899) 610.

⁵¹⁴ Griswold, 4.

speculators.”⁵¹⁵ By the close of the Long Nineteenth Century, land was no longer cheap nor plentiful. The basic assumption underlying the Jeffersonian/ Jacksonian ethic was no longer true. The implication of this, to a true-believing Jeffersonian, Jacksonian, or Populist, was that democracy and the independence of the Republic were in danger, and something had to be done. To keep a veneer of Jeffersonian independence, Western farmers had to submit to a socialistic government agency known as the Reclamation Service.

⁵¹⁵ Wellock, 42

Chapter Seven

The Tragedy of the Commons

Survival in the arid American West depended on cooperation and, above all, on intelligence about water supplies and food resources scattered over enormous, harsh landscapes.

— Brian Fagan (2008)

Progressivism was one strand that was braided into the Nevada Water Law of 1913. The second strand was the tragedy of the commons. Progressivism answered the questions “Who should develop the West?” and “Why should the West be developed?” The Tragedy of the Commons influenced the answer to the question “How.” Although progressivism was known and recognized by contemporaries, the tragedy of the commons operated anonymously, almost surreptitiously.

The phrase “tragedy of the commons” was coined in 1968 as the title of an article by Garrett Hardin published in *Science*.⁵¹⁶ He argued that certain problems have no “technical solution,” but require a change in human behavior. By “technical solution,”

⁵¹⁶ Hardin, 1243-1248.

Hardin meant, “a change only in the techniques of the natural science, demanding little or nothing in the way of change in human values or ideals of morality.”⁵¹⁷

The concept of the *commons* is that certain things are not, cannot, and/or ought not be exclusively owned or controlled by anyone. Beryl R. Crowe claims that the “commons is a fundamental social institution that has a history going back through our own colonial experience to a body of English common law which antedates the Roman conquest” of Britain in AD 43.⁵¹⁸ Be this as it may, the AD sixth century Byzantine-Roman legal text *The Institutes of Justinian* declared, “By the law of nature these things are common to mankind—the air, running water, the sea, and consequently the shores of the sea.”⁵¹⁹ The eighteenth century jurist William Blackstone stated the English common law rule, “There are some few things, which . . . must unavoidably remain in common. . . . Such (among others) are the elements of light, air, and water.”⁵²⁰ Blackstone continued, “For water is a moveable, wandering thing, and must of necessity continue common by the law of nature.”⁵²¹ American courts inevitably adopted the

⁵¹⁷ *Ibid.*, 1243.

⁵¹⁸ Beryl L. Crowe, “The Tragedy of the Commons Revisited,” *Science*, n.s. 166, no. 3909 (November 28, 1969): 1103.

⁵¹⁹ *Institutes of Justinian*, Thomas Collett Sandars, trans. (New York: Longmans, Green and Co., 1905) bk. 2, tit. 1, § 1, 90.

⁵²⁰ William Blackstone, *Commentaries on the Laws of England*, 3rd ed. (Oxford: Clarendon Press, 1768) 2:14.

⁵²¹ *Ibid.*, 2:18.

English common law rule.⁵²² American jurist James Kent wrote that the owners of river banks have “no property in the water itself, but a simple usufruct [that is, a right to use] while it passes along.”⁵²³ In 1825, the Supreme Court of Connecticut held, “It is too late to enter into the legal character and quality of water; the law having been settled . . . Water is neither land nor tenement, nor susceptible of absolute ownership. It is a movable, wandering thing; and must of necessity continue common by the law of nature.”⁵²⁴ In 1847, the Supreme Court of Pennsylvania held, “They [the legal authorities] establish that the use of water, flowing in its natural channel, like the use of heat, light, or air, has been held by every civilized nation from the earliest times to be common by the law of nature and not merely public.”⁵²⁵ “Water, being natural property,” Richard Hinton wrote in 1888, “can never, when needed for beneficent purposes, legitimately and in accord with the highest social economic demands be justly made a source of private profit, let alone of ownership.”⁵²⁶ Some of the very early legal authorities, such as the *Institutes of Justinian*, made a distinction between “things

⁵²² Samuel Wiel, *Water Rights in the Western States* 3rd ed. (San Francisco: Bancroft-Whitney Co., 1911), 1:8.

⁵²³ James Kent, *Commentaries on American Law*, 6th ed. (New York: William Kent, 1848), 3:*439.

⁵²⁴ *Mitchell v. Warner*, 5 Conn. 497, 518-519 (1825).

⁵²⁵ *Mayor v. Commissioners of Garden Spring*, 7 Pa. 348, 363 (1847).

⁵²⁶ Richard J. Hinton, “Irrigation in the Arid West,” *Harper’s Weekly*, 32, no. 1657 (Sept. 22, 1888): 724.

common,” which could not be regulated by any law, and “things public,” which could be regulated by law. The distinction is subtle, and sometimes appears to be contradictory. Regardless, it fell into disuse by the later decades of the Long Nineteenth Century. These late nineteenth and early twentieth century authorities sometimes call running water “common” and sometimes call it “public.” Most legal authorities from this time use the term “owned by the State in trust for the people” or words of similar import.⁵²⁷ Whether air, light, wild animals, running water, the sea, the sea shore, or pasture, whether “public,” “common,” or “held in trust for the people,” the essential requirement for some natural resource to be considered a “commons” is that all members of the population have equal, unrestricted, and free access to it, and right to use and consume it indiscriminately.

America’s first commons was land. From the coming of the Europeans to North America to the Gilded Age, land seemed to be inexhaustible, and was free or cheap. Water, coming in the form of rain and snow, was also free. During these centuries, the tragedy of the commons was averted by moving farther west whenever the population seemed to be approaching the carrying capacity of the existing settled area. As Theodore Roosevelt complained, “The pioneer was unaware of any duty to posterity in dealing with the renewable resources. . . . When he exhausted the soil of his farm he felt that his son could go West and take up another. So it was with his immediate successors.”⁵²⁸

⁵²⁷ Wiel, *Water Rights in the Western States*, 1:10-14.

⁵²⁸ Theodore Roosevelt, “The Natural Resources—Their Wise Use or Their Waste,” (Address, White House Conference on the Conservation of Natural Resources, Washington, D.S., May 15, 1908) reprinted in *The Works of Theodore Roosevelt*, 18: 164.

However, in the 1840s, the frontier crossed into the arid region of North America. Land was still plentiful, and free or very cheap; but, suddenly, water became scarce. The number of people living in the West was still well below the carrying capacity of the land, but the carrying capacity of the available water sources was rapidly met, if not exceeded. The tragedy of the commons was upon all those who lived west of the Missouri River.

Hardin explained the tragedy of the commons and his proposed solutions as a “thought experiment”: “Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons.”⁵²⁹ For a time, possibly for centuries, this arrangement will be acceptable because disease, war, theft, and other man-made or natural disasters will maintain a sort of balance “well below the carrying capacity of the land.” Eventually, “the long-desired goal of social stability becomes a reality.” By this, Hardin means that social, political, technological and/or biological evolution will eliminate disease (perhaps through vaccination or the selective breeding of disease-resistant animals), war (perhaps through a victory over the enemy or through diplomacy), or theft (through better law enforcement) and so forth. “At this point,” Hardin wrote, “the inherent logic of the commons remorselessly generates tragedy.” The “logic of the commons” holds that each herdsman “seeks to maximize his gain” by adding as many additional animals as possible to the common pasture. Sooner

⁵²⁹ Hardin, 1244.

or later, all the grass is consumed and the common pasture is left desolate, unable to support any animals. Hardin concluded:

Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit—in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believed in the freedom of the commons. Freedom in a commons brings ruin to all.⁵³⁰

Herschel Elliott rephrased the tragedy of the commons as the “breakdown of the ecosystems which support civilization.”⁵³¹ A. Dan Turlock explained there were “two tragedies of the commons. First, unrestrained access will ultimately deprive similarly situated users of their fair share of the resource. Second, such access will cause long term environmental degradation.”⁵³² These two tragedies need not occur simultaneously.

The only solution to the tragedy of the commons is some form of rationing. Hardin suggests five possibilities. First, the commons could be converted to private property through sale, prescription, grant, or otherwise. Second, the commons might be kept as public property, but the right to enter and exploits might be rationed “on the basis of wealth, by the use of an auction system.” Presumably, the high bidder would pay some sort of rent, fee or royalty to the community for the right to enter and exploit the commons, and, presumably, this rent would be used to renew and perpetuate the

⁵³⁰ *Ibid.*, 1244.

⁵³¹ Herschel Elliott, “A General Statement of the Tragedy of the Commons,” *Population and Environment*, 18, no. 6 (July 1997): 515.

⁵³² A. Dan Tarlock, “Prior Appropriation: Rule, Principle or Rhetoric?” *North Dakota Law Review*, 76 (2000): 886-887.

commons for the benefit of others, or of all. The difference between the first and second possibilities is that under the first possibility the commons would pass forever by a fee simple or fee tail to one person or a few persons, while under the second possibility others might have the opportunity to bid on the commons in succeeding years or decades. Third, the right to enter the commons might be rationed “on the basis of merit, as defined by some agreed-upon standard.” Fourth, access to the commons might be rationed “by lottery.” This possibility has the advantage of placing all possible users on an equal footing and allowing random chance to decide who will get the opportunity to enter and exploit the commons, but, on the other hand, makes all possible users equally uncertain of their future right to exploit the commons. This uncertainty would surely discourage investment and development generally. Fifth, access to the commons might be rationed “on a first-come, first-served basis.” The prior appropriation standard, which will be examined below, is a version of first-come-first-served rationing. Hardin concludes, “These, I think, are all the reasonable possibilities. They are all objectionable. But we must choose. . . . I recommend . . . mutual coercion, mutually agreed upon by the majority of the people affected.”⁵³³ Gordon Morris Bakken claimed there are “two theories of water usage . . . The first theory - individual appropriation - involved the old frontier maxim that priority in time was a priority in right. . . . The second theory - distributive administration - involved the positive role of government in administering

⁵³³ Hardin, 1245, 1247.

law to assure the maximum production of the land.”⁵³⁴ Charles E. Kay summed up Hardin’s solutions as “privatization . . . , or government regulation.”⁵³⁵ Kay claims there is no other class of remedies.⁵³⁶ However, in respect to water, there is one other possible solution which is neither strictly privatization, nor strictly government regulation it is the system of riparian rights, which will be examined next.

Simply stated, riparian rights grant to the owners of lands bordering on water courses the right to use the water flowing by their property. “Riparian (riverbank) owners,” Donald C. Pisani wrote, “could use a stream for any number of purposes from watering stock to turning millstones, but common law prohibited them from altering its course, substantially reducing its volume, or polluting it to the extent it could not be reused downstream.”⁵³⁷ Kent wrote, “Though he [the riparian owner] may use the water as while it runs over his land as an incident to the land, he cannot unreasonably detain it [that is, build a dam], or give it another direction [that is, divert it], and he must return it

⁵³⁴ Gordon Morris Bakken, “The English Common Law in the Rocky Mountain West, *Arizona and the West*, 11, no. 2 (Summer, 1969): 121.

⁵³⁵ Charles E. Kay, “The Ultimate Tragedy of Commons,” *Conservation Biology*, 11, no. 6 (December 1997): 1447.

⁵³⁶ *Ibid.* citing B.J. McCay and J. M. Acheson, eds. *The Question of the Commons: The Culture and Ecology of Communal Resources* (Tucson: University of Arizona Press, 1987) and R.T. Simmons, F. L. Smith, Jr., and P. Georgia, *The Tragedy of the Commons Revisited: Politics vs. Private Property* (Washington: Center for Private Conservation, The Competitive Enterprise Institute, 1996).

⁵³⁷ Pisani, *To Reclaim a Divided West*, 11-12.

to its ordinary course when it leaves his estate.”⁵³⁸ The riparian rights doctrine is perfectly suited to humid areas like England and the eastern United States. It comes as close as possible to avoiding the tragedy of the commons. Water is common property and all the members of the community are entitled to an equal use of it, and are forbidden by law from diminishing or polluting the flow, assuming the “community” is defined as only those people who own land along the river or stream.⁵³⁹ It treats all riparian owners equally in times of plenty, and in times of drought or other scarcity. It forbids all riparian owners from polluting or diminishing the commons. It allows for new members to join the community of riparian owners at any time and on an equal basis with all previous members by simply buying land along the river bank. As Samuel C. Wiel observed riparian law “places all users upon an equality.”⁵⁴⁰ He continued, “Is the riparian doctrine socialism? It certainly passes the idea of ‘common right’ to its completion, and could not extend farther in that direction so far as the water is concerned. It could be extended only by introducing ‘common right’ in the land too.”⁵⁴¹

The doctrine of riparian rights breaks down in arid regions where rainfall is inadequate to support agriculture and rivers and streams are few and far between and/or

⁵³⁸ Kent, *439-*440.

⁵³⁹ Levin, *American Jurisdiction*, 45:577-583.

⁵⁴⁰ Samuel C. Wiel, “Theories of Water Law,” *Harvard Law Review*, 27, no. 6 (April 1914): 542.

⁵⁴¹ *Ibid.*

inaccessible. In the arid West, water must be diverted from its natural course for use in irrigation, or mining, or manufacturing, and it cannot be returned because it is consumed, or polluted. A further complication comes from the fact that only riparian owners are accorded riparian rights, and that all landowners whose land does not border the stream have no right in the stream, or its water whatsoever. Therefore, in an arid country under a strict riparian regime, only the land along the stream would have any value whatsoever, and settlement would be limited to that extent. “Add to this the fact,” George Welsh wrote, “that many large Western rivers traverse through deep unusable canyons on the way to the Pacific Ocean. In short, in the West, under the riparian system, much of the water would end up unused and in the ocean.”⁵⁴² William Ellsworth Smythe called the riparian doctrine “odious” and called for it to “be cut out of constitutions and statutes, root and branch.”⁵⁴³ He got his wish. The riparian doctrine was “specifically repudiated in toto in . . . Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.”⁵⁴⁴ The Nevada Supreme Court held, “Irrigation is the life of our important and increasing agricultural interests, which would be strangled by enforcement of the

⁵⁴² Greg Walch, “Water Law: Treading Water Law—A Nevada Water Rights Primer,” *Nevada Lawyer* 6 (November 1998): 18.

⁵⁴³ Smythe, “The Struggle for Water in the West,” 647.

⁵⁴⁴ U.S. Department of Agriculture. *Selected Problems in the Law of Water Rights in the West*, by Wells A. Hutchins. Miscellaneous Publication No. 415 (Washington: Government Printing Office, 1942) 30. Cited hereafter as “Hutchins, *Selected Problems*.”

riparian principal.”⁵⁴⁵ Gordon Morris Bakken called the “remolding of water law,” through the rejection of riparian rights, the “the most dramatic change in English common law” to come out the Western America.⁵⁴⁶

Many contemporary commentators and subsequent historians have written that riparian rights doctrine was unsuitable to the arid regions. This is simply untrue. For the reasons stated above, the riparian doctrine fairly allocates the commons of water among all the community, again assuming the community is limited to the owners of riparian lands. In an arid region where water is scarce, water may be used, but not consumed, therefore the water may be used by a maximum number of people. The riparian doctrine breaks down only true when one assumes that the arid regions must be economical developed and populated to a degree equal to the humid regions. This is simply not necessarily the case. While the West did—and still does—possess vast mineral resources, the very fact that agricultural and urban development beyond certain point require artificial means indicates that development beyond this point is unwise and that sooner or later the tragedy of the commons will be upon the arid States.

Hardin suggested five possible solutions to the tragedy of the commons. His first suggested solution is turning the commons into private property. Such a solution is very American. Herbert Croly wrote, “The new American system of law and government . . . was intended above all to strengthen the association between personal liberty and the

⁵⁴⁵ *Twaddle v. Winters*, 29 Nev. 88, 106, 85 P. 280, 284 (1906).

⁵⁴⁶ Bakken, “The English Common Law,” 121.

security of private property.”⁵⁴⁷ Alexis de Tocqueville observed that in “no country in the world is the love of property more active and more anxious than in the United States.”⁵⁴⁸ Kent opined that property “has always occupied a pre-eminent place in the municipal codes of every civilized people.”⁵⁴⁹ Even *über*-progressive Theodore Roosevelt admitted, “I believe in shaping the ends of government to protect property as well as human welfare.”⁵⁵⁰

In simplest terms, property is a bundle of legal rights in a thing.⁵⁵¹ The thing, or *res*, may be land (real property), or moveable (personal property or chattels), or intangible. Thus, a person might conceivably have property in water as a part of the land over which or besides which it flows; or in the water itself, either in the natural streambed, or otherwise; or in the legal right to take water from a stream. Blackstone wrote that “water is a species of land . . . and I cannot bring an action to recover possession of a pool or other piece of water, by the name of water only . . . but I must

⁵⁴⁷ Croly, 57.

⁵⁴⁸ Alexis de Tocqueville, *The Republic of the United States of America, and the Political Institutions, Reviewed and Examined*, Henry Reeves, trans., 2 vols. in 1, (New York: A.S. Barnes and Co., 1851) 2:272

⁵⁴⁹ Kent, 2:*317.

⁵⁵⁰ Theodore Roosevelt, “The New Nationalism,” (Speech, Osawatomie, Kan., August 31, 1910) reprinted in *Works of Theodore Roosevelt*, 19: 27.

⁵⁵¹ Romualdo P. Eclavea, “Property,” *American Jurisprudence*, 2nd ed. (Eagen, Minn.: West, 2010) 63C:70-72.

bring my action for the land that lies at the bottom.”⁵⁵² Later, Blackstone wrote, “And therefore if a man grants all his lands, he grants thereby all his mines of metal and other fossils, his woods, his waters, and his houses, as well as his fields and meadows.”⁵⁵³ The ownership of physical water in a natural stream was examined previously. However, Weil wrote that water “passes into private ownership . . . when some portion of it is taken out of the natural resource, severed from the stream, and reduced to possession.”⁵⁵⁴ Other than property rights in the physical water itself, the right to have and to use a given amount of water is also a form of property protected by the fifth and fourteenth amendments to the United States Constitution, and analogous provisions in State constitutions.⁵⁵⁵ Wiel wrote, “A water-right is a usufruct in the stream, the natural resource, consisting in the right to have the water flow so that some portion of it . . . may be reduced to possession and made the private property of an individual.”⁵⁵⁶ Joseph R. Long wrote, “A person who has acquired a right to the use of water for irrigation by

⁵⁵² Blackstone, 2:18.

⁵⁵³ *Ibid.*

⁵⁵⁴ Wiel, *Water Rights in the Western States*, 1:22.

⁵⁵⁵ Brian E. Gray, “The Property Right in Water,” *Hastings West-Northwest Journal of Law and Policy* 9 (Fall 2002): 4.

⁵⁵⁶ Wiel, *Water Rights in the Western States*, 1:22.

appropriation can be deprived thereof only by his voluntary act, by forfeiture, or by operation of law.”⁵⁵⁷

The bundle of rights, which constitute property includes the right to use and enjoy the thing in any manner and without any restrictions, so long as the use does not interfere with nor is a nuisance to another.⁵⁵⁸ This is one of the most important rights in the bundle. Another important right is the right to exclude others. Taken together, these two rights create a situation where things may be and are consumed, or even destroyed, without regard to the interests of any other members of the community.⁵⁵⁹ With few if any restrictions on use, especially on the frontier, people were free to consume property—land, water, minerals, timber, and so forth—with selfish, reckless abandon. And did so.

While turning the commons into private property was widely accepted in regards to land and minerals, it was quickly rejected in regards to water. The basic assumption of the commons is that all people have an equal right to access and use the common natural resource. But, by definition, private property confers the right to exclude others on the owner. Excluding others from land when there is more land just a few days travel more

⁵⁵⁷ Long, 294.

⁵⁵⁸ Romualdo P. Eclavea, “Property,” *American Jurisprudence*, 2nd ed. (Eagen, Minn.: West 2009) 63C: 110-112.

⁵⁵⁹ The common law concept of “waste” applies only to the acts of a trustee, life tenant, or a lessee who has a duty to return property to the beneficiary, remainderman, or lessor as the case may be. An owner in fee simple absolute cannot “waste” his own property. See generally Jeffery J. Shampo, “Waste,” *American Jurisprudence*, 2nd ed. (Eagen, Minn.: West Group, 2002) 78: 303-336.

or less farther west did not offend the sensitivities of nineteenth-century Americans. Excluding others from water in a desert or semi-desert region takes on a totally different meaning that it would in a humid region. In the desert, “water is life.”⁵⁶⁰ Converting water to private property gives some individual, or small group of individuals, in essence, the power of life and death over their fellows. This is the most undemocratic thing imaginable to Americans. According to Smythe the private ownership of water “in its economic and political aspects” would “make millions of men in the future tenants rather than proprietors. It would create a system essentially feudal since ownership of the water in an arid region is practically equivalent to ownership of the land.”⁵⁶¹ Elwood Mead warned, “A water lord is even more undesirable than a landlord as the dominant element in society. It is indisputable, as has already been said, that the man who owns the water practically owns the land.”⁵⁶² Elsewhere Mead warned, “There is need for adequate protection for investments in canals and ditches, but this can be afforded without having the water they carry become private property or the stream itself become subject to private ownership.”⁵⁶³ In 1911, Katharine Coman wrote, “The furnishing of water by a

⁵⁶⁰ Barbara Kingsolver, “Fresh Water,” *National Geographic* 217, no. 4 (April 2010): 44.

⁵⁶¹ Smythe, “The Struggle for Water in the West,” 649.

⁵⁶² Mead, *Rise and Future of Irrigation*, 607.

⁵⁶³ Mead, *Irrigation Institutions*, 365.

private monopoly is no more satisfactory to an agricultural district than to a municipality, and the danger of inadequate supply and exorbitant charges is no less a menace.”⁵⁶⁴

A variation on privatizing water was to tie ownership of water to the ownership of land. Mead believed that tying the ownership of water to the ownership of land would solve the problems of both land and water monopoly, “Water rights must inhere in the lands and pass with land titles. It is only where the irrigated home controls both elements of fertility that success is assured.”⁵⁶⁵ He believed the source of the problem was federalism which “divorces” land titles from water rights “at the outset.”⁵⁶⁶ Mead complained, “The public land of the arid region belongs to the General Government; the water-supply is owned or controlled by the several States. Title to land comes from the nation; title to water from the State. No right to water goes with a land patent.”⁵⁶⁷ He further complained that each State had its own unique water law regime.⁵⁶⁸ Although tying the water to the land might have certain advantages in preventing the dreaded water monopoly or land monopoly, it did nothing to solve the tragedy of the commons.

⁵⁶⁴ Coman, 9.

⁵⁶⁵ Elwood Mead, “The Plight of the Arid West,” *The Century*, 51, issue 4 (Feb. 1896): 635.

⁵⁶⁶ *Ibid.*

⁵⁶⁷ *Ibid.*

⁵⁶⁸ *Ibid.*

Turning the commons into private property proceeds from the rebuttable presumptions that an individual will first treat his or her own property with respect, and then, guided by Adam Smith's "invisible hand," use that property to promote the interests of the community while pursuing his or her own selfish, private interests.⁵⁶⁹ As Corly wrote, Americans wanted to develop the natural resources of their country and the continent as quickly as possible, and this "work of economic development required a system of law and government which gave complete security to individual rights and social order, and unrestrained freedom to the pursuit of individual and local interests."⁵⁷⁰ However, neither Smith nor his disciples guaranteed that the community's interests in fact will be promoted at all, nor can they.⁵⁷¹ Adam Smith only "contributed to a dominant tendency of thought that has ever since interfered with positive action based on rational analysis, namely, the tendency to assume that decisions reached individually will, in fact, be the best decisions for an entire society."⁵⁷²

Adam Smith's theories were widely accepted during the Age of Jackson and later during the Gilded Age. Congressional policy during this period called for converting the commons known as the public domain from public property to private property as quickly

⁵⁶⁹ Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations* (1776) vol. 39 of *Great Books of the Western World*, Robert Maynard Hutchins, ed. in chief (Chicago: Encyclopedia Britannica, 1952) 194.

⁵⁷⁰ Croly, 58.

⁵⁷¹ Hardin, 1243.

⁵⁷² *Ibid.*

as possible for little or no compensation through various land acts, as examined previously. So long as land remained vacant, and therefore, to the eyes of Americans from the Long Nineteenth Century, wasted, America's divine calling, America's manifest destiny, was to fill this land with yeoman farmers. Typical of this attitude, *Irrigation Age* editorialized, "In Western America there is room for sixty millions more people, who can sustain themselves without encroaching upon any acre now occupied, or upon any property right now vested in individual or corporation."⁵⁷³ *The Las Vegas Age* joined the chorus, with perhaps foolish optimism, "There are in the United States millions upon millions of arid and semi-arid lands which irrigation could make and is making very fertile. These lands will support 15,000,000 households or twice the population of New York State."⁵⁷⁴

However, turning the public domain into private property without full, fair and adequate compensation to the community does not solve the tragedy of the commons. Under those circumstances, the owner has no investment in his property, financially, and, in some cases at least, morally or emotionally; therefore the owner has no interest in preserving it long term. In regards to water, Theodore Roosevelt complained of the

⁵⁷³ "The Progress of Modern America," *Irrigation Age*, 7, no. 2 (Aug. 1894): 47.

⁵⁷⁴ "Our Undeveloped Resources," *Las Vegas Age*, August 21, 1909, p. 6.

“overextensive and wasteful cultivation of pioneer days.”⁵⁷⁵ The result is that the tragedy of the commons still occurs.

Other than privatization, Hardin proposed that the commons remain public property and that access thereto be rationed by one of five possible schemes. One of these was “first come, first served.”⁵⁷⁶ In simplest terms, prior appropriation is just this. Jack K. Levin explained, “The rule among appropriators is first in time, first in right; the earliest user has the right to use the amount that has been continuously diverted, superior to the rights of subsequent users based on historical beneficial use.”⁵⁷⁷ As Wiel described it, the doctrine of prior appropriation

forcefully denies that a water user has any ownership in the water of the stream from which he diverts (that “belongs to the public”), but only a right to continuance of supply from the natural resource during the beneficial use. . . . He also has only a right of continuance of supply, though this right of a riparian owner differs from the law of appropriation, in that it is not confined to periods of use, but is perpetually reserved to his land, a perpetual right to have the supply from the natural resource continued for future possible use whether now used or not.⁵⁷⁸

⁵⁷⁵ Theodore Roosevelt, “The Man Who Works With His Hands,” (Address, Semicentennial Celebration of the Founding of Agricultural Colleges in the United States, Lansing, Mich., May 31, 1907) reprinted in *The Works of Theodore Roosevelt*, 18: 186.

⁵⁷⁶ Hardin, 1245.

⁵⁷⁷ Levin, “Irrigation,” *American Jurisprudence*, 45: 599-600.

⁵⁷⁸ Wiel, *Water Rights in the Western States*, 1: 45-46.

Elsewhere, Wiel wrote, “The law of appropriation arose as a branch of the law of possessory rights upon the public domain.”⁵⁷⁹

Later commentators have offered various justifications for the prior appropriation doctrine. Schorr believed that the “same ideology that favored the claims of settlers over speculators” was the source of prior appropriation.⁵⁸⁰ According to Schorr, “The Lockean and Jeffersonian view of acquisition from the public domain, requiring work as a condition of acquisition and limiting the scope of rights to the amount a person could directly use, led directly to the use requirement for water claims.”⁵⁸¹ Tarlock claimed “first in time, first in right is a foundational principle of property law and has many powerful justifications.”⁵⁸² He further claimed that “to the western irrigation community, prior appropriation represents a sacred and eternal covenant between the federal government and settlers. It is the reward for enduring the risks and hardships of settling the harsh, arid West and thus the right to use water is eternal and God-given.”⁵⁸³ Pisani described some of these justifications. First, prior appropriation made “no value judgments . . . about how or where the water was used . . . [as] long as the water was

⁵⁷⁹ *Ibid.*, 1:167.

⁵⁸⁰ Schorr, 32-33.

⁵⁸¹ *Ibid.*, 33.

⁵⁸² Tarlock, 885.

⁵⁸³ *Ibid.*, 886.

claimed for a ‘beneficial use.’”⁵⁸⁴ Second, prior appropriation guaranteed “equal access” to water, unlike riparian rights which restricted water use to only those who owned water along the stream banks.⁵⁸⁵ Third, prior appropriation was simple, straightforward and “familiar, embodying as it did the principle of ‘first in time, first in right,’ which had long prevailed on the public domain, and therefore, fourth, “did not require an expensive bureaucracy to administer or maintain.”⁵⁸⁶ “Finally,” as Pisani wrote, “it was consistent with the cherished American ideal that individuals, not society, should control their destiny.”⁵⁸⁷ In addition, Turlock claims the “best justification for priority” is the “protection of investment-backed expectations from the risks of variable water years.”⁵⁸⁸ Donald Worster acknowledged the “notion that appropriation was a more democratic approach to water rights,” but warned that this notion “rested a single assumption, unexamined and unsubstantiated in the convention: that democracy was promoted by intensive reclamation of the desert.”⁵⁸⁹ Regardless of reasons, justifications, assumptions or excesses, Western waters were subject to prior appropriation from the 1840s.

⁵⁸⁴ Pisani, *To Reclaim a Divided West*, 31.

⁵⁸⁵ *Ibid.*

⁵⁸⁶ *Ibid.*

⁵⁸⁷ *Ibid.*

⁵⁸⁸ Tarlock, 884, 886.

⁵⁸⁹ Worster, 106.

Prior appropriation evolved as a natural extension of the customs of hydraulic miners. Riparian rights were perfectly suited to placer miners who panned for gold in flowing streams. Placer miners did not need the water itself, but needed the water to flow past their claims washing gold from the Mother Lodes, thus any miner could use the stream so long as the water was allowed to continue down stream to the next claim. Viable, profitable placer mining was short-lived; the next step was hydraulic mining. Hydraulic mining, or hydraulicking, required large quantities of water, up to the entire flow of some streams, be turned out of the stream's natural channel and conveyed through flumes, pipes and hoses to deliberately erode entire hillsides in the search for gold. Water used for hydraulicking could not be returned to its natural streambeds, or, if it were, was heavily polluted by sand, gravel and mud. Under these conditions, the miners turned to the familiar.

Prior appropriation was the basis of mining claims, so it was natural that the doctrine of prior appropriation would become the basis of claims for water for mining purposes.⁵⁹⁰ O. L. Waller wrote, "The method of acquiring the right to the use of water by appropriation is based on the civil law, ancient customs, and the method adopted by the miners in California when all the lands and the streams were in Federal ownership."⁵⁹¹ John M. Gould wrote, "The right to running water exists without private ownership of the

⁵⁹⁰ See e.g., Wiel, 1: 72.

⁵⁹¹ O. L. Waller, "Right of State to Regulate Distribution of Water Rights" (address, Washington State Bar Ass'n, Wenatchee, Wash., Aug. 5-6, 1914), 3.

soil, upon the ground of prior location upon the land or prior appropriation of the water.”⁵⁹² Later Gould wrote, “The right to thus appropriate water exists without private ownership in the soil as against all persons but the government or its grantees. Possession of public land which has not been surveyed or patented gives rise to no riparian rights in the streams which flow through it.”⁵⁹³ Wiel wrote, “The law of prior appropriation of water originated among the miners of California in the earliest days of that State, whence it has been copied in all the Western States and Territories.”⁵⁹⁴ At first, mining interests strongly argued that water could be appropriated only for mining purposes, and not for any other purpose.⁵⁹⁵ Gradually, State and territorial legislatures and courts extended prior appropriation to agriculture.⁵⁹⁶ The first reported appellate case to approve the doctrine of prior appropriation was the California Supreme Court case *Irwin v. Phillips*.⁵⁹⁷

⁵⁹² John M. Gould, *A Treatise on the Law of Waters* (Chicago: Callaghan and Co., 1883), 406-407.

⁵⁹³ *Ibid.*, 409.

⁵⁹⁴ Wiel, *Water Rights in the Western States*, 1: 66.

⁵⁹⁵ Hutchins, *Selected Problems*, 69.

⁵⁹⁶ Pisani, “Enterprise and Equity,” 23.

⁵⁹⁷ *Irwin v. Phillips*, 5 Cal. 140 (1855); see also Christine A. Klein, “The Constitutional Mythology of Western Water Law,” *Virginia Environmental Law Journal* 14 (Winter 1995): 346-347.

The first Nevada appellate case to deal with water was *Geller v. Huffaker*, decided in January 1865, a mere three months after Nevada was admitted to the Union.⁵⁹⁸

Federal law was behind the customs of the miners. Congress passed the Mining Act of 1866 on July twenty-sixth. Section nine of the act provided that water rights for mining, agricultural or other purposes acquired by “priority of possession,” and those rights “are recognized and acknowledged by the local customs, laws, and decisions of courts” would be “protected” by the federal government.⁵⁹⁹ The Desert Land Act of 1877 also approved “bona fide prior appropriation” up to the “amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation.”⁶⁰⁰ In the case *Boquillas Land and Cattle Co. v. Curtis*, on appeal from the Supreme Court of the Territory of Arizona, the United States Supreme Court held, “The right to use water is not confined to riparian proprietors. . . . Such a limitation would substitute accident for a rule based upon economic considerations, and an effort, adequate or not, to get the greatest use from all available land.”⁶⁰¹

⁵⁹⁸ *Geller v. Huffaker*, 1 Nev. 23 (1865). Although the underlying case was a suit for damages for defendants’ unlawful diversion of water from a creek in which the plaintiffs claimed they had rights by prior appropriation, the actual issue on appeal was the competence of a witness for the plaintiffs.

⁵⁹⁹ *Mining Act of 1866 (Chaffee Act)*, ch. 262, § 9, *U.S. Statutes at Large* 14 (1866): 253; see also Hutchins, *Selected Problems*, 70-71.

⁶⁰⁰ *Desert Land Act*, ch. 107, § 1, *U.S. Statutes at Large* 19 (1877): 377.

⁶⁰¹ *Boquillas Land and Cattle Company v. Curtis* 213 U.S. 339, 347, 29 S. Ct. 493, 53 L. Ed. 822 (1909)

Prior appropriation, intentionally or not, created *de facto* property rights in water. The rights acquired by appropriators were as absolute as those acquired by owners in fee simple. Long stated explicitly, “In its nature, a water right or an interest in a water right and ditch is real estate, and a perpetual right to have a certain quantity of water flow through an irrigating ditch is a freehold estate.”⁶⁰² Because prior appropriation denies water to later would-be users who have not appropriated and to later appropriators in times of drought or other shortage, Wiel opined that prior appropriation “is certainly not a system of common right . . . To follow out the idea of common right in such case the water, instead of going to the earliest appropriators, would be apportioned among all existing users of it.”⁶⁰³ Far from allowing a communitarian or share-and-share-alike approach to a scarce resource, prior appropriation permits the first appropriator to take his share of the water in full regardless of the amount of available in the stream generally, and regardless of any hardship that may be worked on other water users with junior priorities.⁶⁰⁴ In 1914, Wiel described prior appropriation as “every man for himself.”⁶⁰⁵ Later, he warned that “any idea of forcing apportionment or sharing deficiency to secure equality is held to mean confiscation of the priorities of the prior appropriators . . . To

⁶⁰² Long, 297.

⁶⁰³ Wiel, “Theories of Water Law,” 534.

⁶⁰⁴ Jack K. Levin, “Irrigation,” *American Jurisprudence*, 45:595-596; Gould, 410.

⁶⁰⁵ Wiel, “Theories of Water Law,” 543.

attempt it would, it is sometimes said, cause an uprising.”⁶⁰⁶ Almost a century later, Joseph L. Sax and his coauthor wrote, “The oldest rights are the most valuable, and much controversy still turns on the validity and status of rights acquired many years ago, often in the nineteenth century. In western water law, age is not coextensive with obsolescence.”⁶⁰⁷ The Nevada Supreme Court has been particularly aggressive in protecting the rights of prior appropriators. For example, as early as 1866, the Nevada Supreme Court, citing California case law, held that “The first appropriator of the water of a stream has undoubtedly a right . . . to the quantity of water actually appropriated by him as against anyone subsequently appropriating any of the water of the same stream.”⁶⁰⁸ Less than ten years later, citing *Lobdell v. Simpson*, the Court ruled in *Barnes v. Sabron*, “The first appropriator has the superior right, where the right to the use of running water is based upon appropriation, and not upon an ownership in the soil.”⁶⁰⁹

Appropriators were also entitled to full compensation for a “taking” by the government under both the fifth and fourteenth amendments to the United States Constitution and comparable State constitutional provisions.

⁶⁰⁶ *Ibid.*, 535.

⁶⁰⁷ Joseph Sax, et al., *Legal Control of Water Resources: Case and Materials*, 3rd ed. (St. Paul, Minn.: West Publishing Group, 2000) 104; Kathryn M. Casey, “Water in the West: Vested Water Rights Merit Protection Under the Takings Clause,” *Chapman University Law Review*, 6 (Spring 2003): 348-349.

⁶⁰⁸ *Lobdell v. Simpson*, 2 Nev. 275, 279 (1866).

⁶⁰⁹ *Barnes v. Sabron*, 10 Nev. 217, 233 (1875).

Hardin also suggested that the commons be rationed “on the basis of merit, as defined by some agreed-upon standard.”⁶¹⁰ The problem with merit-based allocations is coming to an agreement on the standard by which “merit” is to be judged, and then implementing it in a fair and impartial way. These requirements doomed any sort of merit-based allocation because Americans are fearful and jealous of anyone else getting some special privilege or advantage. Pisani named value-neutral allocation one of prior appropriation’s advantages. Westerns were never about to devise any sort of merit-based allocation scheme. The concept of beneficial use was not as a system of merit-based rationing, but rather as a check on speculation and hoarding of water and water rights.

Some sort of check was necessary because of the perpetual nature of appropriation and the ease with which one made an appropriation. Procedurally, making an appropriation required only posting a prominent notice of the claim near the streambed. Later, the law required appropriators to file a copy of the notice at some centralized office, and/or publish it in a local newspaper. Substantively, an appropriation could be made by merely diverting water from the streambed within a reasonable period of time following the claim; diverting the water “‘regularly,’ though not continuously”; and applying the water to a “‘beneficial use.’”⁶¹¹ Once made an appropriation never expired; it could be only voluntarily abandoned. William Ellsworth Smythe wrote, “The great lesson that has been learned is that water in an arid land cannot be treated as private

⁶¹⁰ Hardin, 1245.

⁶¹¹ Pisani, *To Reclaim A Divided West*, 38.

property, subject to barter, like land and livestock. . . . Every human being is entitled to receive as much of it as he can apply to a beneficial use.”⁶¹² *Irrigation Age* claimed that “The universal law that water must be applied to ‘a beneficial use’ is in itself a denial of the right of ownership. What a man owns he may apply as he pleases.”⁶¹³ United States Senator William Morris Stewart, of Nevada, thought that unused appropriations should be taxed, not to raise revenue, but as a punitive measure, “If those who have acquired a claim to water allow it to be wasted, or not used to the best advantage, and persist in retaining this precious fluid, there is no reason why they should not be taxed for it.”⁶¹⁴

Beneficial use, like prior appropriation, proceeded from customary mining law which limited mining claims to the amount a single prospector could work productively and required actual work on the claim on pain of forfeiture.⁶¹⁵ So too with water, an appropriator could claim as much water as he or she needed for some use, but only that much, no more.⁶¹⁶ Nevertheless, “beneficial use” was a surprisingly broad concept; so broad that almost any use could be justified as “beneficial.” J. Warner Mills complained in 1907 that diverting water “for mining and manufacturing, to propel machinery in mills

⁶¹² Smythe, “The Struggle for Water in the West,” 651.

⁶¹³ “The Progress of Western America,” *Irrigation Age* 7, no. 1 (July 1894): 5.

⁶¹⁴ Stewart, 205-206.

⁶¹⁵ Mohamed T. El-Ashry and Diana C. Gibbons, “The West in Profile,” *Water and Arid Lands of the Western United States*, Mohamed T. El-Ashry and Diana C. Gibbons, eds. (Cambridge, Eng.: Cambridge University Press, 1988), 4.

⁶¹⁶ Newell, *Irrigation in the United States*, 288.

and factories, to irrigate land for the production of crops, and to furnish water to the citizens of a municipality for drinking and other domestic and useful purposes” were all “within the meaning of the term.”⁶¹⁷ Beneficial use “did not mean either reasonable or economical use,” and the perpetuity associated with a prior appropriation gave appropriators an incentive to claim as much water as possible, sometimes two or three times the amount absolutely necessary to water the amount of land under cultivation.⁶¹⁸

Pisani wrote,

Farmers practiced extravagant irrigation techniques and assumed that ‘more was better’—that abundant water would produce abundant crops. Waste was also a way to ‘reserve’ water, whether for later sale to newcomers, for use on land a settler hoped to buy in the future, or for the needs of thirstier crops he hoped to raise someday.⁶¹⁹

Smythe complained that “one of the worst of these evils” of the prior appropriation doctrine was “that of over-appropriation. . . . As a consequence, nearly every Western stream was ‘appropriated’ several times in excess of its contents.”⁶²⁰ The Salt River in

⁶¹⁷ J. Warner Mills, *Mills’ Irrigation Manual* (Denver: The Mills Publishing Co., 1907), 65.

⁶¹⁸ Pisani, “Enterprise and Equity,” 24-25. Elwood Mead claimed that water “must be restricted to beneficial and economical use in order that the water supply may serve the needs of the largest possible number.” Mead, *Rise and Future of Irrigation*, 607.

⁶¹⁹ Pisani, *To Reclaim A Divided West*, 37-38.

⁶²⁰ Smythe, “The Struggle for Water in the West,” 647.

Arizona was appropriated 2,500 percent by 1900, and the San Joaquin River in California was appropriated 17,200 percent.⁶²¹

As a solution to the tragedy of the commons, prior appropriation, even when checked by the concept of beneficial use, was wholly inadequate. Pisani described the situation best. He wrote,

Prior appropriation carried a heavy social cost. Because the system regarded water as ‘free,’ it returned no revenue to the state; water rights were property that could be bought, sold, and assigned, but because their value so much from place to place and time to time, they were difficult, if not impossible, to appraise to tax. Moreover, by encouraging rapid economic development, prior appropriation exacerbated the boom-and-bust mentality endemic to the mining industry, encouraging speculation and maximum production. Tragically since the doctrine did nothing to preserve the quality of water and protect it for reuse—as riparian rights did—it permitted not just waste but environmental destruction on a vast scale.⁶²²

Schorr believed that prior appropriation was “part of a complex of pro-settler and anti-speculator laws and rules.”⁶²³ According to Schorr, prior appropriation was a form of “land-reform legislation . . . : a sort of extension of the Homestead Act to water, aimed at preventing ‘monopoly’ control of water supplies by allowing ‘actual settlers’ to trespass on riparian lands and divest them of their common-law water rights.”⁶²⁴ Tarlock was

⁶²¹ Pisani, “Enterprise and Equity,” 24-25.

⁶²² Pisani, *To Reclaim a Divided West*, 31-32.

⁶²³ Schorr, 32.

⁶²⁴ *Ibid.*

even more terse, “Prior appropriation does not solve the tragedy of environmental degradation; to the contrary, it is one of the primary causes.”⁶²⁵

Herschel Elliott described Hardin’s thought experiment as a call for “system-sensitive ethics.”⁶²⁶ Elliott explained that “if any ethics makes it advantageous for individuals or groups to increase their demands on the biological commons while it forces everyone to share equally the damage which that behavior causes, then the demise of the whole—the ecosystem which supports that behavior—is inevitable.”⁶²⁷ In his view, such an ethical system is “absurd” and “refutes itself in the sense that it requires or allows ethical behavior which denies the possibility of further ethical behavior.”⁶²⁸ Therefore, according to Elliott, any “acceptable system of ethics is contingent on its ability to preserve the ecosystems which sustain it.”⁶²⁹

One possible definition of law is the morality or ethics of a community codified or decreed.⁶³⁰ In a humid climate, such as England or eastern North America, running water is plentiful and therefore of little monetary value. The morality and ethics of such a place

⁶²⁵ Tarlock, 887.

⁶²⁶ Elliott, 515.

⁶²⁷ *Ibid.*, 518-519.

⁶²⁸ *Ibid.*

⁶²⁹ *Ibid.*, 515.

⁶³⁰ See e.g. John Chapman Gray, *The Nature and Sources of the Law* (New York: Columbia University Press, 1909), 266-267, 286.

easily see running water as something to be held in common and very little conflict would result. On the other hand, water is scarce in the arid West, and therefore valuable. Things which are scarce and valuable, and that are supposed to be held in common or by the public, inevitably lead to conflict. Progressives enacted laws during the last decades of Long Nineteenth Century to avoid and resolve these conflicts. These water laws reflected the morality and ethics of progressives, not necessarily the morality and ethics of Westerners.

The progressive ethic included support for property. Roosevelt's New Nationalism program promised to "make . . . good" the constitutional protections of property, but insisted that the "true friend of property, the true conservative, is he who insists that property shall be the servant and not the master of the commonwealth."⁶³¹ To this end, Roosevelt insisted that "property is subject to the general right of the community to regulate its use to whatever degree the public welfare may require it."⁶³² The progressive ethic also included reclamation and conservation as "a great moral issue, for it involves the patriotic duty of insuring the safety and continuance of the nation."⁶³³ Further, and most important, the progressives' "aim" was "to create . . . the best possible

⁶³¹ Theodore Roosevelt, "The New Nationalism," (Speech, Osawatomie, Kan., August 31, 1910) reprinted in *The Works of Theodore Roosevelt*, 19: 17.

⁶³² *Ibid.*, 24.

⁶³³ *Ibid.*, 23.

social and industrial conditions.”⁶³⁴ In order to accomplish this aim, William Morris Stewart reminded America that the “successful reclamation of the arid region of the United States requires a harmonious and appropriate system of laws to be enacted by Congress and the several States and Territories.”⁶³⁵ About ten years after Stewart wrote, Mead stated the “one inevitable conclusion.”⁶³⁶ Without rejecting prior appropriation for beneficial use outright, Mead concluded “that irrigation, over and above all other industries, is a matter demanding public supervision and control.”⁶³⁷

⁶³⁴ Theodore Roosevelt, “First Annual Message,” Dec. 3, 1901. Online. University of California, Santa Barbara. The American Presidency Project. <http://www.presidency.ucsb.edu/ws/index.php?pid=29542>. Accessed: Feb. 26, 2010.

⁶³⁵ Stewart, 203-204.

⁶³⁶ Mead, *Rise and Future of Irrigation*, 608.

⁶³⁷ *Ibid.*

Chapter Eight

Nevada Boosterism

“Nevada will base much of its assured future prosperity upon its agriculture.”

— Thomas Wren (1904)

“Confronted by the desert, the first thing Americans want to do is change it.”

— Marc Reisner (1986)

Previous chapters examined two of the three strands which were braided together to form Nevada’s 1913 Water Law.⁶³⁸ These two strands were progressivism and the tragedy of the commons. This chapter will examine the third strand: boosterism in the West, generally, and in Nevada, specifically. In this context, boosterism is the promotion of a town, community, State, or region for purposes of developing it economically, politically, and socially. Boosterism is typified by vainglory, braggartry, boastfulness, hucksterism, puffery and, on occasion, charlatanism. Boosterism is founded on the assumption that more-is-better; that more people means more business activity and higher

⁶³⁸ Nevada Water Law of 1913 (March 22, 1913), ch. 140, *Statutes of the State of Nevada* 1913: 192-220 codified as amended at *Nevada Revised Statutes Annotated* §§ 533.060 *et seq.* (Matthew Bender 2010).

real estate values and this must be better than less. Speculation is the soul of boosterism. Sinclair Lewis, in a 1908 editorial published in the *Waterloo (Iowa) Daily Courier*, wrote, “The booster’s enthusiasm is the motive force which builds up our American cities.”⁶³⁹ Boosterism was widespread in the literature coming out of the West during the Gilded Age, whether newspapers and journals such as *Irrigation Age*, the statements and speeches of Western politicians and capitalists, and the advertizing of railroads. In a classic example of boosterism, the *Las Vegas Age* called on all “citizens of Las Vegas” to organize “for the advancement of this city.”⁶⁴⁰ The newspaper promised, “Men and money are ready for the opportunities we can offer did we but make them known.”⁶⁴¹ The *Age* continued, “Our city is on the eve of a new development in business lines. The improvements already assured will mean the disbursement of many thousands of dollars each month in play rolls and the addition of several thousand souls to our population.”⁶⁴² Boosterism was not just the responsibility of organized efforts, but individuals took up the responsibility of promoting their hometowns, States, and the arid region generally. Charlis [sic] P. Squires, editor of the *Las Vegas Age* was quoted in his own paper, “With our railroad shops, fertile soil and loyal citizens, the future of Las Vegas is just about as

⁶³⁹ Sinclair Lewis, “The Needful Knocker,” *Waterloo (Iowa) Daily Courier*, as quoted Mark Schorer, *Sinclair Lewis: An American Life* (New York: McGraw-Hill, 1961), 142.

⁶⁴⁰ “Boosters Club,” *Las Vegas Age*, March 6, 1909, 1.

⁶⁴¹ *Ibid.*

⁶⁴² *Ibid.*

bright as that of any town of its size in the country. We can grow anything we want down there, and . . . everything that grows reaches almost perfection.”⁶⁴³ Although boosterism was nothing new to the Gilded Age, and nothing unique to Nevada or the West, Nevada needed boosters more than any other State or territory because of its dependence on mining and the boom-or-bust cycles that went with a mining economy. As shown by Squires’ comments in the *Las Vegas Age*, boosters were most eager to encourage the immigration of *actual settlers*, which meant *farmers*.

The first actual white settler in Nevada was H. S. Beatie, a Mormon, “who becoming enamored of the valley of the Carson, and the opportunities offered for turning an honest penny, took possession the site of the present town of Genoa, and thereupon erected a log house.”⁶⁴⁴ Four, or possibly seven, others remained with Beatie.⁶⁴⁵ The purpose of the settlement, soon known as Mormon Station, was to provide supplies to pioneers on their way to the gold fields in California. In 1855, Mormon Station was renamed Genoa.⁶⁴⁶ Herbert Howe Bancroft reported, “At the end of the summer the little party in Carson valley found itself better off from the profits of trade than many who had

⁶⁴³ “Boosters For Vegas,” *Las Vegas Age*, April 1, 1911, 8.

⁶⁴⁴ Herbert Howe Bancroft, *History of Nevada, Colorado, and Wyoming, 1540-1888*, Vol. 25 of *The Works of Hubert Howe Bancroft* (San Francisco: The History Company, 1890), 66.

⁶⁴⁵ *Ibid.*, 66fn4.

⁶⁴⁶ Thomas Wren, *A History of the State of Nevada: Its Resources and People* (New York: The Lewis Publishing Co., 1904), 25.

spent the time digging for gold in California.”⁶⁴⁷ By 1850, there were twenty such trading posts in the Carson valley.⁶⁴⁸

On September 9, 1850, as part of the Compromise of 1850, Congress organized the Utah Territory, which included the present State of Utah as well as the present State of Nevada, except the portion south of thirty-seven degrees north latitude.⁶⁴⁹ The population of “western Utah,” that is, those settlements along the eastern slope of the Sierra Nevada, was about one hundred, of whom “not more than twenty [were] actual settlers.”⁶⁵⁰ Relations between those in western Utah and the Mormon-dominated territorial government in Salt Lake City were always strained. Between 1851 and 1861, the residents of western Utah repeatedly petitioned Congress for annexation by California, or, in the alternative, a separate territorial government.⁶⁵¹ All of these efforts came to naught, at least in part, because of the very small population. The separatists claimed the white population in western Utah was “between 7,000 and 8,000 and 75,000

⁶⁴⁷ Bancroft, *History of Nevada*, 67.

⁶⁴⁸ *Ibid.*, 68.

⁶⁴⁹ *Utah Territorial Government Act*, ch. 51, *U.S. Statutes at Large* 9 (1850): 453.

⁶⁵⁰ Bancroft, *History of Nevada*, 69.

⁶⁵¹ *Ibid.*, 69, 72, 73-75, 78, 80, 82; see also Utah Territory. Second Judicial District. *Report of the Grand Jury of the Second District of Utah Territory, September Term, 1859* (Carson Valley: Territorial Enterprise, 1859), 4.

to 100,000 natives”⁶⁵² Bancroft says these estimates “greatly exceeded the truth.”⁶⁵³ The total population of Humboldt, Carson, and St. Mary’s counties of Utah Territory, which would become Nevada Territory in 1861, was only 6,857 in 1860.⁶⁵⁴ Before Nevada could count on becoming a State, or even a territory, it needed more people.

The first boosters in Nevada were prospectors, miners, and mining speculators. In 1859, gold was discovered near what is now Gold Hill.⁶⁵⁵ Bancroft commented, “Nowhere else in the annals of the world do we find a society springing up in a desert wilderness, so wholly dependent on a mountain of metal, so ruled by the ever-changing vagaries attending its development, and which finally attained the full measure of a fair and prosperous commonwealth.”⁶⁵⁶ At first mining occurred sporadically in various canyons, valleys, and other locations along the eastern slope of the Sierra Nevada.⁶⁵⁷ Then, on June twelfth or thirteenth, 1859, two prospectors named Patrick McLaughlin and Peter O’Riley struck silver near Gold Canyon. Henry Tompkins Paige Comstock, a prospector and mining speculator of sorts, informed McLaughlin and O’Riley that they were working on his land and with his water, and proposed a partnership between

⁶⁵² Bancroft, *History of Nevada*, 82-83.

⁶⁵³ *Ibid.*

⁶⁵⁴ Sutch and Carter, table Aa4613-4675, 1:290.

⁶⁵⁵ Bancroft, *History of Nevada*, 86.

⁶⁵⁶ *Ibid.*, 92.

⁶⁵⁷ *Ibid.*, 92-100.

himself, McLaughlin, O’Riley and Emanuel Penrod, a partner of Comstock’s in the water. The partnership was formed.⁶⁵⁸ The strike, which became known as the Comstock Lode, was one of the richest silver strikes ever. Other mines were discovered in Humboldt County, along the Reese River, near Las Vegas, and in the Truckee River Valley.⁶⁵⁹ Prospectors and miners flooded into the region. By 1870, the total population of Nevada was 42,491, an increase of 620 percent.⁶⁶⁰

Miners still have to eat, so some Nevadans turned to agriculture. As United States Senator from California John Conness (R-Calif.) observed at the time, "Nevada is a mining community exclusively, and can never be anything else. It must always be *fed from adjacent countries*."⁶⁶¹ In an unsigned article written sixty-four years later, the *Nevada State Journal* reported

Farm life at that time had to take the line of least resistance; irrigation structures did not extend past the brush-and-rock dam thrown across the streams to make the water overflow larger areas than it ordinarily would. There was no demand for diversified crops, and the early settler turned his attention to increasing his herds of cattle and flocks of sheep.⁶⁶²

⁶⁵⁸ Bancroft, *History of Nevada*, 100-101; Wren, 40-41; Eliot Lord, *Comstock Mining and Miners*, vol. 4 of *Monographs of the United States Geological Survey* (Washington: Government Printing Office, 1883), 33-55.

⁶⁵⁹ Bancroft, *History of Nevada*, 101-105

⁶⁶⁰ Sutch and Carter, table Aa4613-4675, 1:290.

⁶⁶¹ John Conness, as quoted by David Alan Johnson, *Founding the Far West: California, Oregon, and Nevada, 1840-1890* (Berkeley: University of California Press, 1992) 75 (Italics in Johnson.)

⁶⁶² "Gives History of Irrigation," *Nevada State Journal*, January 18, 1914.

Wren wrote, “Owing to high prices charged for imported food from California, by the 1860s, Nevadans took up farming as a means of self-preservation.”⁶⁶³ G. W. Ingalls reported that, beginning in 1860, coinciding with the Comstock Lode silver rush, the “products of the soil, which for years had but a nominal value . . . were now in demand at very high prices, and gold and silver coins were freely exchanged for grain, hay, and all kinds of farm and garden produce.”⁶⁶⁴ Ingalls reports one incident near Ragtown where potatoes were sold for fifteen cents per pound, rather than the expected fifteen cents per bushel.⁶⁶⁵ In Carson City, potatoes were a relative bargain at only ten cents per pound.⁶⁶⁶ Eliot Lord reported that four was \$1.50 per pound in the Carson Valley, and \$2.50 in Humboldt.⁶⁶⁷ Spurred by demand, farming grew slowly. Bancroft reported, “In 1860 Nevada has less than 100 small farms; in 1870 there were more than 1,000, and in 1879 nearly 1,500, ranging from 10 acres to 1,000 or more.”⁶⁶⁸ Wren reported, “There is practically no record of the early, spasmodic attempts at farming, though in December 1862, a society was incorporated called the ‘Washoe Agricultural, Mining and

⁶⁶³ Wren, 163.

⁶⁶⁴ G.W. Ingalls, “Washoe County,” in Sam P. Davis, ed., *The History of Nevada* (Reno: Elms Publishing Co., 1913), 2:1004-1005.

⁶⁶⁵ *Ibid.*, 2:1005.

⁶⁶⁶ *Ibid.*

⁶⁶⁷ Lord, 13-14.

⁶⁶⁸ Bancroft, *History of Nevada*, 244fn12.

Mechanical Society”⁶⁶⁹ The Washoe Agricultural, Mining and Mechanical Society sponsored regular fairs beginning December 12, 1862.⁶⁷⁰ Settlers soon filled up Paradise Valley, “Thousand Spring and other valleys in the eastern part of the State . . . [the] Humboldt country was considered to be a great county when it came to the raising of grains, vegetables and hay, while sorghum grew luxuriantly.”⁶⁷¹ During these early decades, fear of Native American attack was a greater concern than aridity or access to water.⁶⁷²

Even with an increase in population, Nevada was not truly ready for organization as a territory, much less as a State. Nevertheless, William Smith (D-Va.) reported a bill to organize the Territory of Nevada into the House of Representatives (H.R. 567) on May 12, 1858.⁶⁷³ The bill died in committee. When the Thirty-Sixth Congress met for its second session in 1860, the Union was on the verge of dissolution. On December 18, 1860—two days after the South Carolina secession convention met and two days before it passed its ordinance of secession—Representative Galusha Aaron Grow (R-Pa) reported another bill to “provide a temporary government for the Territory of Nevada” (H.R.

⁶⁶⁹ Wren, 159.

⁶⁷⁰ *Ibid.*

⁶⁷¹ *Ibid.*, 163.

⁶⁷² *Ibid.*

⁶⁷³ U.S. Congress. *House of Representatives Journal*, 35th Cong., 1st sess., May 12, 1858, 789; Bancroft, *History of Nevada*, 150. Bancroft gives the date as “May 12, 1859”; this appears to be a typographical error.

888).⁶⁷⁴ A comparable Senate bill (S. 563) was introduced by Senator James Stephen Green (D-Mo.) on February 14, 1861—four days before Jefferson Davis was inaugurated as President of the Confederate States of America.⁶⁷⁵ The Senate version was eventually passed and the Nevada Territory was organized on March 2, 1861.⁶⁷⁶ President James Buchanan signed the bill two days before Abraham Lincoln took office. In large measure, the act passed because seven Southern States had seceded from the Union. Less than four years later, Nevada was admitted to the Union as the thirty-sixth State on October 31, 1864, just days before the presidential election that year. Nevada cast two electoral votes for Lincoln.

During the Civil War, Nevada was rabidly Unionist, but, because of its remoteness and small population, Nevada's contribution to the war effort was almost exclusively economic in the form of providing silver and gold to the U.S. Treasury.⁶⁷⁷ During the period 1860 to 1861, the United States as a whole produced 372,721

⁶⁷⁴ *A Bill to Provide a Temporary Government for Nevada*, H.R. 888, 36th Cong., 2nd sess., *Congressional Globe*, December 18, 1860, 54, pt. 1: 120.

⁶⁷⁵ *Bill to Organize the Territory of Nevada*, S. 563, 36th Cong., 2nd sess., *Congressional Globe*, March 1, 1861, 55, pt. 2: 1334.

⁶⁷⁶ *Act to Organize the Territory of Nevada* (March 2, 1861), ch. 88, *U.S. Statutes at Large* 12 (1861): 209-214; Bancroft, 150.

⁶⁷⁷ Total casualties at the Battle of Gettysburg (51,000 killed, wounded and missing) were 744 percent of the total population of Nevada, based on 1860 census figures. See James McPherson, *Battle Cry of Freedom* (New York: Oxford University Press, 1988) 664.

kilograms of gold and 1,067 metric tonnes of silver, much of it came from Nevada.⁶⁷⁸

During this time, the Comstock Lode alone produced silver and gold worth \$52,990,000.⁶⁷⁹ However, as Wren wrote just after the turn of the twentieth century, “Nevada profited little by her mineral output, for the promoters of Nevada’s mines sunk all profits in San Francisco, inaugurating worldwide enterprises and erecting magnificent homes and public buildings. . . . None of that wealth was expended in promoting the development of Nevada, along any line.”⁶⁸⁰

In the years just after the Civil War, three kinds of money circulated in the United States: gold coins and notes promising redemption in gold coin, silver coins and notes promising redemption in silver coin, and legal tender notes commonly called “greenbacks.” Legal tender notes, which were not backed by either gold or silver but only the confidence of the public, were introduced in 1862 as a temporary, wartime expedient,

⁶⁷⁸ Sutch and Carter, table Db87-95, 4: 315.

⁶⁷⁹ Lord, table 2, 416.

⁶⁸⁰ Wren, 20.

and were controversial from the beginning.⁶⁸¹ Once the war ended, the Congress passed legislation to redeem the greenbacks in gold coins.⁶⁸² The ensuing political debate known to contemporaries as “the money question,” which took on a decidedly religious and moral tone, is beyond the scope of this work.⁶⁸³ Nevertheless, the Coinage Act of 1873,

⁶⁸¹ *First Legal Tender Act*, ch. 33, *U.S. Statutes at Large* 12 (1862): 345; *Second Legal Tender Act*, ch. 143, *U.S. Statutes at Large* 12 (1862): 532; *Third Legal Tender Act*, ch. 73, *U.S. Statutes at Large* 12 (1863): 709; *Hepburn v. Griswold*, 75 U.S. 603 (1870); *Knox v. Lee and Parker v. Davis (The Legal Tender Cases)*, 79 U.S. 457 (1870); *Juilliard v. Greenman*, 110 U.S. 412 (1881). See also William Dodsworth, *Our Legal Tender System Its Evils and Their Remedy* (New York: The Journal, 1897); George Frisbie Hoar, *The Charge Against President Grant and Attorney General Hoar of Packing the Supreme Court of the United States* (Worcester, Mass.: C. Hamilton, 1896); James Milliken, *Law and Legal-Tender Money* (Philadelphia: J.B. Lippincott, 1891); William Richards, *The Standard of Value and Legal Tender Money* (Washington: Church News Pub., 1893); Benjamin F. Butler and Lyman E. DeWolf, *The Money Question Settled: Supreme Court Decisions in the Legal Tender Cases* (Chicago: B.S. Health, 1885); H.R. Linderman, *Money and Legal Tender in the United States* (New York: G.P. Putnam’s Sons, 1877); Clarkson Nott Potter, *Argument Against the Power of Congress to Make United States Treasury Notes a Legal Tender* (Washington: Gibson Brothers, 1871).

⁶⁸² *Specie Payment Resumption Act*, ch. 15, *U.S. Statutes at Large* 18 (1874): 296.

⁶⁸³ See e.g. Gretchen Ritter, *Goldbugs and Greenbacks: The Antimonopoly Tradition and the Politics of Finance in America* (New York: Cambridge University Press, 1997); Allen Weinstein, *Prelude to Populism: Origins of the Silver Issue, 1867-1878* (New Haven, Conn.: Yale University Press, 1970); Walter T. K. Nugent, *The Money Question During Reconstruction* (New York: W.W. Norton, 1967); Irwin Unger, *The Greenback Era: A Social and Political History of American Finance, 1865-1879* (Princeton, N.J.: Princeton University Press, 1964); Milton Friedman and Anna Jacobson Schwartz, *A Monetary History of the United States, 1867-1960* (Princeton, N.J.: Princeton University Press, 1963); Don Carlos Barrett, *The Greenbacks and Resumption of Specie Payments, 1862-1879* (Cambridge, Mass.: Harvard University Press, 1931); A. Barton Hepburn, *History of Coinage and Currency in the United States and the Perennial Contest for Sound Money* (New York: Macmillan, 1903); J. Laurence Laughlin, *The History of Bimetallism in the United States*. (New York: D. Appleton, 1900).

which detractors called the “Crime of ‘73,” demonetized silver.⁶⁸⁴ The effects of this Act, together with the effects of the Panic of 1873 and the Long Depression of 1873-1879 which followed, caused a contraction of the money supply and severe distress in the Western mining States, Nevada in particular. Wren complained, “No state suffered as severely as did Nevada from the depressing effect of our financial legislation, which resulted in the fall of silver from \$1.29 an ounce to 60 cents. The demonetization of silver caused the suspension, almost entirely, of silver mining. . . . The conditions were all speculative and the result was chaos.”⁶⁸⁵ The Sherman Silver Purchase Act and the Allison-Brand Act did little to help the situation.⁶⁸⁶ The demonetization of silver was not the only problem for the silver magnates either, a silver boom during the years 1871 to 1877 caused the price of silver as a commodity to drop, then after 1879 production dropped as the Comstock Lode became played out.⁶⁸⁷ The mint at Carson City, Nevada, which opened in 1870, was closed in 1885.⁶⁸⁸ Eliot charitably called the “fortunes of the

⁶⁸⁴ *Coinage Act of 1873*, ch. 131, *U.S. Statutes at Large* 17 (1873): 434; see also Milton Friedman, “The Crime of 1873,” *The Journal of Political Economy*, 98, no. 6 (Dec., 1990): 1159-1194.

⁶⁸⁵ Wren, 13.

⁶⁸⁶ *Sherman Silver Purchase Act*, ch. 708, *U.S. Statutes at Large* 26 (1890): 289; *Allison-Brand Act*, ch. 20, *U.S. Statutes at Large* 20 (1878): 25. Congress passed the Allison-Brand Act over President Benjamin Harrison’s veto.

⁶⁸⁷ Lord, 407-410, 416.

⁶⁸⁸ Bancroft, *History of Nevada*, 201.

Comstock mining district . . . depressed” in 1881.⁶⁸⁹ By 1885, the silver mining industry was, according the director of the United States Mint, “practically reduced to nothing.”⁶⁹⁰

Because of the collapse of the mining industry, Gilded Age Nevada was in rather dire straits. The population dropped 24 percent between 1880 and 1890, and another 11 percent between 1890 and 1900.⁶⁹¹ Nevada’s population in 1900 was less than Nevada’s population in 1870.⁶⁹² Frederick Haynes Newell wrote, “The decrease in population has resulted mainly from the lessened output of the mines and neglect to make use of the agricultural possibilities.”⁶⁹³ The city government of Virginia City, Nevada dissolved itself on May 2, 1881 and transferred its powers to the board of county

⁶⁸⁹ Lord, 407.

⁶⁹⁰ Bancroft, *History of Nevada*, 201.

⁶⁹¹ Sutch and Carter, table Aa4613-4675, 1:290.

⁶⁹² *Ibid.* See also Mary Ellen Glass, *Silver and Politics in Nevada: 1892-1902* (Reno: University of Nevada Press, 1960), 30.

⁶⁹³ Frederick Haynes Newell, *Irrigation in the United States*, rev. ed. 3rd ed. (New York: Thomas Y. Crowell and Co., 1906) 341-342.

commissioners.⁶⁹⁴ The sympathetic *Irrigation Age* lamented, “Nevada has the smallest population of any State in the Union. It is the only State west of the Allegheny mountains which has ever shown a record of decreasing population. . . . The greatest lack in Nevada is the lack of public spirit.”⁶⁹⁵ *The New York Times* opined, “The history of Nevada is unique—and pathetic—in that it is the only Western State that has gone backward in wealth and population.”⁶⁹⁶ The *Chicago Tribune*, in a cruel editorial which William Ellsworth Smythe charitably called “spirited,” suggested that Nevada be deprived of representation in Congress; the *Tribune* called it “condition of suspended animation— a sleeping beauty waiting for the fairy prince to come along.”⁶⁹⁷ The *Tribune* justified this unprecedented and probably unconstitutional action on the grounds that the “silver-mines

⁶⁹⁴ Lord, 409-410. Virginia City has never really recovered. It remains an unincorporated community in Storey County, Nevada with a population in 2000 (938) less than half that in 1860 (2,345). Riley Moffatt, *Population History of Western U.S. Cities and Towns, 1850-1990* (Lanham, Md.: Scarecrow Press, 1996) 159; U.S. Department of Commerce, Census Bureau. “894 3-Digit ZCTA – 5-digit ZIP Code Tabulation,” Virginia City, Nevada, 89440. http://factfinder.census.gov/servlet/GCTTable?_bm=yand-geo_id=85000US894and-_box_head_nbr=GCT-PH1and-ds_name=DEC_2000_SF1_Uand-_lang=enand-format=ZI-1and-_sse=on. Accessed: December 3, 2010.

⁶⁹⁵ “The Progress of Western America,” *Irrigation Age* 8 (1895): 167.

⁶⁹⁶ Frank Williams, “What’s the Matter with Nevada?,” *New York Times*, February 26, 1911, SM13

⁶⁹⁷ “The Way to Deal With Nevada,” *Chicago Tribune*, December 3, 1896, 6. See also William Ellsworth Smythe, “Shall Nevada Be Deprived of Statehood?,” *The Forum*, April 1897, 228. Whether stripping a State of its representation in Congress would be constitutional is doubtful. See U.S. Const., art. 5; *Texas v. White*, 74 U.S. (1 Wall.) 700, 19 L. Ed. 227 (1868). The *Tribune*’s citation to the fact that the Confederate States did not have representation in the U.S. Congress during the Civil War is not a persuasive precedent.

which made her all she was have been exhausted. She has no other mineral wealth. She has no agricultural resources. She has nothing to attract people; and, as a consequence, she is flickering out.”⁶⁹⁸ In another editorial published January 2, 1893 entitled “The Farce of Nevada Statehood,” the *Chicago Tribune* called “absurd” the fact that Nevada, with “fewer people than an average Chicago ward,” should have equal representation with Illinois in the United States Senate.⁶⁹⁹ The *Tribune* recommended that the Territory of Utah be annexed to the State of Utah.⁷⁰⁰ In another editorial published January 22, 1898, the *Chicago Tribune* opined, “There are far too many rotten boroughs already with Statehood representation in Congress. . . . It would be more profitable to turn attention to the extinguishment of that pestilential little county miscalled a State which promotes pugilism and populism. Nevada never should have been granted Statehood.”⁷⁰¹ Smythe calls the suggestion to strip Nevada of statehood “radical, if not revolutionary,” “an unprecedented humiliation,” “perilous indeed, and fraught with new evils more dangerous than those which it is sought to remove,” and “the dissolution of the Union on the

⁶⁹⁸ “The Way to Deal With Nevada,” *Chicago Tribune*, December 3, 1896, 6.

⁶⁹⁹ *Chicago Tribune*, January 2, 1898, 4.

⁷⁰⁰ *Ibid.*

⁷⁰¹ *Chicago Tribune*, January 22, 1898, 12.

instalment plan.”⁷⁰² Regretfully, Smythe admits, “These suggestions have been quoted with approval by many newspapers.”⁷⁰³

There was only one way to prevent this “dissolution of the Union on the instalment plan,” and that was to recruit more people to come live in Nevada. These people needed to be *actual settlers*, individuals with families who would come with the intention of staying for the long-term, even for generations, and do so. Wren complained, “Nevada has never tried, seemingly, to secure settlers. It has been, rather, seeking to secure capital for the development of mines. The consequence has been . . . that Nevada, as far as population goes, has been at a standstill for years.”⁷⁰⁴ Smythe contrasted Nevada’s development with Utah’s, and found that the difference between the two States was that “Utah has always had a colonization policy.”⁷⁰⁵ Smythe concluded that the reason for Utah’s larger population and economy was “difference between the results of speculative mining, on the one hand, and of the patient development of agricultural resources by methods of sober industry on the other.”⁷⁰⁶ Wren, Smythe and other Gilded

⁷⁰² Smythe, “Shall Nevada Be Deprived of Statehood?,” 228.

⁷⁰³ *Ibid.*

⁷⁰⁴ Wren, 158.

⁷⁰⁵ Smythe, “Shall Nevada Be Deprived of Statehood?,” 235. Smythe is correct of course, but he seems to be unaware of, or to ignore, the fact that the majority of Utah immigrants were Mormons for whom migration to Utah—to Zion—was a matter of religious duty, and not merely a matter of seeking better economic opportunities. See e.g. Ludlow, s.vv. “Gathering,” “Immigration and Emigration.”

⁷⁰⁶ Smythe, 235.

Age Americans, remembering their Jeffersonian/Jacksonian forebearers, naturally, almost inevitably, assumed that agriculture was the obvious industry to boost.⁷⁰⁷ In Nevada's case, they may well have been right. The State's remoteness from the coast and lack of navigable rivers made commerce impracticable, even after the completion of the railroads. Manufacturing was impractical because of the difficulties in transportation, and lack of industrial raw materials. Even if Nevada's mines had been working, they produced mostly gold and silver—valuable metals to be sure, but of almost no industrial application in the Gilded Age.

In this environment, boosterism was essential to survival, and boosters went to work with a will. Soon Americans outside of Nevada were offered a smorgasbord of glowing reports about Nevada's superior climate—sunny skies, dry air, warm days, mild winters—the fertility of the soil, the diversity of crops which may be grown, the exceptional quality of life and so forth in local and national newspapers, books, journals and in testimony before Congress. John Whitson wrote in the *Nevada Daily State Journal*, “We must do everything within our power, make personal sacrifice if necessary, to keep the population of the state increasing. We must not permit the whole burden to rest on our mines. It should be evenly distributed by providing means to develop our

⁷⁰⁷ Ironically, in light of Nevada's later, post-World War II economic development, casino gambling was banned by the first Nevada territorial legislature. Nevada. Legislative Assembly. *Act to Prohibit Gambling* (November 25, 1861), ch. 25, *Laws of the Territory of Nevada*, 1861: 53. The Nevada State Legislature legalized casino gambling March 19, 1931 in an effort to fight the effects of the Great Depression. *Gambling Act of 1931*, ch. 99, *Statutes of the State of Nevada* 1931: 165.

agricultural, cattle, commercial, and industrial prospects.”⁷⁰⁸ Howe agreed, “The real wealth of Nevada lies in the improvements made; in developments that are in fact improvements; in farms and manufactures; in roads and systems of irrigation; which are due rather to the absence of enormous mineral developments.”⁷⁰⁹ Charles A. Norcross also agreed, “Millions of acres of rich, arable valley lands in Nevada await the plowshare. . . . An agricultural empire lies fallow here. . . . Nevada’s greatest need is agricultural homeseekers. Considering the productiveness of the soil and excellent markets, the cheapest land is to be found here of any state in the west.”⁷¹⁰ Wren promised “a new and glorious Nevada, and her further agricultural glory will make the glory of Comstock pale into insignificance.”⁷¹¹ The *Las Vegas Age* opined, “Not only were local chambers of commerce organized and deployed to propagandize for Nevada, but the State of Nevada organized a State Board of Immigration to prepare “a pamphlet for gratuitous distribution giving the resources of the State and illustrated with photogravures.”⁷¹² Even the out-of-state newspaper *The San Francisco Chronicle* was moved to write Nevada “is really

⁷⁰⁸ John Whitson, “The Urgent Need for Publicity,” *Daily Nevada State Journal*, January 15, 1907, 8.

⁷⁰⁹ Bancroft, *History of Nevada*, 225-226.

⁷¹⁰ Charles A. Norcross, *Nevada: Fifty Years Asleep Awakening, 1915* (Carson City: Nevada Bureau of Industry, Agriculture and Irrigation, 1915) 16, 29.

⁷¹¹ Wren, 156-157.

⁷¹² “Colony Building In America: The March of the Colonist,” *Irrigation Age* 7, no. 1 (July 1894): 34.

capable of agricultural development which in the aggregate will be sufficient to support a large population. . . . The whole West, and especially California, is interested in the prosperity of Nevada and will rejoice to see the State grow in wealth and population.”⁷¹³ Nevada Governor Tasker Oddie said, “Here is the crux of the whole problem of state development. We have not enough farms and farmers. Increase these and at once a dozen other lines of industrial opportunity will afford room for more people to establish themselves here without crowding.”⁷¹⁴ Railroads, which were major landowners due to the generous grants of public real estate given them by Congress, were also enthusiastic boosters.⁷¹⁵ The Southern Pacific Railroad published a pair of pamphlets *The New Nevada: What It Is and What It Is To Be: The Era of Irrigation and the Day of Opportunity and Agricultural Nevada*. John E. Frost, Land Commissioner of the Atchison, Topeka and Santa Fe Railroad, in an article published in December 1896 issue of *Irrigation Age* based on his address to the Fifth National Irrigation Congress, on Thursday, December 17, 1896 in Phoenix, Arizona, wrote, “What you in the arid regions want to secure a fairer population is to pave the way for it by enlisting Eastern capital in the development of your natural resources.”⁷¹⁶

⁷¹³ “Development In Nevada,” *San Francisco Chronicle*, April 30, 1910, 6.

⁷¹⁴ “Governor Oddie Sees Our Needs,” *Las Vegas Age*, May 2, 1914, 1.

⁷¹⁵ “Many Colonists Brought to this State,” *Las Vegas Age*, October 27, 1907, 2.

⁷¹⁶ John E. Frost, “Immigration Into the Arid Regions,” *Irrigation Age*, 10 (July-Dec. 1896): 162.

At this point, both contemporaries and later historians confuse the issue; they make the technical problem the real problem and overlook the real problem altogether. All of the boosters agreed that the problem in Nevada was not aridity; rather the problem in Nevada was a declining population due to a failing mining industry. Boosters recognized that aridity was a technical problem that could be solved by experts such as engineers and lawyers, and that it needed to be solved in order to facilitate the solution to the real problem of a declining population. The technical solution to the technical problem was water. Wren wrote, "One of the greatest drawbacks to the rapid settlement of Nevada has been the scarcity of water, a scarcity which can only be overcome by means of irrigation. . . . Water, only water, is all that Nevada needed to make her the richest, most populous state in the Union."⁷¹⁷ The *Las Vega Age* pontificated, "The government's irrigation, when worked out, will immediately double Nevada's population; it will provide a new lifeblood of settlement and citizenship for a region of unsurpassed agriculture."⁷¹⁸ To this end they devoted much capital, political and financial. Their efforts to solve the technical solution were the cause of the confusion.

According to the terms of Garritt Hardin's *The Tragedy of the Commons*, water and/or access to water was a mere technical solution to the technical problem of aridity, but that made it no less of a problem to the *actual settlers*, the farmers who were trying to

⁷¹⁷ Wren, 117.

⁷¹⁸ "The Conquest of the Great American Desert," *Las Vegas Age*, September 23, 1905, p. 3.

eke a living from Nevada's deserts. Samuel Clemens, later and better known by his pen name Mark Twain, lived in Nevada for several years while his brother Orion was secretary to the territorial governor, James Warren Nye. Apocryphally, Twain described the state of water rights in Nevada, "Whisky is for drinkin'; water is for fighin' over." The *Daily Nevada State Journal* opined, just as cynically but with certainly better documentation, "As usual in Nevada, we are told, the first crop raised by irrigation was a lawsuit."⁷¹⁹

The first efforts to provide water for irrigation purposes were co-operative efforts by small groups of individual farmers. The first irrigation works were limited to a primitive "brush-and-rock dam thrown across the streams to make the water overflow larger areas than it ordinarily would."⁷²⁰ Later, slightly more sophisticated structures were built involving ditches and canals, but even these structures were limited to what a man alone or with a small handful of partners could accomplish with hand tools. The key to the success of these ventures was the goodwill and cooperation of all participants; and an adequate supply of water to satisfy everyone's needs. In dry years, conflict was certain. Wren described the situation

The farmers near certain canyons would agree to each take so much water, on a pro rata basis. Then someone would be found taking more water than was necessary. Recourse was had in suits, dragging on interminably. For

⁷¹⁹ *Daily Nevada State Journal*, September 1, 1886, 3.

⁷²⁰ "Gives History of Irrigation," *Nevada State Journal*, January 18, 1914.

some death was the harvest, for a number of men have been killed in different portions over the state, in disputing the title to water.”⁷²¹

For example, in 1886, William Crow killed Curly Hogan in a dispute over water.⁷²² Mary Jane Walsh sued fifteen men to vindicate her rights to water from King’s Canyon and Gregory’s Creek. The lawsuit dragged on for years.⁷²³ William H. Hunt advised any “young lawyer who expects to practice in the far western States . . . to take special care to study the underlying principles of the law of water rights. [Because] rights to the use of water have become most valuable properties, and litigation concerning them is important and not easy of settlement.”⁷²⁴

Before too long, private individuals became unable to build effective irrigation works, so ceded the field to corporations. The Nevada territorial legislature chartered several irrigation companies in its early years. Jacob L. Van Bokkelen, was elected the first president of the Nevada Territorial Council. On assuming his responsibilities, President Van Bokkelen made a speech in which he said, “Our agricultural interests, although at the present time deemed unimportant, must improve year after year.”⁷²⁵ The

⁷²¹ Wren, 153.

⁷²² *Ibid.*

⁷²³ *Ibid.*, 153-154.

⁷²⁴ William H. Hunt, “Law of Water Rights,” *The Yale Law Journal*, 17 No. 8 (June 1908): 585.

⁷²⁵ Nevada. Territorial Assembly. *Journal of the Council of the First Legislative Assembly*, “The President’s Speech,” Jacob L. VanBokkelen, (San Francisco: Valentine and Co., 1862) 8.

first session of the Nevada territorial legislative assembly did not address the issues of irrigation specifically, nor the issue of water rights generally.⁷²⁶ However, during its first session, the Nevada territorial legislature passed a bill authorizing four men, C. H. Hobbs, J. C. Russell, David Smith, and J. L. Pennell, to “improve the east branch or fork of the Carson River . . . so as to make said river suitable for the purpose of rafting down logs for manufacture into lumber and other timber.”⁷²⁷ This is the first act of the territorial legislature to address rights on any waterway in Nevada. At the next session, the legislature amended the franchise given to Hobbs and the others by adding the proviso, “nothing in this Act shall be so construed as to work detrimentally to the interests of mining or agriculture.”⁷²⁸ At this same session, the territorial legislature chartered the Truckee River and Washoe Valley Canal Company. The corporation was authorized to build a canal from the Truckee River to Washoe Valley “for commercial, manufacturing, milling, mining, or agricultural purposes.”⁷²⁹ Also during its second session, the Nevada territorial legislature passed an act granting J. Jacobson, John Bowen, Alexander Person,

⁷²⁶ Nevada. Territorial Assembly. *Journal of the House of Representatives of the First Legislative Assembly* (San Francisco: Valentine and Co., 1862).

⁷²⁷ *Act for the Improvement of the East Branch of the Carson River* (November 28, 1862), ch. 35, *Laws of the Territory of Nevada*, 1862: 100.

⁷²⁸ *Act to Amend the Act for the Improvement of the East Branch of the Carson River* (December 19, 1862), ch. 6, §2, *Laws of the Territory of Nevada*, 1862: 6.

⁷²⁹ *Act Granting Certain Persons the Right to Construct a Canal From Truckee River to Washoe Valley* (December 19, 1862), ch. 96, § 1, *Laws of the Territory of Nevada*, 1862: 106.

John Taylor, and P. Reynolds, “their associates and assigns,” the “right to improve and navigate the waters” along the Carson River. However, “noting in this Act shall be so construed as to prohibit any persons now owning ranches or farms located on the Carson River, from the full use of the waters of said river, or any of its channels, sinks, or sloughs, for irrigating or agricultural purposes.”⁷³⁰ This is the first mention of irrigation in any Nevada statute.

Unfortunately, these private irrigation companies failed. Stephen N. Bretsen and Peter J. Hill wrote for the West generally, “Undercapitalization resulting in insufficient funds to complete a project could lead to bankruptcy in the short term. Overcapitalisation resulting in an irrigation system larger than either the available water rights could fill or the market for land could sustain could bankrupt a project in the long-term.”⁷³¹ For example, the *Reno Evening Gazette* reported, “The South Side Canal Company has stopped work temporarily. The Canal will, however, be completed in time of irrigation the coming Summer.”⁷³² There is no report of whether or not this occurred. The most important of these companies—not because of its success, but because of its failure—was

⁷³⁰ *Act to Provide for the Improvement of Navigation on the Carson and Humboldt Rivers* (December 20, 1862), ch. 128, § 5, *Laws of the Territory of Nevada*, 1862: 175.

⁷³¹ Stephen N. Bretsen and Peter J. Hill, “Irrigation Institutions in the American West,” *UCLA Journal of Environmental Law and Policy* 25 (2006/2007): 296.

⁷³² “Stopped,” *Reno (Nevada) Evening Gazette*, April 11, 1876, 3.

the Truckee Irrigation Project founded in 1888 by Francis G. Newlands. The Truckee Irrigation Project's importance will be examined later.

Boosters soon recognized that private enterprise could not effectively build and manage irrigation works and that government intervention was needed; however, for constitutional and political reasons the federal government chose to promote irrigation through indirectly through the States. The answer was the Carey Act.⁷³³

However, the Carey Act was voluntary as to State participation, and Nevada was very cool to the idea. Initially, Nevada took steps to avail itself of Congress' largess by considering "two measures, one providing for the acceptance of the Carey grant, and the other providing a good code of water laws with an administrative system."⁷³⁴ The Nevada Legislature passed an act on March 20, 1895 to "accepted the provisions and conditions" of the Carey Act, but did not enact the bureaucracy necessary administer the act.⁷³⁵ In 1903, irrigation booster Elwood Mead wrote, "Seven States accepted this trust. The laws of five of these States require actual settlement and cultivation of the land; limit filings to 160 acres; attach the water right to the land, and provide for the ultimate ownership by the irrigators of the ditches on which they depend."⁷³⁶ Nevada was not one of the seven

⁷³³ *Carey Act*, ch. 561, *U.S. Statutes at Large* 26 (1891): 1066 amended by *Rivers and Harbors Act*, ch. 301, *U.S. Statutes at Large* 28 (1894): 472.

⁷³⁴ "The Progress of Western America," *Irrigation Age*, 8 (1895): 105.

⁷³⁵ Kinney, 4: 3455.

⁷³⁶ Mead, 24.

mentioned by Mead. *Irrigation Age* opined this was “very unfortunate for Nevada” and speculated that “if they had carried . . . [Nevada] would have seen . . . a live policy of development.”⁷³⁷ Beyond this, Nevada did not follow up on the Carey Act until 1909.⁷³⁸ Charles S. Kinney believed “some local prejudices” caused the delay and that even then the act eventually passed was “a meager and unsatisfactory.”⁷³⁹ This act would be amended on March 17, 1911.⁷⁴⁰

To many, the Carey Act was disappointing. Governor Tasker Oddie, in an address to the Nevada legislature, said, “The terms of the act of March 3, 1909, amounted to giving away our million acres.” He called on the legislature to repeal that act and pass another which provided “for a complete system of control for the disposition of Carey Act lands in this state and if enacted will give Nevada unquestionably the best Carey Act land law in force in any state.”⁷⁴¹ John Frost wrote, “The Carey law is found to contain serious defects and should be amended and the desert land law should be repealed.”⁷⁴² However,

⁷³⁷ “The Progress of Western America,” *Irrigation Age*, 8 (1895): 105.

⁷³⁸ *Act to Provide for the Reclamation and Occupation of Lands* (March 23, 1909), ch. 146, *Statutes of the State of Nevada* 1909: 198.

⁷³⁹ Kinney, 4: 3455.

⁷⁴⁰ *Ibid.*

⁷⁴¹ “Governor Has Sent A Special Message: Urges Passage of Several Bills Now Pending,” *Reno (Nevada) Evening Gazette*, February 23, 1911, 2.

⁷⁴² John E. Frost, “Immigration Into the Arid Regions,” *Irrigation Age*, 10 (July-Dec. 1896): 162.

by March 1913, Charles A. Norcross, Nevada Commissioner of Industry Agriculture and Irrigation, proclaimed that the Carey Act was on a “sound and respected basis” despite the Act being “hated by certain interests with selfish aims.”⁷⁴³ The *Las Vegas Age* preferred the Carey Act over the Newlands Act because the Carey Act is more flexible.⁷⁴⁴

Representative, later Senator, Francis G. Newlands (D-Nev.) was one of the greatest boosters in Nevada. Newlands was born in Natchez, Mississippi in 1846. Despite being a Southerner by birth, he was raised in Illinois and educated at Yale. He was trained as a lawyer. In 1870, Newlands moved to San Francisco and began practicing law. One of Newlands’ principal clients was Nevada mining magnate William Sharon. Newlands married Sharon’s daughter Adelaide and moved to Nevada to represent his father-in-law’s interests.⁷⁴⁵ In 1888, Newlands formed the Truckee Irrigation Project. This was a private scheme to develop irrigation in the area around Reno using the Truckee and Carson Rivers as a water source. Sadly, the project failed and Newlands lost

⁷⁴³ “In Nevada the Carey Act Is on a Sound and Established Basis, Respected by Federal Authorities and Hated By Certain Interests with Selfish Aims,” *Reno (Nev.) Evening Gazette*, March 5, 1913, 9.

⁷⁴⁴ “Merits of the Carey Act,” *Las Vegas Age*, April 20, 1907, 2.

⁷⁴⁵ William D. Rowley, “Newlands, Francis Griffith,” *American National Biography*, John A. Grady and Mark C. Carnes, gen. eds. (New York: Oxford University Press, 1999) 16: 342-343; William D. Rowley, *Reclaiming the Arid West: The Career of Francis G. Newlands* (Bloomington, Ind.: Indiana University Press, 1996); U.S. Congress. Senate. *Francis Griffith Newlands (Late Senator from Nevada) Memorial Addresses Delivered in the Senate of the United States, 65th Cong., 2d Sess., Doc. no. 448, Sept. 2, 1918*; Hubert Howe Bancroft, *Chronicles of the Builders of the Commonwealth* (San Francisco: The History Co., 1892) 4: 80-102.

his \$500,000 investment.⁷⁴⁶ Marc Reisner called this project “one of the most ambitious reclamation efforts of its day.”⁷⁴⁷ The project failed “not because it was poorly conceived or executed (hydrologically and economically, it was a good project),” concluded Marc Reisner, “but because squabbles among its beneficiaries and the pettiness of the Nevada legislature ruined its hopes.”⁷⁴⁸ In addition to the money, Reisner believed, Newlands lost “whatever faith he had in the ability of private enterprise to mount a successful reclamation program.”⁷⁴⁹ Newlands was elected to the House of Representatives as a Democrat in 1892, and became a tireless booster of irrigation.

Newlands efforts took ten years to bear fruit. Donald Pisani attributed Newlands’ eventual success to the “homemaking ideal and the lingering fear of domestic turmoil left from the ‘terrible '90s’” and “railroad support and pressure.”⁷⁵⁰ While these factors were undeniably important, the most important factor was the support of Theodore Roosevelt.

Theodore Roosevelt came to the presidency in 1901 after the death of President William McKinley. According to his biographer Harold Howland, “on the first Sunday

⁷⁴⁶ Barbara Cosens, “Farmers, Fish, Tribal Power and Poker: Reallocating Water in the Truckee River Basin, Nevada and California,” *Hastings West-Northwest Journal of Environmental Law and Policy* 89 (Fall 2003): 96

⁷⁴⁷ Reisner, 116.

⁷⁴⁸ *Ibid.*

⁷⁴⁹ *Ibid.*

⁷⁵⁰ Donald J. Pisani, “Reclamation and Social Engineering,” 50; Donald J. Pisani, “George Maxwell, the Railroads, and American Land Policy, 1899-1904,” *Pacific Historical Review*, 63, no. 2 (May 1994):178.

after he reached Washington as President, before he had moved into the White House,” Roosevelt met with Gifford Pinchot and Frederick Hayes Newell to discuss “the twin policies that were to become two of the finest contributions to American progress of the Roosevelt Administrations”: reclamation and conservation.⁷⁵¹ Roosevelt was won over, if he needed any convincing at all. In his first message to Congress on December 3, 1901, Roosevelt called for “great storage works . . . to equalize the flow of streams and to save the flood waters.”⁷⁵² Roosevelt continued,

Their construction has been conclusively shown to be an undertaking too vast for private effort. Nor can it be best accomplished by the individual States acting alone. Far-reaching interstate problems are involved; and the resources of single States would often be inadequate. It is properly a national function, at least in some of its features. It is as right for the National Government to make the streams and rivers of the arid region useful by engineering works for water storage as to make useful the rivers and harbors of the humid region by engineering works of another kind.⁷⁵³

Roosevelt explicitly stated the “object of the Government is to dispose of the land to settlers who will build homes upon it. To accomplish this object water must be brought within their reach.”⁷⁵⁴

⁷⁵¹ Harold Howland, *Theodore Roosevelt and His Time: A Chronicle of the Progressive Movement* (New Haven: Yale University Press, 1921), 132.

⁷⁵² Theodore Roosevelt, “First Annual Message,” Dec. 3, 1901. Online. University of California, Santa Barbara. The American Presidency Project. <http://www.presidency.ucsb.edu/ws/index.php?pid=29542>. Accessed: Feb. 26, 2010.

⁷⁵³ *Ibid.*

⁷⁵⁴ *Ibid.*

With what amounted to a presidential blessing, Congress lost no time in preparing a reclamation bill. The day after Roosevelt's message was read to Congress Newlands "introduced a bill in the House of Representatives to authorize and begin the construction of reservoirs, canals, and other works necessary for the irrigation of arid lands in the State of Nevada; which was referred to the Committee on Irrigation of Arid Lands."⁷⁵⁵ The same day, Representative William Augustus Reeder (R-Kan.) introduced a bill similar to Newlands', that is "to authorize the construction of reservoirs, diversion canals, artesian wells, and other works necessary for the irrigation of arid and semi-arid lands of the United States."⁷⁵⁶ The next day, December 4, 1901, Senator Henry Clay Hansbrough (R-N.D.) introduced a comparable bill in the Senate.⁷⁵⁷ The final version of the bill, known as the Newlands Reclamation Bill, was passed by the Senate with only one dissenting vote. President Roosevelt signed the bill on June 17, 1902.⁷⁵⁸ Smythe believed that June seventeenth should be kept as a "holiday" to remember the Theodore Roosevelt signing the Newlands Act.⁷⁵⁹ On the other hand, Gene M. Grassley thought the "Newlands legislation, as we now know, was an anomaly, cleverly conceived by a conservation-

⁷⁵⁵ "Forestry and Irrigation in Congress: Measures Introduced in the First Session of the Fifty-Seventh Congress," *Forestry and Irrigation* 8 (1902): 75.

⁷⁵⁶ *Ibid.*

⁷⁵⁷ *Ibid.*, 75-76.

⁷⁵⁸ *Newlands Reclamation Act* (June 17, 1902), ch. 1092, *U.S. Statutes at Large* 32 (1902): 388.

⁷⁵⁹ Smythe, *Constructive Democracy*, 375.

minded, politically astute president and a crusading Nevada congressman. Suddenly, his fellow western senators, who had long trumpeted the virtues of private enterprise, found themselves in the bastion of public subsidy.”⁷⁶⁰

With a tool like the Newlands Reclamation Act, boosterism was successful. The first project to be undertaken pursuant to the new law was the Truckee-Carson project in Nevada. This project did something important and was completed soon. Appropriately, Francis G. Newlands, now a Senator, presided over the project’s inauguration ceremony. Boosters promised that the Truckee-Carson project would irrigate 100,000 acres.

William E. Curtis, wrote in the *Las Vegas Age*

The land is good for alfalfa, sugar beets, potatoes, and all the root crops and fruits of the temperate zone. . . . Part of the land reclaimed will be the old Forty-Mile Desert, or Carson’s Sink, which was a horror of early emigrants—the worst part of the overland trail; and was lined the entire distance with the bones of men and animals. . . . All of this desert will be redeemed . . . and make a paradise of what is now the most desolate part of Nevada.⁷⁶¹

According to the *Las Vegas Age*, in the first five years after the Newlands Act was passed in 1902 eight towns were built and 10,000 people were settled on Nevada’s desert lands.⁷⁶² Thus, boosterism, with the tools of the Carey Act and the Reclamation Act, achieved some success. However, Donald J. Pisani concluded, “The Reclamation Act

⁷⁶⁰ Grassley, 241.

⁷⁶¹ William E. Curtis, “Conquest of the Great American Desert,” *Las Vegas Age*, August 12, 1905, 2.

⁷⁶² “Desert and Swamp Lands,” *Las Vegas Age*, August 3, 1907, 4.

acknowledged—by its offer of ‘free’ land and interest-free loans—that reclamation could not pay for itself. Projects had to be evaluated as much for ‘intangible benefits’ as for direct economic returns.”⁷⁶³

⁷⁶³ Pisani, *To Reclaim A Divided West*, 323.

Chapter Nine

The Nevada Water Law of 1913

“The water problem has been the most difficult that Nevada has ever had to face,
but its complete solution is only a matter of time, money and energy.”

— *Reno (Nev.) Evening Gazette* (1912)

“How to conserve this excess water to serve the needs of summer-grown crops
is the problem of arid America.”

— Katharine Coman (1911)

Previous chapters have examined the three strands which were braided into the social, political and legal milieu in Gilded Age Nevada. Two of these stands were the tragedy of the commons, and boosterism. The third strand was populism from about 1850 to about 1900, progressivism from about 1900 forward, except for a brief populist resurgence in 1913. This chapter will examine how this was experienced in the passage of the Water Law of 1913.⁷⁶⁴ This chapter will also examine how progressivism

⁷⁶⁴ *Nevada Water Act of 1913* (March 22, 1913), ch. 140, *Statutes of the State of Nevada* 1913: 192 codified as amended at *Nevada Revised Annotated Statutes* (Mathew Bender 2010) §§ 533.060 et seq.

reasserted itself to modify the Water Law of 1913 through court challenges and amendment.

After the silver rush of the 1860s played out and the State's population began to decline rapidly, Nevada became the "butt of cruel jokes."⁷⁶⁵ "Wags" called Nevada "a defunct mining camp represented by two U.S. Senators," or, in the alternative, claimed that California was represented by "four U.S. Senators and an extra congressman."⁷⁶⁶ Nevadans were not amused. Nevada's population decline coincided with the rise of progressivism. Progressives, being technocrats, understood that the solution to Nevada's problem was more people, and that these people would need homes and jobs, and the best way to provide both together and at once was to offer any would-be immigrant a small farm. However, to make farming viable in a desert such as the Great Basin, irrigation was necessary. Donald Pisani wrote, "In an age enamored with harnessing nature and achieving mastery over the earth, irrigation was an important part of 'scientific agriculture.'"⁷⁶⁷ As examined in an earlier chapter, irrigation was a technical solution to the technical problem of aridity, but aridity was a real problem nonetheless.

While other Western States— notably Wyoming and Colorado —were writing water policy into their statutes and constitutions, Nevada relied on a hodgepodge of often confusing, contradictory and inapplicable court decisions, and legislative half

⁷⁶⁵ Pisani, *To Reclaim A Divided West*, 183-185.

⁷⁶⁶ *Ibid.*

⁷⁶⁷ Pisani, *To Reclaim A Divided West*, 73.

measures.⁷⁶⁸ In 1912, Clesson S. Kinney wrote, “Our criticism of the Nevada laws does not extend so much to the present laws as they now exist, but to the great delay of the legislature in the enactment of any laws.”⁷⁶⁹ Indeed, Nevada did not pass a comprehensive water code until 1903. Clesson S. Kinney blamed this tardiness on “local prejudices.”⁷⁷⁰ Pisani suggests that “the fear that one section [of Nevada] might profit at the expense of another forced lawmakers either to abandon programs in their infancy or to engage in a futile effort to provide ‘something for everyone.’”⁷⁷¹ John M. Townley believed that Nevadans preferred “agricultural anarchy to any deliberative system for

⁷⁶⁸ Wyoming was the first State to declare the “water of all natural streams . . . to be the property of the State.” Wyo. Const. art. VIII, § 1 (1889). “Wyoming was the first State to provide by Constitutional enactment that the water within the borders of the State is the property of the State.” Grace Raymond Hebard, *The Government of Wyoming: The History, Constitution and Administration of Affairs* (San Francisco: The Whitaker and Ray Co., 1907) 127. Colorado on the other hand, declared “The water of every natural stream to be the property of the public.” Colo. Const., art. 16, § 5 (1876). Whether the water is property of the “public” or property of the “State,” as discussed in an earlier chapter, is a distinction without a difference. “The first extensive code of water laws was that adopted by Wyoming in 1890. In 1895 Nebraska adopted a code substantially the same in principle as that of Wyoming, and in 1903 Idaho, Nevada, and Utah adopted similar codes with modification suggested by the experience of Wyoming.” Long, 21. “There is no provision in the Nevada constitution relating to irrigation, but there has been considerable legislation, and an irrigation code was adopted in 1903, which has been superseded by later codes in 1905, 1907, and 1913.” *Ibid.*, 48. There is still no provision in the Nevada constitution governing water.

⁷⁶⁹ Kinney, 4: 3442.

⁷⁷⁰ *Ibid.*, 4: 3455.

⁷⁷¹ Pisani, *To Reclaim A Divided West*, 169.

controlling access and use of surface irrigation water.”⁷⁷² In fact, Nevada was suffering from a sort of Jeffersonian/Jacksonian/ Populist hangover in which individualism and small government were prized above efficiency even in the face of changed economic and social realities.

Nevada was laggard solving this problem because for the first thirty years or so, the problem did not exist. So long as the population was growing and the economy was based on mining, water policy was biased in favor of miners. The first statute passed by the Territory of Nevada’s new legislature adopted the “Common Law of England” as the “rule of decision in all Courts of this Territory.”⁷⁷³ By doing so, the Legislature, intentionally or unintentionally, adopted the riparian doctrine as well. In *Van Sickle v. Haines*, the Nevada Supreme Court approved riparian rights for landowners, that is, people who held their lands under a federal patent, as opposed to others who were merely, technically, squatters.⁷⁷⁴ Although this decision was a correct ruling according to the “Common Law of England,” it was completely wrong according to the common law of Nevada, that is the traditions, customs, and practices of Nevadans, which already

⁷⁷² Townley, 208.

⁷⁷³ *Act Adopting the Common Law* (October 30, 1861), ch. 1, *Laws of the Territory of Nevada* 1861:1; see also *Van Sickle v. Haines*, 7 Nev. 249, 285-286 (1872) overruled on other grounds by *Jones v. Adams*, 19 Nev. 78, 6 P. 442 (1885).

⁷⁷⁴ *Van Sickle v. Haines*, 7 Nev. 249, 257 (1872) overruled by *Jones v. Adams*, 19 Nev. 78, 6 P. 442 (1885). See also e.g. Long, 48; A. E. Chandler, *Elements of Western Water Law* (San Francisco: Technical Publishing Co., 1913) 5.

included the practice of prior appropriation.⁷⁷⁵ Other early decisions which followed the riparian rule included *Union Mill and Mining Co. v. Ferris* and *Union Mill and Mining*

⁷⁷⁵ “The common law, as frequently defined, includes those rules of law which do not rest for their authority upon any express or positive statute or other written declaration, but rather upon statements of principles found in the decisions of the courts. Common law is the law of necessity, and is applied in the absence of controlling statutory law.

“Although the common law is inseparably identified with the decisions of the courts, and can be determined only from such decisions, it has also been said that the common law is not limited to published judicial precedent, but includes the entire wealth of received tradition and usage, fundamental principles, modes of reasoning, and the substance of its rules as illustrated by the reasons on which they are based, rather than the mere words in which they are expressed. Thus, in a broader sense, the common law is the system of rules and declarations of principles from which our judicial ideas and legal definitions are derived, and which are continually expanding.

“The common law is not static, but is rather a dynamic and growing thing. It is to be derived from the interstices of prior opinions and a well-considered judgment of what is best for the community. The common law has an inherent capacity for growth and change. Its development is informed by the application of reason and common sense to the changing conditions of society, or to the social needs of the community which it serves. It is constantly expanding and developing in keeping with advancing civilization and the new conditions and progress of society, and adapting itself to the gradual change of trade, commerce, arts, inventions, and the needs of the country. It is said that public policy is the dominant factor in the molding and remolding of common-law principles to the end that they may soundly serve the public welfare and the true interests of justice.” Tim A. Thomas, “Common Law,” *American Jurisprudence*, 2nd ed. (Eagan, Minn.: West Group, 2000) 15A: 564-568.

Oliver Wendell Holmes equated the common law with “experience.” Oliver Wendell Holmes, *The Common Law* (Boston: Little, Brown and Co., 1881) 1. Holmes continued, “The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed and unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embraces the story of a nation’s development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.” *Ibid.*

Co. v. Dangberg.⁷⁷⁶ These three cases established a precedent for riparian rights, at least for some landowners/water users. Yet, other early cases followed the prior appropriation rule.⁷⁷⁷ Riparian rights were not finally and explicitly abrogated in Nevada until 1889.⁷⁷⁸ In this environment, the only thing certain was uncertainty, and uncertainty is detrimental to private investment and prosperity.

Legislative action was also slow in coming. Nevada's first statute to deal with irrigation in anyway was a criminal statute which made "every person who shall willfully and maliciously cut, break, injure, or destroy, any . . . structure erected to create hydraulic power, or to conduct water for mining, manufacturing, or agricultural purposes, or any embankment necessary to the same" or who damaged "any aperture in such dam,

⁷⁷⁶ *Union Mill and Mining Co. v. Ferris*, 24 F. Cas. 594, 2 Sawy. 176 (C.C.D. Nev. 1872) (No. 14,371) Citing *Van Sickle v. Haines* with approval; the case was remanded for further fact finding by a special master; *Union Mill and Mining Co. v. Dangberg*, 24 F. Cas. 590, 2 Sawy. 450 (C.C.D. Nev. 1873) (No. 14,270) Holding that land owners whose entry date was before July 26, 1866 are unaffected by the *Mining Act of 1866 (Chaffee Act)* (July 26, 1866), ch. 262, § 9, *U.S. Statutes at Large* 14 (1866): 253.

⁷⁷⁷ See e.g. *Proctor v. Jennings*, 6 Nev. 83, 87 (1870) ("Priority of appropriation, where no other title exists, undoubtedly gives the better right. And the rights of all subsequent appropriators are subject to his who is first in time."); *Ophir Silver Mining Co. v. Carpenter*, 4 Nev. 534 (1869); *Lobdell v. Simposn*, 2 Nev. 274, 277 (1866) The Court called doctrine of prior appropriation "anomalous," but "founded upon the clearest principles of justice . . . resting as it did for years upon no other titles but that of prior occupation and appropriation."

⁷⁷⁸ *Reno Smelting, Milling and Reduction Works v. Stevenson*, 20 Nev. 269, 282, 21 P. 317 (1889).

canal, flume, aqueduct, reservoir, embankment, or structure” guilty of a felony.⁷⁷⁹ This was a useful law to be sure, but hardly one to deal with the allocation a scarce resource. During the same session, the territorial legislature enacted a statute granting four named individuals a franchise to “improve the east branch or fork of Carson River.” The act explicitly permitted other parties “from taking the water of said river in ditches and conveying it to distant points for the *purpose of propelling machinery for mining purposes*, or for building dams for said purposes,” but made no reference to using water for irrigation.⁷⁸⁰ In 1865, Nevada State Senator James W. Haines “introduced a comprehensive bill to ‘. . . settle, regulate and declare water rights and privileges of irrigation and mining purposes,’” but the bill died in committee.⁷⁸¹ John M. Towley concluded, “Although competition for water was already prevalent by the mid-1860's, the thorough and effective nature of Haines’ plan disturbed legislators and their constituents who preferred the unfettered situation whereby users diverted water when and where they chose, subject only to legal proscription.”⁷⁸² Ironically, six years later, Haines would be the defendant in the celebrated Nevada Supreme Court case *Van Sickle v. Haines*, in

⁷⁷⁹ *Act Concerning Crimes and Punishments* (November 26, 1861), ch. 28, § 146, *Laws of the Territory of Nevada* 1861: 87; see also Albert Hart, *The Mining Statutes of the United States, California and Nevada* (San Francisco: A. L. Bancroft and Co., 1877) 92

⁷⁸⁰ *Act for the Improvement of the East Branch of the Carson River* (November 28, 1861), ch. 35, § 5, *Laws of the Territory of Nevada* 1861: 101 (Italics added.).

⁷⁸¹ Townley, 44. Ellipsis as in Townley.

⁷⁸² *Ibid.*

which the Court upheld Haines' rights as a riparian owner.⁷⁸³ In 1866, Nevada passed its first law recognizing irrigation. This law merely required a party "desiring to construct a ditch or flume to record, in the county in which the ditch was to be built, a certificate and plat. This record was intended to give constructive notice to all other proposed appropriators."⁷⁸⁴ This was the same year Congress passed the Act of July 26, 1866, which among other provisions, recognized local and State laws regulating water.⁷⁸⁵ This law, which primarily regulated mining on public lands and dealt with water rights only in passing, "was the result of a struggle in Congress led by Senator William M. Stewart, of Nevada, to defeat the proposition to sell the mines on the public lands to pay the national debt growing out of the Civil War."⁷⁸⁶ However, to the extent the federal Mining Act of 1866 dealt with water, agriculture, and homesteads, carried with it its own set of problems. Elwood Mead remarked, "This law, like so many of the western irrigation laws, permitted the indiscriminate filing of indefinite and ridiculous claims."⁷⁸⁷

⁷⁸³ *Van Sickle v. Hains*, 7 Nev. 249 (1872).

⁷⁸⁴ Mead, *Irrigation Institutions*, 312-313; Hutchins, *Selected Problems*, 74; *At to Allow Any Person or Persons to Divert the Waters of Any River or Stream* (March 3, 1866), ch. 100, § 1, *Statutes of the State of Nevada* 1866: 202-203.

⁷⁸⁵ *Mining Act of 1866 (Chaffee Act)* (July 26, 1866), ch. 262, § 9, *U.S. Statutes at Large* 14: 253 codified as amended at *United States Code Annotated* 43 (2010): § 661.

⁷⁸⁶ Long, 148 citing Gregory Yale, *Legal Titles to Mining Claims and Water Rights In California Under the Mining Law of Congress, of July, 1866* (Roman and Co., 1867), 10

⁷⁸⁷ Mead, *Irrigation Institutions*, 313.

Nevada would have to wait seventeen years before the Legislature attempted to deal with irrigation again. In the meantime, the situation became desperate. United States District Court Judge Edward Silsby Farrington, of Nevada, opined:

The demand for regulation [of water rights] is more and more insistent, as the people of the state [of Nevada] come to understand how limited is the supply, how immeasurable the need for water, and how essential it is to the general welfare that every stream and every foot of water within our boundaries should perform its largest possible economic service.⁷⁸⁸

Farrington referred to “the manifold and inevitable embarrassments and difficulties” which arise from the fact that practically all Nevada water rights are undefined, and therefore debatable. . . . More than 700 persons and corporations claim rights to use water from the Humboldt river. For the most part these claims are uncertain and indefinite; the uncertainty of each affects and adds to the indefiniteness of every subsequent appropriation.”⁷⁸⁹ Pisani described the situation

When the 1889 legislature met, there were virtually no laws regulating the acquisition or use of water in Nevada, and riparian rights had not yet been disallowed by the state supreme court, as they would be later in the year. On both the Humboldt and Carson rivers, water users demanded a cheap way to protect their rights.⁷⁹⁰

However, Chief Justice John Adams Sanders wrote, “Many of those who have been for years . . . entirely dependent upon the variable flow of the Humboldt for the success of

⁷⁸⁸ *Bergman v. Kearney*, 241 F. 884, 890, 891 (D. Nev. 1917).

⁷⁸⁹ *Ibid.*

⁷⁹⁰ Pisani, *To Reclaim A Divided West*, 196.

their farming enterprises look askance upon any water law . . . that tends to limit or to police their right to the use of water.”⁷⁹¹

Among those urging decisive legislative action was Francis G. Newlands, then a real estate developer and irrigation entrepreneur and not yet elected to the House of Representatives. The Legislature acted, and passed Nevada’s first attempt at a comprehensive water code.⁷⁹² Sylvia Harrison characterized the 1889 act as “an ambitious law.”⁷⁹³ The 1889 law provided “for the filing of claims, giving the names, post-office addresses, names of the ditches, locations of headgates, and providing for special books of record.”⁷⁹⁴ The Act of March 18, 1889 also divided Nevada into irrigation districts and provided for commissioners to “to control the distribution of water.”⁷⁹⁵ Although the attempt as a new water regime is worthy of admiration in its own right, the 1889 law was deeply flawed. As Pisani reported, “The law resulted in a rush to county recorder’s offices by water user’s attempting to legitimize extravagant claims. It

⁷⁹¹ *Pitt v. Scrugham*, 44 Nev. 418, 426-427, 195 P. 1101 (1921).

⁷⁹² *Act to Regulate the Use of Water for Irrigation*, (March 9, 1889), ch. 113, *Statutes of the State of Nevada* 1889: 107 repealed by *Act to Repeal Act of March 9, 1889* (February 3, 1893), ch. 127, *Statutes of the State of Nevada* 1893: 131.

⁷⁹³ Sylvia Harrison, “The Historical Development of Nevada Water Law,” *University of Denver Water Law Review*, 5 (2001): 162.

⁷⁹⁴ Act of March 19, 1889, ch. 113, *Statutes of the State of Nevada* 1889: 107 repealed by Act of February 3, 1893, ch. 127, § 1, *Statutes of the State of Nevada* 1893: 131; Elwood Mead, *Irrigation Institutions*, 313.

⁷⁹⁵ *Ibid.*

neither limited the amount of water that could be claimed nor required that water be put to an immediate ‘beneficial’ use.”⁷⁹⁶ One year, two months later, a trial court in “Humboldt County ruled the law unconstitutional.”⁷⁹⁷ The ruling was never appealed to the Nevada Supreme Court, so the trial court’s ruling stood. Regardless, in 1893, the legislature repealed the law and “Nevada returned to the pre-1893 era when there was no state control over water rights.”⁷⁹⁸ The result of this delay was a situation where most of the available water was appropriated long “before any statute prescribing a method of appropriation, and that such rights had been recognized by the courts as being vested under the common law.”⁷⁹⁹

To this point, all three strands— populism, the tragedy of the commons, and boosterism— were bearing the sweet fruit of prosperity. Populism was a particularly strong strand, especially insofar as water law and water rights were concerned. During these early frontier years, the Jeffersonian-Jacksonian ethic was strong. Prior appropriation— first-in-time-first-in-right, or in other words, finders’ keepers— perfectly fit the individualistic ethos. Nevadans wanted a small government and generally distrusted that which did exist. A water regime meant a government bureaucracy telling

⁷⁹⁶ Pisani, *To Reclaim A Divided West*, 196.

⁷⁹⁷ *Ibid.*

⁷⁹⁸ *Ibid.*; see also Act of (February 3, 1893), ch. 127, § 1, *Statutes of the State of Nevada* 1893: 131.

⁷⁹⁹ Hutchins, *Selected Problems*, 74 citing *Ormsby County v. Kearney* 37 Nev. 314, 142 Pac. 803 (1914).

Nevadans who could use water and how much, which seemed anti-democratic. And it was. To Nevadans of the Gilded Age, democracy meant elections—*vox populi*—and fairness meant taking turns. Nevadans also distrusted, even feared, monopoly. A water regime also smacked of monopoly whether the water was controlled by the State, or a private company. The tragedy of the commons was still a long way off— there were still not enough people drawing on the available water to cause the tragedy, yet. As for boosterism, those who mine the earth, and those who mine the miners flocked to Nevada looking for wealth, and some of them found it. Unfortunately, it did not last.

Not coincidentally, progressivism was on the rise at the same time as the mines began to fail. For contemporaries, the conclusion was inescapable: populism was failing; Jeffersonianism/Jacksonianism was failing; individualism was failing; every-man-for-himself was giving way to we're-all-in-this-together. As examined in a previous chapter, progressivism stood for rule by experts, at least in part. Progressives set up boards of experts to deal with every conceivable problem, including water issues.

In 1901, Nevada took a major step in this direction by creating a State Board of Irrigation. The Nevada State Board of Irrigation consisted of the governor, surveyor-general, and attorney-general of the state.⁸⁰⁰ All three of these officials were elected; none of these individuals was necessarily a technical expert in the fields of irrigation or

⁸⁰⁰ *Act to Provide for the Measurement of Streams* (March 16, 1901), ch. 59, § 2, *Statutes of the State of Nevada* 1901: 72-73.

hydrological engineering.⁸⁰¹ The board was plagued by political gridlock and rivalry between the members who occasionally came from different political parties, had different agendas, and ambitions. Nevertheless, the board of irrigation was a first step toward governmental control over water rights. By the act of February 26, 1907, the state engineer, an expert, was made a member of the Board.⁸⁰² After the state engineer was made a member of the Board, he gradually took control of all aspects of irrigation.⁸⁰³

In 1903, the Nevada Legislature passed an act accepting the provisions of the 1902 federal Newlands Act. This law was not passed entirely on the initiative of the people of Nevada. John M. Townley made a compelling case for the position that Newlands, now a United States Senator, and Frederick H. Newell, director of the United States Reclamation Service, worked to “persuade” the Nevada State Legislature to establish a state water authority that would work with, but be subordinate to, the federal

⁸⁰¹ Among other duties, the surveyor-general was “chief engineer and commissioner of internal improvements.” Among other duties, the surveyor-general was responsible for “plans and suggestions for the construction and improvement of . . . canals, and aqueducts; also, . . . for the draining of marshes, prevention of overflows, and the irrigation of arable lands by means of reservoirs, canals, artesian wells, or otherwise. . . . An estimate of the aggregate quality of all lands used for or adapted to tillage and grazing within this state, and each county of the state, together with a description of the locations in which the same may be situated.” *Act Concerning the Office of Surveyor General* (March 20, 1865), ch. 194, § 5, *Statutes of the State of Nevada*, 1864-65: 411-412 codified at *Revised Laws of Nevada* (1912), § 4351.

⁸⁰² *Act to Provide for the Appropriation, Distribution and Use of Water* (February 26, 1907), ch. 18, § 21, *Statutes of the State of Nevada* 1907: 30. Cited hereafter as “1907 Act.”

⁸⁰³ Long, 372.

Reclamation Service.⁸⁰⁴ Townley concluded, “The Washington-based technocrats realized that local problems over water distribution and rights to appropriation could best be negotiated by state residents, rather than outsiders. An agency with those powers was politely demanded by [United States Geological Service Director Charles Doolittle] Walcott.”⁸⁰⁵ Indeed, the Nevada act’s lengthy preamble expresses the State’s desire “to cooperate in every way with the Secretary of the Interior in the construction, operation, management and maintenance of irrigation works” and the legislature’s belief that “it is in the interest of the State of Nevada that every inducement should be held out to the Secretary of the Interior by cooperative and helpful State legislation.”⁸⁰⁶ Substantively, the Act created the Office of State Engineer. “Creation of a state engineer’s office in 1903,” Townley wrote:

represented a grudging change within a legislature that had so often preferred agricultural anarchy to any deliberate system for controlling access and use of surface water. Only the temptingly dangled benefits of a multimillion dollar federal program overcame their inherent preference for unlimited individual opportunity, although that usually translated into unfettered license for the largest agriculturalists to take what they needed at the expense of other users.⁸⁰⁷

⁸⁰⁴ Townley, 207.

⁸⁰⁵ *Ibid.*

⁸⁰⁶ *Act Providing for the Cooperation of the State of Nevada With the Secretary of the Interior in the Construction of Irrigation Works* (February 16, 1903), ch. 4, preamble, *Statutes of the State of Nevada* 1903: 24. Cited hereafter as “1903 Act.”

⁸⁰⁷ Townley, 208.

The person who would cooperate with and help the Secretary of the Interior reclaim Nevada was the newly created State Engineer.⁸⁰⁸ The State Engineer was a gubernatorial appointee, but also a technocratic expert. Section three specified that the state engineer have training “in hydraulic engineering and such practical skill and experience as shall fit him for the position.”⁸⁰⁹ Curiously, the Governor could only appoint someone to the position of State Engineer on the recommendation of the federal Secretary of the Interior or the director of the United State Geographical Survey.⁸¹⁰ Townley wrote, “This requirement of doubtful constitutionality indicates the degree to which state sovereignty was willingly limited in order to attract federal funding.”⁸¹¹ The first Nevada State Engineer was A. E. Chandler.⁸¹² Nevertheless, the office of State Engineer remained weak and ineffective due to a lack of adequate staff, political machinations, and,

⁸⁰⁸ 1903 Act, §§ 3-5, *Statutes of the State of Nevada* 1903: 25-26.

⁸⁰⁹ *Ibid.* § 3, 25.

⁸¹⁰ *Ibid.*

⁸¹¹ Townley, 205.

⁸¹² Wren, 154.

according to Townley, “the tendency of succeeding state engineers to use the post to climb to the governorship and beyond.”⁸¹³ The office continues to this day.⁸¹⁴

The 1903 Act also established the first mechanism for the resolution of disputes, other than lawsuits, or violence. Greg Walch wrote, “Before 1903, the only way a person could establish a ‘water right’ superior to that of another was through the courts.”⁸¹⁵ At the time this act was pending, Mead wrote

There is no way of settling controversies over water except in the courts. Litigation has been characterized by great cost and barrenness of results. Where a litigant has gained a certain volume of water in a decree, he has had no means of protecting his right. He must either resort to force or institute contempt proceedings, and he generally chooses the former. The lesson of Nevada, as of other states, is the need of *administrative control*.⁸¹⁶

Such administrative control is a hallmark of progressivism. Under the Act, state engineer was authorized and responsible to “prepare for each stream in the State of Nevada a list of the appropriations of water according to priority.”⁸¹⁷ Thereafter, water would be allocated according to the list the state engineer prepared. The Act authorized any “aggrieved”

⁸¹³ Townley, 209. One notable instance of a State Engineer using his post to challenge the governor was Emmett D. Boyle, a Democrat, who in fact challenged Governor Tasker Oddie, a Republican, in 1911. Oddie fired Boyle over policy differences that year. In 1914, Boyle ran for governor and was elected.

⁸¹⁴ *Nevada Revised Statutes Annotated* (2010), §§ 532.010 to 532.230.

⁸¹⁵ Walch, 18.

⁸¹⁶ Mead, *Irrigation Institutions*, 314 (Italics added.).

⁸¹⁷ 1903 Act, § 9, 26.

parties to bring a lawsuit against the state engineer in “any Court having jurisdiction . . . to have their rights determined.”⁸¹⁸ The act also provided for a number of Water Commissioners to “make apportionment of the waters of [each] stream according to the list of priorities” prepared by the state engineer.⁸¹⁹

Also, in 1903, for the first time, the Nevada state legislature declared, All natural water courses and natural lakes, and the waters thereof which are not held in private ownership, belong to the public, and are subject to appropriation for the beneficial use and the right to the use of water so appropriated for irrigation shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure and the limit of the right; the use of all water now appropriated or that may hereafter be appropriated, is hereby declared to be a public use.⁸²⁰

This provision follows, almost verbatim, similar provisions in the Colorado Constitution. It shows clearer than anything the move toward the collectivist-socialist attitudes of progressivism.

Townley’s conclusion that the Legislature agreed to pass the 1903 Act “in order to attract federal funding” misses the mark, but narrowly. The 1903 water law in fact shows the conversion of Nevada politicians from an overwhelmingly populist frame of mind to a progressive one. The conversion may not have been sincere for all the members of the Nevada Legislature, but Townley is wrong to accuse them all of mercenary motives. Progressivism and conservatism were on the ascendancy in 1903. Indeed, Robert H.

⁸¹⁸ *Ibid.*, § 14, 28.

⁸¹⁹ *Ibid.*, § 15, 28.

⁸²⁰ 1903 Act, § 1, 24.

Wiebe correctly wrote, “Progressivism was the central force in a revolution that fundamentally altered the structure of politics and government early in the twentieth century.”⁸²¹ Thomas Wheelock wrote, “The Newlands Reclamation Act of 1902 exemplified the spirit of Roosevelt’s Progressivism.”⁸²² Progressivism was very scientific. “Indeed,” Pisani wrote, “science in the “Progressive Era” was used as often to impose order or discipline on society or to reform the structure of government as to describe processes of nature. In effect science was an extension of politics.”⁸²³

The 1903 act was slightly amended in 1905.⁸²⁴ The amendment repealed the limit of three acre-feet per acre of irrigated land per year,⁸²⁵ and established a procedure for appropriating water.⁸²⁶ This procedure required would-be appropriators to apply to the state engineer for “permission” to appropriate water before beginning any work on canals, ditches or other works.⁸²⁷ If there was water available and the “application not detrimental to the public welfare,” the state engineer was required to grant the

⁸²¹ Wiebe, 181.

⁸²² Wellock, 42. See also Pisani, *Water and American Government*, xiii.

⁸²³ Donald J. Pisani, “Forests and Reclamation, 1891-1911,” *Forest and Conservation History*, 37, no. 2 (April 1993):76.

⁸²⁴ *Amends to the Act Approved February 16, 1903* (March 1, 1905), ch. 46, *Statutes of the State of Nevada* 1905: 66. Cited hereafter as “1905 Act.”

⁸²⁵ *Ibid.* § 1, 66.

⁸²⁶ *Ibid.* § 3, 67-68.

⁸²⁷ *Ibid.*

application.⁸²⁸ Significantly, only new appropriators were required to get the state engineer's permission; those whose appropriations predated March 1, 1905 were not required to do so.⁸²⁹ The Act also provided for a judicial appeal to anyone "aggrieved" by the state engineer's decision.⁸³⁰ The act also established that water used for irrigation was appurtenant to the land upon which it is used.⁸³¹

In 1907, the Nevada Legislature tried again. The water law passed that year explicitly repealed the Act of February 16, 1903 and the Act of March 1, 1905.⁸³² The 1907 act again declared that "all natural watercourses and natural lakes and the waters thereof which are not held in private ownership, belong to the State and are subject to appropriation for beneficial uses."⁸³³ The act went on to protect existing rights, define the limits of water rights to beneficial use, not to exceed three acre-feet of water per acre of land, to recreate the office of state engineer, and to define the process for appropriating any waters or changing any previous appropriation.⁸³⁴ Unlike the earlier procedure which

⁸²⁸ *Ibid.*, § 3, 68.

⁸²⁹ Nevada. State Engineer's Office. *Synopsis of the Water Law of 1913 as Amended Chapter 253, Statutes of 1915*, by W. M. Kearney. Pamphlet no. 7 (Carson City, Nev.: State Printing Office, 1915), 4. Cited hereafter as "Kearney, *Synopsis*."

⁸³⁰ 1905 Act, § 3, 68.

⁸³¹ *Ibid.*, 69.

⁸³² 1907 Act, § 32, 38.

⁸³³ *Ibid.*, § 1, 30.

⁸³⁴ *Ibid.*

required the would-be appropriator to merely give notice, under the 1907 act, a would-be appropriator was required to “make application to the State Engineer for permission.”⁸³⁵ The act provided for public notice, and an evidentiary hearing for any objectors. Finally, the State Engineer was empowered to deny the application, if there was no unappropriated water available, or required to grant it if there was water available and the “appropriation is not detrimental to the public welfare or . . . will not invade or impair the rights of other appropriators.”⁸³⁶ This provision in the law was the sort of this that was anathema to populists. It was not just governmental control, it was control by experts in government service, by bureaucrats who were never elected. It was anti-democratic, and, given that the civil service system was in its infancy, it also bore the stigma and stench of the spoils system. Persons who were “aggrieved by the action of the State Engineer” had standing to sue in “any court having jurisdiction,” and could appeal.⁸³⁷

After 1907, populists and other “opponents of conservation in the Western states mounted an increasingly effective counterattack.”⁸³⁸ In 1913, the Nevada Legislature

⁸³⁵ *Ibid.*, § 24, 35.

⁸³⁶ *Ibid.*, § 36, 36.

⁸³⁷ *Ibid.*, § 27, 37.

⁸³⁸ Wiebe, 213-214.

again tried to pass a comprehensive water law.⁸³⁹ Governor Tasker Oddie urged the Legislature to pass such a law during the 1911 legislative session.⁸⁴⁰ When the Water Law was finally passed at the closed of the 1913 legislative session, the *Nevada State Journal* proclaimed the new statute “important to all the agricultural sections and is a step toward better conditions in agricultural matters. The law contains sixty printed pages and will require considerable study to master all its important features.”⁸⁴¹ The Act of February 26, 1907 and the Act of February 20, 1909, which created irrigation districts, were explicitly repealed, along with “all other acts or parts of acts in conflict” with the new legislation.⁸⁴² The act begins with “General Provisions” concerning public ownership of water, prior appropriation, beneficial use, and so forth.⁸⁴³ Sections ten, and twelve through seventeen deal with the office of the state engineer.⁸⁴⁴

⁸³⁹ *Ormsby County v. Kearney*, 37 Nev. 314, 336, 142 P. 803 (1914). Justice Frank Herbert Norcross wrote for the Court, “The water law of 1913 contains ninety sections and was manifestly designed to be a comprehensive statute covering the water law of this state.”

⁸⁴⁰ “Governor Has Sent A Special Message: Urges Passage of Several Bills Now Pending,” *Reno (Nev.) Evening Gazette*, February 23, 1911, 1

⁸⁴¹ “Work of Legislature is Now a Matter of History,” *Nevada State Journal*, March 23, 1913, 8.

⁸⁴² *Water Law of 1913*, ch. 140, § 88, *Statutes of the State of Nevada* 1913: 219; see also Keanery, *Synopsis*, 3.

⁸⁴³ *Ibid.*, §§ 1-9, 192-194.

⁸⁴⁴ *Ibid.*, §§ 10, 12-17, 194-195.

The gravamen of the law is the adjudication provisions. First, in a change from the 1905 Act, the 1913 Act required all existing appropriators prove their rights to water.⁸⁴⁵ Second, the 1913 Act revised the procedures for new appropriators claim water rights and perfect their title there to.⁸⁴⁶ Sylvia Harrison wrote, “At the time of its enactment, its [the Water Law of 1913's] system of adjudication of existing rights had far more immediate and controversial ramifications.”⁸⁴⁷ After more than half a century of unregulated appropriation, every stream in Nevada of any consequence was fully appropriated, and many were appropriated in excess of 100 percent.⁸⁴⁸ The tragedy of the commons had been reached. There were simply too many appropriators drawing on too little water, and, like Garrit Hardin’s hypothetical pasture, the commons was exhausted. This situation was as bad, or even worse than, that which existed before 1889.

Any law which purports to regulate or adjust rights that are not just legal, political, and economic, but deeply also emotional, would inevitably be challenged as unconstitutional. Water users brought several lawsuits in Nevada and federal courts to challenge the Water Law of 1913 on several grounds. The Nevada Supreme Court found the Law to be “clearly within the lawful exercise of such [police] power. [Because] the public welfare is very greatly interested in the largest economical use of the waters of the

⁸⁴⁵ *Ibid.*, §§ 18-58, 195-208; Kearney, *Synopsis*, 4.

⁸⁴⁶ *Water Act of 1913*, §§ 59-86, 208-218.

⁸⁴⁷ Harrison, 167.

⁸⁴⁸ *Ibid.*

state for agricultural, mining, power, and other purposes.”⁸⁴⁹ The Nevada Supreme Court also upheld the constitutionality of the 1913 Water Law against a due process challenge.⁸⁵⁰ A federal court declared that the 1913 Water Law was not an unconstitutional taking of private property.⁸⁵¹ However, the strongest constitutional challenge, and the one that would ultimately succeed in part, was to the authority of the state engineer to adjudicate water rights.

Sections eighteen through thirty-three, inclusive, of the 1913 Water Law empower the state engineer to investigate and adjudicate the water claims, and describe the procedure.⁸⁵² However, persons who felt themselves “aggrieved by the determination of the state engineer” still had a right to bring an action in “any district court of the State” with a further right of appeal to the Nevada Supreme Court.⁸⁵³ This was different from the earlier statute in that the decision making authority was moved away from the state engineer’s office to the courts. In a pamphlet, State Engineer William M. Kearney explained, “The Supreme Court in the case *Johannes Anderson et al. v. W.M. Keanery, as State Engineer*, being a test case on the constitutionality of the law, held that the order of

⁸⁴⁹ *Ormsby County v. Kearney*, 37 Nev. 314, 336-337, 142 P. 803 (1914).

⁸⁵⁰ *Vineyard Land and Stock Co. v. District Court*, 42 Nev. 1, 171 P. 166 (1918).

⁸⁵¹ *Bergman v. Kearney*, 241 F. 884, 907 (D. Nev. 1917).

⁸⁵² *Water Law of 1913*, §§ 18-33, 195-201.

⁸⁵³ *Ibid.*, § 34, 202.

determination was *prima facie* final only.”⁸⁵⁴ Joseph Long wrote, “The constitutionality of these provision of the act of 1913 was carefully considered in a recent case, and they were sustained in so far as they may be construed as vesting administrative powers only in the state engineer.”⁸⁵⁵ Farrington summed up the state engineer’s function this way, “What he does is merely preliminary, the initial step in a proceeding which culminates in a final decree by the district court; thus it is not the engineer, but the court, which exercises the judicial power of the state of Nevada.”⁸⁵⁶ In other words, the state engineer’s determination was merely expert testimony to be presented in a suit in equity.

Although the Water Law of 1913 generally survived the constitutional challenges, a lingering doubt remained as to some of the Law’s sections. Justice Patrick Anthony McCarran dissented from the Nevada Supreme Court’s finding that the state engineer exercised only “ministerial powers,” or at most “quasi-judicial” powers. McCarran wrote, “These contentions, in my judgment, are untenable, under a strict reading of the statute.”⁸⁵⁷

In 1915, section twenty-five, sections thirty through thirty-nine, inclusive, section fifty-two and section seventy-five of the Water Law of 1913 were amended; sections forty

⁸⁵⁴ Kearney, *Synopsis*, 3; *Anderson v. Kearney*, No. 2115 (Nev. Sup. Ct.) was a companion case to *Ormsby County v. Kearney*, 37 Nev. 314, 142 P. 803 (1914).

⁸⁵⁵ Long, 434-435.

⁸⁵⁶ *Bergman v. Kearney*, 241 F. 884, 907 (D. Nev. 1917).

⁸⁵⁷ *Ormsby County v. Kearney*, 37 Nev. 314, 376, 142 P. 803 (1914).

through forty-four, inclusive, were repealed; and sections 88a, 88b, and 88c were added.⁸⁵⁸ The sum of these amendments altered the adjudication powers and procedures of the state engineer. Kearney gave his official interpretation of the 1915 amendments

Practically no change was made in the law or the procedure prior to the time of the making of the order of determination by the State Engineer. Under the original law the order of determination of the State Engineer completed the proceedings unless the parties interested filed an action in the court against the State Engineer joining those adversely affected, praying for reversal or modification of the order of determination. . . .

The amendments of the law, adopted in 1915, provide specifically for the filing of the order of determination of the State Engineer with the District Court, so that all interested parties have opportunity to file exceptions before the order becomes a court decree by the approval of the court in the form submitted.⁸⁵⁹

Although the Water Act of 1913, together with the 1915 amendments, was found by the federal district court to be constitutional in *Bergman v. Kearney*,⁸⁶⁰ the Nevada Supreme Court, in 1921, in the case *Pitt v. Scrugham*, declared sections 29 through 32, inclusive, were severable, and “unconstitutional, because they attempt to give judicial powers to the state engineer to hear and determine contests involving not relative but vested rights, which the statute itself expressly inhibits [in] Section 84.”⁸⁶¹ These sections, 29 through 32, specify the procedures for the state engineer to hold evidentiary hearings into the

⁸⁵⁸ *Act to Amend the 1909 Act and Water Act of 1913* (March 25, 1915), ch. 253, *Statutes of the State of Nevada* 1915: 378.

⁸⁵⁹ Kearney, *Synopsis*, 3.

⁸⁶⁰ *Bergman v. Kearney*, 241 F. 884, 890-891, 907 (D. Nev. 1917).

⁸⁶¹ *Pitt v. Scrugham*, 44 Nev. 418, 427-428, 195 P. 1101 (1921).

decisions already made by the state engineer, thus, in effect making the state engineer the judge of his own case.

Despite amendments and judicial interpretations from time to time, the Water Law of 1913 remains the foundation of Nevada's water regime.⁸⁶² That any water regime was passed by the Nevada legislature after half a century of agricultural anarchy is a testament to Nevadans beginning to appreciate the coming tragedy of the commons. For nearly a century thereafter, the Water Law of 1913 has served Nevada well. It remains as a testament to the populists and boosters of Gilded Age Nevada who recognized that Nevada needed more people, that these people would need jobs, and that providing would-be migrants with a farm solved both problems as once. The populists were also following the Jeffersonian/Jacksonian tradition of the first half of the nineteenth century which valued the almost mythic yeoman farmer as the paragon of republican virtue. The Water Law of 1913 moved the responsibility for adjudication from the appointed, professional, technocratic Officer of the State Engineer—a very progressive position—and moved it to the courts, which in Nevada were, and still are, elected—a more populist position.

⁸⁶² Harrison, 169.

Chapter Ten

Conclusions

“And God said, Let the waters under the heaven be gathered together unto one place, and let the dry land appear: and it was so.”

— Genesis 1:9

“One response to the present crisis is a rush to the past—a mythical American part”

— William J. Novak (1996)

On March 22, 1913, Nevada Governor Tasker Oddie signed a bill enacting a new comprehensive water code for his State. The statute was a response to the Newlands Act of 1902. Marc Reisner opined, “What seems beyond question is that the Reclamation Act, or some version of it, was, by the end of the nineteenth century, inevitable”⁸⁶³ The Nevada act may have been an inducement to get federal funding for irrigation projects, but, regardless, the specific provisions of the act were the result of three strands which wove together to produce it. These three strands were the Industrial Revolution, the tragedy of the commons, and boosterism.

⁸⁶³ Reisner, 115-116.

In the summer of 2009, I went to the Nevada State Library and Archives in Carson City. I chose to go there by taking Interstate 5 then turning east on Interstate 80, and crossing the Sierra Nevada to Carson City. While driving through the Central Valley of California, one of the most productive agricultural areas in the world and an area completely dependant on irrigation, I noticed several signs posted along the way some proclaiming “Farm Water Feeds the Nation” and others proclaiming “No Water, No Jobs Equals Higher Food Costs,” and still others proclaiming “Congress Created Dust Bowl.” These signs all point to a common sentiment; that water for irrigation must be widely available and cheap, and that the federal government ought to provide it. Far from being the fiercely independent, solidly republican yeoman farmers of Jeffersonian/Jacksonian/Populist mythology, today’s agriculturalists are dependent on government largess for more than just the water they need to grow crops. This is true in California, among the entire American farm sector, and most especially in Nevada. Thomas Jefferson believed that America would remain an agrarian society for two hundred years, yet, as John M. Townley correctly concluded, “the concept of a homogeneous agricultural community in Nevada [and for that matter the rest of the United States] at the turn of the [twenty-first] century is fallacious.”⁸⁶⁴ What happened?

The Industrial Revolution. The harnessing of steam and steel to do the work men and animals had previously done increased food production, which increased population,

⁸⁶⁴ Townley, 211.

which increased demands for more food, and so forth. For a time, about two centuries so far, technology has kept the tragedy of the commons and a Malthusian population collapse at bay. However, the Industrial Revolution caused severe economic, social, and political dislocations. Old life ways disappeared. Old elites were dethroned, sometimes literally. Old patterns of trade and commerce ceased to be profitable. The new life ways which appeared were not always understood or appreciated. The new elites did not feel the same sense of *noblesse oblige* toward the masses, and the masses resented it. The new patterns of trade and commerce became profitable, but the profits were not evenly spread. The captains of industry, also known as the robber barons, became famously wealthy while factory workers, whom Marxists and others referred to as wage slaves, worked for pennies per day.

In America, the Industrial Revolution produced two sets of responses: one conservative to reactionary, the other liberal to radical. The first movement was populism. Populists looked backwards to an ideal, almost mythic, past that included the ideals of Jeffersonianism and Jacksonianism. The populist ideal emphasized individualism and although populists called for certain governmental intervention into the economy, they did so in a defensive way—insisting that the government protect *the little guy*, the *ordinary Americans*, from monopolies and special interests. Populism was the last chorus of eighteenth century Enlightenment liberalism. To the populists, democracy meant the voice of the people ascertained through frequent elections, and the voice of the people was to be obeyed. Populism meant special privileges for none. The second

movement was progressivism. Progressives looked forward to an ideal, almost mythic, future that included ideals of science and efficiency. The progressive ideal emphasized collectivism and government intervention in the economy and in society in a positive, active way to promote the general welfare, and efficiency up to the perfection of human society and even the human species. Progressivism was the version of twentieth century socialism. To progressives, democracy meant equal treatment to all people.

Progressivism meant special privileges for all.

Both populists and progressives believed that small, owner-operated farms would be the cure to a multitude of social, economic, and political ills, although for different reasons. The East had no available land for such a program; the West had the land, but no water. To solve the technical problem of aridity, both populists and progressives favored irrigation. Populism and progressivism would take turns being dominant during the last decades of the Long Nineteenth Century. From about 1800 to about 1896, populism was in the ascendancy. Beginning in the 1880s, progressivism was in the ascendancy, and it would continue ascendent—under such names as Progressivism, the New Nationalism, the New Freedom, the New Deal, the New Frontier, the Great Society, even Compassionate Conservatism—to this day. Each influenced the course of Nevada water law. The 1903 Act was progressive in its general intent and specific details. The 1913 Act was populist in its general intent and specific details. The amendments made in 1915 shifted Nevada's water code back toward progressivism.

The second strand braided into Nevada's water law was the tragedy of the commons. According to Genesis, God gathered all the water of Earth together and left the land dry. Some land was left drier than other. Earth has about 366 million trillion gallons of water.⁸⁶⁵ Of that, only less than 1 percent, about 9.25 million trillion gallons, is fresh water available for human use, including growing crops and household uses.⁸⁶⁶ "Irrigated agriculture accounts for 70 percent of the fresh water used by humans."⁸⁶⁷ Nineteenth-century Americans well knew that rainfall west of the Missouri River could not support agriculture, and that irrigation was the only way to grow crops. In the West, fresh water was found only at higher elevations, but only seasonally, and in a few widely separated rivers. Management of this commons required some form of rationing. The law inherited from the East—riparian rights—was simply not suitable to the West, so a new law had to be invented—prior appropriation and beneficial use. In effect, Westerners chose to ration water on a first-come-first-served basis.

The third strand was boosterism. Boosters promoted the irrigation. Boosterism worked. More people came and more farms were planted, the higher real estate prices went and the more business was generated. Looking ahead one hundred years to 1993,

⁸⁶⁵ Brad Scriber, "Water's Out There," *National Geographic* 217, no. 4 (April 2010): 25. That is, 366,000,000,000,000,000 or 366×10^{18} gallons.

⁸⁶⁶ William E. McNulty, "The World's Fresh Water," *National Geographic* 217, no. 4 (April 2010): 46. That is, 9,250,000,000,000,000,000 or 9.25×10^{18} gallons.

⁸⁶⁷ Elizabeth Royte, "The Last Drop," *National Geographic* 217, no. 4 (April 2010): 176.

J.M. Rusk stated confidently, “The man who farms a large farm successfully in 1993 must be such a man as would be successful in any career, whether professional or mercantile, and who, like the merchant or manufacturer, must command some capital, and be capable of utilizing profitably the labor of his fellows.”⁸⁶⁸ In fact, as the twentieth century wore on, irrigation water was used more for suburban lawns, swimming pools, and golf courses than for farms; nevertheless, boosters continued to boost Nevada, and the West. Charles F. Wilkinson summed up irrigation’s accomplishments:

Although homesteading is commonly associated with the nineteenth century, in fact the greatest flood of homestead patents occurred between about 1900 and 1920. The high water mark was reached in 1910, when 23 million acres were patented. . . . In the eleven western states, reclamation water is applied to 8.2 million acres of about 28.4 million irrigated acres, approximately 28 percent of all irrigated lands. The impact of this irrigated land went far beyond the actual acres watered . . . Farms create jobs in farm employment and in the equipment businesses that supply farms. Whole communities then grow up around the agricultural base.⁸⁶⁹

However, Reisner believed that the development would have occurred anyway, “No matter what the government did, short of erecting a wall at the hundredth meridian, the settlement of the West was going to continue. The only way to prevent more cycles of disaster was to build a civilization based on irrigated farming,”⁸⁷⁰

⁸⁶⁸ J. M. Rusk, “American Farming a Hundred Years Hence,” *The North American Review*, 156, issue 436 (March 1893): 261.

⁸⁶⁹ Charles F. Wilkinson, *Crossing the Next Meridian: Land, Water, and the Future of the West* (Washington: Island Press, 1992) 247-248.

⁸⁷⁰ Reisner, 115-116.

And then the water started to run out. The twentieth century was the wettest century of the past millennium,⁸⁷¹ and technology in the form of bigger dams and canals kept the day of reckoning off, but eventually as the twenty-first century dawned the water started to run out. Donald J. Worster observed, “The fear of going dry has driven many communities to extraordinary efforts, provoking in them the deepest anxiety, the sorriest desperation, it has stirred them out of lethargy to undertake the most difficult labors: building enormous engineering works to bring water from distant places and stave off their thirst.”⁸⁷² Some cities in the arid region “function like space stations, importing every ounce of fresh water from distant rivers or fossil aquifers.”⁸⁷³ James Gustave Speth wrote, “The American West is now living on borrowed water. Even discounting farfetched schemes to import water into the region from Canada, the West is using water faster than nature can replenish it. The borrowers are this generation, and the lenders the next.”⁸⁷⁴

The American West is coming up against what Ian Morris calls “the paradox of development.”⁸⁷⁵ Morris defines “the paradox of development” as “rising social

⁸⁷¹ Robert Kunzig, “The Drying of the West,” *National Geographic* 213, no. 2 (February 2008): 97.

⁸⁷² Worster, 20.

⁸⁷³ Kingsolver, 44.

⁸⁷⁴ James Gustave Speth, “Forward,” in El-Ashry and Gibbons, ix.

⁸⁷⁵ Ian Morris, *Why The West Rules—For Now: The Patterns of History, and What They Reveal About the Future* (New York: Farrar, Straus and Giroux, 2010) 28.

development generates the very forces that undermine further social development. . . .

Success creates new problems; solving them creates still newer problems.”⁸⁷⁶ Irrigation was not necessarily an environmentally wise program. Frederick H. Newell complained, “Throughout arid North America, 15 percent to 20 percent of the irrigated lands, . . . have been ruined by careless handling of the water and by lack of drains. The surface has been converted into swamps or covered with alkali over tens of thousands of acres.”⁸⁷⁷ Speth pointed out that irrigation caused “soil erosion, sanitization and waterlogging, high salinity levels in ground and surface water, and toxic elements in surface and subsurface return flows are the price some water users and society as a whole are paying to make desert agriculture bloom.”⁸⁷⁸ Irrigation solved the problem of aridity which, in turn, solved the problem of Nevada’s declining population, which caused the “newer” problem of too many people drawing on too limited a resource, the classic tragedy of the commons situation.

It gets worse. Norris Hundley wrote, “Water is today among mankind’s greatest concerns—a problem that has become a crisis of worldwide importance.”⁸⁷⁹ Brian Fagan

⁸⁷⁶ *Ibid.*

⁸⁷⁷ Frederick H. Newell, *Water Resources: Present and Future Uses* (New Haven: Yale University Press, 1920), 191.

⁸⁷⁸ Speth, ix.

⁸⁷⁹ Norris Hundley, Jr., *Water and the West: The Colorado River Compact and the Politics of Water in the American West* (Berkeley and Los Angeles: University of California Press, 1975), xi.

speculated, “Drought and water are probably the overwhelmingly important issues for this and future centuries”⁸⁸⁰ Robert Kunzig warned, “As the climate that underpinned that expansive vision vanishes, the vision needed to replace it has not yet emerged. In a drying climate, the human ecosystems established in a wetter one will have to change—die and be replaced by new ones.”⁸⁸¹ Barbara Kingsolver also warned, “Declining to look for evidence to the contrary, we just knew it was there. We pumped aquifers and diverted rivers, trusting the twin lucky stars of unrestrained human expansion and endless supply. . . . Rather grandly, we have overdrawn our accounts.”⁸⁸² Fagan continued, “Many futurists believe the wars of the coming centuries will not be fought over petty nationalisms, religion, or democratic principles, but over water, for this most precious of commodities may become even more valuable than oil. They are probably correct.”⁸⁸³

Climate change and environmental damage are two of the five factors that Jared Diamond identifies as the causes of civilization’s collapse.⁸⁸⁴ Morris concluded that

⁸⁸⁰ Brian Fagan, *The Great Warming: Climate Change and the Rise and Fall of Civilizations* (New York: Bloomsbury Press, 2008), 241.

⁸⁸¹ Kunzig, 113.

⁸⁸² Kingsolver, 49.

⁸⁸³ Fagan, *The Great Warming*, 241.

⁸⁸⁴ The five factors which contribute to civilization collapse of civilizations are (1) environmental damage, (2) climate change, (3) decreased support from friendly neighbors, (4) increased attacks from hostile neighbors, and (5) responses to factors one through four. Diamond, 10-15.

civilization “collapse coincided with a period of climate change.”⁸⁸⁵ The Anasazi, the Hohokam, and the Mogollon civilizations collapsed because of climate change and environmental damage in the American Southwest.

Both Diamond and Morris agree that collapse is not inevitable or unavoidable. Civilizations choose to succeed or fail. Choosing to succeed is often harder than choosing to fail. Choosing to succeed “requires political and social thinking of a kind that barely exists today, when instant gratification and the next election seem more important than acting with a view to the long-term future.”⁸⁸⁶ What choices will America make?

⁸⁸⁵ Ian Morris, 526.

⁸⁸⁶ Fagan, *The Great Warming*, 241.

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