

Westerns and Property Rights

by Andrew P. Morriss

Several new westerns opened at the box office last fall, including Kevin Costner's *Open Range*, costarring Robert Duvall. The story was a familiar one, with a twist: Costner's Charlie Waite and Duvall's "Boss" Spearman are cowboys trailing a herd north through Montana Territory. They run afoul of a villainous cattle rancher who tries to deny them the cowboys' traditional grazing rights on the "free" range, which is public land. Since the land isn't actually the villain's but public land open to all, Charlie and Boss fight back, leading up to a predictable gun battle. Costner's western, despite lukewarm reviews, received a reasonable reception at the box office, proving there is still an audience for westerns and at least partially achieving Costner's goal of reviving what he called "the great American classic genre personified by John Wayne." Unfortunately, Costner only got part of the history right, missing a chance to show the real story of the open range.

In real life much of the Great Plains was truly open range and the plentiful grass that stretched from the Texas Panhandle to Montana and Dakota Territories offered wonderful grazing after the elimination of the buf-

falo and the military's removal of the Native American populations. As the railroads stretched west and created a means to transport cattle east to markets, the free-range cattle industry sprang up in the 1870s and 1880s. As homesteaders spread west, however, violence occurred between the two groups as the cattlemen sought to keep homesteaders off "their" range and the homesteaders fenced off streams and plowed up pastures for their crops. The conflict between free-range cattlemen and homesteaders (portrayed memorably in the 1958 western *Shane*) was more common than the "intramural" conflict between cattlemen shown in *Open Range*.

North of Texas much of the Great Plains was federal land. The land that wasn't federally owned was generally in noncontiguous blocks: "checkerboard" sections alternating along railroad lines granted to the companies to subsidize the building of the railroads, sections set aside for specific public purposes such as schools and the like. Someone who wanted to purchase large tracts of land outside Texas could do so only from the federal government, and it would not sell. Federal land for grazing could be acquired only in relatively small tracts through the homestead laws, which required actual occupation and residency. Cattle ranchers could not purchase the land they used.

Western cattlemen thus faced exactly the conditions that today we describe as producing the "tragedy of the commons." Most

Contributing Editor Andrew Morriss (andrew.morriss@case.edu) lives in Cleveland, Ohio, which was once part of the wild west. He wishes he lived further west. If you e-mail him your street address, he'll send you a long article on this topic that includes extensive references to literature on cattlemen.

The conversion of open range to farmland imposed a cost on the ranchers (less land for the cattle) without allowing them any corresponding benefit.

often used to describe environmental problems, the tragedy occurs when unregulated access to a common resource produces overuse. Private property solves the tragedy because each property owner receives the benefits and bears the costs of his actions, forcing the owner to be responsible.

Since they were denied land ownership as a means of solving their common property problems, cattlemen formed range and roundup associations to do the job instead. These associations organized cooperation on the roundups, greatly reducing costs, and wrote and enforced rules which prevented most of the problems that come with the lack of the ability to exclude others. Members were required to contribute bulls, ensuring the herds would continue to grow; contribute labor to the roundups, ensuring that everyone paid their share; and help pay for stock detectives to stop rustlers. All these contributions were proportional to their herd sizes, making the scheme fair. As the associations developed further, they also provided disease control, common facilities at railroad stations (pens and livestock inspectors), and brand registries to help identify cattle ownership.

The cattlemen's associations were not perfect substitutes for land ownership, however. They could do nothing to control nonmembers, as their only sanctions were to threaten expulsion from the association. This can be seen in the legendary cattlemen–sheep-herder battles of the West, which came about because sheep herders had no need of the associations' services and so were immune from the pressures the associations brought to bear on their members. As homesteaders continued to enter the western range, the cattlemen found themselves unable to protect "their" range from the intruders.

The Transition from Ranch to Farm

Farming is often more lucrative than ranching, at least where the soil and water supply justify it. Converting at least some of the Great Plains to farmland from rangeland made a great deal of sense. Converting as much of it as the homesteaders did, and converting it in the small parcels allowed under the homestead laws, did not make sense.

Most important, however, the conversion of open range to farmland imposed a cost on the ranchers (less land for the cattle) without allowing them any corresponding benefit. Frustrated in their attempts to buy the land, the cattlemen of the northern Great Plains saw the land and water they had been using taken away without compensation by the new arrivals.

This problem is captured in *Shane*, an unusual western that allows its villain, the head open-range cattleman William Ryker, to explain to the heroes, homesteader Starrett and gunslinger Shane, why the cattlemen feel entitled to the land. After his offer to buy out Starrett's homestead is rebuffed and Starrett asserts his rights to the land, Ryker explodes.

Right? You in the right! Look, Starrett. When I come to this country, you weren't much older than your boy there. And we had rough times, me and other men that are mostly dead now. I got a bad shoulder yet from a Cheyenne arrowhead. We *made* this country. Found it and we made it, with blood and empty bellies. The cattle we brought in were hazed off by Indians and rustlers. They don't bother you much anymore because *we* handled 'em. We made a safe range out of this. Some of us died doin' it. We made it. And then people move in who've never had to

Far from being the inevitable clash of the contrasting character of the cattleman and the farmer, the problems between the open-range cattlemen and the homesteaders were the direct result of federal land policies.

rawhide it through the old days. They fence off my range, and fence me off from water. Some of 'em like you plow ditches, take out irrigation water. And so the creek runs dry sometimes. I've got to move my stock because of it. And you say we have no right to the range. The men that did the work and ran the risks have no rights? I take you for a fair man, Starrett.

In this short passage, Ryker manages to deliver a concise summary of Lockean property-rights theory: the land belongs to the ranchers because they "made" the range.

When Starrett objects that Ryker isn't taking into account the trappers and Indian traders who were there first, Ryker dismisses their claims by the derisive snort: "They weren't ranchers." Starrett then brings out his best argument: "You talk about rights. You think you've got the right to say that nobody else has got any. Well, that ain't the way the government looks at it."

Starrett and the homesteaders may not have had a sophisticated philosophical argument, but they had a winning one. The government didn't recognize the ranchers' property rights and actively sought to undermine them. Not only did the federal government forbid the sale of public land to ranchers, it subsidized the small holders whose fences cut the cattlemen's stock off from water. Far from being the inevitable clash of the contrasting character of the cattleman and the farmer, the problems between the open-range cattlemen and the homesteaders were the direct result of federal land policies.

Range Wars

The conflicts that sprang up on the northern Great Plains were no Hollywood screen-

plays. Homesteaders shot cattlemen; cattlemen shot homesteaders; vigilantes chased rustlers; and rustlers chased cattle. Most notoriously, in 1892 a group of prominent cattlemen in Wyoming set out to rid themselves of a group of homesteaders in Johnson County. While the cattlemen portrayed the homesteaders as rustlers, the history of the "Johnson County War" suggests the real conflict was over the homesteaders' land and water claims on range the cattlemen considered their own. The conflict continued for years, including passage of repressive legislation allowing the Wyoming Stockgrowers' Association to seize nonmembers' property. Despite their virtually total control of Wyoming's territorial and state governments, the cattlemen could not eradicate the homesteaders because juries routinely refused to convict on rustling charges.

The cattlemen determined that extralegal methods were needed. They assembled a team of gunmen, taking along a doctor and a newspaper reporter for good measure. A special train was hired to transport the raiding party north, and a death list of 100 rustlers and sympathizers was made up. The telegraph wires to Johnson County were cut and the most prominent cattlemen headed for Denver and the nineteenth-century version of "plausible deniability."

Fortunately for the citizens of Johnson County, the leader of the expedition made some critical mistakes. Instead of immediately seizing the local militia arsenal, he allowed the expedition to get bogged down in a siege of a ranch where two suspected rustlers were staying. This allowed the rest of the county to learn about the attack and to arm themselves. Confronted by an armed population, the invaders took refuge in another ranch house. Just as the locals were

about to set fire to the house, the U.S. Cavalry rode over the hill, and rescued the invaders. Legal maneuverings by the invaders' defense team kept the matter from ever being resolved in court and none of the invaders was ever punished. Considerable bloodshed was averted only by the bad judgment of the invaders' leadership. The Johnson County War was the logical culmination of the federal land policies that prevented ranchers from acquiring private property in western lands.

The Private Property Alternative

The open range was not the only way to organize western lands, however. Texas, which had been an independent country before it entered the union, had no federal land. All its public land was owned by the state. In need of cash after the Civil War, the Texas state government was willing to sell land in large parcels, allowing Texas ranchers to create the contiguous spreads they needed for their herds. As a result, the Texas panhandle was soon privatized into large ranches, including the famous XIT Ranch, whose brand stood for "Ten in Texas" and referred to the number of counties the XIT's land covered.

The Texas ranches invested in barbed wire (a recent innovation), accurate rifles for their cowboys, improved stock, and internal improvements such as windmills that increased the carrying capacity of their range. The rifles allowed a "shoot to kill" policy on rustlers that resulted in low levels of rustling; the fences allowed the benefits of the expensive bulls the ranchers imported to be kept for themselves.

Most important, because they owned the land, the Texas ranches received the benefits from converting it from ranchland to farmland. When homesteaders came to the Texas panhandle, they bought their farms from the ranches. Their farms were of an appropriate size to survive, located on the best farming land, and laid out to avoid cutting off the remaining range from water. Texas ranchers had an incentive to see the farms succeed—

successful farms would drive up the price of the remaining ranchland. As a result, farming and ranching peacefully coexisted in the Texas panhandle while war raged in Wyoming Territory.

There are some powerful lessons from the cattlemen's experience in the West. Unfortunately, these lessons don't make as exciting a movie as the typical story of gunslingers and range wars.

- *Private property rights allow peaceful coexistence of competing land uses.* Texas avoided range wars, not because it was populated by more civilized people but because the existence of private property allowed the cattlemen to receive a share of the benefits of the transition to farming.
- *Customary institutions can substitute for property rights, but governments can destroy customary institutions.* Wyoming's problems didn't arise until the federal government began subsidizing the homesteaders' entry (with "free" land). So long as the only people in Wyoming were cattlemen, the roundup associations were able to prevent the appearance of a "tragedy of the commons." As more and more people who did not care about the threat of expulsion from the association arrived, the power of the customary solution declined.
- *Property rights prevent violence.* Private property is a substitute for violence because it allows contracts between willing parties. Where property rights are absent, as in *Open Range* and Wyoming Territory, the cheapest substitute is often violence.

In his book *The Mysteries of Capital*, Peruvian economist Hernando de Soto points to the development of property rights in the American west as one of the "missing lessons of U.S. history" that explains why the United States has succeeded in growing rich while few Latin American countries have. Those "missing lessons" make a more accurate story than Hollywood's version of how the west was won. □