

**Fifty Million Acres: Conflicts over Kansas Land Policy (1854-1890).** By Paul W. Gates. Ithaca, New York: Cornell University Press, 1954. Pp. xiii, 311. \$4.50.

**Arid Domain: The Santa Fe Railway and Its Western Grant.** By William S. Greever. Stanford, California: Stanford University Press, 1954. Pp. x, 184. \$4.00.

These two books have as their objective a description of what happened to the land in particular areas within the public domain and the Indian reserves. The Gates book on Kansas is broader in types of land covered since it covers the disposition of Indian lands, public lands and railroad land grants in the State of Kansas. The Greever book covers only land-grant land of the Santa Fe Railroad system in New Mexico and Arizona acquired as a result of building the railroad from Isleta, New Mexico to Needles, California. On the other hand, the Greever book on the Santa Fe lands is broader both in time and in subject scope. It considers the railroad land policies from the time of the grant, about 1880, down to 1946 and beyond; and it includes the railroad policies as to sale, leasing, disposition of minerals and timber, and other land management policies. The Gates book considers only the sale or grant of Kansas land during the period 1854 to 1890 and considers primarily sale or grant from the United States government, either as owner or as trustee for an Indian tribe, to a settler, speculator or railroad. The book does have one chapter on railroad disposition to settlers and does mention sales to settlers of other land disposed of by the government, but that is not its primary concern.

From the viewpoint of a lawyer interested in the influence of business decisions on legal forms and rules, and interested in considering how legal rules influence business decisions, neither book is entirely satisfactory. Neither author explores these questions fully. Greever does give us some insight however into the Santa Fe practices and does conclude that it made no innovations but adopted practices in use by other land agencies in the area. He reports that the Santa Fe at an early date adopted uniform forms of sales contracts and leases from which it would not deviate in individual deals. Indeed one of the virtues of the Santa Fe as a landlord is said to be that it almost invariably permitted the present tenant to renew his short term (one year) lease and on the same terms and conditions unless the railroad had in the meanwhile changed its general form of lease or contract or changed its general pricing policy. Greever also compares the marketing practices of the railroad with those of the state governments. The railroad, using a negotiated contract method rather than public auctions (used by the states), was able in deciding whether to sell or rent to consider special circumstances such as conflicting range rights and whether the offeror was a speculator, while the states did not take these factors into consideration. The railroad had higher down payments

and much shorter terms than did the states and both appeared to use some form of installment land contract. Both government and railroad were lenient about delinquent payments. The railroad's price per acre was less than that of the states and it has earned less from its sales than the states will when the terms of their long contracts are carried out. In leasing practices as in the marketing practices Greever concludes that the railroad observed creditable standards of business ethics and also observed usual methods of marketing.

The Gates book gives us much less on marketing practices and nothing to set the described practices in proper perspective. Written in the style of the newspaper reports which the author uses as authority, the book is less careful and studious in its judgments and generalizations. Thus the relatively short term of the installment contract used in Kansas by speculators is to Gates an example of the burden imposed on settlers by unscrupulous investors. The frequent extension of the one year mortgage is to Gates not evidence of a lenient delinquency policy but evidence that the settler was unable to pay an exorbitant mortgage debt and price. He does not give us any basis for his conclusions nor does he help us to decide whether the frequent extensions of the one year mortgage were something which "had," to use his term, to be done because of oppressive contracts, or whether they were an indication that the investor was so satisfied that the farmer and business conditions would ultimately produce, that he extended payment. A short term mortgage which is usually extended is no more onerous than a long term mortgage with power in the mortgagee to accelerate payment when he deems himself insecure, and may in fact be less onerous on the mortgagor since it gives him much greater freedom of early payment of the debt than does the now usual long term mortgage. If proper comparisons had been made, the short term mortgage with frequent extensions might have appeared at least neutral on the question of exploitation of the settler. Perhaps it was customary in the whole United States at the time in question.

The trouble with the Gates book lies in his development of a series of "good guys" and "bad guys" and in his lining people and events up in this way without making clear to us what his point of reference is. His worst offense in this regard is in the field of price. He apparently is under the illusion of a "fair price," and his point of reference is not constant. It seems to be zero when settlers are buying (prices above that are "high"), but when railroads and investors are buying at wholesale for resale to settlers, his point of reference is the price of sales to settlers (prices paid by railroads below that are described as "low"). Thus government sales of land to a railroad at \$1.28 an acre in 1860 are described as "well below market price" and from this he infers that the government and settler were exploited. On the other hand sales by "speculators" to settlers in 1858 to 1860 in substantially the same part of Kansas at \$1.43 an acre are described as at a price "exacted"

from the settlers for land that then had "little value." If land agents charge a settler a fee for locating public lands available for settlement the fee is, in this book, always "high" and the service is invariably "small."

It is of course an author's privilege to make such quality judgments but in a scholarly work the least he can do is tell us clearly his point of reference, and I would think it ought not to fluctuate. This is particularly important when "high" prices, "large fees," "large profits," are the basis of a suggestion of influence or corruption among various promoters and government officials.

The hero-villain role permeates the whole book. When the struggle between settlers and railroads gets into court, a decision for the railroads is "not difficult to secure" because the courts "easily brushed aside" the arguments of the land reformers after the railroad hired Benjamin R. Curtis, a former member of the Supreme Court, and paid him a \$7,000 fee to oppose the arguments of Benjamin F. Butler, a congressman from Massachusetts. Is Gates suggesting influence, a corrupt deal, or that a \$7,000 fee makes things "easy," or that the land reformers' case had no merit? Three years later when the land reformers win a case in the Supreme Court, it is the result of "extraordinarily able legal talent" (Jeremiah Black), but even then only after "dreary years of wrangling." The author then attempts to reduce the part legal talent played by pointing out that Mr. Justice Davis, who wrote the opinion of the court, was a "liberal land reformer." (Davis was with the majority in the previous case.) Apparently Gates finds it easier to impute a motive to the court than to consider the merits of the controversy.

When railroads delay taking a patent from the United States on lands sold on contract, resulting in tax exemption to the settler-purchaser, it is because the railroad lawyer (J. P. Usher, a former member of Lincoln's cabinet) caused a "distortion" of *McCulloch v. Maryland* in his advice on tax exemption, and because railroads "had come to regard themselves above the law." A similar tax exemption for purchasers of lands of the agricultural college of Kansas are described only as a result of a legal "confusion." How a lawyer's advice to his client which apparently was so "correct" that it took legislation to change it becomes a "distortion" through Mr. Gates' eyes is not made clear, unless hindsight permits all erroneous decisions to be called distortions of the truth.

In fairness to Mr. Gates, he does confess in his introductory remarks that the subject turned out to be too big for him. After reading these two books together I think it is clear that at this stage in historical research of land disposition it would be better to pick out a particular land owner or a particular type of disposition as the basis of study rather than a particular area. But we need broad area studies, too, if done in as scholarly and dispassionate a form as the Greever book.

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