Mapping the Interior: Land Offices, Technology, and Bureaucratic Development in 19th Century America

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Abstract

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Founded in 1812, the General Land Office (GLO) was the bureaucratic engine of American settler expansion. Beginning in the early 1800s as a loosely affiliated network of land offices, the GLO would develop throughout the 19th century into the primary institution which determined the pattern and process of settlement in the American west. In this dissertation, I argue that the GLO developed this power through a process of *bureaucratic consolidation.* As the agency consolidated, the GLO utilized technologies of mapping and contract to claim autonomous power. These technologies of land management were bound to the racial and social order of American political development.

Political elites created early land offices to establish control over settler populations. Rather than seeking to dominate these distant populations through force, elites used the public

provisions of the land office to encourage settlers to recognize the American state. I demonstrate this process using the case of Mississippi Territory, where land offices gave formal recognition to settler property rights, providing economic security for settlers and forming the foundation for the growth of enslavement in the region. As settlement expanded under President Andrew Jackson many of the processes undergirding the structure of early land offices became increasingly untenable under the GLO. In 1836, this would become a crisis for the agency, creating a critical juncture and leading to the first major consolidation of the GLO after Congressional action. However, in passing new legislation, Congress failed to change the fundamental structure of GLO technologies. In 1849, the GLO would consolidate again, becoming part of the newly created Department of Interior. In this new department, the office would seek to exercise autonomous power through its technologies of mapping and contract. Examining the case of Oregon Territory, I show that, collaborating with the Office of Indian Affairs, the GLO would claim the power to map Indian Reservations, despite lacking the formal authority. This project would lay the foundation for allotment, leading to the seizure of Indigenous land and the forced assimilation of Native nations. By the end of the 19th century, the consolidation and autonomy of the GLO had reached their peak. However, with new modes of land management emerging, the outdated technologies of the GLO would struggle to adapt. As a result, the 20th century would lead to the decline of the GLO as a center of bureaucratic power.

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Introduction

Consolidating the Frontier: Land Offices, Technology, and Bureaucratic Development

Introduction

> *It seems to me this is a self-acting machine that we have set going, and if we only run it on the track it will work itself all out, and all these difficulties that have troubled my friend will pass away like snow in the spring time, and we will never know when they go; we will only know they are gone.*[1]
>
> **– Senator Henry Dawes, speaking in favor of the 1887 General Allotment Act, often known as the "Dawes Act".**

On September 28th, 1887, the Indian Rights Association (IRA) convened its fifth annual meeting at Lake Mohonk Mountain House, in the Catskill Mountains of New York. The IRA had much to celebrate. As a political organization it had, since its founding, lobbied for the allotment of Indian Reservations, making it a political objective of primary importance.[2] With the recent passage of the General Allotment Act on February 8th of that same year, the organization achieved a major political victory. Senator Henry Dawes, the primary sponsor of the act, was himself in attendance. A mood of elation took hold among the organizers and attendees, and they spoke of their accomplishments with lofty and exalting rhetoric. As one speaker stated in his opening remarks: "The Dawes Land in Severalty and Indian Citizenship bill, made a law since our last Conference, has given us what Archimedes wished for, that he might test the power of his lever to lift the world, and we now have a standing place, and opportunity to test the power of our civilizing influences to lift the Indian".[3] With the passage of the Dawes Act in 1887, the United States transformed land ownership across Indian Reservations, unraveling systems and

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[1] Indian Rights Association. 1887. *Proceedings of the Lake Mohonk Conference, Fifth Annual Meeting*. Philadelphia, Indian Rights Association, 9.
[2] Indian Rights Association. 1884. *Second Annual Address to the Public of the Lake Mohonk Conference held at Lake Mohonk, N.Y., September, 1884, in behalf of the Civilization and Legal Protection of the Indians of the United States*, 7-8.
[3] IRA, *Proceedings of the Fifth Annual Meeting*, 3.

histories of collective ownership and replacing them with individual allotments.[4] The system of allotment was foundational to the construction of American empire, emerging from the earliest technologies that the bureaucratic state used to exert coercive power over non-white peoples.

This transformation of land through allotment, for the supposed benefit of Indigenous people, had the backing of white reform organizations such as the IRA. However, when presented with allotment proposals, many Native nations resisted heavily, only acceding under intense pressure and the threat of violence.[5] At the foundation of the Dawes Act was the practice of allotment, the creation of square parcels of land which were then assigned to individual members of Native nations. Once land was allotted, mostly in 160-acre parcels, and assigned to individual members of Native nations, the act returned all "excess" reservation land to the national domain (i.e. government ownership) for sale to settlers. This excess was enormous, calculated at more than 80 million acres, or roughly the size of New Mexico or Poland.[6] The reduction of land occurred rapidly. While Native nations held 155,632,312 acres of land in 1881, by 1900, they held only 77,865,373, about 50 percent less.[7] Despite its aims for the promotion of agriculture, the Dawes Act also led to a decline in practices of farming among Native nations.[8]

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[4] *An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.*, Public Law 227, U.S. Statutes at Large 24 (1887): 388-391.
[5] See Chapter 4.
[6] Smith, 392 For state sizes, see US Census Bureau. "State Area Measurements and Internal Point Coordinates". Census.gov, 2021, https://www.census.gov/geographies/reference-files/2010/geo/state-area.html. For country sizes see United Nations. 2024. *United Nations Demographic Yearbook 2023/Nations Unies Annuaire Démographique 2023*. United Nations Publications.
[7] Prucha, Francis Paul. *The great father: the United States government and the American Indians*. Vol. 1. U of Nebraska Press, 1995, 671
[8] Carlson, Leonard A. "The Dawes Act and the Decline of Indian Farming." *The Journal of Economic History* 38, no. 1 (1978): 274–76.

The Dawes Act sought to restructure the political, legal, and social organization of Indian Reservations. As Senator Richard Coke, chairman of the Committee on Indian Affairs and an early proponent of allotment, expressed in a floor speech:

> The policy of the bill is to break up this large reservation, to individualize the Indians upon allotments of land; to break up their tribal relations and pass them under the jurisdiction of the Constitution… and by building houses upon their allotments of land, to become self-supporting, to be cultivators of the soil…The bill simply recognizes the logic of events, which shows that it is impossible to preserve peace between the Indians and the whites with these immense bodies of land attempted to be locked up as Indian Reservations.[9]

This dual logic, to promise the benefits of "civilization" or "industry" to Native nations on one hand, while creating new tracts of land for white settlement through land removal on the other, underscored much of the rhetoric on federal Indian policy at the time. The IRA spoke proudly of their desire to improve conditions on reservations and regarded the reforms of the Dawes Act as necessary for achieving their aims.[10] In practice, as many Native nations suspected, these improvements were one sided, enriching the white settler at the cost of immiserating Indigenous people.

For American elites at the end of the 19th century, this practice appeared to form the very basis of American industry and society. Organizations such as the IRA extolled the virtues of allotment and individual proprietorship: "For many years past those who have given earnest thought to the best method of placing the Indian on a right footing among us… have united in the belief that the allotment of land to individual Indians by a secure title would prove one of the most powerful agencies in the advancement of the race".[11] Evident in this formulation is the degree to which individual proprietorship and land tenure had become central to American

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[9] Congress. "10 Cong. Rec. (Bound) - Volume 10, Part 3 (April 1, 1880 to May 5, 1880)". Government. U.S. Government Publishing Office, May 4, 1880. See in Prucha, *The Great Father,* 661-2.
[10] Prucha, *The Great Father,* 669-71.
[11] IRA. *Second Annual Address,* 7-8.

notions of racial advancement. The racial status of Indigenous people was thus connected to an idealized notion of the white settler "who work[s] from the imperative necessity for self-support, and from the knowledge that the law will protect them in the possession of their rightful earnings".[12] The very spirit of white American industry was bound together with the predominant form of landholding on the American frontier.

Why did organizations such as the IRA and Congressional reformers such as Coke and Dawes view allotment as critical to their mission? As I explore in this dissertation, allotment was itself the result of a long process of bureaucratic development centered in the General Land Office (GLO). What appeared natural and commonsense at the end of the 19th century was the product of a consolidated GLO bureaucracy which extended state power across the western frontier. Using two key technologies, mapping and contract, GLO bureaucrats produced a conception of land which became central to settler identity. Seeking to remold Indigenous people in the image of the settler, reformers like the IRA sought the allotment of Native nations. That, to Senator Dawes, the General Allotment Act could appear a "self-acting machine" in 1887, underscores the degree to which this structure of land management had become enmeshed in the very fabric of American political identity. Throughout the 19th century, the system of rectangular survey would expand across the continental United States forming the basis of not only the Dawes Act, but the very structure of American settlement.

In this dissertation, I examine the *bureaucratic consolidation* of the GLO and argue that the GLO was the key agency in the project of western expansion and settlement. The consolidation of the GLO extended technologies of mapping and contract across the American continent. To maintain political authority over American territories, early land officers used these

[12] *Ibid,* 8.

technologies to provide key benefits to settlers which ensured that they would remain loyal political subjects. In early 19th century Mississippi, land officers secured the economic position of enslavement in the cotton economy. After the Indian Removal Act in 1830, the GLO would map and sell former Indigenous land in the Deep South to land hungry settler and enslavers. However, as the agency consolidated—refining processes, formalizing rules, accumulating funding, and hiring personnel—the GLO increasingly sought independent authority without the backing of Congressional legislation. In the latter half of the 19th century, the GLO would autonomously pursue the mapping of Indian Reservations, laying the foundation for later allotment. With the expansion of the American state, the twin practices of mapping and contract ever more deeply penetrated the structure of social life on the frontier. These practices were constituted through the racialized logic of American expansion, providing freedom and equality for white settlers while producing and upholding conditions of subjection and inequality for Black and Indigenous people.

The Development of a Bureaucracy of Settlement

First established in 1812, the General Land Office (GLO) formed the bureaucratic foundation of American settler expansion in the 19th century. However, the processes of mapping and contracting had early precursors in the colonial period as the European settler project began long before the American state. The British crown, interested in getting colonists to make expensive journeys overseas, used land grants to encourage settlement. Among the most widespread of these practices was headright. The headright system emerged in English Virginia during the 17th century, when the Royal Virginia Company sought to combat the slow growth of

the colony.[13] Under this system, those who paid for the passage across the Atlantic of themselves or another colonist were granted 50 acres of land. The system was largely used by wealthy landowners to bring over indentured servants, gaining both a valuable laborer who worked to pay off the debt the landowner incurred and a potentially productive plot of land in the process. Planters in Virginia used these grants to massively expand their own land holdings and base of indentured laborers. As racial slavery grew in Virginia, however, the headright system slowly faded away as powerful Virginian planting interests barred the claiming of headrights in enslaved people.[14] The practice slowly spread throughout the American south, including Carolina. In contrast to Virginia, however, Carolina's headright system explicitly granted headrights for enslaved people.[15]

The southern system, as it became known, became central to the creation of a national land bureaucracy.[16] Starting with the Land Ordinance of 1785 mapping and contracts became core techniques of governance in the process of American territorial development. The early American state's land management was based on the system of rectangular survey. The 1785 Ordinance established regular practices of survey which extended a grid across the national domain.[17] This domain consisted of land which states ceded after resolving land conflicts under the Articles of Confederation, first applying to the newly created Northwest Territory.[18] Under

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[13] For more on the headright system see Parent, Anthony S. *Foul Means: The Formation of a Slave Society in Virginia, 1660-1740*. Chapel Hill: The University of North Carolina Press, 2012. See also Brenner, Robert. *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550-1653*. Princeton, N.J: Princeton University Press, 1993.

[14] Early Virginia planters, whose fortunes grew considerably under the headright system, sought to restrict competition from the emerging slave. See Parent, *Foul Means*.

[15] Wood, Peter H. 1974. *Black Majority; Negroes in Colonial South Carolina from 1670 through the Stono Rebellion*. New York: Knopf.

[16] Ford, Amelia Clewley. 1910. *Colonial precedents of our national land system as it existed in 1800*. University of Wisconsin.

[17] Continental Congress, Journal of the Continental Congress, 28 (1785), 375.

[18] For more on the creation of the Northwest Territory, see Onuf, Peter S. *Statehood and union: A history of the northwest ordinance*. University of Notre Dame Pess, 2019.

the Ordinance, land was divided into six-mile by six-mile townships, and further divided into sections of one square mile. After survey, there was an auction to sell this land in one-mile sections to settlers.[19] This rectangular survey system would come to form the foundation of what came to be known as the national domain. The system of rectangular survey was extended westward across the United States and settlement occurred largely in conformity to its structure. Despite its long-term impact, however, American policymakers initially viewed the system of rectangular survey as a failure, with few settlers purchasing land.

Under the 1785 Ordinance, the purchase of land was inaccessible to most. The first auction took place over the course of only a few days, at a site far from where the land itself was located. Larger and wealthier entities, such as colonial corporations, easily outbid and outmaneuvered potential settlers for desirable plots of land and had far greater access to information which might determine the suitability of land for settlement.[20] At the same time, settlers in far-flung regions had little power to purchase or retain the land which they occupied. These settlers were largely composed of two groups. The first of these was the squatter or preemptor. Squatters occupied land without formal title and engaged in practices of homesteading as subsistence farmers. Such squatters were largely distrusted by policymaking elites, viewed as a criminal and potentially revolutionary element. Fears of squatters breaking off and forming a new state were widespread in the late 18th and early 19th centuries.[21]

These fears were exacerbated by the second group of prior settlers: those who obtained land titles under prior European colonial rule. With the integration of Spanish Mississippi in 1795 under the Treaty of San Lorenzo, this group became an increasingly pressing concern as

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[19] Continental Congress, 28 (1785), 375.
[20] Pattison, William David. "Beginnings of the American rectangular land survey system." PhD diss., The University of Chicago, 1957.
[21] Onuf, *Statehood and Union.*

American borders expanded. For American political elites, European titleholders appeared a much more respectable and group than squatters. Such titleholders had obtained their land through legitimate means, were often wealthy, well educated, and, most worryingly, politically organized.[22] Titleholders created local committees, drafted lists of complaints, and sent petitions to Congress. They sought to retain their land titles and advance their economic and social interests.

Local land offices would quickly become key to the advancement of these interests. First established under the Harrison Land Act of 1800, land offices came to form an important part of the institutional framework that governed settler life.[23] Land offices served as a repository of information, centrally located and available to all, which governed the exchange and sale of land. The 1803 Mississippi Land Act would also establish land office commissioners, who retained formal bureaucratic powers to adjudicate land claims and land disputes, making rulings based on the legal chain of title. These offices served important purposes for the federal government as well. The President maintained formal oversight of all sales of the public domain. Furthermore, all copies new land title were to be retained in both the local land office and the Department of Treasury in Washington D.C.[24] With this system of centralized retention, the government gained a better sense of the lay of the land: what was surveyed, what was purchased, and what was settled. As such, land offices served important informational functions, reducing the cost of obtaining information on land for both settlers and the government back in Washington.

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[22] For more, see Chapter 2.

[23] *An Act to amend the act intituled "An act providing for the sale of the lands of the United States, in the territory northwest of the Ohio, and above the mouth of Kentucky river."* Public Law 6-55. US Statutes at Large 2 (1800): 73-7.

[24] *An Act regulating the grants of land, and providing for the disposal of the lands of the United States, south of the state of Tennessee*. Public Law 7-27. US Statutes at Large 2 (1803): 229-35.

Furthermore, the land offices would substantially assist with the collection of revenue from land sales, an increasingly important component of government revenue.

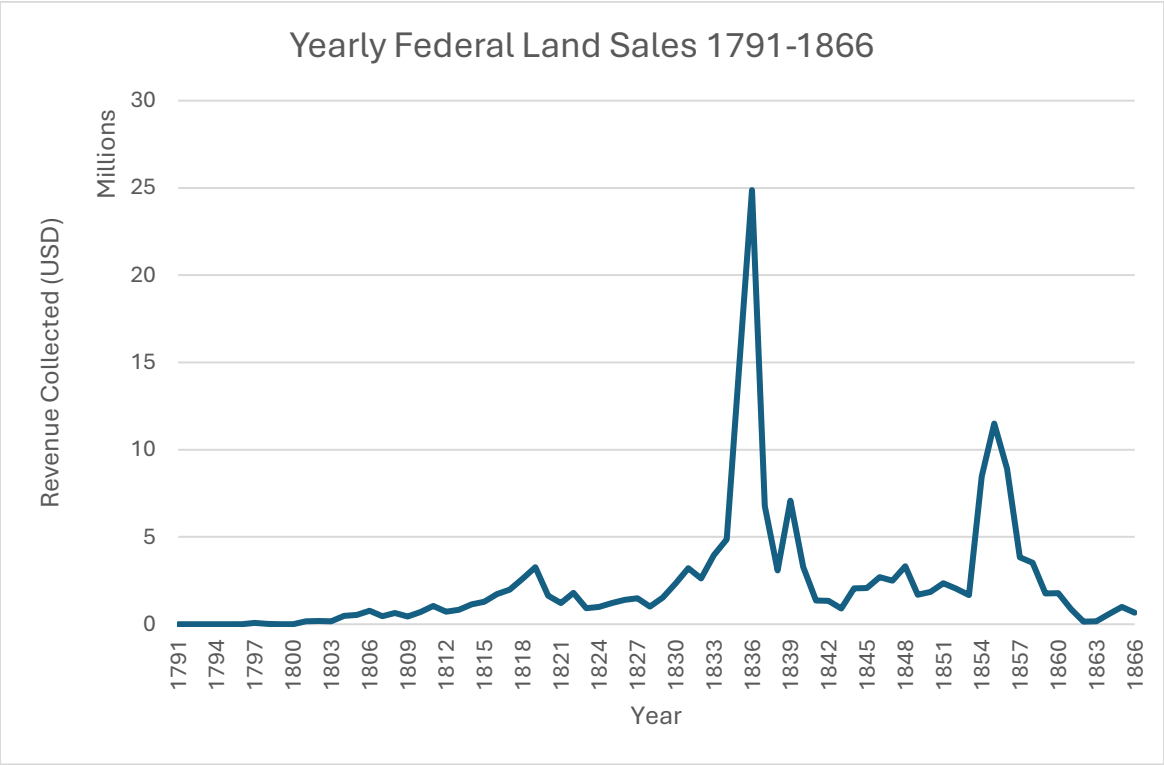

Figure 1: For data, see United States. Department of the Treasury. "Report of the Secretary of the Treasury on the State of the Finances for the Year 1866," Annual Report of the Secretary of the Treasury on the State of the Finances (1866).

Indeed, the American bureaucratic state in the 19th century served a largely clerical function, recording information and collecting revenue. As such, bureaucrats tended not to exhibit substantial autonomy leaving little room for improvisation. This clerical state was also subservient to Congressional action and presidential patronage, which limited the development of expertise within these bureaucratic agencies.[25] Legislation often left bureaucrats with vague

[25] Balogh, *A Government Out of Sight*.

mandates and poorly specified processes which they struggled to apply to existing social conditions.

Consolidation and the Structure of the Land Office

Despite these limitations, however, these offices served important functions for the federal government. Notably, the practices of land sale and survey were an important component of national revenue and strengthened the "affective bonds" between settlers and the central government.[26] Consolidation occurred through the accumulation of these processes controlling the production maps and contracts. However, under early conditions, processes of mapping and contracting occurred within two separate organizations: land offices and the office of the territorial surveyor general. Each office lacked formal hierarchy and clear lines of oversight. As a result of this limited oversight, when a local land officer required clarification on some element of his duties, his only superior officer was the Secretary of Treasury. Furthermore, land offices and surveyors general both struggled with vague legislative mandates and a lack of clear directions, leading to confusion over rules and process. Land offices and surveyors general also had no means to coordinate with one another. Other burdensome requirements of public land law in the United States further contributed to the morass of information and duties that accumulated on the Secretary.[27] One surveyor general in Mississippi spent several years mapping the wrong

[26] *Ibid*.

[27]For example, the Secretary was required to audit all receipt of public money dating back to 1801, which included all sales of the public domain. By 1813, this audit was substantially backlogged, leading to significant challenges collecting much of the money which was owed to the American government. See Tiffin, Edward. 1814. Letter from the commissioner of the general land office, respecting the public lands of the United States. *The Historical Register of the United States (1812-1814),* 9.

land, following incorrect procedures, and failing to produce any maps all while the local land office waited to receive plats to begin land sales.[28]

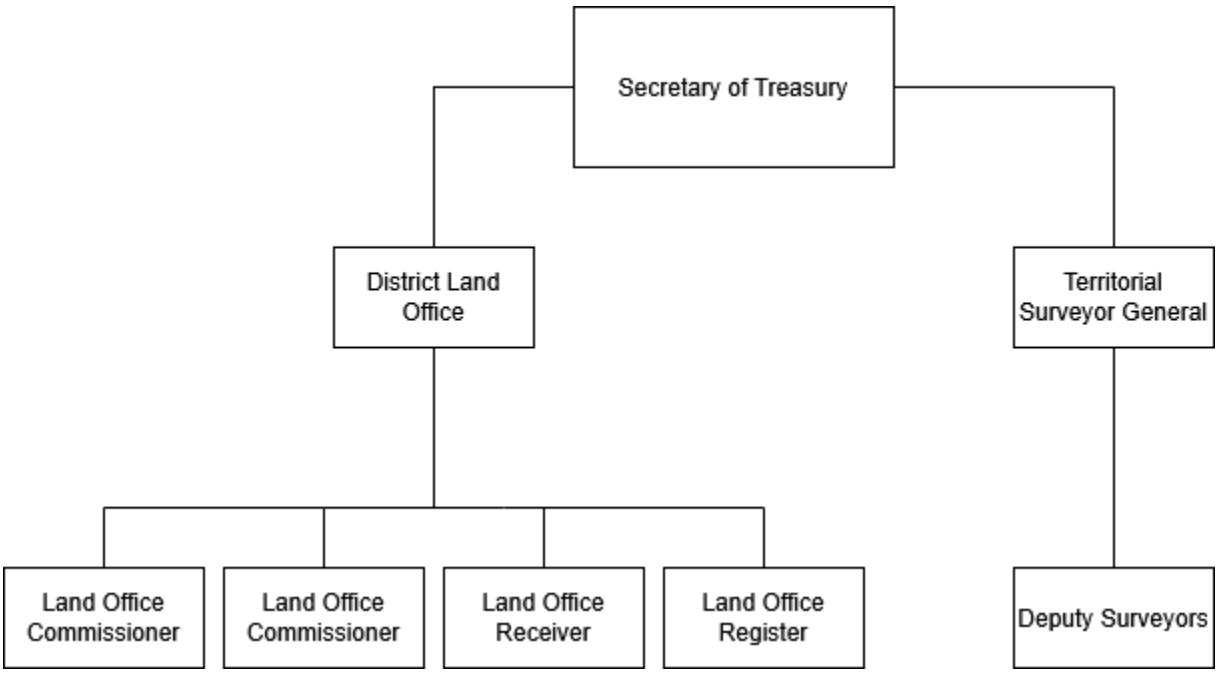

Figure 2: Land Office Organization in Mississippi under the 1803 Land Act.

Early land officers, then, largely filled the mold of the bureaucrat-as-clerk. Land officers acted as recorders and keepers of information. However, in some circumstances, early land officers exhibited more modern forms of bureaucratic decision making. For example, in Mississippi, Land Office Commissioners had the responsibility to determine how or when land titles should be recognized. However, these commissioners by no means carried out long term political or ideological projects. At the same time, early land officers struggled to navigate the disorganized lines of authority and confusing processes created with national legislation.

[28] Griffin, C. David H. "The Importance of Thomas Freeman's Surveys In the Mississippi Territory." *Surveying and Land Information Science* 73, no. 1 (May 1, 2013): 31–42.

The creation of the GLO in 1812 would solve some organizational problems, creating a new official in charge of all land office business, the GLO Commissioner and several other organizational officials in Washington DC. However, Congress failed to incorporate surveyors general into the structure of the GLO. Instead, the Secretary of Treasury retained immediate control over surveyors general. This oversight was not corrected until 1836, under a land office reorganization act (see below).[29] With this reorganization, the GLO Commissioner could finally direct the processes of contracting and surveying. Furthermore, the act would create clear lines of hierarchy within the land office. Local land offices functioned under territorial surveyors general, who could delegate authority and communicate according to more local concerns, while also fulfilling many of the prior functions of district land office commissioners (i.e. establishing proper documentation for title).

[29] *An Act to reorganize the General Land Office.(a)*, Public Law 78, U.S. Statutes at Large 5 (1836): 107-112.

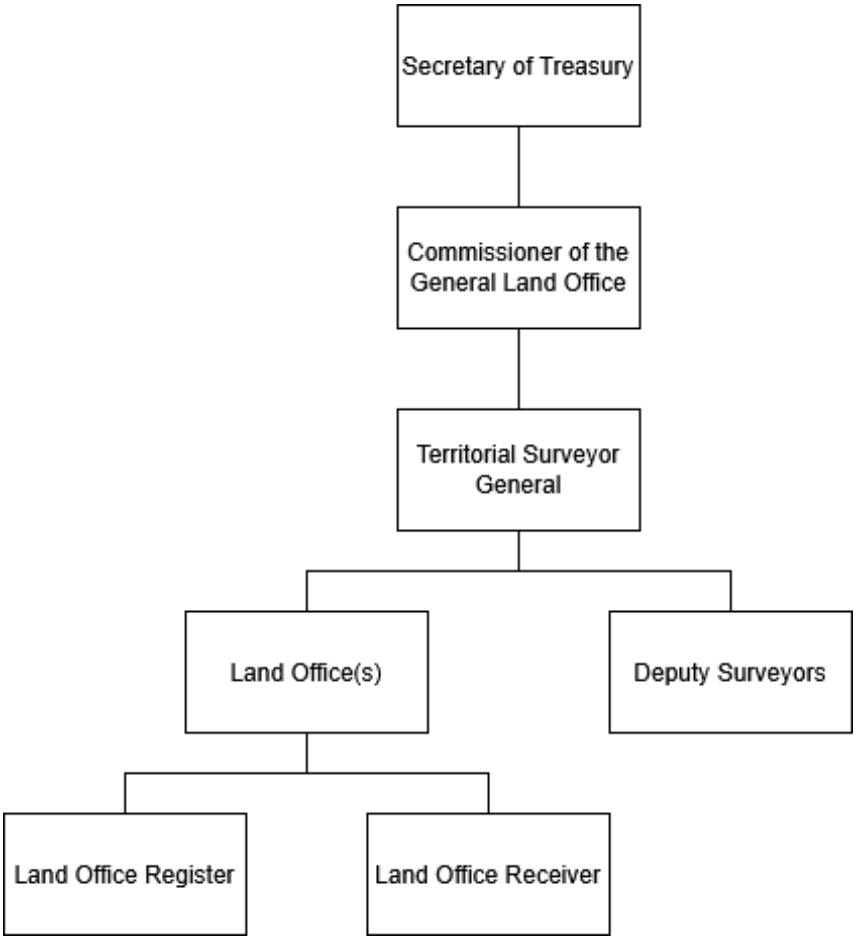

Figure 3: Organization of the Land Office under the 1836 Land Office Reorganization Act. Excludes officials in Washington D.C.

The GLO would undergo a second phase of consolidation with the creation of the Department of Interior (DoI) in 1849. While the DoI would not meaningfully alter the internal structure of the GLO, the new department would bring another key land management agency under its umbrella, the Office of Indian Affairs (OIA). This created new political opportunities for the GLO. What ensued was interoffice competition, where both the GLO and OIA fought over the authority to survey Indian Reservations. The GLO would ultimately claim this authority for itself without a clear legislative mandate, demonstrating substantial autonomy. However, the rules governing the GLO limited this autonomy. While the GLO acted autonomously, it did so

within clear bounds, using its powers of mapping and contract to restructure land on Indian Reservations to conform with the national grid.

This stands in stark contrast to conventional views of the department. Frequently referred to as the "Department of Everything Else" or the "Great Miscellany", the DoI is generally understood as a paradigmatic case of bureaucratic disorganization, inefficiency, and incompetence.[30] When analyzing the DoI, scholars have tended to ask why it failed to develop the capacity and autonomy of organizations such as the USDA during the Progressive and New Deal eras.[31] This dissertation, by contrast, argues that the DoI, and specifically the GLO, developed substantial autonomy far earlier than recognized. While the capacity of the DoI was hampered by the general limitations of bureaucratic governance in the early 19th century, by the 1850s, the department had consolidated significantly and was developing independent policies to carry out departmental policy. The dissertation also clarifies that, while the DoI appeared a confusing medley of bureaus and offices by the turn of the 20th century, in the 19th century, the offices of the DoI coordinated together to achieve significant policy goals. The apparent ineffectiveness of the department at the start of the 20th century obscures the significant achievements of the DoI during the latter half of the 19th.

Mapping Bureaucratic Consolidation

In examining bureaucratic consolidation, this dissertation focuses on two key features of bureaucratic development: autonomy and bureaucratization. Autonomy refers to the ways in which bureaucratic offices become independent from other sources of authority, through the

[30] Carpenter. *Forging Bureaucratic Autonomy.*
[31] *Ibid.*

creation of new internal processes and the claiming of independent authority.[32] Bureaucratization refers to the degree to which internal authority is clearly delineated, and rules and procedures are well established. In other words, bureaucratization is the level of bureaucratic formalization.[33] As scholars have noted, these two features often exist in tension with one another. Autonomous organizations are less likely to follow clearly established rules. Likewise, rule-bound organizations may lack the flexibility to produce autonomous authority.[34] Yet, despite these contradictions, organizations with high levels of autonomy also tend to have high levels of bureaucratization. To capture this seeming contradiction, I argue that the process of bureaucratic consolidation leads to the development of organizations which exist under the condition of bounded autonomy.

	Autonomy	**Bureaucratization**
Low Consolidation	Low	Low
High Consolidation	High	High

[32] Carpenter, Daniel. *The forging of bureaucratic autonomy: Reputations, networks, and policy innovation in executive agencies, 1862-1928*. Princeton University Press, 2002.
[33] Hall, Richard H. "Professionalization and Bureaucratization." *American Sociological Review* 33, no. 1 (1968): 92–104.
[34] *Ibid*, 94.

Alongside the production of new bureaucratic offices comes the creation and refinement of certain policy processes. These processes define the way organizations interact with the social world. For example, with the development of titling processes, land offices gained the capacity to assign titles to settlers. In themselves, these processes may appear relatively mundane. However, with consolidation, as organizations accumulate more authority, funding, and personnel, bureaucrats may seek to deploy these processes across new domains. Even as rules become more formalized, bureaucrats with high levels of institutional expertise can redeploy processes to achieve independent goals. Yet, as they redeploy processes in new political arenas, bureaucrats still find themselves restricted by the very structures of the processes which they deploy. Bureaucrats may cleverly interpret rules to provide themselves with new forms of authority, but this authority remains structured by the bureaucrat's reliance on pre-existing policy. Therefore, while bureaucrats may create new forms of authority, they do so within a set of bounded rules. Legislators may also put substantial pressure on bureaucrats, through formal (e.g. lawmaking) and informal (e.g. persuasion) political activity. With legislation, lawmakers can change the rules which bureaucrats use to create autonomy, which places a significant restriction on bureaucratic action (see Figure 3 below).

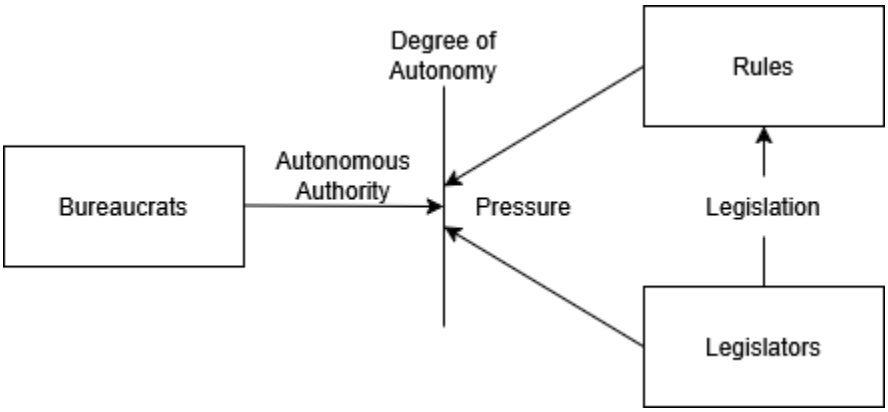

Figure 4: Simple model of bureaucratic autonomy.

Bureaucrats who exceed their formal powers may cause backlash, and find their authority restricted with legislation or other external action. If bureaucrats exercise this autonomy in ways which are commensurate with broader political goals, they are less likely to face political reprisal. With time, bureaucracies will tend toward an equilibrium with external pressures as bureaucrats exercise autonomy within a set of bounded rules in ways which do not lead to external backlash. As such, the process of bureaucratic consolidation tends to lead to path dependence, as bureaucrats learn to navigate the set of rules and relations which bind their autonomy and organizations seek to replicate already familiar processes. However, exogenous shocks may create critical junctures, leading to the rise of new forms of bureaucratic organization. Consolidated bureaucracies are therefore at risk of losing authority with the emergence of new political orders or conflicts.

Archival Methods

In this dissertation I examine the critical junctures and policy processes which led to the development of national land bureaucracy in the United States. In my empirical chapters, I employ a process tracing approach to understand the development of land management across several policymaking domains, with a particular focus on the development of legal authority and the processes through which bureaucratic rulemaking occurred. Given my interest in the development of *national* bureaucratic capacity, I examine the development of bureaucracy in the context of *territories* rather than *states*. While the early American government lacked substantial authority over state development, the appointments process in Congress gave the federal government substantial oversight of territorial development. Furthermore, territories were subject

to Congressional legislative authority and many territorial officials, such as governors, were members of the Executive branch, subject to direct presidential oversight.[35] As such, these relatively geographic distant territories were tied more closely to federal authority than states. In Chapters 2 and 3, then, I examine the development of national bureaucracy in Mississippi and Oregon Territories, taking advantage of this feature of territorial governance.

Within these contexts, I look at communication between national and local federal bureaucratic officials to understand how policy was translated from the national to local level. I carefully examine the challenges which local bureaucrats faced in implementing national policy mandates and how those challenges led to durable shifts in national policymaking. These shifts occurred across multiple policymaking domains. I further examine how these challenges were translated through legislation, bureaucratic rulemaking, and treaties with Native nations. At the same time, I analyze how pressure from settlers, often in the form of petitions, led policymakers to adopt new standards and create land policy which was responsive to settler concerns. This responsiveness was limited to white settlers. While policymakers tended to make moves to incorporate white settlers into the national polity, for Native nations, they instead used coercion and the threat of violence to dictate their terms. Similarly, national policymakers used land policy to secure the position of enslavers in southern society, viewing enslaved people as a both potential threat and economic resource.

This dissertation draws from the deep well of American state archives, with a particular focus on bureaucratic communication. The major sources are the Territorial Papers of the United States, the Executive Journals of Mississippi Territory, the Papers of the Surveyors General of

[35] See e.g. *An Act to establish the Territorial Government of Oregon.*, Public Law 86, U.S. Statutes at Large 9 (1848): 323-331. See also Ablavsky, Gregory. 2021. *Federal Ground: Governing Property and Violence in the First U. S. Territories*. 1st ed. Oxford: Oxford University Press, Incorporated.

Oregon and Washington, the Papers of the Washington and Oregon Indian Superintendencies, the Annual Reports to Congress of the Secretary of Interior, General Land Office, and Office of Indian Affairs, the Congressional Globe, and the Statutes at Large of the United States alongside several other minor sources. Each of these archives presents unique challenges, with differing criteria for inclusion and problems with missing records.

These issues are most acute in the early part of the 19th century. The archives of Mississippi Territory were substantially limited due to material conditions. Officials frequently failed to produce written records, as bookkeeping practices were not well formalized and the outpost suffered from insufficient staffing due to its distance from the major population centers on the east coast and limited funding. By the latter half of the 19th century, practices had become more established and formalized. In Oregon Territory, land offices retained records of all correspondence using record books and other record keeping methods. However, the Office of the Surveyor General struggled to retain staff due to low pay and harsh conditions. Those who chose to remain often had dubious qualifications and allegations of corruption were frequent, leading to problems with missing or inaccurate paperwork.

Beyond the difficulties with missing records, these official state archives also contained key omissions and silences which obscured the roles of Black and Indigenous people. In Mississippi, the voices of the enslaved are entirely occluded and the slave-owning class understood their presence in an instrumental fashion, as a violent threat or economic asset. When the first governor of Mississippi employed an enslaved man as a translator with local Native nations, the settlers claimed it as an offence against their own freedom and independence in their petitions to have the Governor removed.[36] The challenges are similar in recovering

[36] "We present as a very great grievance the want of a white man for an indian Interpreter which has hitherto been effected by a negro slave to the great shame of a free and independent people", Mississippi Territory, 63.

Indigenous voices in the state archive. The dominant ideology and governance strategy with regards to Native nations in the latter half of the 19th century, paternalism, meant that many state actors had a vested interest in portraying Native nations as helpless and in need of "civilization".[37] These incentives often meant that Indigenous voices in the archive went through several layers of translation and interpretation to make them legible to the policy goals and ideology of the time. Thus, secondhand accounts and summaries of Indigenous complaints are highly suspect. However, given the preeminent role of treaty and negotiation with Native nations, state actors had an incentive to accurately retain and publish records of these meetings. While it is critical to remember that such records are translated and inscribed by white interlocutors, they remain a valuable source for understanding how Native nations and leaders understood the implementation of allotment and other bureaucratic processes.

Land, Settlement, and State Development

Recent work within the field of American Political Science has brought attention to the role of settlement and land in American state development. Yet, despite this intervention, theories tying land to state power remain surprisingly incomplete. Notably, while scholars have written extensively about the development of American state bureaucracy, little research has addressed the connections between bureaucratic development and land. Yet, given the primacy of land and settlement in the early American context, understanding these connections is critical to properly examining the development of American political power in the 19th century. Therefore, this project seeks to rectify this blind spot, tracking the development of the GLO and its role in the parcellation of land.

[37] See, generally, Wilkins and Stark, *American Indian Politics*.

This project, then, draws strongly from a line of work done across several other disciplines which has more thoroughly reckoned with the settler colonial foundation of the American polity and politics. Within the field of Native Studies, scholars have long noted the importance of property and, more broadly, land to the dual projects of state and economic development.[38] Historians and legal scholars have also long noted to importance of settlement and land management to American law and governance.[39] Despite this substantial literature, it is only recently that American Political Science and American Political Development (APD) more specifically has begun to reckon with the settler history of the American state. Drawing from this substantial tradition outside of APD, I intervene in three distinct APD literatures: the first focused on the development of national bureaucratic structure, the second on settler expansion and territorial acquisition, and the third on political development and race. Moving between these diverse theories of American state development I argue that centering western settlement and expansion sheds new light on debates within these fields.

Within studies of bureaucratic development, scholars have tended to focus on the period preceding and including the progressive era in American politics, from the mid-1870s to the

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[38] See, for example: Deloria, Vine. 1970. *Custer Died for Your Sins: An Indian Manifesto*. New York: Avon; Coulthard, Glen Sean. 2014. *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. 1st ed. Minneapolis: University of Minnesota Press; Simpson, Audra, and Andrea Smith, eds. 2014. *Theorizing Native Studies*. Durham; Duke University Press; Wilkins, David E. (David Eugene), and Heidi Kiiwetinepinesiik Stark. 2018. *American Indian Politics and the American Political System*. Fourth edition. Lanham, Maryland: Rowman & Littlefield.

[39] Black, Megan. 2018. *The Global Interior: Mineral Frontiers and American Power*. Cambridge, Massachusetts: Harvard University Press; Harring, Sidney L. 1994. *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century*. Cambridge; Cambridge University Press; Harris, Cheryl I. 1993. "Whiteness as Property." *Harvard Law Review* 106 (8). CAMBRIDGE: Harvard Law Review Association: 1707–91. doi:10.2307/1341787; Park, K-Sue. 2016. "Money, Mortgages, and the Conquest of America." *Law & Social Inquiry* 41 (4). HOBOKEN: Blackwell Publishing Ltd: 1006–35. doi:10.1111/lsi.12222; Prucha, Francis Paul. 1984. *The Great Father: The United States Government and the American Indians*. Lincoln: University of Nebraska Press; Volpp, Leti. 2015. "The Indigenous As Alien." *UC Irvine Law Review* 5 (2). eScholarship, University of California.

early 1920s, examining the role of industrialization,[40] agriculture,[41] financialization,[42] and railroads.[43] However, during this era of progressive policymaking, despite the prominence of the GLO as a national institution, scholars have largely overlooked the importance of the development of national land policy in the process of creating national bureaucracy. Instead, they have cast the Department of Interior, the department which the GLO was located within starting in 1849, as a "Department of Everything Else", a poorly organized and loosely affiliated grouping of agencies which were situated together for lack of anywhere else to go.[44] This predominant view of the DoI has lead to a dearth of scholarship on the agency, taking for granted that, to legislators in 1849, the creation and organization of the DoI achieved significant political objectives. As I demonstrate in the third chapter, the DoI functioned as an autonomous and powerful bureaucratic organization in the latter half of the nineteenth century.

By contrast, a more recent strand of scholarship within APD has also examined the role of territorial acquisition and western colonialism in the process of state development. As these scholars have noted, much of American state development was strongly tied to the processes underlying the practice of western settlement.[45] Questions of settlement were of central

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[40] Skowronek, Stephen. 1982. *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920*. Cambridge: Cambridge University Press. doi:10.1017/CBO9780511665080; Bensel, Richard Franklin. 2000. *The Political Economy of American Industrialization, 1877-1900*. Cambridge [England]; Cambridge University Press.

[41] Sanders, M. Elizabeth. 1999. *Roots of Reform: Farmers, Workers, and the American State, 1877-1917*. Chicago: University of Chicago Press; Johnson, Kimberley S. 2011. "Racial Orders, Congress, and the Agricultural Welfare State, 1865–1940." *Studies in American Political Development* 25 (2). New York, USA: Cambridge University Press: 143–61. doi:10.1017/S0898588X11000095.

[42] Bensel, *American Industrialization*; Mehrotra, Ajay K. 2013. *Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929*. 1st ed. New York: Cambridge University Press. doi:10.1017/CBO9781107358263.

[43] Callen, Zachary. 2016. *Railroads and American Political Development: Infrastructure, Federalism, and State Building*. 1st ed. La Vergne: University Press of Kansas; Decker, Leslie E. (Leslie Edward). 1964. *Railroads, Lands, and Politics; the Taxation of the Railroad Land Grants, 1864-1897.* Providence: Brown University Press.

[44] The DoI even proudly adopts this moniker for itself. See Utley, Robert M, and Barry Mackintosh. 1988. *The Department of Everything Else: Highlights of Interior History*. Washington, D.C: [U.S. Dept. of the Interior].

[45] Frymer, Paul. 2017. *Building an American Empire: The Era of Territorial and Political Expansion*. 1st ed. Vol. 156. United States: Princeton University Press. doi:10.1515/9781400885350; Rockwell, Stephen J. 2010. *Indian Affairs and the Administrative State in the Nineteenth Century*. New York: Cambridge University Press; Van Atta,

importance to early American political actors and the American state institutions paid careful attention to the placement of settlers, moving them "defensively" to protect territorial boundaries.[46] Yet, though this work examines the critical role of settlement policy in constructing the territorial boundaries of the American state, it largely fails to turn this lens inward and consider the enduring influence of settlement on the structure of American institutions.

My intervention examines the significant role of settlement in the construction of American institutions not explicitly centered on territorial acquisition or Indigenous dispossession, such as the GLO. Ostensibly created to manage the titling, distribution, and sale of land, the GLO would become the primary tool of territorial expansion and dispossession. As the GLO refined techniques of land management, these techniques were increasingly turned on Native nations. As a result, though it critically contributes to our understanding of early American political development, this earlier work has not paid careful attention to the interior, mapped structure of land itself.

Given the vital importance of the Black and Indigenous experience to settlement, it is unsurprising that the literature on race and political development provides among the strongest analytical frames to understand the ways in which race has played a constitutive role in the development of American institutions. Scholars have examined the extensive manner in which race has shaped the path of American political development. Earlier work had suggested that American political institutions were fundamentally liberal, and instances of racism were

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John R. 2014. *Securing the West: Politics, Public Lands, and the Fate of the Old Republic, 1785–1850*. 1st ed. Baltimore: Johns Hopkins University Press; Balogh, Brian. 2009. *A Government out of Sight: The Mystery of National Authority in Nineteenth-Century America*. Cambridge; Cambridge University Press; Levinson, Sanford, and Bartholomew H Sparrow. 2005. *The Louisiana Purchase and American Expansion, 1803-1898*. Lanham, MD: Rowman & Littlefield Publishers; Obert, Jonathan. 2018. *The Six-Shooter State: Public and Private Violence in American Politics*. Cambridge, United Kingdom; Cambridge University Press; Obert, Jonathan. 2021. "Inlaws, Outlaws, and State Formation in Nineteenth-Century Oklahoma." *Social Science History* 45 (3). New York, USA: Cambridge University Press: 439–67. doi:10.1017/ssh.2021.13.

[46] Frymer, *Building an American Empire*.

aberrational, not constitutive. However, this more recent work follows from the multiple traditions, or racial orders approach which suggest that within American politics there exist continuing and distinct strands of racially liberal egalitarian and inegalitarian ascriptive political practice, with the conflicts between these orders shaping American political institutions.[47]

However, recent scholarship has called this approach into question, suggesting that rather than treating these orders as wholly separate and conflicting elements of political development, the democratic tradition within American political culture is more broadly constituted through these exclusions. As Aziz Rana argues, "Smith's critique of exceptionalism tends to present these 'multiple traditions' as insular and discrete...Rather than separate currents flowing into the well of American values, the democratic ideals themselves gained strength and meaning through frameworks of exclusion".[48] The development of the technology of land management lends considerable credence to this interpretation. The production of land as a mappable, divisible, and ownable object, on its surface a neutral act, fundamentally structures American democracy along the lines of race and indigeneity. Both the liberal and republican tradition in American politics are predicated on a system of landholding which, at its basis, centralizes the status of white settlers. Such a centrality suggests an American tradition which is not composed of multiple competing orders, but instead one which is constituted through its exclusions of race, gender, and

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[47] For earlier work, see Tocqueville, Alexis de. 1966. *Democracy in America*. Edited by J. P. (Jacob Peter) Mayer and Max Lerner. Translated by George Lawrence. [First edition]. New York: Harper & Row *Hartz, Louis. 1955. The Liberal Tradition in America : An Interpretation of American Political Thought since the Revolution.* First edition. New York: Harcourt, Brace & Company. For multiple traditions Smith, Rogers M. 1993. "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America." *The American Political Science Review* 87 (3). New York, USA: Cambridge University Press: 549–66. doi:10.2307/2938735; Smith, Rogers M. 2008. *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*. Yale University Press. For racial orders see King, Desmond S, and Rogers M Smith. 2005. "Racial Orders in American Political Development." *The American Political Science Review* 99 (1). New York, USA: Cambridge University Press: 75–92. doi:10.1017/S0003055405051506; Johnson, *The Agricultural Welfare State.*

[48] Rana, Aziz. 2010. *The Two Faces of American Freedom*. Cambridge, Massachusetts: Harvard University Press; See also McCann, Michael W, and George I Lovell. 2020. *Union by Law: Filipino American Labor Activists, Rights Radicalism, and Racial Capitalism*. 1st ed. Chicago: The University of Chicago Press.

indigeneity. In this sense, the American political arena—the very site at which these orders collide and conflict in Smith's account—is constituted through a set of practices and institutions which uphold the white settler as the primary subject of political consideration. Ascriptive practices, which Smith casts as antithetical to liberalism, instead appear as foundational and constitutive to liberalism itself. Setting these orders in opposition to one another, or even as meaningfully distinct, conceals the degree to which these orders continually reproduce the conditions for their shared existence.

Here, then, the turn toward the GLO suggests that a seemingly diverse set of state projects are interlinked through shared sets of ideas, institutions, and practices. This dissertation lends considerable credence to the competing frame which analyzes the policy of the GLO as fundamentally constituted through the illiberal practices of settlement, slavery, and dispossession. As I show, the creation of land offices helped ensure the political loyalty of enslavers in Mississippi through the security of land title and the creation of land markets. Settlers in Oregon were freely granted land while, at the same time, Indian Reservations were slowly reduced through survey and allotment. Land policy, which for white settlers secured the economic means of their existence, was, in historical practice, bound tightly to enslavement and dispossession. While land policy extended egalitarian freedoms to white settlers, it simultaneously produced the conditions under which ascriptive practices flourished.

Outline

In Chapter 1, I present a theory of land, technology, and bureaucratic development and apply it to the case of the 1836 General Land Office Reorganization Act, the first substantial

consolidation of the GLO after its establishment in 1812. I argue the process through which the state produces land as a social and institutional object deserves further examination. To this end, I expand on the concept of *bureaucratic consolidation*, arguing that the GLO sought to control the process through which land is produced as a social category. To do so, it utilized two key technologies: mapping and contract. This framework centers technological development as a key mode through which bureaucracy accumulates power and autonomy. I further argue that land has five features which make it ripe for this process driven analysis: materiality, territoriality, divisibility, transferability, and ownership. These features are subject to contestation from numerous actors and provide ample room for the establishment of new forms of bureaucratic process and autonomy. I then apply this theoretical framework to the consolidation of the land office during the presidency of Andrew Jackson. I argue that the technologies of mapping and contract, as established in the Jeffersonian era proved insufficient for the Jacksonian project. Furthermore, the autonomous policies of the GLO Commissioner during this period created excessive administrative burdens and provoked Congressional backlash. As a result, the GLO struggled to manage the rapid growth in land sales through throughout Jackson's presidency. The 1836 Reorganization Act, which provide more funding, created new offices, and established clearer policy processes, would resolve many of the tensions between Jacksonian policy and the structure of the GLO.

Chapter 2 examines the early development of land offices, with a case study of Mississippi Territory at the turn of the 19th century. Mississippi Territory, the first territorial acquisition of the United States from a colonial European power, presented new challenges to national level policymakers. Prior settlers in the region, who had purchased or retained land under British and Spanish rule, confronted national elites with a question: how could the nascent

American nation secure rule over this newly integrated region? The first effort, under the Federalist territorial administration of Winthrop Sargent, ended largely in failure, with settlers resisting efforts to form a militia and complaining bitterly of his rule. With the transition to the new presidency of Thomas Jefferson, however, came new territorial administrators, more willing to accommodate the interests of settlers. The new Governor, William C.C. Claiborne, served as an intermediary between settlers and national policymakers, and sought to resolve the most pressing concern for settlers in the territory, that of land title. This question was intertwined with the economic security of settlers, who had invested heavily in land and enslaved people. With insecure title, enslavers became deeply concerned that they might lose out on the cotton boom which was rapidly taking hold in the territory. As such, they sought regulations which would secure their economic future and welcomed the opening of a land office. Land offices served a critical bureaucratic function, in effect acting as a form of public infrastructure for landholders in the territory. Land office Commissioners would adjudicate claims to prior title alongside registers and receivers would track land ownership and oversee the sale of the national domain. At the same time, land officers collected intelligence for national elites, such as Thomas Jefferson, and the offices' provision and retention of land title ensured that settlers would remain loyal to the American federal government. As such, the creation of land offices was a critical component of the extension of early national authority and helped produce the economic conditions under which enslavement would grow in the territory.

Chapter 3 analyzes the implementation of a long term GLO policy goal: the interior survey of Indian Reservations. This policy change had substantial implications for Native nations and was the culmination of a twenty-year effort by the DoI to extend rectangular survey lines through Indian Reservations. To understand this history, I examine the history of land

management in Oregon and Washington Territories. This chapter moves between national level debates over land management, settler concerns with land ownership, bureaucratic efforts to make sense of the morass of regulations and laws, and the violence against Native nations which undergirded these processes. The Donation Land Claims Act of 1850 structured the settlement of Oregon Territory and created a competing land regime that lacked conformity with the practice of rectangular survey. This created significant administrative and financial challenges for the Office of the Surveyor General in the territory, the basic organizational unit of the GLO. Following this, I use process tracing to understand the development of bureaucratic autonomy across three arenas over the next two decades. First, I look at how local administrators initially competed over and struggled to use Congressional appropriations for surveys. Second, I examine how the GLO used vague Congressional legislation to create new authority over the survey of reservations, resolving the difficulties prior laws had created. Third, I analyze how settler and state violence against Native nations underpinned these processes, with the chapter culminating in an examination of a series of meetings between the Confederated Umatilla nation and local bureaucratic and political elites.

In the conclusion, I explain the decline of the GLO at the end of the 19th century. I argue that the GLO went through institutional decline as it struggled to adapt to the professional mode of bureaucratic management. Furthermore, the structure of the Homestead Act limited the expertise of the GLO when it came to the regulation of land use. While the GLO would regulate multiple types of land use, it did so through laws structured for individual settlement. With the rise of the Forest Reserve, however, the GLO would lack the expertise to manage large scale land projects. In its stead, the Division of Forestry in the Department of Agriculture, with its focus on scientific and statistical management methods, would ultimately supersede the GLO, claiming

the authority for large scale land management projects. I also briefly discuss the transfer of land management technologies to the overseas colonies. In the Philippines, colonial administrators would use the model of the Homestead Act and the GLO as the basis for new land law. They would create a two-tiered land management system, where Filipinos could claim 40-acre tracts of land for settlement while American corporations could claim up to 2,500 acres. As such, while the GLO would undergo institutional decline in the continental United States, the institution would have a significant afterlife in the colonial context.

Land was the primary domain of American state development during the 19th century and, as such, the consolidation of the GLO is an important object of study. Early land offices were isolated extensions of American bureaucratic power yet secured important objectives for the American state. As the land office system consolidated, bureaucratic officials substantially shifted land policy to meet long term objectives. The GLO, as a bureaucratic institution was critical to the path of American development during the 19th century and produced the underlying structure of the American frontier. The policies of the GLO became synonymous with western American identity and produced new forms of social and political existence. As such, understanding the consolidation of the GLO throughout the 19th century is necessary to properly delineate the bounds of state power during this critical period of American development.

Chapter I

Bureaucratic Consolidation in the Jacksonian Era: Mapping, Contracts, and Settlement

Introduction

> *Marvellous accounts had gone forth of the fertility of the virgin lands; and the productions of the soil were commanding a prize renumerating to slave labor as it had never been renumerated before. Emigrants came flooding in from all quarters of the Union, especially from the slaveholding States. The new country seemed to be a reservoir, and every road leading to it a vagrant stream of enterprise and adventure.*[1]
>
> **– Joseph G. Baldwin, explaining the rush for land after the Indian Removal Act**
>
> *They come like the locusts of Egypt, & darken the office, with clouds of smoke & dust, and an uproar occasioned by whiskey and avarice, that a Register at least can never forget.*[2]
>
> **– Gideon Fitz, Land Office Register in Louisiana, describing the operation of the 1830 Pre-emption Act**

In August of 1835 the General Land Office (GLO) was in crisis. Its commissioner, Elijah Hayward, had struggled to manage and reform the land office since he was first appointed to this post in 1830. Initially a close ally of President Andrew Jackson, he slowly lost the confidence of Congress, his land officers, and eventually, President Jackson himself. During his tenure, the land office had struggled to handle the bureaucratic demands that came with a large increase in land office business. By the end of 1836, the backlog of land patents (i.e. certificates guaranteeing title) had reached 263,017, which it processed at a sluggish rate of about 25,000 per year.[3] To meet the objectives of settlement the GLO would need to operate much more efficiently. Under significant pressure, Hayward would tender his resignation on August 31st.[4]

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[1] Joseph G. Baldwin, *The Flush Times of Alabama and Mississippi* (New York, 1853), 82-84 quoted in Rohrbough, Malcolm J. *The land office business: the settlement and administration of American public lands, 1789-1837*. Oxford University Press, 1968.
[2] Gideon Fitz to George Graham, 5 July 1830, quoted in Rohrbough, *Land Office Business.*
[3] U.S. Congress. *House of Representatives. Letter from the Secretary of the Treasury, transmitting a report of the Commissioner of the General Land Office of the operations of said office during the year 1836*. 24th Cong., 2nd sess., 1836. 24-6. For processing rate, see Rohrbough, *Land Office Business,* 257.
[4] Rohrbough, *Land Office Business*, 264.

The new commissioner, Ethan Allen Brown, quickly undertook the business of reforming the GLO. He documented the deficiencies in the land office and explained the need for reorganization and improved funding. Given the dysfunction of the land office over the past decade, Congress acquiesced and requested that he write a bill which would reorganize the GLO. The subsequent bill, the General Land Office Reorganization Act, was passed by Congress in 1836 and substantially increased the funding of the land office. The bill created new bureaucratic offices and reforming many inefficient practices and structures.[5] The consolidation of the land office in 1836 only occurred as previous Congressional action—and, at times, a lack thereof—had pushed it into dysfunction. The 1836 Reorganization Act represented the first significant consolidation of GLO power since it was founded in 1812.

At a time when Congress and federal executives undertook new major projects of land development and settlement, why did Congress take until 1836, near the end of Jackson's presidency, to reform the GLO? I argue that, whereas Hayward's administration had become mired in the path dependent limitations of the early GLO, under Brown the agency entered a critical juncture, opening the avenue for major reform. At the core of the crisis was the failure of the GLO to effectively manage land. To understand this failure, this chapter develops a systematic approach for assessing the relationship between land and bureaucratic development. Land, as a category, appears to the observer of American political history as a concrete object, physical and defined. Yet, as I will demonstrate, this apparent objectivity is the distinct result of technological and bureaucratic processes of political change. I argue that land management offices underwent *bureaucratic consolidation*, increasingly centralizing and controlling processes of land management. This technology and process focused approach clarifies the ways

[5] *An Act to reorganize the General Land Office.(a)*, Public Law 78, U.S. Statutes at Large 5 (1836): 107-112.

in which the American state sought to develop and maintain control over settlement, combining two key technological techniques: mapping and contract. I then apply this framework to an analysis of the GLO under the presidency of Andrew Jackson, examining how this new political order required the GLO to refine these twin processes of land management.

This chapter, then, seeks to track the ways in which the American state developed and consolidated technologies of public land management and created a national land bureaucracy. At times, the structure of land management led to confusion, inefficiency, and failure. Yet, despite these failures, the restructuring of land remained a powerful technology, enabling the consolidation of white settler power in the United States, the expansion of slavery, and the concomitant weakening of Native nations. As such, the technology of land management was the key element in the racialized expansion of American state power.

Mapping and Contract as Technologies of Settlement

A major domain of state power is creating technologies to make populations legible to state institutions. Technology, here, refers to the processes of measurement and differentiation which produce legible categories of space, society, and personhood. Technology reduces the manifold complexities of social existence into discrete, quantifiable, and hierarchical attributes which state bureaucratic institutions can measure and manipulate to produce desirable social outcomes.[6] In this sense, the creation of the American settler resulted from the accretion of technological attribution onto the social body of the American public.

[6] See especially, Canaday, Margot. *The Straight State: Sexuality and Citizenship in Twentieth-Century America.* Princeton: Princeton University Press, 2009; Scott, James C. *Seeing like a state: How certain schemes to improve the human condition have failed*. Yale university Press, 2020.

Understood in this context, developing a system of measurement is a core component of constructing state bureaucratic institutions. The manner in which bureaucracies "see" subject populations and spaces structures the modes through which they attempt to manage and control the social world.[7] Measurement is not neutral. The categories which bureaucracies produce inevitably will map imperfectly onto the domains of state power. The demands of simplification and legibility reduce the near infinitely complex and fluid material and social external world into static categories which can be reproduced in documents, tables, charts, and maps. From fluid interchangeability, bureaucracies produce static hierarchies. In doing so, bureaucracies must make decisions about who or what to include and exclude. These decisions will generally reflect prevailing social and political norms. At the same time, these processes of measurement and differentiation may produce new and unexpected social outcomes. In their efforts to measure and categorize subjects, state bureaucracies reify certain forms of social organization which, in turn, create new conditions of social existence.

A core component of the state power over measurement comes from the technology of mapping. Mapping is a key technology in the development of land bureaucracy. Maps are political documents, situated in space and time. On their surface, maps seek to make sense of moments in geological, social, and political time. Maps provide static geographic representations of complex and fluid social and political relationships. The map must necessarily reduce the complexities of social life to a codex, a key, which simplifies the view from above to a narrow set of dimensions which correspond imperfectly to the external world. Bound up in maps are questions of representation, legibility, and state power. Maps record and produce spaces in ways that are coextensive with political power in a modern territorial state. Pre-modern dynasties

[7] Scott, *Seeing Like a State*.

rarely produced accurate maps of their territories, as territory did not bind the authority of the king in a meaningful way. Instead, power in such contexts was relational, produced through ties of vassalage and tribute. However, with the rise of *territory* as a meaningful form of state power, states sought to make record of the extent of their domain. Maps declared modern states as *spatial*, their territory abutting against the border of others. As such, rulers in modern states undertook extensive projects to map their territories, as an accurate map clearly delineated the extent of their power.[8]

With maps, rulers created new modes of rule over their subjects. Rulers sought to inscribe traditional forms of land tenure onto maps through the new rational and geometric modes which mapping permitted. The cadastral map, as it is known, transformed the relationship between subjects, land, and the state, making the social relations underpinning prior forms of land tenure legible within the spatial dominion of the modern state.[9] As I emphasize in this project, the production of maps through survey was a key technological process in consolidating bureaucratic power over the frontier. Producing maps was a costly endeavor for the early American state and the frontier was frequently inhospitable to surveyors. However, through maps, the American state sought to establish clear authority over the property-making process, using a combination of maps and contracts to ensure political control over settlers.

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[8] Harley, John Brian. "Historical geography and the cartographic illusion." *Journal of Historical Geography* 15, no. 1 (1989): 80-91; Biggs, Michael. "Putting the state on the map: Cartography, territory, and European state formation." *Comparative studies in society and history* 41, no. 2 (1999): 374-405; Branch, Jordan. *The cartographic state: Maps, territory, and the origins of sovereignty*. No. 127. Cambridge University Press, 2014.
[9] Scott, *Seeing Like a State*.

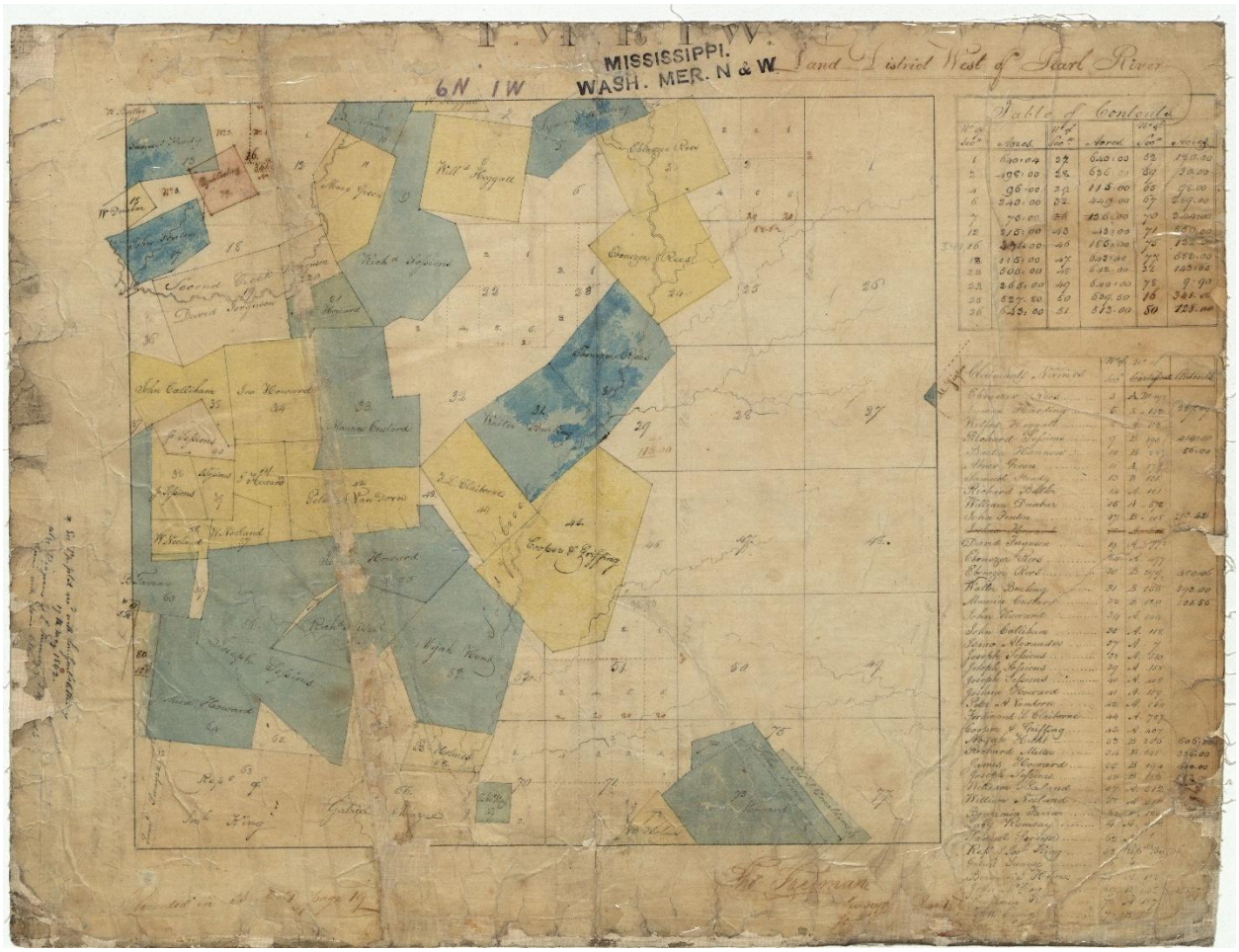


Figure 5: A map of a portion of Mississippi Territory in modern day Adams County, circa 1810-20. Bureau of Land Management, General Land Office Records, Survey Plats and Field Notes. Survey Plat of Thomas Freeman, Mississippi, Washington Meridian, Township 6, Range 1.

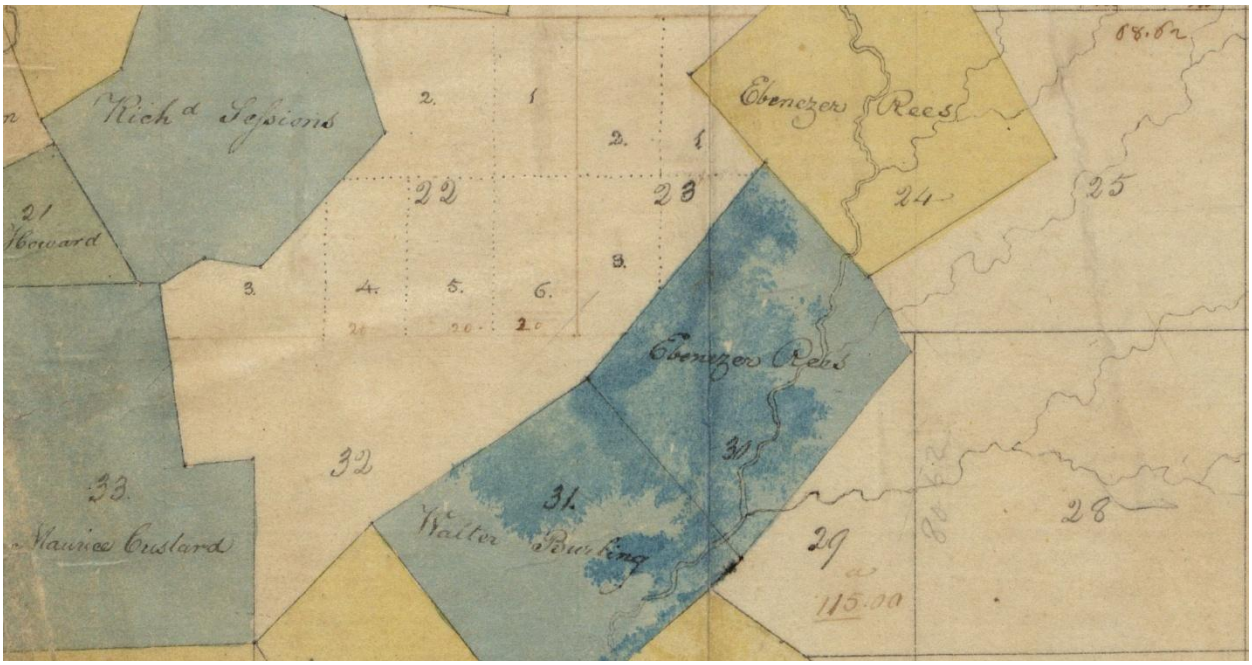
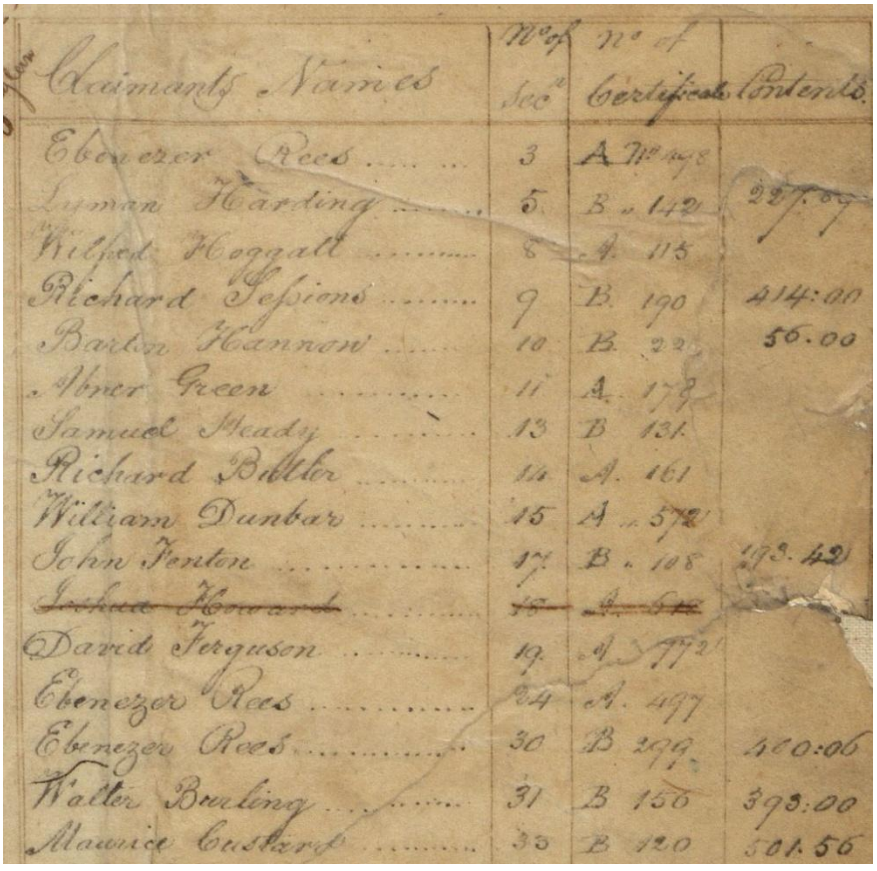


Figure 6: Detail showing names, section and subsection numbers, and minor geographic details from Figure 1. From the top right of the map, each section receives a number starting with one, with each allotment also receiving a number in sequence.



Claimants Names	No of Sec^n	No of Certificate	Contents
Ebenezer Rees	3	A No 148	
Lyman Harding	5	B 142	227.64
Wilfred Hoggatt	8	A 115	
Richard Sessions	9	B 190	414:00
Barton Hannon	10	B 22	56.00
Abner Green	11	A 178	
Samuel Heady	13	B 131	
Richard Bibler	14	A 161	
William Dunbar	15	A 572	
John Fenton	17	B 108	193.42
~~Joshua Howard~~	~~18~~	~~A 62~~	
David Ferguson	19	A 772	
Ebenezer Rees	24	A 497	
Ebenezer Rees	30	B 299	100:06
Walter Burling	31	B 156	393:00
Maurice Custard	33	B 120	501.56

Figure 7: A partial list of names from the right side of the map in Figure 1. Section and certificate numbers are provided as well as acreage for some claimants.

As such, cadastral maps convey important information about the objectives and aims of the modern state while also bearing traces of prior modes of development. As I explore in the second chapter of this dissertation, surveyors in Mississippi Territory produced maps, such as the one above (Figure 5, with detail in Figures 6 and 7), which recognized prior European forms of landholding while also creating an underlying system of rectangular survey. Landowners who retained claims from prior periods of British and Spanish rule did so according to titles with irregular boundaries. By contrast, the early American state sought to produce a rational and regular system of settlement through the process of rectangular survey. Surveyors would mark out square mile sections of land in a regular geometric fashion. Those surveys would then form the basis for the purchase and settlement of land. These two forms of land tenure collide abruptly in the surveyors' plat (i.e. cadastral map) from the region (See especially Figure 6) demonstrating how the early American state sought to reconcile multiple forms of land ownership through bureaucratic process. At the same time, the map provides a physical representation of the contractual obligations of the United States government. The assignment of land allotments via survey ensured that early settlers would maintain a right to the land as federal officials had promised. The record of names on the right-hand side of the plat, with labels provided on the map itself serve as a visual record of the state's ultimate power to guarantee land rights and ties land ownership to a contract with the American state (Figure 5). Indeed, surveying and mapping would become critical components of the consolidated processes which would guide land management throughout the 19th century.

The above map also points to the forms of equality and inequality which undergirded the system of rule in America. Maps such as this one homogenize space, they reduce physical and social complexities to linear boundaries, "apprehend[ing] space as pure quantity, abstracted from

qualities of meaning and complexity."[10] Yet in producing spatial homogeneity, maps emphasize another form of uniformity, that of political citizenship. Under earlier forms of political dominion, different spatial domains operated according to different laws.[11] What is striking about this map of Mississippi is how it represents a form of basic political equality: all plots of land exist in relation to one another, each subject to the same laws and regulations as any other. Yet, in representing one form of political equality, this map conceals fundamental inequalities which structured the American land system. The settlement of these lands occurred due to the coerced displacement of Indigenous peoples. The lands which these white men in Mississippi occupied were maintained through the practice of chattel slavery. While this map makes legible the history of European settlement in the region and the future system of land which would take hold in the western United States, it does so through the erasure of other sets of historical and social meaning.

Contracting as State-Making

The American state retained maps alongside contracts, cataloging and formalizing land records. The vast bulk of the records of the office were contracts between settlers and the federal government known as patents, affirming the settler's right to possess land. While these contracts, on one level, simply formalized the status of the settler with regards to the federal government, they also served critical functions for the federal government and were key to the construction and extension of state power in the early 19th century. At the same time, in centering contract, I look at the role of treaties with Native nations in state building. An oft overlooked element of the

[10] Biggs, "Putting the State on the Map", 378.
[11] Scott, *Seeing Like a State*, 32. See also Thompson, Edward P. *Whigs and hunters*. Harmondsworth, Middx: Penguin Books, 1975.

American administrative state, treaties created administrative obligations for the American state and were used by the DoI and the GLO to extend administrative power onto Indian Reservations. In this dissertation, therefore, I take the contract seriously as a site of the expansion of state power. However, the contract as a site of state development remains largely undertheorized in APD. Here, then, I argue that the process of contract making was a key technological component of the bureaucratic consolidation of the GLO.

I understand the contract, in its most basic form, as a formal agreement between two or more parties. There are several important features of contracts to note at this juncture. First, contracts create obligations. Failing to carry out duties as defined by a contract may subject those contracted to certain penalties. However, a contract is not self-executing. In itself, a contract cannot "make" either party follow or carry out its duties. Likewise, though contracts may have built in penalties, there is nothing about the contract qua contract that ensures the enforceability of these penalties. From here, the second key feature of contracts emerges: contracts require external enforcement. If a contract is not self-executing, it follows that there is some party which executes the contract. This may be a third party or one of the parties subject to the contract itself. Enforcement, therefore, requires the development of new enforcement agencies or state contracts with third party enforcers.

For example, a contract signed between a settler and the US government might entitle the settler to a parcel of land, provided that the settler makes certain improvements to said land.[12] In this case, the entity which determines whether the settler has made said improvements is one of the parties to the contract, the US government. Though the contract itself may contain the

[12] See e.g. the Donation Land Claim Act, *An Act to create the Office of Surveyor-General of the Public Lands in Oregon, and to provide for the Survey, and to make Donations to Settlers of the said Public Lands.*, Public Law 45, U.S. Statutes at Large 9 (1850): 496-500.

conditions under which it is executed, the US government ultimately determines whether those conditions have been met. By contrast, a contract between two landowners may, if no disputes arise, require little external coercion. However, if the landowners come into irreconcilable dispute with one another, then it is not up to the landowners to resolve said dispute. Instead, such disputes would be formally resolved through courts and other legal avenues such as land offices. In this case, we see how third parties are often responsible for the execution and resolution of contracts.

However, for enforcement to occur, one of two conditions must be met. Either (a) the central contracting party must maintain a monopoly on violence (e.g. a Weberian state) or (b) all parties must agree that such contracts have force and delegate enforcement to the central authority or a third party. The first, more coercive, mode tends to correspond to a unitary model of development, whereas the second, more cooperative, mode tends to correspond to a federal model of development.[13] To encourage cooperation, the federal model of development seeks to produce contracts which are self-enforcing (i.e. those which all parties have an incentive to obey).[14] Contracts which provide mutual benefit, therefore, tend to create the cooperative conditions which give rise to federal governance.

Viewing contracting as an important component of bureaucratic processes, then, highlights the importance of land contracting as a core site of the expansion of state power. As the problem of territorial governance emerged, where the American federal government sought to extend its reach over diverse populations of settlers, land policy emerged a central technique to

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[13] There is substantial overlap between the two modes of development, as these are tendencies, not absolutes. See Ziblatt, Daniel. "Rethinking The Origins of Federalism: Puzzle, Theory, and Evidence from Nineteenth-Century Europe." *World Politics* 57, no. 1 (2004): 70–98.

[14] Rui J. P. de Figueiredo, Jr., and Barry R. Weingast. "Self-Enforcing Federalism." *Journal of Law, Economics, & Organization* 21, no. 1 (2005): 103–35.

encourage compliance with the federal regime. Creating a local land office, which guaranteed settlers titles to their land, provided a key benefit to settlers: economic security. Land offices, acting as central repositories of title, ensured that settlers could retain title to their land against other claimants. Furthermore, as land offices recorded the sale of land, settlers could participate in the land market knowing that the exchange was legitimate and recognized by the state. These incentives encouraged settlers to cooperate with national officials and helped extend national authority to distant territories.

At the same time, the expansion of the federal bureaucracy brought substantial advantages to the central state. With settler cooperation, federal officials could introduce territorial governance and incorporate distant populations into the national polity. Seeing themselves as part of the nation, settlers participated in local governance and become active agents for the extension of national authority as members of the territorial government, militia, law enforcement, or other bureaucratic agencies. Furthermore, the creation of local land offices served a surveillance function for the central government. Land officers transmitted information about local conditions to central offices in Washington D.C. and, in their daily work, catalogued the survey, settlement, and sale of land for a national land register. Most critically, however, land offices raised money for the national government, with the sale of land through the office amortizing the costs of establishing and running land offices and providing an important revenue source for the government. The mutual benefits of land title, governed through the land office, ensured that conditions for the emergence of federal governance would remain stable.

However, when the condition of mutual benefit is not fulfilled, parties are less likely to fulfill the terms of a contract for several reasons. First, if one of the parties to the contract is also the entity which enforces the contract, said entity can unilaterally revoke the contract or violate

its terms. Second, if there are significant differences in resources or power between two parties to a contract, then the weaker party will find it significantly more difficult to obtain their contractual dues. Third, if there is no clear mechanism through which a contract might be enforced, there is a strong chance that the obligations of the contract will not be met if it is to the advantage of one party. Fourth, parties may not turn to formal mechanisms to enforce contracts if there is advantage to be had in the informal sphere.

These problems highlight that contractual relations are fraught with questions of power. In particular, in this project, I seek to explain how questions of state power and development are bound up with the production of contracts, particularly in the realm of land. In taking the contract as the central object of analysis, I clarify how state power penetrates the project of settlement in three key areas. First, the contract centers the process through which settlement took place, through the rationalization and contracting of land, which ultimately transformed land into property. Second, taking the contract as central clarifies how the American government extended rule over distant territories, providing the security of title as a key social good to settlers. Third, the contract emphasizes the nation-to-nation relationship, specifically in the treaties which the American state ratified with Native nations.

The cooperative benefits of contracts were not extended to Native nations and their members. Instead, efforts to extend rule over Indigenous people much more resemble the unitary model of development. The federal government deployed military force against Native nations, using such force or the threat thereof to negotiate treaties with these nations. Treaties consolidated American territorial gains after conflict with Native nations. As they were structured, treaties sought to create structures of obligation that would ensure that military victories transformed into more stable forms of landholding. However, these obligations

generally imposed costs on Native nations and the national government rather than creating mutual benefit. For Native nations, these costs were extraordinarily high, involving the loss of their land, their right to self-governance, and their way of life. While the federal government initially obtained substantial benefits from these treaties, most notably in the form of territory, once the treaty was negotiated, the government was generally required to pay some form of renumeration per the terms of the treaty. With its major objective accomplished (territorial acquisition), the government had little reason to follow the terms of the treaty. Furthermore, since the relative power in the relationship between Native nations and the federal government was highly unequal, there was little to hold the government to the terms of the treaty. As treaties were not self-enforcing, requiring Congressional ratification and appropriation to fulfill, the government frequently violated the terms of these treaties. Despite the significant formal and structural advantages which treaties provided to the federal government, Congress would ultimately end the practice of treaty-making in 1871.[15]

Indeed, as the US territorial state expanded, it frequently violated the treaties it had previously signed with Native nations, since these terms were no longer to its advantage. Treaties both maintained a coercive set of relations with Native nations and laid the groundwork for later acts of dispossession. At the same time, treaties often were used to regulate specific forms of contract. Notably, treaties delineated the forms of contract which Native nations themselves could make. The American state ensured control over formal processes of title and sale, with Native nations strictly forbidden from selling land to settlers. The US further regulated the granting of title in a series of laws collectively known as The Non-intercourse Act, passed

[15] *Indian Appropriations Act of 1871*.

between 1790 and 1834. These laws specifically forbade Native nations from selling land and US citizens from purchasing land, with significant financial penalty.[16]

Indeed, centering contract in this analysis further underscores the degree to which the project of state development was more broadly imbricated in whiteness. As Cheryl Harris argues:

> The origins of property rights in the United States are rooted in racial domination. Even in the early years of the country, it was not the concept of race alone that operated to oppress Blacks and Indians; rather, it was the interaction between conceptions of race and property that played a critical role in establishing and maintaining racial and economic subordination… [T]he conquest, removal, and extermination of Native American life and culture were ratified by conferring and acknowledging the property rights of whites in Native American land. Only white possession and occupation of land was validated and therefore privileged as a basis for property rights.[17]

Harris advances a conceptualization of whiteness as bound up with property the American regime of property rights. The social, political, and legal institutions surrounding property construct whiteness through defining a particular relationship with the land itself. This emphasizes the degree to which property relations within the American context are a function of an institutionalized white supremacy, both as an exclusionary violent force and as a privileging of white social relations.

Within this context, contracting becomes a central locus of state power. In seeing units of land as a fungible and, ultimately, interchangeable, state institutions set in motion a process of creating a set of relations with the land which produces whiteness within a settler regime of property relations. These institutions, then, continually reproduce and empower settler whiteness as their capacities and boundaries expand. Through this activity, the state expands not only as a territorial sovereign, but as a diverse set of institutionally bound economic and political relations.

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[16] For the final law, see *An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.* (a), Public Law 800, U.S. Statutes at Large 4 (1834): 729-735.
[17] Harris, Cheryl I. "Whiteness as property." *Harvard law review* (1993): 1707-1791.

Contracting, as a technology, therefore, produces relations between land and settler which serve the political and economic interests of an array of elite political actors and state institutions.

However, the emphasis on contract serves another purpose. Rather than simply understanding state power as a mediating force between land and settlement, contract centers whiteness as a core element of American economic development. At the same time, analytically centering contract underscores the degree to which violence is bound up in the American settler project. As Harris notes, whiteness and property share, at their core, the "unconstrained right to exclude".[18] In the American settler context, this property right fundamentally entails the violent dispossession of Indigenous nations, both in the form of military and settler violence. Therefore, the right to exclude, within this context, takes the form of coercion and violence.

In utilizing this broader notion of contract, this project also draws on social contract theory. Here, I follow from Charles Mills and the relationship between traditional social contract theory and the concrete practices employed in what he terms the racial contract. For Mills, the racing of space plays a key role in the production of individuals subject to the social contract:

> [T]he Racial Contract in its early preconquest versions must necessarily involve the pejorative characterization of the spaces that need taming, the spaces in which the racial polities are eventually going to be constructed. The Racial Contract is thus necessarily more openly *material* than the social contract.[19]

For Mills, then, the Racial Contract has a stronger material basis than the social contract. The processes which produce space as coherent and interpretable for a white racial polity are concrete, not abstract. This is not to say that these processes do not produce abstraction. The conceptions of land under the conditions of the racial contract are necessarily removed from the land itself. As Mills emphasizes, the white settler state produces a pejorative imaginary of land

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[18] *Ibid.*
[19] Mills, Charles W. *The Racial Contract.* Ithaca: Cornell University Press, 2014, 43.

that needs taming. It is thus, in this construction, that elites come to hold a moral economy that *requires* expropriation of land from Indigenous people to construct a new political order.

It is with this economy in mind that Mills makes clear the importance of contract to the settler state. Under the conditions of the Racial Contract, elites engage with and utilize the abstractions of social contract theory to justify the seizure of land from Indigenous Americans. The moral economy of the social contract becomes a structuring principle for elite actors. As Mills notes: "Creating the civil and political here thus requires an active *spatial* struggle (this space is resistant) against the savage and barbaric, an advancing of the frontier against opposition, a Europeanization of the world".[20] In this sense, the political is *necessarily* spatial. The construction of a white American polity, under the conditions of the Racial Contract and according to the precepts of the social contract requires the subjugation of Indigenous peoples and the corresponding spaces which they occupy. The political project of settlement, as an ordering of race and space, thus becomes moral imperative.

Yet, the racing of space takes on another dimension within the context of settler colonialism. The European notion of the political necessarily presupposes the sovereignty of a given political order. Thus, in addition to the construction of a political order in the process of settlement, this project carefully attends to the remaking of sovereignty which inevitably accompanies the emergence of the settler state. As scholars of Indigenous studies have long noted, the processes undergirding the creation of the American state entail the continual destruction of Indigenous sovereignty and political identity of Indigenous nations.[21] As I will argue, through the process of treaty-making, American elites continually demanded the cession

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[20] *Ibid,* 43.
[21] See, for example, Bruyneel, *The Third Space of Sovereignty*. See also Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States*.

of sovereign status from Native nations as they continued the process of settlement and space-making.

Taken together, it is clear that the American state understood the disbursement of land as a key technology of state power. The consolidation of bureaucratic power, guaranteed through treaty and law, provided the framework through which the bifurcated project of dispossession and settlement were to be carried out. Bureaucrats and federal elites carefully managed contracts to order, hierarchize, and categorize differentiated subjects, groups, and objects for the purposes of governance. The structure of contract—as rooted in treaty, property, and governance—concretely represented the early American state's efforts to assemble a rational framework through which governance and state development occur.

Land and State Building

The two dominant ways in which scholars in political science have understood the relationship between land and state power are the *land as territory* and *land as property* approaches. The first approach, *land as territory*, is a common way of understanding land in the state building literature. Here, scholars seek to emphasize how control over a given national territory is a core component of constructing a national state. In this reckoning, the measure of the state's power is in its capacity to exert its social and political dominance in a given geographical space. States remain dominant insofar as states make people and institutions play by *their* rules (as opposed to the rules of other social organizations). In this rendering, states succeed when they supplant other forms of social and political organization, coercing individuals

and groups—through the application of violence and the provision of goods—into mobilizing at the state's behest.[22]

This approach understands territory as a necessary precondition of the state's existence. State institutions penetrate other preexisting social institutions, remaking these institutions in the image of the state. States deploy citizens to engage in state-building projects. Citizens may engage in the core functions of the state: making war, raising revenues, or enforcing law.[23] Much of American state development follows this schematic. As the American state sought to expand its territory, it likewise looked to extend its control of people and populations on the frontier. In doing so, state actors offered land to settlers, transforming territory into property.

In the *land as property* perspective, a core function of state power is to establish and secure certain sets of stable property relations for different social actors. This perspective is not wholly distinct from the *land as territory* view. Indeed, many of the rules which the state seeks to enforce within its territory are the same rules which enforce property relations. However, scholars of property rights have often taken a more restrained view of the state, emphasizing the state's role as one actor among many in the complex negotiations which determine the rules through which property is governed.[24] Such scholarly restraint, however, tends to neglect the state's central role in establishing and enforcing property rights. Scholars of American Political Development (APD), by contrast, have taken a more state-centered approach to understanding the emergence and development of property rights.[25] In taking this more state-centered approach,

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[22] See Joel S. Migdal, *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World*.
[23] *Ibid.*
[24] See e.g., Libecap, Gary D. *Contracting for Property Rights*. Cambridge [England] ; Cambridge University Press, 1989.
[25] See e.g., Paul Frymer, *Building an American Empire*; Stephen Rockwell, *Indian Affairs and the Administrative State in the Nineteenth Century*.

APD scholars have more clearly delineated the ways in which the objectives of the American state led to particular distributions of property.

Yet, such scholarship, though well attenuated to questions state power, fails to thoroughly describe the process through which territory is transformed into property. The very existence of land as property is taken as given, leaving the question of property's structural origins unanswered. In this sense, the American state building literature has taken the question of property as a precondition to the growth of state power and capacity, rather than viewing the production of property itself as an active component of the state building process. In moving towards an analysis of bureaucratic consolidation, then, I seek to synthesize these two disparate notions of land: as territory and property. At the same time, I emphasize that the transformation of land is a *social and political process*.

In turning to process here, I seek to move from a notion of land as a static object, to one where the very foundation of a shared vision of land is a matter of social and political contestation. This is not a unique insight. Scholars have examined the political processes which shaped statehood, the frontier, and the border.[26] Yet, the origins of land ownership in the American context remain relatively understudied. To be clear, I do not propose to provide full history of American land development in this project. Instead, I seek to explain how processes surrounding land, territory, and property came together to form a particular structured understanding of land at distinct times and places in American history. In the course of this study, therefore, I propose five relevant features of land as an object of analysis: materiality, territoriality, divisibility, transferability, and ownership.

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[26] See, respectively, Peter Onuf, *Statehood and Union*; Paul Frymer, *Building an American Empire,* and Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America*.

Materiality: Land exists as a physical object. While social practices may impose certain understandings of land, land's existence in physical space precedes such practices. As a physical object, then, land exists both as a resource in itself (e.g., as territory, as a place for construction) and a site of mediation and production for other resources (e.g., farming, mining, and so on). This materiality constitutes land as a contested object between different groups, since occupancy and use by one restricts occupancy and use by others. As I will show, the American state sought to impose an exclusive (and exclusionary) set of meanings onto land through which it could manage the way the resources derived from land were distributed. Materiality, however, does not imply immutability. Certain actions may alter the geography of land, transforming its use. However, even when transformed, land retains its physical character. At the same time, this material existence corresponds with a geographical location. Though the determinants of this location may be socially constructed (i.e. the way the location of land is determined is ultimately arbitrary), these determinants correspond to a real physical place.

Territoriality: The United States underwent significant territorial growth throughout the 19th century. This occurred on two levels. First, the federal government acquired substantial territory from European colonial powers through purchase and war. Second, with the territory acquired, the American state engaged in warmaking and treaty-making with Native nations. While both processes used the form of the treaty to claim territorial possession, territoriality in the American context is multilayered. European powers were treated as the primary possessors of land, whereas the territorial claims of Native nations were secondary. This two-level structure produces what scholars of Indigenous politics have termed *layered sovereignty* or a *third space of sovereignty*.[27] In claiming Native territory, the American state imposed obligations using treaties,

[27] See Volpp, Leti. "The indigenous as alien." *Immigr. & Nat'lity L. Rev.* 36 (2015): 773. See also Bruyneel, Kevin. *The third space of sovereignty: The postcolonial politics of US-indigenous relations*. U of Minnesota Press, 2007.

which restructured the relationships between Native nations, settlers, and the American state itself. These treaties also fundamentally altered the relationship between Native nations, the land on which they historically resided, and the social and political structures which governed these relationships. With time, as the American state grew in power, more demands were placed on Native nations, further restricting their capacity for self-governance. At the same time, this process of territorial growth was mediated through federal lawmakers, who retained substantial power to determine the structure of governance in federal territories. Unlike states, where the early American government retained little direct control, federal territories remained under the direct control of the federal government. Lawmakers and federal elites had substantial power in determining the structure of governance in these regions and ensuring that these regions remained under American jurisdiction. As such, understanding the process through which the American state came to establish and further its territorial claims is critical to understanding the fundamental social and political transformation of land under conditions of American governance.

Divisibility: The question of how land is divided into units is a key part of the process through which land is transformed from territory into property. The division of land frequently corresponds to the physical existence of land but is not predetermined. Instead, the act of dividing territorial holdings is a process informed by the objectives of political actors. This process was not uncontested. As various actors sought to lay claim to newly seized land, the division of land took on numerous forms. Land was divided into separate territories, Native reservations, allotments, and so forth. Prior forms of division also produced contestation, as titleholders under previous European regimes sought to secure their claims. These divisions did not cleanly map onto one another. As a result, the early American state struggled to resolve these

tensions and gave significant concessions to other land tenure systems. In the aftermath of the American Revolution, the process of mapping the land and demarcating lots proved a significant challenge to the nascent American state. However, as the American state grew in its capacity to map and divide land, the division of land itself became a key technique in the dispossession of Native nations. For example, as I discuss in Chapter 3, the GLO used allotment to break up the power of Native nations such as the Umatilla, which lead to a checkerboard pattern of land holding.[28]

Transferability: With the entry of American state power into these regions, determining who owned what was a pressing political question. Prior European landholders often claimed title to land through processes that were not always clear. At the same time, settlers clamored for the power to buy and sell land. Therefore, the American state established its own position as the central source of title through the creation of land offices excluding both Native nations and settlers from establishing their own title rights. Buying and selling land were no longer matters of private exchange but instead were mediated through the land office and land officers. This brought significant informational benefits to settlers and the American state. With the land office, sale became a matter of public record, legible to the American state bureaucracy. At the same time, settlers gained access to land markets. With control of title, the American state embarked on a set of projects to distribute these titles. Settlement was one project among many (see, e.g., the construction of railroads, the creation of National Forests and National Parks, and so on).

Ownership: In the American context, ownership is often understood in the terms of private property. However, this framework elides the constitutive role which the American state

[28] *An act providing for allotment of lands in severalty to the Indians residing upon the Umatilla Reservation, in the State of Oregon, and granting patents therefor, and for other purposes.*, Public Law 178, U.S. Statutes at Large 23 (1885): 340-343.

played in constructing a regime of private property as it expanded westward. Prior inhabitants of land often fought for recognition under American titling practices. With European settlers, the American land policy generally incorporated prior European titleholders into the larger scheme of American landholding. By incorporating these claimants, the American bureaucratic state ensured that claims to property did not originate with individual or corporate property holders. Instead, these claims gained authority from the American state itself. The first private claimant of any allotment of western land reserved title for that land with the state, and, to this day, nearly all western title has a genealogy traceable to an initial sale or bequest from the American state itself. At the same time, understanding land as private property diminishes the extensive role which state ownership continues to play in the structure and management of Western land. The federal government holds 45.8% of land in the 11 westernmost contiguous states and 60.8% of Alaska.[29] While large amounts of land were afforded to private entities, state ownership remains a key factor in the structure of Western land. Furthermore, it is critical to note that the structure of ownership which the American state established is distinct from prior forms of ownership. In structuring land for private ownership, the American state sought to establish social relations and rules which afforded a distinct set of rights to private owners. These rights to private ownership superseded other forms of ownership (e.g., collective ownership) and were deeply imbricated with republican notions of self-governance.

In delineating these five separate features of land, I clarify the relationship between the American state and land in several key ways. First, the relationship between the state and land shifts over physical space. Land has a physical dimension. The capacity of the state to exercise its power varies from location to location. This variation may lead to different methods and

[29] Carol Hardy Vincent, Carla N. Argueta, & Laura A. Hanson, *Federal Land Ownership: Overview and Data, Congressional Research Service (updated February 21, 2020)*.

structures of governance and landholding. For example, states in the Midwest, such as Iowa, with large amounts of arable land had much of their land privatized and given to farmers. By contrast, states such as Nevada, with more rugged terrain and a harsh climate, largely remain under direct control of the federal government (80.2% of land is Nevada is federally owned).[30] There exists substantial variation within states as well.

Second, shared practices in the regulation and disbursement of land, which on their surface may appear commonsensical, are the products of social and political negotiation. The manner in which, for example, homesteading took place was not fixed or inevitable. Instead, the creation, development, and accumulation of certain techniques of managing land resulted in the set of practices that emerged as the American state sought to place settlers on the land which it had claimed. The methods by which land was divided, transferred, and brought under private ownership arose from longstanding administrative techniques used for the purposes of structuring settlement.

Third, the physical existence of land has substantial consequences for how the state governs land. As a physical manifestation of space which remains in a single location, conferring ownership to a plot or allotment of land carries certain features which make the problem of its governance relatively unique. Unlike other goods, which may be provided at the site of sale or exchange, a settler must go to his plot of land in order to access its benefits. Thus, the act of providing or selling land for settlement necessarily entails the transportation of the settler to said land. In turn, this means the settler must be able to recognize the land as his own, distinguishing it from other plots which may be held by other entities and understanding how the boundaries of

[30] *Ibid.*

the land are drawn. Such a complex technical process inevitably means errors and, frequently, conflicts.

Fourth, the relationship between the state and land is a transformative relationship. The state does not simply navigate already agreed upon notions of land; it transforms the social meaning of land. While the physical nature of land is less malleable, it too is subject to the transformative power of the state. Hills may be flattened to construct a railroad. Valleys may be flooded to construct a dam. Each of these features of land is ultimately subject to state power. Yet, the state is not the final determinant of social meaning. Though the central focus of this project is on state power, other social relationships may have a bearing on the ultimate social meaning of land. As land's status within society is indeterminate, other processes of social production and meaning making may also transform this status. However, as I will argue, the state plays the primary role in producing the set of social meanings surrounding land.

Fifth, the transformation from territory into property is not a linear transformation. While divisibility, transferability, and ownership are all necessary components of land as property, they are not applied to the land in a straightforward or step-by-step manner. The transformation of land is an uneven process. For example, pre-emption laws provided land to squatters who had claimed ownership of land before it was divided or titled. Therefore, process tracing may demonstrate that the foundations of property and the process by which it was established may have occurred differently depending on the circumstances. However, these five features of land are present in all clearly established property claims in the United States, even if their relationship is, at times, fluid.

The Consolidation of the General Land Office During the Jacksonian Era

How, then, did these technologies mediating the relationship between the state, subjects, and land impact the consolidation of the GLO during the Jackson presidency? The election of Andrew Jackson marked a rupture with Jeffersonian era politics, but also a renewal of many earlier Jeffersonian commitments.[31] President Jackson viciously attacked what he saw as the corruption of Jeffersonian elites, with much of his ire focused on the Bank of the United States. At the same time, he sought to expand and extend many of the practices of the earlier period. Foremost among these practices was settlement. Whereas during the Jeffersonian era, settlers were generally political outsiders, with the election of Andrew Jackson, for the first time the United States had a president whose political career began outside the original thirteen colonies.[32]

The GLO during the Jackson presidency undertook two major projects. First, he GLO was the key actor in the survey and settlement of the territory claimed after the Indian Removal Act in 1830.[33] Second, Congress had significantly expanded pre-emption laws permitting settlers to claim titles without prior survey throughout the country. Between 1828 and 1831, pre-emption claims increased by a factor of over 100.[34] Furthermore, a major speculative land bubble developed during the Jackson administration which would massively expand land office business. However, despite the centrality of these projects to the extension of Jacksonian political power, the GLO lacked the procedures and funding necessary to successfully accomplish these

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[31] Skowronek, Stephen. *Presidential Leadership in Political Time: Reprise and Reappraisal*. University Press of Kansas, 2008, 35.
[32] Remini, Robert V. *Andrew Jackson: The Course of American Empire, 1767-1821*. Vol. 1. JHU Press, 1998.
[33] *An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi*., Public Law 459, U.S. Statutes at Large 4 (1830): 411-412.
[34] Rohrbough, *Land Office Business*, 210.

goals. It would take the near collapse of the land system for the GLO to receive the necessary reforms to carry out these substantial state projects.

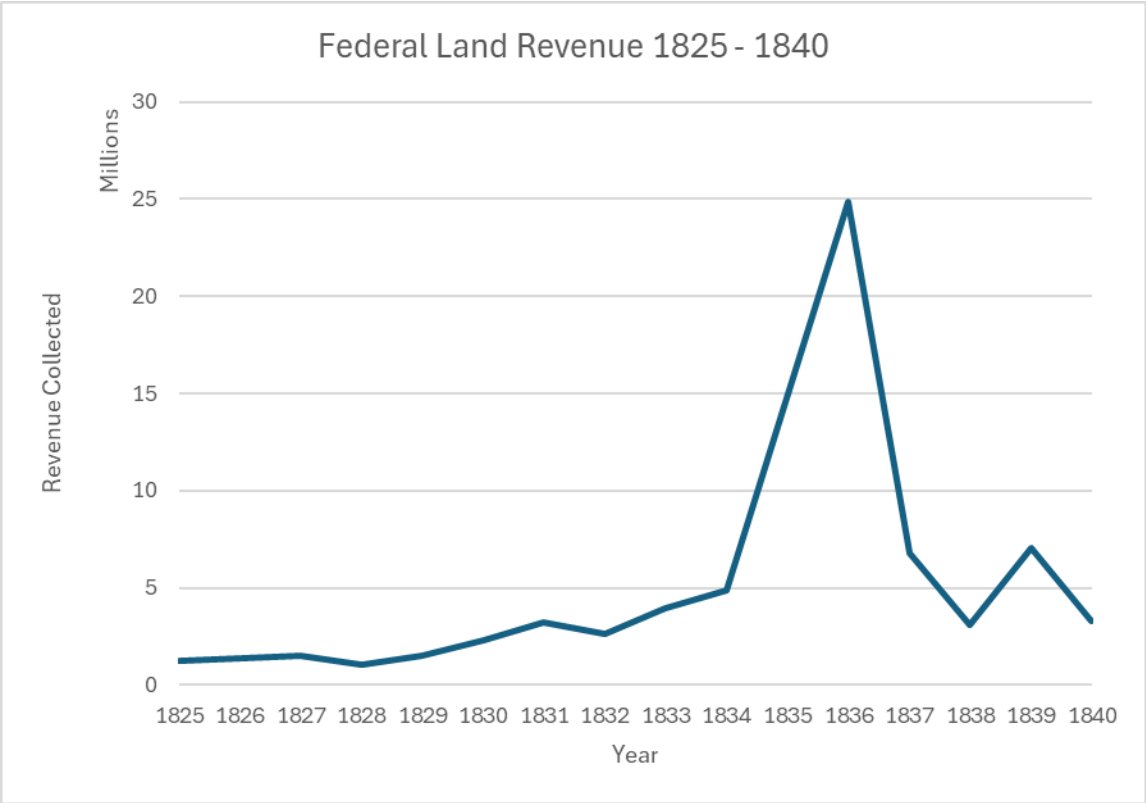

Figure 8: Federal land revenue from 1825-40. For data, see United States. Department of the Treasury. "Report of the Secretary of the Treasury on the State of the Finances for the Year 1866," Annual Report of the Secretary of the Treasury on the State of the Finances (1866).

The Jackson presidency oversaw the substantial expansion of the land office business. Between the years of 1829 and 1836, the GLO revenues grew from 1.5 million dollars to nearly 25 million dollars, a growth rate of 1540 percent. Yet, even before Jackson took office, the GLO had struggled to keep up with settler applications due to short staffing and overly cumbersome procedures. Congress compounded these difficulties, as it had become convinced that the GLO was overfunded, filled with staff drawing government salaries, but doing little actual work. The

previous GLO commissioner, George Graham, successfully cut land office budgets, but these cuts came at the cost of efficiency, creating a backlog of 26,000 land patents.[35]

Congress' perceptions of the GLO were not without some merit. Land officers regularly failed to carry out their duties. As one land officer wrote of his predecessor: "[he] had not the advantage of a *practical* knowledge of surveying, nor of conducting such business".[36] Land officers often gave substantial advances to deputies, many of whom lacked any practical experience in survey or management, and left land offices in such a state of disrepair that maps, field notes, and other various documents frequently found themselves at the mercy of mice and cockroaches.[37] The appointment of a new GLO Commissioner in 1830, Elijah Hayward, therefore, came at a critical moment for the GLO. With the office in such a state of disrepair, reform was sorely needed. However, Hayward would struggle to administer the office as an unprecedented volume of land claims would soon engulf the GLO.

The first source of land claims was the ethnic cleansing and removal of Native nations in the American South after the passage of the Indian Removal Act in 1830.[38] After the passage of the act, Jackson brutally pursued the removal of the numerous Native nations from their land. These nations were forced to leave their land, often at gunpoint, and deaths during the process of internment, removal, and resettlement ranged between 15 percent of the original population for the Choctaw nation and 50 percent for the Creek and Seminole nations.[39] Jackson took a close and personal interest in the opening of these lands for settlement and frequently asked the GLO as to their progress on the matter. Land hungry settlers also pressed for the chance to purchase

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[35] Rohrbough, *Land Office Business,* 253.
[36] *Ibid,* 253-4.
[37] *Ibid,* 254.
[38] 4 Stat. 729.
[39] Thornton, Russell. "Cherokee Population Losses during the Trail of Tears: A New Perspective and a New Estimate." *Ethnohistory* 31, no. 4 (1984): 289–300.

land and extend enslavement into this new portion of the public domain.[40] However, the GLO struggled to meet the demands of both Jackson and settlers.

Purchases of land in the public domain required prior survey. Surveyors in the land office needed to produce township plats (i.e. maps). To produce these plats, surveyors measured the land in conformity with the principles of rectangular survey. Each township was six miles by six miles square and further subdivided into sections of one square mile (640 acres), with further subdivisions into quarter sections. Prior to the removal of these Native nations, surveyors had only conducted surveys of the treaty designated boundary line which separated each nation from the territory of the United States. Therefore, surveyors would have to map the entire land cession before sales opened. Surveying each section required considerable labor. Producing plats was another matter entirely. While surveyors provided field notes, clerks and draftsmen transformed these notes into maps. Thus, even with the rapid hiring of surveyors, the creation of plats required further staffing and presented a significant bottleneck. For example, only two clerks and one draftsman were hired to produce plats from the surveys of the Creek cession, which comprised 277 townships. This task took them an entire year.[41] Therefore, despite hiring of fifteen deputy surveyors, Jackson's insistence, and considerable settler pressure, the process of first opening the lands for sale took more than three years.

The administration of land sales also presented a problem. Settlers quickly overwhelmed local land offices. Large crowds gathered outside these offices, demanding to purchase land, and creating significant logistical challenges. Local offices struggled to process so many settlers. According to one land officer, some settlers took more than three weeks to have their initial

[40] Rohrbough, *Land Office Business*, 223.
[41] *Ibid*, 228.

application granted, applying for the same plot of land two or three times.[42] However, the major bottleneck was the GLO in Washington D.C. Outmoded procedures at the GLO made processing and confirming the purchase of land extremely laborious. For example, the President was required to sign every single land patent, confirming that the land title had passed from public to private ownership. Between December of 1831 and June of 1832, Jackson signed more than 10,000. This rate, however rapid it might appear, was not fast enough to keep up with the growth in the business of the land office.[43]

Despite these challenges, the office's management of survey and sale in the former Native nations of the Deep South ultimately resulted in the purchase of nearly all ceded land by the end of the decade. In 1836 alone, offices in Alabama and Mississippi sold 3.9 million acres of land.[44] Rampant land speculation in the region alongside rising cotton prices also led to the rapid growth in practices of enslavement in these two states. Between 1830 and 1840, the population of enslaved people in Alabama would more than double, reaching 265,532 from 117,549. In Mississippi, the enslaved population would grow from 65,659 to 195,211, more than tripling.[45]

Congress created further complications for the GLO with the passage of the Pre-emption Act of 1830.[46] In this act, and two others in 1832 and 1834, Congress extended pre-emption rights to many settlers on public lands. Squatting had long proved a problem for the United States, as many Americans lacked the funds to purchase land according to regular procedures. Pre-emption, the purchase of land *after* settlement and cultivation, promised a potential solution.

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[42] *Ibid,* 226.
[43] *Ibid,* 258.
[44] *Ibid,* 231.
[45] US Census Bureau. "1830 Census: Return of the Whole Number of Persons within the Several Districts of the United States", 1831; US Census Bureau. "1840 Census: Return of the Whole Number of Persons within the Several Districts of the United States", 1841.
[46] *An Act to grant pre-emption rights to settlers on the public lands*. (a), Public Law 475, U.S. Statutes at Large 4 (1830): 420-421.

Since settlers could derive a profit from their labor upon the land, with pre-emption they could use those profits to purchase and regularize their ownership of that land. However, administrating pre-emption under the acts of the 1830s would prove challenging, as Congress scarcely considered how these pre-emption laws might interact with already existing procedures at the GLO. When asked for his views on the 1830 legislation, the Commissioner of the GLO opposed the bill entirely.[47]

The law introduced substantial complications for the land office. Congress permitted pre-emptors to claim 80-acre tracts of land, but failed to consider how pre-emption might conflict with the requirements of sale under prior survey. How should pre-emptors establish proof of settlement and cultivation to qualify for relief under the act? On this question, the 1830 Pre-emption Act provided little guidance and deferred to the GLO. Hayward thus created a process which established how to qualify for a pre-emption claim. Pre-emptors would identify the location of their land on the national grid, go to the local land office with witnesses, and, while under oath, present their claim to the land office register. Only then could these settlers receive a contract which established their ownership of the land. Many registers broadly interpreted these instructions, viewing them as burdensome and unnecessary. Some registers even openly defied Hayward's orders, arguing that they conflicted with the pre-emption law.[48]

Undeterred, Congress would complicate pre-emption claims even further in 1832, reducing the minimum size of the claims to 40 acres, producing yet more burden to already overtaxed land offices.[49] The 1832 bill would also complicate the contractual administration of pre-emption claims, requiring settlers to file an affidavit, which Hayward determined would

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[47] Rohrbough, *Land Office Business*, 205.
[48] *Ibid*, 207-209
[49] *An Act supplementary to an act to grant pre-emption rights to settlers on public lands. (a)*, Public Law 555, U.S. Statutes at Large 4 (1832): 496.

require the presence of a justice of the peace.[50] The act also lacked any specification or description of the term "cultivation", leaving the GLO to determine what properly qualified as such. Hayward's intervention on this term created further burdens for local land offices, as he would require land office registers to forward all evidence supporting pre-emption claims to the GLO in Washington, D.C.[51]

Hayward's efforts to assert the autonomous authority of the GLO on the regulation of pre-emption claims angered settlers, land officers, and Congress alike. At a time when the business of the land office was rapidly growing, Hayward substantially increased administrative burdens, slowing the sale of land. The GLO bureaucracy had ground to such a halt that Hayward himself estimated that thousands of settlers would die before ever completing their land claims. Hayward's policies, alongside his rumored intemperance and the ongoing crisis of management at the GLO, made his position at the office increasingly untenable and he was forced out of office on August 31, 1835.[52]

Hayward's successor, Ethan Allen Brown, would push for the reorganization of the GLO. Congress, recognizing the challenges which the office faced and the increasing importance of land sale to government revenue, asked Brown to write a bill to reform the office. This legislation, which Congress passed in 1836 as the General Land Office Reorganization Act, would substantially restructure the office and provide increased funding to process land claims. It also created several important new offices. With the Reorganization Act, Surveyors General, who had previously operated as an independent branch in the Department of Treasury were brought into the GLO hierarchy. Furthermore, the legislation would create three clerkships, each with

[50] *Ibid,* 214.
[51] *Ibid,* 217.
[52] *Ibid,* 264.

clearly defined responsibilities. One clerk would manage public land sales, the second would manage private land sales, and the third would manage surveys. Previously all such work had fallen under the jurisdiction of the Commissioner. Additionally, the bill provided for a head recorder of the public land office, responsible for all public land patents and a solicitor who could provide legal advice on challenging questions and conflicts over land law. Furthermore, the Reorganization Act appropriated funding for nearly 90 other office staff with defined duties at GLO headquarters. Finally, the act created a secretary "whose duty it shall be, under the direction of the President, to sign in his name, and for him, all patents for land sold or granted under the authority of the United States".[53]

Conclusion

The decline of the land office business in the latter half of the decade would remove many of the pressures that led to the challenges which had beset the office. However, the significant reforms of the 1836 Reorganization Act would remain in place. With the increased consolidation of the GLO, new opportunities arose for land office bureaucrats to claim autonomy. As I discuss in Chapter 3, in the 1850s the GLO would undertake a decades long project to claim the authority to survey Indian Reservations for the preparation of allotment. In doing so, land office bureaucrats would avoid the chaos which followed the 1830 Indian Removal Act. Increasingly the GLO came to understand its technological powers as critical tools to manage the settler expansion of the United States.

The development of land management technology, specifically mapping and contract, entrenched particular modes of understanding land and settlement in the GLO. While the 1836

[53] 5 Stat. 107.

Reorganization Act reforms significantly improved the capacity of the land office, they failed to fundamentally alter the underlying structure of the technological methods which the GLO employed. Land office bureaucrats increasingly came to see the western frontier as a series of 640-acre sections. Therefore, when land failed to conform with this rectangular scheme, the GLO struggled to incorporate it into the national domain.

As this chapter demonstrates, technology is a key feature of bureaucratic development. Understanding the growth of American bureaucracy requires carefully attending to the specific technologies that bureaucrats used in order to apprehend subject populations and spaces. With mapping the GLO reduced a multidimensional social space into a two-dimensional rectangular plane, making land comprehensible to bureaucrats who sought to control the process of settlement. Using contracts the land office encouraged settlers to accept its role in the sale of the national domain, thus establishing its legitimacy. The centrality of the GLO in the process of state development underscores the importance of land as a central feature of the American project. Land mediated the relationship between settler and state, defining bureaucratic development in the 19th century.

Chapter II

"Groundless—Captious—or Premature": Settler Organization in Mississippi Territory and the Development of the American Bureaucratic State

Introduction

On August 25th, 1802, the citizens of Mississippi Territory sent a petition to Congress. Signed by over 1100 men, or nearly 75 percent of the adult white male population of the territory, the petition was the largest yet in an ongoing effort by local settlers to convince Congress to change territorial policies. What was it that concerned these settlers that they would repeatedly petition Congress, undertaking "extraordinary pains" to collect so many signatures?[1] As the petition stated:

> We the undersigned, Citizens of the Mississippi Territory pray your Honorable Body that the Land Office to be Opened for this Country may be held within the Bounds of the same, and that the Actual Settlers on the Vacant lands of the United States, may have a preemtion right Secured to them.[2]

The settlers had long sought two key objectives: the opening of a land office and the security of title for the land which they occupied. In about one year's time, on May 10th, 1803, Congress would pass a law granting both.[3] In doing so, Congress expanded the federal administrative state in the territory at the settlers' behest. Land offices served an important administrative function: containing information such as maps and functioning as sites for land sale. These offices made land transfers a matter of public record, legible to the state. The petitioners, then, fought for the closer regulation of their economic and social lives, actively pursuing the extension of federal power. Indeed, as I will show, the growth of administrative policy and capacity in territorial America was often the result of organized and collaborative efforts between settlers and the federal government.

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[1] United States Congress. *The Debates and Proceedings in the Congress of the United States*. Vol. 12. 22 vols. Washington, D.C.: Gales and Seaton, 1851, 277.
[2] *The Territorial Papers of the United States,* (District of Columbia: U.S. G.P.O., 1987), 5, 159-60.
[3] *An Act regulating the grants of land, and providing for the disposal of the lands of the United Stales, south of the state of Tennessee*. Public Law 7-27. US Statutes at Large (1803): 229-35.

The land office represents an extension of federal authority to the very edge of the American territorial state. Counterintuitively, it was at these margins of American territory that federal bureaucracy first began to consolidate. This early formation of federal power stands in contrast with previous scholarship in American Political Development (APD), which has tended to point to the Civil War as the key inflection in the establishment of national authority. In this prior view, federal power in the early American state was weakly constituted, and states largely acted as independent political units with little oversight.[4] More recently, however, APD scholars have argued that, due limited central authority, national policymakers exercised their power through the provision of land to settlers, thereby structuring the pattern of national expansion.[5] Work such as this has helped recontextualize that expansion as the result of carefully structured national policy which sought to constitute the frontier in ways that extended central state authority despite limited capacity. In this view, legislation played the predominant role in structuring settlement. Congressmen set national standards and, due to the incentives embedded in legislation, settlers largely complied.

This second perspective, however, has understated the role of the early administrative state in settlement. As I argue, the contours of territorial governance and land policy reveal an early federal administrative state far more robust than either of these frameworks suggest. Federally appointed territorial governors exercised substantial authority, reporting directly to the Secretary of State. Land officers made critical administrative decisions about the ownership of land, reporting directly to the Secretary of Treasury. While the central administrative state

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[4] See, e.g. Bensel, Richard Franklin. *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877*. Cambridge [England]; Cambridge University Press, 1990.

[5] Frymer, Paul. *Building an American Empire: The Era of Territorial and Political Expansion*. Princeton Studies in American Politics: Historical, International, and Comparative Perspectives. Princeton, New Jersey: Princeton University Press, 2017.

remained small and relatively anemic, frontier bureaucrats exercised substantial and, at times, autonomous authority over settler populations. Settlers recognized and cooperated with this authority despite a federal government which struggled to deploy coercive power.

Why, then, did settlers cooperate? I argue that settlers played a key role in the development of land administration, as the formalization of land title provided both economic and physical security. The central state did not impose this regulatory authority on settlers. Instead, settlers actively sought the benefits which the regulation of land ownership would bring. Federal regulation helped clarify uncertain property regimes in regions with multiple sources of property ownership and established coherent practices of title for settlers. In areas where property titles overlapped, the introduction of a single titling regime was key to ensuring economic security. At the same time, the formalization of title would help with the sale of the national domain (i.e. federally owned land), leading to further immigration to sparsely settled areas. Encouraging compact settlement helped ensure settlers' physical security, with settlers serving as members of the territorial militia.[6] In this role, they could defend against invasions from nearby Indigenous or European powers, while also serving a security function against internal uprisings and slave rebellions. As such, federal rule was not a series of top-down impositions on settler society. Instead, it was an extension of the economic and social preferences of settlers.

Furthermore, the dispersed nature of federalized governance created unique pathways for settlers and administrators to influence national political activity. Such pathways were especially available to those under territorial rule. While the American federal government lacked

[6] For more on the strategy of compact settlement, see Frymer, Paul. "'A Rush and a Push and the Land Is Ours': Territorial Expansion, Land Policy, and U.S. State Formation." *Perspectives on Politics* 12, no. 1 (2014): 119–44. See also, generally, Frymer, *Building an American Empire*.

significant capacity during this period, with most of the questions of day-to-day governance left to states, territories remained under direct federal supervision. For settlers under territorial governance, the closest and most responsive official was often a federal appointee. The boundary between local and federal rule was blurred, and, when settlers sought to challenge local rule, they petitioned the national government, looking to Congress, the President, and other federal elites. These activities bound them more strongly to the federal government, implicitly recognizing its authority, leading them to seek further federal interventions.

Mississippi Territory in Context

Figure 9: Mississippi Territory (highlighted) in 1800. Created using historicalmapchart.net under Creative Commons Attribution-ShareAlike 4.0 International License.

One region with a particular need for federal oversight was Mississippi Territory.[7] Mississippi was the first foreign territory to be incorporated into the United States. Transferred from Spain to the United States in 1798 due to the 1795 Treaty of San Lorenzo, Mississippi became a territory under the Mississippi Government Act of 1798.[8] Therefore, the experience of extending rule over Mississippi would prove instructive as the American state continued to expand westward with the Louisiana Purchase. Key figures in Mississippi, such as Governor William C.C. Claiborne, who later became Governor of Orleans Territory (now Louisiana), would continue to play key roles in the expansion of American territorial power. The construction of rule in Mississippi was a critical juncture in the extension of governance across the American continent.

Furthermore, the Mississippi Valley was central to the growth of slavery in the 19th century, and the incorporation of Mississippi Territory was a critical component of that growth.[9] In the three years between the signing of the Treaty of San Lorenzo and the incorporation of Mississippi, the system of plantation slavery had rapidly expanded as the result of a cotton boom. The cotton gin was introduced in the region in 1795. Consequently, cotton production grew 33 times over in those three years alone, from 36,000 pounds to 1.2 million.[10] Yet, in this key moment, Mississippi's population growth was restricted by a complex system of title inherited from a series of European colonial empires. Originally claimed as part of Colonial Georgia, the region was incorporated into British West Florida after the Seven Years War in 1763. During the

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[7] See next page.
[8] *An Act for an amicable settlement of limits with the state of Georgia, and authorizing the establishment of a government in the Mississippi territory*. Public Law 5-28. US Statutes at Large (1798): 549-50.
[9] See, generally, Johnson, Walter. *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom*. 1st ed. Cambridge: Harvard University Press, 2013. See also Hammond, John Craig. *Slavery, Freedom, and Expansion in the Early American West*. Charlottesville, United States: University of Virginia Press, 2007 and Hammond, John Craig. "Slavery, Settlement, and Empire: The Expansion and Growth of Slavery in the Interior of the North American Continent, 1770-1820." *Journal of the Early Republic* 32, no. 2 (2012): 175–206.
[10] Hammond, "Slavery, Freedom, and Expansion", 18.

American Revolution, the region fell into Spanish hands, and was formally ceded to the Spanish with the Treaty of Paris of 1783, as part of the retrocession of Florida.[11] This history resulted in multiple overlapping property regimes at the time of the American takeover, with many settlers claiming title to land based on old Spanish and British grants, some authentic and others forged.[12] For white settlers, these concerns were especially pressing and threatened their economic status. To the American state, resolving these conflicting claims was key to securing rule in the region and encouraging further settlement.

To this end, the Northwest Ordinance of 1787 provided a useful model.[13] Written to establish a system of government for the Northwest Territory, the legislation was an obvious candidate to create an administration for the new Mississippi Territory. However, the 1787 ordinance had explicitly barred the practice of slavery in the Northwest. Thus, as the transition to American rule approached, enslavers became increasingly paranoid about their status under the new government. They spread rumors that Andrew Ellicott, a surveyor sent to manage the transition to American governance, was seeking to ban the practice of slavery.[14] To quell these rumors, Ellicott communicated to Congress what he viewed as the importance of retaining the practice slavery in the region. When the House of Representatives brought the Mississippi Government Act to the floor for debate, one member tabled an amendment to ban slavery in the region. However, opposition to the amendment cut across party and geographic lines.

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[11] For more see, Narrett, David. *Adventurism and Empire: The Struggle for Mastery in the Louisiana-Florida Borderlands, 1762-1803*. Chapel Hill: The University of North Carolina Press, 2015.
[12] Haynes, Robert V. *The Mississippi Territory and the Southwest Frontier, 1795-1817*. Lexington: University Press of Kentucky, 2010.
[13] *Ordinance for the Government of the Territory of the United States North-West of the River Ohio.* Miscellaneous Papers of the Continental Congress, 1774 – 1789, Records of the Continental and Confederation Congresses and the Constitutional Convention, Record Group 360. National Archives Building, Washington, DC. See map on page 4. See also Ablavsky, Gregory. 2021. *Federal Ground: Governing Property and Violence in the First U. S. Territories*. 1st ed. Oxford: Oxford University Press, Incorporated.
[14] Hammond, *Slavery, Freedom, and Expansion,* 20.

Northerners and Southerners, Federalists and Republicans, all opposed the amendment alike. Any qualms which the members had about the practice of slavery (at least one nominally anti-slavery Representative openly opposed the amendment), were superseded by concerns around the enslavers' discontent with the new government. Only three members voiced their support for the amendment, and only 12 of 106 members voted in favor.[15] When the final act passed, it explicitly permitted the practice of slavery.[16] Mississippi, then, would have the ignominious status as the first American territorial acquisition incorporated with slavery.

Yet, as territorial rule approached, enslavers remained anxious about their status. To further cement their position in the expanding economy, enslavers would press the territorial government to recognize their land claims. However, the initial structure of territorial governance addressed few of the enslavers' concerns. The first appointed Governor of Mississippi, Federalist Winthrop Sargent, dismissed their petitions and ruled almost exclusively by executive fiat. Despite this, by the middle of the next decade, federal rule in the region was well established and largely accepted. As my analysis will demonstrate, Mississippians themselves would seek to transform the mode of federal rule in Mississippi territory. They organized as landowners, demanding representation in the territorial government and security of federally recognized land title. Within a few years, the federal government would meet most of these demands. In the region, the government would implement a new system of title, with centralized offices and regularized processes of claiming ownership and transfer. This new bureaucracy helped stabilize rule in the territory and form the foundation upon which settlement and slavery would grow. What emerges from the land office is a new typology of governance. Land officers made important decisions on the provision and distribution of title but were also

[15] *Ibid*, 23-7.
[16] 1 Stat. 549.

bound by law. In doing so, they acted independently, outside the typical clerical remit of the early bureaucratic state. In effect, land office bureaucrats were among the earliest members of a young and growing American administrative state.

The Search for the Administrative State in Early American Politics

It is challenging for the contemporary observer to understand the limitations of centralized federal bureaucracy in early America. In 1802, the entire federal bureaucracy numbered 130 personnel in Washington.[17] The Treasury Department of the period was the largest part of this bureaucracy, with 89 members.[18] If central capacity virtually did not exist, where then was the bureaucratic state? Given the diminutive size of the early state, many scholars of American bureaucracy have understandably identified the Civil War and Reconstruction as the historical starting points of the modern administrative apparatus.[19] However, others have challenged this vision, arguing that key features of the administrative state emerged much earlier in American development, starting soon after the Revolutionary War. These scholars have identified three key forms of administrative capacity during this period. The first emerges from efforts to provide land and other social goods for Revolutionary veterans as an early form of welfare policy.[20] The second existed within states themselves, which often made active interventions in the social and economic lives of their citizens, regulating the society of the

[17] Young, James Sterling. *The Washington Community, 1800-1828*. Columbia University Press, 1966.
[18] Excluding uniformed military personnel.
[19] See, e.g. Bensel, *Yankee Leviathan* and Johnson, Kimberley S. *Governing the American State: Congress and the New Federalism, 1877-1929*. Princeton Studies in American Politics. Princeton: University Press, 2007.
[20] Jensen, Laura. *Patriots, Settlers, and the Origins of American Social Policy*. Cambridge, UK; Cambridge University Press, 2003.

period far more than is commonly supposed.[21] The third arises from development of national infrastructure and the construction of national identity.[22]

First, as Laura Jensen argues, early congressional policymaking on veterans and settlers was an important source of early American social policy. Jensen points to Congress' efforts to provide veteran's pensions as a "novel type of public policy: statutes entitling *groups* of citizens to Federal benefits via public benefit *programs*."[23] Likewise, she suggests that the provision of land to veterans and settlers by Congress was an early form of social policy.[24] However, Jensen's approach tends to center Congressional action, not the actual administration of benefits programs. Furthermore, settlers fit poorly under the administrative schematic which she provides. While Revolutionary War veterans did indeed receive lands as part of their pensions due to Congressional action, other settlers needed to purchase their land. As I will show, the core good provision was not land for settlers, but the clarification of title which gave rise to the national land system. As such, Jensen slightly misidentifies the distributive effects of the administrative apparatus surrounding land.

Second, as William Novak demonstrates, states vigorously regulated social and economic life throughout the 19th century. In this perspective, states themselves were forebearers to the post-Civil War administrative state, with extensive regulations on public safety, commerce, infrastructure, morality, and health. Such regulations were widely accepted by the population and supported by Supreme Court decisions.[25] However, this perspective overlooks a key transformation in the American nation which took place over much of this period, the transition

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[21] Novak, William J. *The People's Welfare: Law and Regulation in Nineteenth-Century America*. Studies in Legal History. Chapel Hill: University of North Carolina Press, 1996.
[22] Balogh, Brian. *A Government out of Sight: The Mystery of National Authority in Nineteenth-Century America*. Cambridge; Cambridge University Press, 2009.
[23] Jensen, *Patriots and Settlers,* 3
[24] *Ibid*, 123-70.
[25] Novak, *The People's Welfare*.

from *territorial* governance to *state* governance. Unlike states, territories were under the direct administration of the central government. Therefore, federal rulemaking often helped form structures of governance as territories became states. Territorial governance was a major center of power for the federal government and a site of early American regulation. Many state regulations were, in fact, path dependent continuations of earlier territorial regulations. Thus, territories were an important source of governance at the state level.

Finally, for Brian Balogh, elites of the late 18th and early 19th century sought to strengthen the affective bonds between settlers in the west and the citizens of eastern states. Such affections could not be constructed through coercion alone. To this end, the Jeffersonians sought to construct and engage in the construction of internal improvements, such as the canals and turnpikes which would connect disparate populations through commercial self-interest. To this end, it was critical for the administration to maintain a strong presence in outlying regions, as such regions were those at the most at risk for rebellion, lawlessness, and disloyalty.[26]

Among the greatest resources for what Balogh and political actors of the time called "General Government" was the public domain (i.e. land owned by the federal government, not private citizens). Land was an extremely valuable resource for both settlers and the General Government. For settlers, land presented a substantial economic opportunity and the General Government retained significant authority in distributing and selling land. This alignment of economic interest would doubtless produce the affective bonds which the Jeffersonians desired.[27] As Governor Arthur St. Clair wrote to George Washington in 1789, through the Northwest Ordinance, settlers "would learn to reverence the Government; and the Countless multitudes which will be produced in that vast Region would become the nerves and Sinews of the

[26] Balogh, *Government out of Sight*.
[27] *Ibid*, 178-84.

Union".[28] Therefore, land served to produce good citizens who felt a close connection to the central government. However, in thinking about land and infrastructure, it is critical to recognize the provisions of the land office as a form of infrastructural development. In placing land offices at locations convenient to settlers (i.e. locally), the federal government made physically manifest its presence on the frontier. The land office was a form of infrastructure. Just as a public road reduces the costs of transporting goods through social expenditures, the land office reduces the cost of participating in the buying and selling of land. By transforming proof of title from an individual cost to a social cost, land offices reduce transaction fees, ensuring the smooth function of a land market.[29]

Recent scholarship has also begun to examine the role of land and settlement in the development of centralized state authority. As Paul Frymer suggests, land also plays a substantial role in the consolidation of state power at the federal level. The federal government, lacking capacity to effectively control outlying regions, used the disbursement of land to manage the pattern of settlement in the west. Fearing the dangers of the frontier, the federal government encouraged "compact settlement" which would provide a defensible, structured pattern for western expansion. This structure of settlement served a dual purpose, as it also helped prevent unruly settlers from beginning conflicts with Native nations or European empires. As settlement radiated across the continent, this structure provided the weak central government with the power to expand territorially while seizing land from Native nations.[30]

Critically, this work highlights the role of settlement in producing security for the early American nation. Rather than relying on formal (and expensive) military power, settlers could

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[28] *Ibid,* 185.
[29] For more on the role of the American state in constructing markets, see Bensel, Richard Franklin. *The Political Economy of American Industrialization, 1877-1900*. Cambridge [England]; Cambridge University Press, 2000.
[30] Frymer, *Building an American Empire*.

serve a security function, especially if they were settled strategically. This function was partially fulfilled through service in a militia. As scholars have shown, national and local elites understood militias as crucial components in the security of the early American nation.[31] Such functions were of particular importance in the slave economy of the South, where militia members were often deputized to serve as slave patrols.[32] In Mississippi, local elites understood these functions well, and viewed the militia as a key form of security against slave rebellions.[33] With a large population of enslaved people, Mississippi enslavers and political elites understood further settlement and the development of militias as a core element in maintaining the internal security of the region.

While such as Frymer's has offered a useful corrective to the valorization of the settler project and the industrious settler, it has tended to replicate the discourse of national elites, who portrayed settlers as disorganized masses in public statements and letters to one another. I argue, by contrast, that settlers engaged in concerted political activity to advance agendas which had important impacts on national level policy. Through organized political activity, settler norms became embedded in American federal administrative law. This in large part occurred due to the political pathways available to settlers due to the structure of territorial rule. Within the structure of the early American state, states themselves had little connection to the national political elite. Most of the problems of day-to-day governance occurred at the local level and were resolved within the states in which they occurred. Citizens of states had little reason to engage with

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[31] See Herrera, Ricardo A. *For Liberty and the Republic: The American Citizen as Soldier, 1775-1861*. NYU Press, 2017. See also Cress, Lawrence Delbert. *Citizens in Arms: The Army and the Militia in American Society to the War of 1812*. Studies on Armed Forces and Society. Chapel Hill: University of North Carolina Press, 1982.
[32] Hadden, Sally E. *Slave Patrols: Law and Violence in Virginia and the Carolinas*. Harvard University Press, 2001, 71-104.
[33] See Letter from General Wilkinson to Governor Claiborne, 10 May 1803. In *Territorial Papers*, 215-18. See also Butorac, Sean Kim. "States of Insurrection: Race, Resistance, and the Laws of Slavery." ProQuest Dissertations & Theses, 2020.

national political elites and even if they did engage, national elites had few institutional levers to address the problems which they faced. Due to this strong demarcation between state and national politics, state politics tended to dominate the ordinary American citizen's political life. By contrast territorial governance gave settlers a direct connection to Washington. Local elites, such as governors, were federally appointed positions, and they served at the behest of the President and Congress. When settlers became dissatisfied with local rulers, they made appeals to the federal government, invoking notions of popular sovereignty and constitutional law. For settlers, the most responsive and democratic representatives were those back in Washington.

With these pathways, settlers had a surprising and substantial effect on the national level rules which governed the structure of settlement in the United States. Federal elites implemented rules which impacted their daily lives, especially when it came to questions of land. Settlers in Mississippi had a vested interest as enslavers and landowners in ensuring that such rules were favorable to their circumstances and organized politically to achieve their goals. They fought vigorously for regulations which would provide advantages to members of their social class. To ensure settler compliance with national goals, the weakly coercive federal state had little choice but to provide concessions. As a result, many national policy objectives in settlement were coextensive with settler efforts to regulate and structure their own existence on the frontier.

Therefore, in contrast to previous work in the field, I argue that the extension of administrative power was driven in large part by settlers themselves. Settlers demanded the creation of land offices which would enforce and apply regular and formal rules regarding land title. When they became frustrated with appointed governors, settlers sent petitions to the President, Congress, and other federal political elites to make their grievances heard. Settlers sought to retain the substantial economic gains which they had made under British and Spanish

rule, especially with regards to the rapidly growing slave economy, and came to view federal power as an effective avenue of securing their advantages.

Federalist Rule in Early Mississippi

Mississippi officially became a territory of the United States on April 17th, 1798. With the passage from Spanish to American control, Mississippians were subject for the first time to the American constitutional order. With this new political regime came the system of territorial governance. Under the Northwest Ordinance, which the Mississippi Organic Act largely replicated, Congress appointed a governor, secretary, and three judges for the territory. Their choice for governor, a loyal Federalist named Winthrop Sargent with ten years of administrative experience as the Secretary of Northwest Territory, arrived in Natchez Mississippi on August 18th of that year.[34]

As Governor of Mississippi Territory, Sargent faced several competing crises. He viewed the settlers in the region as ill-suited for governance and generally of a lawless temperament. Yet, his office lacked the capacity to institute or enforce even the most basic laws. The one judge who had arrived in the territory had no legal training whatsoever and bore no copy of the laws of the United States. Furthermore, his office lacked any mechanism to resolve land disputes, which were widespread throughout the region. Also, with substantial external and internal threats to stability, the territory lacked a militia which could functionally maintain the social order of slavery.[35]

Sargent's effort to extend the rule of law over the territory, which he imposed harshly and unilaterally, proved unpopular with the settlers in the region. Sargent levied high taxes and fees

[34] *Territorial Papers*, 5.
[35] Haynes, *Mississippi Territory*, 27-48.

on basic administrative work, like marriage licensing, to make up for shortfalls in federal funding while also creating a harsh criminal code. Settlers argued these laws went beyond his defined powers as a governor under the Constitution.[36] Likewise, Sargent proved unable to resolve overlapping land claims. The Spanish had encouraged settlement with the provision of generous land titles in the region, many of which overlapped with previous British title. Furthermore, between the initial Treaty of San Lorenzo and the American takeover of the region, the Spanish provincial government had falsified titles for the politically well-connected favorites. This uncertain situation coincided with recent shifts in cotton production, such as the introduction of the cotton gin, which had led to a significant expansion of the political economy of plantation slavery. Enslavers, therefore, sought to preserve their economic and social status, which the conflicts over title threatened. Speculation on land also ran rampant, with the demand for cotton driving up land values. Much of the land formally belonged to British, Spanish, or American investors but had no actual occupants. With the deeply confusing status of land title in the territory, many squatters occupied lots which they did not formally own.[37]

Sargent's inability to resolve these overlapping problems provoked substantial resistance from settlers in the territory. His opponents in the territory labeled his laws "Sargent's Code", arguing that Sargent had acted illegally in their creation and enforcement.[38] However, most troubling to his opponents was his inability to resolve competing land claims and secure the interests of the enslaver class. Prominent landowning members of Mississippi society, angered by Sargent's shortcomings, wrote petitions to the Governor, Congress, the President, and

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[36] *Territorial Papers,* 75.
[37] Haynes, *Mississippi Territory*. For more on the history of land title in the region see Fabel, R. F. A. "Governor George Johnstone of British West Florida." *The Florida Historical Quarterly* 54, no. 4 (1976): 497–511. See also, Wright, J. Leitch. *Florida in the American Revolution*. Gainesville: University Presses of Florida, 1975.
[38] Haynes, *Mississippi Territory*.

newspapers, explaining their dissatisfactions. Though their concerns were diverse, land, settlement, and slavery took center stage.

One petition to Congress, dated October 2nd, 1799, highlights these concerns and expounds upon them at length. The petition begins with a description of how land was acquired under Spanish law, how these claims overlapped with prior British title, and the complications and uncertainties resulting from American rule. To this end, the petitioners put the following demands to Congress:

> [P]ass an act confirming to the Citizens of this Territory all grants of Lands legally, fairly, and justly obtained, prior to the final ratification of the late Treaty with Spain-and that a reasonable portion of Land as to your honourable Body shall seem proper be granted to all occupants, actual setlers [sic], as well imigrants [sic] since the Treaty…on the low and easy terms of the customary fees of office and survey.[39]

For the inhabitants of Mississippi, unclear title was an anathema to economic certainty in the territory. A clear solution to these titling problems was therefore central to their political demands. For the settlers, such a solution would come with the establishment of a new centralized titling bureaucracy, a land office.

Such a system was not without its precedents. Land offices were regular features of colonial governance since the 1600s.[40] The notion of a federal land office had also regularly featured in national debates about the disposal of land since the Confederation Congress.[41] Early federal efforts to dispose of the national domain sought to use auctions in adjoining states to sell land. Rather than going through the expense of establishing a permanent office, auctions were temporary and relatively affordable for the federal government. Policymakers hoped that such

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[39] *Territorial Papers,* 84-5.

[40] Maryland, for example, opened its first land office in 1680. For more on the colonial precedents of the land office see Amelia Clewley Ford, *Colonial Precedents of Our National Land System as It Existed in 1800* (Wisconsin: The University of Wisconsin, 1910).

[41] An early draft of the Land Act of 1785, which established the land survey system of the United States at one point contained a provision for a national land bureaucracy, but this provision was removed by the time the act became law. See *Ibid*, 411.

auctions could result in the sale of a substantial portion of federal lands to smaller landholders. This did not occur. Auctions suffered from poor attendance and few sales. Most land was instead sold in large tracts to colonial companies at reduced prices per acre, resulting in lower than anticipated revenues.[42] Opposition to the auction system emerged quickly. In 1789, Thomas Scott, a Pennsylvania member of the House of Representatives, argued for the creation of a land office, which would increase revenues and access to land for settlers, and formed a committee to study the proposal. The committee released several proposals from 1790-91 for the creation of a national land office in the seat of government, but the proposals remained vague and contentious, and the matter went largely undiscussed in the years after.[43] Thus, at the time of this petition, the federal system of land offices was not yet established.

The settlers also had major concerns about their safety and understood further settlement as a key method of securing their common defense. For the petitioners, Congress should:

> take into consideration the weak, exposed, and defenceless situation of this the most remote and Youngest of your Territories…by enacting a law ordaining that actual settlers may obtain reasonable portions of land with the same facility as heretofore under the Governments of Great Britain & Spain.[44]

In the region, the British had established what was known as a headright system of settlement. To encourage settlement and avoid potential speculation, the system granted 100 acres to any male willing to settle in the colony and an additional 50 for any other man, woman, or child brought with him, free or enslaved.[45] With the cession of Florida to the Spanish Crown after the American Revolution, enslavers who had gained large tracts of land through headright demanded the recognition of their land grants and the continuation of headright. The Spanish Crown, seeing

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[42] Pattison, William David. *Beginnings of the American Rectangular Land Survey System, 1784-1800*. Department of Geography Research Paper ; No. 50. Chicago, Illinois: The University of Chicago Press, 1957.
[43] United States Congress. *Abridgment of the Debates of Congress, from 1789 to 1856: V. 1 1789-96*. Vol. 1. New York (State): D. Appleton and Company, 1861, 99-101, 113-6, 126-7, and 260-1.
[44] *Territorial Papers,* 85.
[45] Narrett, David. *Adventurism and Empire*.

further settlement as a bulwark against American interests in the province, eventually obliged, extending headright and recognizing British title in the region.[46]

The demand for a continuation of the system of British title should, therefore, be read in two ways. First, the settlers who made this demand desired a continuation of easy access to more land. Under Sargent's rule, it was challenging for landholders to buy and sell land, as there was no office with centralized titling records, making the risk of errors—inadvertent or otherwise—high. Furthermore, purchasing land which was untitled was not possible without such an office. Without the sale of untitled land, additional settlement was unlikely. Without additional settlers, the territory would struggle to defend itself from potential internal and external threats. Easy access to land was thus paramount to the security of the colony. Second, the British and Spanish system of headright also significantly advantaged enslavers. For those with capital access and a willingness to engage in the slave trade, headright provided substantial allotments of free land. For the powerful enslavers in Mississippi society, the end of the headright system threatened their privileged economic position.

Sargent's response to the settlers' petitions was decidedly negative. Referring to the petitions as a "very long list of imaginary Grievances", Sargent communicated his negative impression of the petitioners' character and cause to Timothy Pickering, the Secretary of State under John Adams.[47] Pickering responded sympathetically to Sargent's characterization of the settlers, referring to the petitions as "groundless—captious—or premature".[48] By contrast, Congress received the petitions more favorably, with the House of Representatives passing a

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[46] *Ibid*.
[47] Letter from Winthrop Sargent to Timothy Pickering, August 17, 1799. In Mississippi Department of Archives and History. *The Mississippi Territorial Archives, 1798-1803: Executive Journals of Governor Winthrop Sargent and Governor William Charles Cole Claiborne / Compiled and Edited by Dunbar Rowland*. Tennessee: Press of Brandon Printing Co., 1999, 166.
[48] Emphasis his. Letter from Timothy Pickering to Winthrop Sargent, October 28, 1799. In *Territorial Papers*, 89.

resolution intended to overturn much of "Sargent's Code". However, the resolution languished in the still Federalist dominated Senate, failing to come to a floor vote before the end of the 1800 session.[49] Despite the failure of this formal censure, the settlers would soon achieve a much more significant political victory. On May 10th, Congress passed an act establishing a Mississippi General Assembly, elected by the citizens of the territory.[50] This election would bring challengers to Sargent's rule, including many of those who wrote, signed, and circulated the petitions, into the territorial government as legislators.[51]

The Congress of 1800 would bring about another important change for settlers. William Henry Harrison, the representative for Northwest Territory would introduce a new land act which would provide the funding for the first federal land offices. While the act only applied to the Northwest Territory in its initial configuration, it would help lay the groundwork for a future act resolving questions around title in Mississippi.[52] The coming transition in power, from Federalist rule to Democratic-Republican at the national level, would also have significant consequences for Mississippi. Sargent, long a loyal Federalist, would soon be replaced by a Democratic-Republican appointed governor, William C. C. Claiborne.[53] As circumstances shifted in favor of local landed elites, efforts to resolve the longstanding title issues in the region would finally progress.

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[49] Resolution of Congress Re Territorial Laws in *Territorial Papers*, District of Columbia: U.S. G.P.O., 1987, 5, 92-4.

[50] *An Act supplemental to the act intituled "An act for an amicable settlement of limits with the State of Georgia; and authorizing the establishment of a Government in the Mississippi territory."* Public Law 60-50. US Statutes at Large (1800): 69-70.

[51] For more on the relationship between petitions and democracy in American politics, see Carpenter, Daniel P. *Democracy by Petition: Popular Politics in Transformation, 1790-1870*. Cambridge, Massachusetts: Harvard University Press, 2021.

[52] *An Act to amend the act intituled "An act providing for the sale of the lands of the United States, in the territory northwest of the Ohio, and above the mouth of Kentucky river."* Public Law 6-55. US Statutes at Large (1800): 73-7.

[53] Haynes, *Mississippi Territory*.

The Problem of Centralizing Title

The major task for the new government, then, was the resolution of conflicting land titles. Yet, progress on the issue would not come easily. Instead, the first effort to catalog and regularize land title during this period ended in failure. It would take a second attempt to resolve the issue before titles were properly recorded throughout the region. The first effort failed to guarantee the security of the landowners in their titles and was therefore subject to substantial grassroots resistance. The second effort, however, which centralized title in regional land offices, provided a distinct set of advantages and assurances to local settlers. Wary settlers, who might otherwise reject efforts to document title, received material benefits from the creation of a centralized bureaucracy and assurances to the security of their title and accepted the advance of state power in the region. Paradoxically, as federal power grew stronger in the region, it became more attuned to local interests. Federal agents, increasingly, were drawn from pools of local candidates.[54] The demands of the land office also required federal officials to navigate local norms and become involved in the day-to-day problems of governance. As a result, land commissioners and other territorial officials often advocated for local interests to federal elites, thus enhancing the connection between territorial politics and federal policy.

In 1802, the federal government had also started the process of resolving another long-standing conflict over land. Georgia long claimed land west of Appalachian Mountains as its own territory. However, the federal government sought to integrate this land into its new Mississippi Territory. What followed was a series of negotiations between Georgia and the federal government throughout the 1790s and early 1800s. By 1802, the government agreed with Georgia to formally determine who land claimants were throughout Mississippi and western

[54] See, e.g. Edward Turner, a local Mississippian selected as a Commissioner. In Letter from Edward Turner to John C. Breckenridge, *Territorial Papers,* 264-78.

Georgia. To this end, the Secretary of State James Madison ordered Governor Claiborne to carry out a survey of land claims throughout Mississippi Territory. The survey was intended to ascertain the status of claims made under the Spanish and British governments.[55]

Claiborne, for his part, immediately recognized the challenges that such a survey might bring. Writing to Madison, he suggested, "I find that some designing men are endeavouring to impress upon the Citizens an opinion, that the filing of their Claims will be injurious to them… It is however probable, that they may excite some alarm, and prevent a General return of Claims."[56] Despite his reservations, however, Claiborne followed Madison's instructions, publicly posting a handbill asking residents to register their claims with county clerks. In the handbill, Claiborne provided assurances to settlers that at least some land claims would be respected:

> That all persons who, on the twenty seventh day of October, one thousand, seven hundred and ninety five, were actual settlers within the territory thus ceded, shall be Confirmed in all the grants, Legally and fully executed prior to that day, by the former British Government of West Florida, or by the Governor of Spain.[57]

However, these assurances were not sufficient to quell the settlers' concerns. The primary question, that of *overlapping* land title, remained unaddressed. The Spanish frequently provided title which overlapped with prior British grants. Furthermore, many British and Spanish titles had limited documentation. Additionally, while the British had a formal process which would confer title to settlers in the region, in practice, this process was rarely followed to the letter, with many settlers resting their title claims on the initial survey of the land. Likewise, Spanish practices of title were lax, and Spanish titles were rife with irregularities, with many backdated and otherwise forged documents. Furthermore, the handbill provided no method for resolving the

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[55] Letter from Secretary of State Madison to Governor Claiborne, 26 July 1802, *Territorial Papers*, 156-8.
[56] Letter from Governor Claiborne to Secretary Madison, 12 September 1802, *Executive Journals,* 501-2.
[57] "Hand Bill to Persons Claiming Lands within the Mississippi Territory", *Executive Journals,* 503-5.

land claims of squatters. Many in Mississippi settled land without formal title and sought the power to at least purchase the land on which they resided. Some resided on land which was formally owned by land speculators and others who had never set foot in the region. No provisions in the handbill addressed their claims or condition.

As Claiborne suspected, the survey faced substantial challenges, as settlers largely failed to comply.[58] Yet, Claiborne himself emerged from the survey with new sympathies for settlers and tried to convey these sympathies to Madison. Preemptors, those who had settled on land without title, were of particular concern to Claiborne:

> It will not escape your observation, that a great proportion of the present population in this Territory, is composed of Citizens who have formed settlements on vacant lands… I do sincerely hope that these Citizens may be secured in their improvements, and that the Government will sell out the Vacant land in this district upon moderate terms and in small tracts to actual settlers.[59]

Claiborne's appeal extended from some degree of actual sympathy for the settlers, but he translated this sympathy into concerns he knew would preoccupy Madison. First, he suggested that these settlers might, in their anger at being removed from the land, turn to the Spanish crown. Spain still retained much of the Gulf Coast, with Spanish Florida's panhandle extending into modern day Louisiana. Spain also continued the headright policy which might tempt settlers without clear title under American rule to move into Spanish territory, threatening the political integrity of Mississippi.

Second, for Claiborne, maintaining and eventually increasing white settlement was critical for providing security as the practice of enslavement continued to grow in the region. This concern with security was exacerbated by extensive land speculation, with non-residents holding large tracts of land under dubious title. As Claiborne argued, "[T]his most distant and

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[58] See Letter from Governor Claiborne to Secretary Madison, 5 November 1802, *Executive Journals,* 536-45.
[59] *Ibid, 543*.

infant settlement of the United States…would be rendered more weak and defenceless, by the banishment of the poorer Class of White Citizens, and the introduction of a few wealthy characters, with a large increase of negroes."[60] Removing white settlers from their land would exacerbate the security problems associated with slavery. Of particular concern to Claiborne were slave rebellions.[61] As Claiborne himself was reminded, "Your Excellency's [Claiborne's] apprehensions of danger to the Country, spring from the fear of…an insurrection of the Slaves…I cannot discern the smallest cause for alarm…The organization & arming the Militia is a guarantee for internal security."[62] Territorial elites clearly understood that a key function of white militias was in preventing and putting down slave rebellions. Ensuring a continual supply of white settlers, therefore, helped maintain the structure of enslavement in the territory. Thus, granting preemption rights to settlers was crucial to maintaining the economy of violence underpinning slavery.

Claiborne's request for preemption rights was far from unusual for territorial governments during this time. Settlers regularly requested preemption rights from Congress, but Congress granted these rights unevenly.[63] Yet, bottom-up pressure on this matter continued. A petition circulated throughout the territory, signed by nearly 75 percent of the territory's adult white male population, had two primary requests: locating the new land office in the territory and granting preemption rights to settlers without title.[64] With pressure from both Claiborne and the mass of settlers in the region, Congress acquiesced, and did so with little resistance. The bill

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[60] *Ibid*, 543-4.
[61] See Letter from General James Wilkinson to Governor Claiborne, 10 May 1803, in *Territorial Papers*, 215-8.
[62] *Ibid*, 217. The original letter from Claiborne to Wilkinson is unfortunately missing.
[63] Frymer, *Building an American Empire*.
[64] The petition was signed by 1,153 adult males. The territory's documented population in of white males over the age of sixteen in 1800 was 1,552. Assuming a relatively stable population (which is likely, given the challenges of purchasing land), this results in a ratio of 74.3 signatories per 100 adult males, or 74.3%. For petition signatories, see Territorial Papers, 159-73. For Census data see, US Census Bureau. "1800 Census: Return of the Whole Number of Persons within the Several Districts of the United States."

which established the land office, passed with a simple voice vote and no objections were noted in the Congressional record.[65] When Congress passed the final legislation, they granted preemption rights to most of those citizens without formal title.[66] However, the most critically for settlers, the 1803 would create the position of land office commissioner, which would adjudicate prior land claims. This new position had no precedent in the Harrison Land Act.

The Land Office and Administrative Development

The 1803 Land Act opened two land offices in Mississippi and created new lines of communication between settlers and the central government. Land offices were structured as follows. Each office had one register, who would record applications for the purchase of land, mark which lands were sold, and transmit information and payment for the land to the appropriate officer. While they received some central funding, most land office revenue was the remit of the register, through fees on land sale. Land offices also had two commissioners. The duty of the commissioners was to adjudicate land claims, determining who had a rightful claim to the land based on the convoluted chains of title in the region. The law provided commissioners with a broad latitude to make decisions and interpret the tangled set of land laws. In cases where the law was unclear (e.g. direct title conflicts), officers could turn to courts to find a resolution. The act also finally resolved most of the standing questions on land title. The Land Act directed land officers to grant title to all those who had obtained a grant from the British or Spanish colonial governments prior to October 27, 1795. Furthermore, preemptors were given the right to

[65] *Debates and Proceedings*, 266, 593, and 643.
[66] The location of the land offices in the territory was less in doubt. The Land Act of 1800 had provided for land offices located in Northwest Territory and it is unlikely that Congress would have provided any differently for Mississippi, given the considerable advantages of the arrangement and the complications of land title in the region. See 2 Stat. 73.

purchase tracts upon which they resided and cultivated upon passage of the act. A few exceptions for those who obtained a grant from the Spanish after 1795, until the handover of the territory in 1798 were also provided. [67]

The Land Act also established new practices of survey in the region. Previously, the military directed surveying in the region and largely focused on the boundary line between the Choctaw Nation and settler territory. With the new act, surveyors were directed to cover the whole of Mississippi Territory, breaking the land into 6-mile by 6-mile townships, and further down into 640-acre plots for purchase. Parts of the township were set aside for educational purposes. The surveyors would deposit their surveys with the land office, making them publicly available. The land office would also forward the surveys to the Secretary of Treasury. The law specified that sales would take place over a three-week period. Land was sold at public auction at the minimum price of two dollars per acre. All land not sold at auction could then be sold privately by the land office registers.[68]

Challenges remained for the governance of land in the region. While the land office was successful in getting settlers to record their title, practices of survey took a longer time to formalize. The first appointed surveyor of the territory, Isaac Briggs, appointed in 1798, became known for his inefficiency in conducting and completing land surveys. As the Secretary of Treasury would note in a letter to Briggs' successor, "I will only repeat what I had often urged to your predecessor that the speedy completion of surveys of private claims & public lands in Mississippi Territory is an object of great national importance, which has been delayed much

[67] *An Act regulating the grants of land, and providing for the disposal of the lands of the United Stales, south of the state of Tennessee*. Public Law 7-27. US Statutes at Large (1803): 229-35.
[68] *Ibid*.

beyond our rational expectations."[69] The bulk of surveying work would only take place with the appointment of Thomas Freeman in July of 1810.[70] Coordination between land offices and the office of Surveyor General also remained poor. Even with surveys completed, poor management and technical flaws frequently delayed land sales.[71]

Land officers and surveyors had no corresponding office in Washington D.C., instead serving directly under the Secretary of Treasury. There was limited coordination between the departments on the ground, as they both maintained separate organizational structures, with flat hierarchies. Furthermore, both institutions were separate from the territorial government. While Mississippi land officers often communicated with the office of the territorial governor, the governor held no formal jurisdiction over the land office or matters related to land.[72] In this way, the central government retained direct control of the activities of the land offices. However, with this formal authority came increased complications in land governance.

In practice land officers were heavily dependent on Washington to function. The duties of land officers were widespread, sometimes going beyond their official purview. Commissioners provided on-the-ground assessments of local conditions across a domain of policy areas related to their office. Land officers communicated local interests to national elites, but also transmitted other information, such as the suitability of land for agriculture, local conditions of settlement, intrusions of settlers onto Indigenous land, and the defensive capacities of settlements.[73] While early land officers communicated much of this information back to their Washington superiors,

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[69] Briggs also appears to have conducted irregular bookkeeping practices and produced maps according to his own whims, in contradiction to his orders. See Letter from The Secretary of Treasury to Seth Pease, 31 March 1807. In *Territorial Papers*, 534-7. See also, Griffin, C. David H. "The Importance of Thomas Freeman's Surveys In the Mississippi Territory." *Surveying and Land Information Science* 73, no. 1 (May 1, 2013): 31–42.
[70] Griffin, "Thomas Freeman's Surveys".
[71] *Ibid*, 36-7.
[72] *Ibid*.
[73] See e.g. Letter from Jefferson to Kirby, *Territorial Papers*, 5, 223-4.

much of the tenure of these early land officers was marked by confusion. Though the 1803 Land Act provided some guidance on how to adjudicate claims, officers would encounter arrangements which the act did not cover. This was further hampered by slow communication between commissioners and the central government.[74]

Despite these challenges, land offices increasingly formalized the relations between settlers and the federal government. While petitions from settlers continued throughout the territorial period (and beyond), increasingly, lines of communication occurred through formal institutions such as land offices. With the opening of the land office, most settlers chose to submit claims to land offices rather than national officials. This increase in formalization made certain complaints less legible to governing institutions. However, the local functions of the land office brought clear benefits for the central state and settlers alike. The land office provided a key public good, information. While the land office was most beneficial to those who owned property, it was also a repository of information. Within the office, this information, alongside title, was centralized and publicly available, substantially reducing costs for those interested in the purchase of land. As such, the local land offices became important and influential institutions. For residents they provided information and security of title. For national elites they likewise proved an important source of information, while also simplifying the sale of land in the national domain and raising revenue for the national government. Locals, having demanded a land office, had little reason to question its authority. Instead, they pressured the office in other ways. At times, they questioned the legitimacy of the appointments of land officers, circulating petitions which cast doubt on their qualifications, accusing them of corruption, disloyalty, and other

[74] Looking at the gap between the time letters were sent and received in the official record, letters took at least two months to reach their destination and at times up to half a year. Letters also often went missing. See, generally, *Territorial Papers* and *Executive Journals*.

assorted malfeasances.[75] Yet, despite personal qualms that many settlers may have had with the land officers, the presence of the land office itself was never in question.

The land office retained this legitimacy for two key reasons. First, land offices had a popular basis. The white population of Mississippi had longstanding concerns about the legality of their title in the land. They continually demanded that the law clarify their claims to title. Settlers welcomed the introduction of a legal structure and office which could help disentangle the complicated history of title in the region. Second, in conferring or confirming titles to land, the land offices ensured that white elites' investments in plantation slavery would remain economically and physically secure. At the same time, preemptors could also remain on the land which they had settled without title, providing for the security of the sparsely populated region. The land offices fulfilled a popular purpose, granting and distributing social goods to white settlers. The primary good of the land office was not land itself, but the security of title. Settlers lived in a society which recognized their property. With the creation of the land office, this recognition was backed with the power of the state.

Conclusion

While land was central to their organizing, settlers in Mississippi fought for closer regulation of their society and economy across a variety of domains. From the construction of roads and infrastructure to the culling of feral boar, settlers argued for robust and extensive federal regulatory power.[76] Yet, most of all, white settlers sought to maintain the conjoined system of white supremacy and slavery from which they benefitted. They asked for government

[75] For example, see Letter from Edward Turner to John C. Breckenridge. Turner, at some considerable length, responds to allegations circulating in a petition against him and his suitability for the office of Land Commissioner. In *Territorial Papers*, 264-78.
[76] *Territorial Papers*, 63-5.

help in shipping cotton and in regulating its quality.[77] They sought to remove enslaved people from public view.[78] They asked for military aid to prevent slave rebellions.[79] Indeed, white settlers envisioned a capacious regulatory state, one which they sought to direct to their own political ends.

Settlers fought for this regulation using the language of democracy. As Cato West, one of the main organizers of the settlers and later governor of the territory, wrote, "We rejoice however that we have it in our power to appeal to, and lay our just complaints before that Government, whose constitution and equitable Laws…dispenses to its Citizens equal protection and ample liberty."[80] Enslavers like West portrayed their concerns as democratic and commonsense using the language of property and commerce to obscure how their social positions were constituted through the labor of enslaved people. They saw little conflict between their positions as democratic citizens and the violence of racial totalitarianism. Likewise, many federal officials and legislators compromised on their putatively anti-slavery morals to ensure the incorporation of Mississippi into the territory of the United States.[81]

The construction of the land office, then, inscribed the racial order of white supremacy into the reproduction of Southern landscape. Land holders and enslavers built coalitions with federal elites to maintain and uphold their dominant position in Mississippi society. These coalitions became durable with the creation of new administrative institutions. Land offices gave formal power and backing to the system of hierarchical social relations which constituted slavery and white supremacy. In this way, the structure of land title in the settler South came to reflect

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[77] *Ibid,* 64 and 138.
[78] *Ibid,* 63-5.
[79] *Ibid,* 215-8.
[80] "Petition to Congress by Committee of Inhabitants", in *Territorial Papers,* 78.
[81] Hammond, *Slavery, Freedom, and Expansion,* 23-7.

the social position and power of enslavers in the region. The land office was more than a repository of information. It entered a landscape, both physical and social, already structured through the practice of slavery. As more white settlers flooded into the region, enticed by the access to land which land offices provided, the practice of slavery became ever more central to Mississippi society.[82] As the population grew, so too did enslavement. In 1817, Congress split Mississippi Territory in two, with the western portion becoming Mississippi State.[83] In 1819, the eastern portion gained statehood as Alabama.[84] In 1820, census officials counted 219,765 people in the two states. Of those, 80,251 were enslaved.[85]

[82] See Rohrbough, Malcolm J. *Trans-Appalachian Frontier, Third Edition: People, Societies, and Institutions, 1775-1850*. Bloomington: Indiana University Press, 2008, 223-32.
[83] *An Act to enable the people of the western part of the Mississippi territory to form a constitution and state government, and for the admission of such state into the union, on an equal footing with the original states*. Public Law 14-23. US Statutes at Large 3 (1817): 348-9.
[84] *An Act to enable the people of the Alabama territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states.* Public Law 15-47. US Statutes at Large 3 (1819): 489-92.
[85] US Census Bureau. "1820 Census: Return of the Whole Number of Persons within the Several Districts of the United States", 1821.

Chapter III

Laying the Groundwork: Surveying, Allotment, and Bureaucratic Development in Oregon Territory

Introduction

In 1849, the General Land Office (GLO) underwent a major reorganization, removed from the oversight of the Treasury Department and becoming part of the newly created Department of Interior (DoI).[1] This new organizational framework increased opportunities for the GLO to collaborate with the Office of Indian Affairs (OIA), previously part of the Department of War. However, early relationships between the agencies under the DoI would largely take the form of rivalry. The GLO and OIA often competed for regulatory powers, making legal arguments for why their own agency should have the power to conduct surveys and other land business with Native nations. Yet, as the relationship matured, the Secretary of Interior increasingly encouraged coordination between the two agencies. As the agencies moved from a competitive to collaborative framework, they found increasing success in achieving the broader goals of the DoI, especially those regarding Native nations.

This occurred, in large part, due to the reorganization and consolidation of authority within the DoI. While in previous periods it was beneficial to have authority distributed widely throughout the GLO, the new initiatives which took place under the umbrage of the DoI required significantly more centralized coordination. The DoI sought to expand its authority and power to coordinate activity between different agencies such as the GLO and OIA. While some of this expansion in the power of the DoI came by way of Congressional authorization, the DoI also sought to expand its own capacity through the negotiation of treaties, the selective reinterpretation of legislation, and the careful reappropriation of Congressional funds.

This chapter examines how the DoI deployed this new authority to structure the political order of Oregon and Washington Territories. Initially established as Oregon Territory in 1848, the

[1] *An Act to establish the Home Department, and to provide for the Treasury Department an Assistant Secretary of the Treasury, and a Commissioner of the Customs.*, Public Law 35, U.S. Statutes at Large 9 (1849): 395-397.

territory was split into Oregon and Washington in 1853.[2] Oregon would become a state in 1859.[3] Under pressure from local Oregonians, the American government sought integrate early white settlers into the political order, and passed generous legislation regarding land claims in Oregon, the Donation Land Claims Act on September 27th, 1850, which recognized their extensive prior claims to land.[4] At the same time, the territorial government sought use this legislation to contain the power of British colonial companies in the region, while also encouraging British subjects to become American citizens. The Land Claims Act would have the effect of further stimulating settlement of the region, quickly moving Oregon on the path towards statehood. The act also created an office of the Surveyor General, with the purpose of conforming settler property with the structure of the national domain. However, the Land Claims Act would prove overly burdensome to the office of the Surveyor General, and local offices would struggle to conduct surveys, grant land titles, and prevent conflicts between settlers and local Native nations.

[2] See figures 1 and 2 in Appendix. *An Act to establish the Territorial Government of Oregon.*, Public Law 86, U.S. Statutes at Large 9 (1848): 323-331. Also, *An Act to establish the Territorial Government of Washington.*, Public Law 91, U.S. Statutes at Large 10 (1853): 172-179.
[3] *An Act for the Admission of Oregon into the Union*., Public Law 205, U.S. Statutes at Large 11 (1859): 383-384.
[4] *An Act to create the Office of Surveyor-General of the Public Lands in Oregon, and to provide for the Survey, and to make Donations to Settlers of the said Public Lands.*, Public Law 45, U.S. Statutes at Large 9 (1850): 496-500.

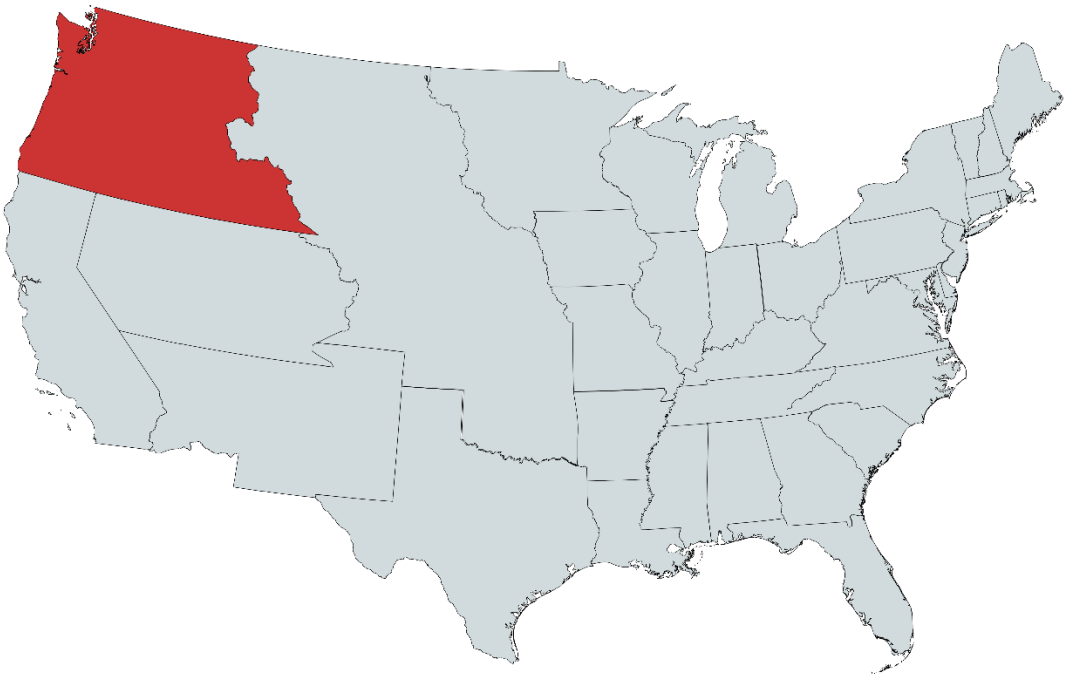

Figure 10: The United States and Oregon Territory in 1850 (highlighted red). Created using historicalmapchart.net under Creative Commons Attribution-ShareAlike 4.0 International License.

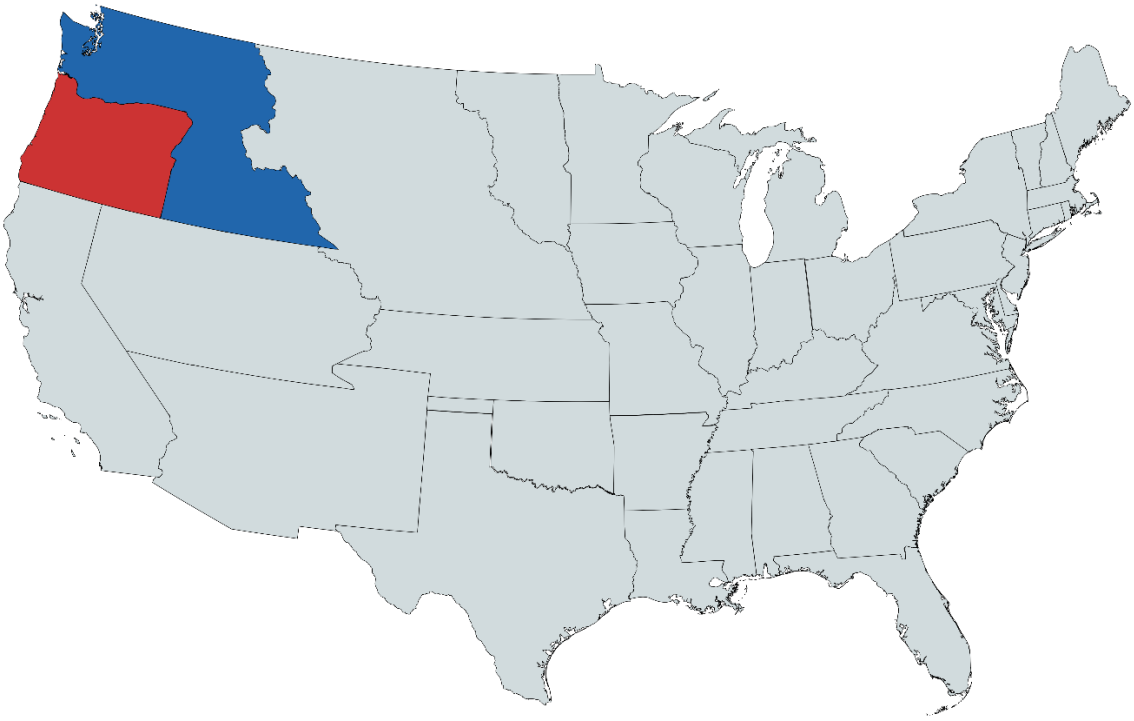

Figure 11: Washington (blue) and Oregon (red) in 1860, after the division of the territory. Created using historicalmapchart.net under Creative Commons Attribution-ShareAlike 4.0 International License.

Local officials would use violence and the threat of violence to extend administrative power. Under the rule of the first Governor of Washington Territory, Isaac Stevens, the territorial militia, with assistance from the American military, would embark on a brutal campaign of submission, engaging at times in the mass killing of Indigenous civilians. At the same time, the DoI sought to extend its managerial capacity with regards to Native nations. A longstanding goal of the DoI was claiming the power to conduct interior surveys of Native nations. This power, the DoI reasoned, would bring with it the "civilizing" of Native nations, as these nations would be encouraged to adopt American practices of land tenure and property ownership. Reducing the size of reservations to that of farmed allotments would satisfy white settlers, who frequently attempted to settle reservation land, despite the illegality of such actions. Taking advantage of legal ambiguity, the GLO claimed this power for itself and began the survey of Native nations in the region in 1870, after the passage of the 1870 Indian Appropriations Act.[5] With the threat of state violence ever present, Native nations such as the Confederated Tribes of the Umatilla Indian Reservation entered into negotiations with the GLO and agents of the OIA.[6] While the Confederated Umatilla permitted the survey of their lands, they resisted substantial pressure to allow the sale of their land to white settlers. However, with the passage of the Umatilla

[5] *An Act making Appropriations for the current and contingent Expenses of the Indian Department and for fulfilling Treaty Stipulations with various Indian Tribes for the Year ending June thirty, eighteen hundred and seventy-one, and for other Purposes.*, Public Law 214, U.S. Statutes at Large 16 (1870): 335-363.

[6] A brief note on language: the Confederated Tribes of the Umatilla Indian Reservation is the modern, formal name by which the Native nations on the Umatilla Reservation refer to themselves. The Confederated Umatilla are composed of three separate nations which were forced onto a single reservation: the Umatilla, the Walla-Walla, and the Cayuse. Beyond this longer formal title, the Umatilla otherwise tend to use the names "CTUIR", "Confederated Umatilla", "Confederated Tribes", or simply "the Tribes". For the sake of clarity, I generally use the second term throughout this essay. When relevant, I use the names of the individual nations. When referring to the legal entity, I use the term "Umatilla Reservation".

Allotment Act in 1885, the Confederated Umatilla were forced to sell "excess" land to white settlers.[7]

Organization of the General Land Office

Scholars have generally understood the Civil War and Reconstruction as the key periods in the development of American bureaucracy. What effect did this transitional era have on the bureaucratic capacity of the GLO? To capture this transition, I examine the case of Oregon. Established as a Territory in 1848 and becoming a state in 1859, Oregon provides an ideal opportunity to understand how the governance of land transformed these years. As this chapter will show, early efforts to settle the territory were haphazard and disorganized, producing significant challenges in bureaucratic governance. However, during the Civil War, with the passage of the Homestead Act and other key legislation, the administrative procedures of the office became more refined. The GLO would soon seek to claim more extensive authority in the matter of land governance, taking advantage of vague Congressional legislation to expand its remit. The expansion in the authority of the office would have a major impact on the governance and allotment of Native nations.

This chapter examines the two faces of American land policy.[8] On one hand, settler policy was inclusive for white settlers. Under the Land Claims Act, even non-citizens could lay claim to a parcel of land, so long as they agreed to integrate into the bureaucratic apparatus which governed land claims. Settlers retained extraordinary freedom in selecting land, land which the act granted them without charge. However, this freedom was extended only to white

[7] *An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.*, Public Law 227, U.S. Statutes at Large 24 (1887): 388-391.
[8] Rana, Aziz. *The Two Faces of American Freedom*. Boston: Harvard University Press, 2011.

settlers. Black people were explicitly excluded from the Land Claims Act.[9] At the same time, the rise in settler freedom came at a steep cost for Native nations. Settlers clamored for the extinction of Indian title in the region and the removal of Indigenous people to reservations. Further still, the bureaucracy of land management, which granted and confirmed settler ownership was transformed into a tool of Indigenous dispossession. While the provision of allotments to settlers was a source of autonomy, the allotment of Indigenous land came at a severe cost to the sovereign autonomy of Native nations. The very process which provided security to the settler produced the conditions of Indigenous insecurity.

Much as in Mississippi, settlers in Oregon used the tools at their disposal to negotiate with Congress and secure their land claims. However, by this period, the land office and the national land system had become far more consolidated. After its creation in 1812, the GLO gained considerable experience in the management of the national domain and coordinated a system which would survey and dispose of land to settlers.[10] The office in charge of survey was that of the Surveyor General.[11] Surveyors General fulfilled several functions for the GLO. As the name implies, Surveyors General were the primary officers in charge of surveys in a given territory (e.g. the Surveyor General of Oregon Territory).[12] The Surveyors General delegated surveying work to deputy surveyors who were contracted for the survey of specific regions to which they were assigned. Surveys were organized around the township, a six mile by six mile

[9] 9 Stat. 496.
[10] *An Act for the establishment of a General Land-Office in the Department of the Treasury.(a)*, Public Law 582, U.S. Statutes at Large 2 (1812): 716-718.
[11] The office was first created in the Northwest Territory in 1896. This first act lays out the basic administrative framework that the office would use. See *An Act providing for the Sale of the Lands of the United States, in the territory northwest of the river Ohio, and above the mouth of Kentucky river.(a)*, Public Law 277, U.S. Statutes at Large 1 (1796): 464-469.
[12] 9 Stat. 496.

square.[13] The township was then divided into 640-acre (1 square mile) sections which were then further subdivided into allotments of variable sizes depending on the orders of the Surveyors General and the GLO.[14]

Once the survey was carried out, the deputy surveyor produced plats (sometimes known as cadastral surveys). Plats were maps of the surveyed township, broken into the requested subdivisions. Copies of the plats were retained in three places: the office of the Surveyor General, the district land office, and the GLO main office in Washington D.C..[15] Plats contained several varieties of important information. On plats surveyors marked key geographic features such as mountains and rivers, infrastructure such as roads and structures, and settlements such as farms and towns. Surveyors would also include field notes alongside plats to denote key facts about the region, such as the suitability of the land for timber or farming.[16] The district land office served as the key site containing information for settlers wanting to purchase land in the district. Land districts were subdivisions of the territorial jurisdiction of the Surveyors General governed by district land offices.[17] However, the Surveyors General did not retain direct control of these district offices. Instead, like the Surveyors General, district land offices reported directly to the GLO. All district land office records were also retained in Washington D.C. with the GLO and sent on a regularized schedule.[18]

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[13] United States Continental Congress, Richard Henry Lee, Charles Thomson, Printer Hudson & Goodwin, United States, and Continental Congress Broadside Collection. “Land Ordinance of 1785”.
[14] *Ibid*.
[15] 2 Stat. 582.
[16] See Appendix, Figure 3.
[17] The district land office emerged first in 1800. See *An Act to amend the act intituled "An act providing for the sale of the lands of the United States, in the territory northwest of the Ohio, and above the mouth of Kentucky river." (a)*, Public Law 48, U.S. Statutes at Large 2 (1800): 73-78.
[18] For more information and examples of these practices, see, generally, Records of the Surveyor General of Oregon, Records of the Bureau of Land Management, Record Group 49, National Archives Building, Seattle. See also General Correspondence, Records of the Surveyor General of Washington, Record Group 118, Washington State Archives, Olympia. While Surveyors General tended to be associated with given territories, there was less fundamental basis for the position in the laws structuring the governance of the GLO. Instead, the positions were

The Land Claims Act fit uneasily with this set of administrative procedures. Unlike previous Congressional action, the act required no prior survey for settlers to claim land. The act also required no purchase of land. Instead, settlers would contract with the office of the Oregon Surveyor General to survey their claims, which would lead to the formalization of those claims with the land office.[19] However, settlers of limited financial means were hesitant to bring these costly claims to the Surveyor General and these claims rarely corresponded to the structure of the township system. As I will show, this deviation from general procedure led to substantial backlogs in the office of the Surveyor General, further exacerbating settler hesitancy. However, despite these challenges, the settlers ultimately integrated into the political and social order of Oregon. As this set of challenges receded, the GLO, and the DoI more broadly, became increasingly involved in the management of Native nations.

A Brief History of Oregon

In this chapter, I examine the region formerly known as Oregon Territory. This region corresponds to modern day Oregon, Washington, and Idaho, as well as some parts of Montana and Wyoming.[20] European presence in the region began with Spanish and British expeditions of the West Coast in the 16th century and French overland expeditions in the 17th. However, the region remained occupied largely by Native nations, with little in the way of permanent European settlement until the early 19th century. With the expansion of the British fur trade after the withdrawal of Spanish claims in the region due to the Nootka Crisis of 1789, British traders

created on a case-by-case basis patterned after the original 1796 law. See, for example, the Oregon Donation Land Claims Act of 1850, 9 Stat. 496.

[19] 9 Stat. 496.

[20] See map above.

increasingly created permanent outposts. At the same time, American elites became interested in the region, in part thanks to the Lewis and Clark expedition of 1803.[21]

American political elites soon began to assert that Oregon was part of the "natural dominion" of the United States. Soon, tensions between the United States and Great Britain resulted in the Convention of 1818. Under this convention, the United States shared "free and open" use of the region with Great Britain, with neither nation claiming total jurisdiction. During this period, settlement of the region remained largely limited to fur traders and missionaries. However, starting in the 1830s, Americans increasingly made the overland journey to Oregon, eventually making up the majority of settlers in the region.[22] However, with both the United States and Great Britain lacking sovereign jurisdiction in the region, the political status of the settlers remained unclear.

This increasingly untenable situation resulted in the creation of a quasi-independent settler government. On February 17th, 1841, the settlers of the Willamette Valley in a public meeting decided to create a rudimentary government, with offices of Governor, Supreme Judge, and Attorney General, alongside other basic functionaries.[23] The provisional government, after undertaking the urgent business of culling wolves, bears, and pumas, would create a constitution for the settlers of the region unaffiliated with the major British trader, the Hudson's Bay Company.[24] The settlers hoped for the eventual extension of American jurisdiction into the region but, in the meantime, adopted, in large part, the laws of Iowa Territory.[25]

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[21] Tyler, Jacki Hedlund. *Leveraging an Empire: Settler Colonialism and the Legalities of Citizenship in the Pacific Northwest.* Lincoln: University of Nebraska Press, 2021.
[22] *Ibid*.
[23] Brown, Joseph Henry. *Political History of Oregon: Provisional Government. Treaties, Conventions, and Diplomatic Correspondence on the Boundary Question; Historical Introduction of the Explorations on the Pacific Coast; History of the Provisional Government from Year to Year, with Election Returns and Official Reports; History of the Cayuse War, with Original Documents*. WB Allen, 1892.
[24] *Ibid*.
[25] *Ibid.*

Soon after the creation of the constitution the territory passed legislation regarding the regulation of land. The Land Act of July 5th, 1843 was extremely generous to the settlers of the region. Settlers were freely granted 640-acre tracts of land, with few stipulations. Settlers were required to maintain occupancy of the land for at least one year and make improvements (i.e. construct buildings, fences, and so on). However, the land otherwise was the settlers' for the taking, so long as it was not already occupied by towns, merchant houses, religious establishments, or public commons.[26]

The settlers' desire for the extension of American jurisdiction would soon come to fruition. The United States resolved the disputed status of Oregon with Great Britain by treaty in 1846.[27] The territory and its constitutive government were then organized shortly thereafter in 1848, under the Oregon Territory Act.[28] However, the previous legislation under the settler government presented a problem to the new territorial government. The settlers already occupied large tracts of land which, according to the 1843 Land Act, was theirs by legal right. However, under the Oregon Territory Act, these claims were explicitly rejected: "all laws heretofore passed in said Territory making grants of land, or otherwise affecting or incumbering the title to lands, shall be, and are hereby declared to be, null and void".[29]

The decision to render the grants null provoked substantial backlash from the settlers of Oregon. As the *Oregon Spectator*, the only newspaper in the territory, declared,

> If there is any one subject upon which the citizens of Oregon feel sensitive and united, it is that of grants of land: they have left their trans-mountain homes under every assurance short of absolute law, that they would receive liberal grants of

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[26] *Ibid.*
[27] *TREATY WITH GREAT BRITAIN, IN REGARD TO LIMITS WESTWARD OF THE ROCKY MOUNTAINS.,* U.S. Statutes at Large 9 (1846): 869-870.
[28] 9 Stat. 323.
[29] 9 Stat. 323, page 329. See also Bergquist, James M. "The Oregon Donation Act and the National Land Policy." *Oregon Historical Quarterly* 58, no. 1 (1957): 17–35.

> such lands here as they might settle upon…in this they have been sorely disappointed.[30]

The people of Oregon evidently expected that their land claims would be respected under the new laws of the United States, yet the new territorial laws rejected these claims. For this, they sought Congressional remedy: "[T]hey believe and feel that no sufficient cause does or can exist why Congress should not speedily comply with its solemn obligation for the unconditional grant of their full claims of 640 acres of land each".[31]

The Donation Land Claims Act of 1850

The first appointed governor of Oregon, Joseph Lane, recognized the importance of this issue to settlers in the territory and, in his inaugural address on July 17th, 1849, communicated that Congressional legislation would be forthcoming.[32] Congress soon passed the Donation Land Claims Act on September 27th, 1850.[33] The Land Claims Act served two major functions. The first function was to resolve the ongoing tensions over the question of land claims. The act provided that "every white settler or occupant of the public lands, American half-breed Indians included, above the age of 18 years" were eligible to freely receive 640 acre lots of land, with two key stipulations.[34] First, the settler must reside on the land prior to December 1st, 1850. Second, the settler must declare their intention to become a United States citizen prior to December 1st, 1851. For settlers arriving after the initial deadline, but before December 1st, 1853, the law provided 160 acre lots to single men and 320 acre lots to married men and their wives,

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[30] "Wants of Oregon", *Oregon Spectator*, 22 February 1849, in Knuth, Priscilla, Charles M. Gates, Peter H. Burnett, Geo. L. Curry, L. A. Rice, Joseph Lane, and G. H. Atkinson. "Oregon Territory in 1849-1850." *The Pacific Northwest Quarterly* 40, no. 1 (1949): 3–23, 10.
[31] *Ibid*, 11.
[32] *Ibid*, 14.
[33] 9 Stat. 496.
[34] *Ibid*.

with each receiving one-half of the lot. The language of the act also excluded Black settlers from claiming land in the region. This exclusion was in line with the white supremacist views of Oregon's settler population at the time. In 1844, the provisional settler government of Oregon had previously passed legislation to expel all Black persons from the territory, and the new Territorial Legislature had passed a law to do the same in 1849.[35]

The second key function of the act was the creation of an office for the Surveyor General of the Territory of Oregon. The Oregon Surveyor General served under the Commissioner of the General Land Office in Washington D.C. and served as the chief land officer in the territory. Under the Land Claims Act, however, the Surveyor General's responsibilities were complicated by the donation claims. Since settlers resided on the land without prior survey, it was the duty of the surveyor general to survey these claims as well. Frequently, these claims did not conform to the general practices described above regarding the survey of the national domain.[36] As a result, much of the daily business of the office of the Surveyor General was taken up by claimants under the Land Claims Act. Legislation on the national level was inconsistent, but generally, settlement of land required prior survey of lots.[37] Settlers would then go to the land office, examine the plats, and choose an available lot on which they would settle. This system of settlement created relative order in the process of settlement. Since surveyors could prioritize areas that would encourage orderly and compact settlement, settlement could better conform to national policy objectives.[38] However, with the Land Claims Act, claimants settled land and then informed the

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[35] Coleman, Kenneth R. "" We'll All Start Even": White Egalitarianism and the Oregon Donation Land Claim Act." *Oregon Historical Quarterly* 120, no. 4 (2019): 414-439.
[36] See, generally, Records of the Surveyor General of Oregon, Records of the Bureau of Land Management, Record Group 49, National Archives Building, Seattle.
[37] National legislators consistently faced the problem of preemptors or squatters, settlers who would settle land without prior survey or legal right. Several national legislative efforts integrated preemptors into the national domain throughout the first half of the 19th century. For more see Frymer, Paul. 2017. *Building an American Empire: The Era of Territorial and Political Expansion*. 1st ed. Vol. 156. United States: Princeton University Press.
[38] *Ibid*.

Surveyor General of their settlement "within three months from the commencement of such settlement, each of said settlers shall notify the surveyor-general".[39] While the act gave preference to lots which would conform to practices of "legal subdivisions", but, if impracticable, "it shall be the duty of the surveyor-general to survey and mark each claim with the boundaries as claimed". The claimants themselves were expected to pay for the cost of survey.[40]

The final key provision of the Land Claims Act was a residency and improvement requirement. Settlers were required under the law to provide proof of "settlement and cultivation" after one year of residence, and proof of continued residence after four years in order to successfully claim an allotment under the act. Such claims were made to the Surveyor General or other appointed officers. If satisfied, the Surveyor General then transmitted this information to the Commissioner of the GLO, who would certify the patent for the land. As a result, all land patents would be on file with both the GLO and the office of the Surveyor General.[41]

In practice, however, governance under the 1850 Act proved highly challenging. Over 30,000 settlers entered Oregon Territory before the act expired, with 7,317 ultimately making claims under the act, and their settlements rarely corresponded with the survey of legal subdivisions.[42] Surveyors General of the territory struggled with the workload and the difficulty of conforming patents to the land survey system, and the process of providing land patents became quickly backlogged.[43] Without patents, settlers were tied to their land, unable to sell,

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[39] 9 Stat. 496.
[40] *Ibid.*
[41] *Ibid.*
[42] Bergquist, James M. "The Oregon Donation Act and the National Land Policy." *Oregon Historical Quarterly* 58, no. 1 (1957): 17–35.
[43] See, e.g. GLO Annual Report 1854, page 76: "For donation claims in Oregon one hundred and forty-two certificates were transmitted to this office for patenting, but on examination it was ascertained that most of them were bounded by lines differing from those of the public surveys, and that special plats of the locations had not been transmitted with them as required by instructions. Without those plats, showing their locations in connexion with the

leading to complaints and protest from the citizens of the territory.[44] The cost of survey also proved a barrier. Since settlers were expected to pay for the survey themselves, many hesitated to formally make claims to their land. Indeed, requests for survey continued to come into the Office of the Surveyor General into the 1870s.[45]

Compared to previous Congressional legislation, the Land Claims Act was extraordinarily generous to settlers. Previous legislation required settlers to purchase land and provided allotments of, at most, 160 acres. Even for those settlers arriving after 1850, the grant of 160 to 320 acres of free land was extremely generous. The generosity of these grants resulted from several factors. First, the cost of reaching Oregon was exceptional. As one House Report noted in 1850, families took on risks of several hundred dollars, if not greater, which was more than equivalent to the cost of land in other regions.[46] With high costs, Congress was concerned that families would not make the journey if they were expected to pay for land. Second, Congress understood that previous settlers had traveled to Oregon under the belief that they would receive these lands due to the acts of the provisional government.[47] However, the generosity of the act proved a double-edged sword. The cost of living in the region remained high, and settlers complained that the purchase of land in another region would bring more profit and security given the relative challenges and financial cost of making a donation claim.[48] Furthermore, settlers struggled to cultivate the large plots of land provided under the act. As a

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lines of the public surveys, there would have been no security that different patents, when issued, would not have included the same land, in whole or in part. The certificates for such donations were therefore returned, that the instructions might be complied with".

[44] Bergquist, "The Oregon Donation Act", 31.

[45] See, generally, Records of the Surveyor General of Oregon, Records of the Bureau of Land Management, Record Group 49, National Archives Building, Seattle.

[46] U.S. Congress. House of Representatives. *Surveyor General of the Public Lands in Oregon. (To accompany Bill H.R. No. 250.) April 22, 1850.* 31st Cong., 1st sess., 1850. H. Rep. 31-271.

[47] *Ibid*, 2.

[48] Berquist, "The Oregon Donation Act".

result, with large the size of the donation claims, the act often encouraged land speculation rather than settlement.[49]

Despite these challenges, however, the act succeeded in its core goal. Settlers in Oregon territory would largely come to respect territorial rule. While some complaints remained, such as the high cost of survey, the act formalized settlement in the region and, though the process took some time, settler allotments would eventually come into conformity with the shape of the national domain. With these initial challenges resolved, the government in Washington D.C. turned to the pressing matter of creating secure settlements, with enough men and weapons to raise a militia to fight against the local Native nations. In an 1848 message to Congress, President James Polk made the argument as follows: "[T]he number of the white population is far inferior to that of the savages;… they are deficient in arms and money, and fear that they do not possess strength to repel the 'attack of so formidable a foe and protect their families and property from violence and rapine'".[50] Inducing settlement of the region was, therefore, paramount to the security of the settlers in the view of the federal government.

Settler Violence and the Extension of Administrative Power

The violence which the settler population would soon inflict upon the Indigenous people of the region was exceptional. Under the Land Claims Act, settlement of Oregon Territory was swift, and Oregon Territory was split in two in 1853. Oregon Territory occupied the present-day boundaries of Oregon, and the remainder of the region became integrated into a new Washington Territory.[51] The new Governor and Superintendent of Indian Affairs of Washington Territory,

[49] *Ibid*.
[50] S. Exec. Doc. No. 47, 30th Cong., 1st Sess. (1848).
[51] 10 Stat. 172.

Isaac Stevens, would engage in a vicious war against several Native nations, one which would result in mass killings of Indigenous civilians. Such killings were in line with his stated goals. As he put forth in a speech given to the Territorial Assembly on January 19th, 1856: "I shall oppose any treaties with these hostile bands…nothing but death is a mete punishment for their perfidy…The tribes now at war must submit unconditionally".[52] Stevens pursued this war with brutal abandon, with his militias at times engaging in several documented massacres of Indigenous civilians.[53] Upon the conclusion of the conflict, he executed of the Chief of the Nisqually nation, Leschi.[54]

Yet, despite the severity with which he would pursue this war, Stevens, in this same speech, argued for the importance of moving Native nations into a "civilized and christianized" state, whereupon "the supervision of the Indians, might not become unnecessary, in consequence of the Indians being able to govern themselves".[55] He continued, "This spirit lies at the basis of all the treaties made in this Territory".[56] This contradiction at the heart of American Indian policy, of violent conquest and submission on one hand and of assimilation on the other, was core to the governance of the region. Assimilation policy was imposed, not voluntary; it coexisted with the threat or actual use of state violence. The implication of violence underpinned administrative policy of this period, as both settlers and government officials sought to weaken and dispossess Native nations.

A key part of this project was the division of Indian Reservations into allotments. This division was a longstanding goal of the Department of Interior and fit with two existing policy

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[52] Chronicling America. "Pioneer and Democrat. [Volume] (Olympia, Wash. Territory [Wash.]) 1854-1861, January 25, 1856, Image 3," January 25, 1856.
[53] For more, see Kluger, Richard. 2011. *The Bitter Waters of Medicine Creek: A Tragic Clash between White and Native America*. 1st ed. New York: Alfred A. Knopf.
[54] *Ibid.*
[55] "Pioneer and Democrat", January 25, 1856.
[56] *Ibid*.

objectives: the "civilizing" of Native nations and the extension of white settlement onto reservation land. Officials tended to be more circumspect about the latter objective but openly spoke of the relationship between civilization and allotment. As the Commissioner of Indian Affairs would state in an 1854 letter to the Secretary of Interior:

> [T]o me it seems absolutely necessary that the survey of all should be continuous, and not, when a reservation is arrived at, that it should be passed over, thus breaking the chain of legal subdivisions. The convenience of this arrangement is evident, and will be of material assistance to this Bureau, in carrying out the views of civilizing the tribes.[57]

The Secretary, evidently interested in the idea, forwarded the letter to the Commissioner of the GLO. The GLO Commissioner assented to the plan and sought to claim jurisdiction over the survey through his office:

> [I]t would seem decidedly to be the better plan to suffer the *regular* surveys to proceed, uninteruptedly, over the Indian lands at once, under the direction of a Surveyor-General, as it would be of very questionable propriety, to have a separate corps of surveyors at work on the Indian reservations, acting under another authority.[58]

This goal was quickly integrated into treaties with Native nations, largely negotiated by members of the OIA, with the Omaha Treaty of 1854 containing stipulations for the survey and allotment of Omaha land under the guidance of the President.[59] The Omaha Treaty would serve as a model, and treaties thereafter would often contain similar language granting the President the power to request surveys of Indian reservations.[60]

The allotment of Native nations fits broadly into the schema of reservation and assimilation. Under reservation policy, officers of the American government negotiated treaties,

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[57] Lester, W. W. -. 1870. *Decisions of the Interior Department in Public Land Cases and Land Laws Passed by the Congress of the United States : Together with the Regulations of the General Land Office / by W. W. Lester : V.2*. Vol. 2. Pennsylvania: H.P. & R.H. Small, 1860-1870, 729.
[58] *Ibid*.
[59] *TREATY WITH THE OMAHAS. March 16, 1854.*, U.S. Statutes at Large 10 (1854): 1043-1047.
[60] Castile, George P. "Edwin Eells, U.S. Indian Agent, 1871-1895." *The Pacific Northwest Quarterly* 72, no. 2 (1981): 61–68.

often under duress and subject to fraud, with Native nations to remove them from their traditional homelands onto reservations. These reservations would "encourage" these nations to take up the habits of "civilization", notably the sedentary practices of agriculture and land tenure. Reservations massively reduced the territorial extent of Native nations. Such a reduction in territory would then enable settlers to claim former Indian territory for their own purposes.[61] However, for land hungry settlers, this initial reduction in territory was not sufficient. Settlers looked with envy at the minor holdings of the Native nations, claiming that these nations had received the highest quality land, and sought to settle upon it themselves. Settlers in Oregon increasingly demanded that the American government give them selection of territory within reservations and frequently took matters into their own hands.

Allotment, the administrators of the DoI reasoned, would further encourage Native nations to take up land tenure and private property. Taking up such practices would alleviate the social problems which plagued reservations and encourage Native nations to become assimilated into the American nation as industrious homesteaders, much like the white settlers who increasingly encroached upon their lands. Allotment was also a longstanding practice of the American government, though it was conducted haphazardly, through individual treaties rather than general policy. Though few Native nations took up the practice voluntarily, those in precarious positions were, at times, coerced into doing so.[62]

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[61] Wilkins, David E. (David Eugene), and Heidi Kiiwetinepinesiik Stark. 2018. *American Indian Politics and the American Political System*. 4th ed. Lanham, Md: Rowman & Littlefield.

[62] The first instance of allotment was exemplary in this regard. The Brothertown (or Brotherton) nation had left New York in the early part of the 19th century, due to increasing pressure from white settlers in the region. They moved to land on the shore of Winnebago Lake in Wisconsin Territory. However, the land on which they settled came under pressure due to the Indian Removal Act. Seeking to avoid removal, they negotiated with the American government to remain on their land in Wisconsin. However, to do so, they were made to give up their ownership of land in common and instead reside on individual allotments. For more, see *An Act for the relief of the Brothertown Indians, in the Territory of Wisconsin.*, Public Law 30, U.S. Statutes at Large 5 (1839): 349-351. See also Cipolla, Craig N. *Becoming Brothertown: Native American ethnogenesis and endurance in the modern world*. University of Arizona Press, 2013.

Despite the interest of federal administrators in extending this practice, the GLO lacked the statutory authority to conduct allotment or even survey reservation land. As such, despite the longstanding desire of both the OIA and the GLO to conduct such surveys, there was no comprehensive system under which surveys could take place. However, with the creation of the Department of Interior in 1849, bringing together the GLO and OIA within a single federal bureaucracy, new opportunities for competition and collaboration emerged for federal administrators.

Due to the distributed nature of governance within the DoI, many of these opportunities occurred in regions with weak oversight. Territories, such as Oregon and Washington, where lines of communication were limited provided opportunities for the overzealous administrator to conduct surveys on his own authority, without the knowledge of his superiors back in Washington D.C. Likewise, the unrestrained pattern of settlement in the region resulting from the Land Claims Act led to conflicts between settlers and the Native nations who resided there. Settlers demanded access to reservation land and often violated the terms of treaties to settle within reservations. Though the policy of the GLO was generally to seek the removal of settlers from reservation land, the overburdened territorial office often struggled to even know when violations such as this took place. At the same time, officials themselves were often frustrated and confused by policies which prevented the survey of Indian reservations.

Anson Henry, the Surveyor General of Washington Territory, expressed these frustrations in a letter to the Commissioner of the GLO, James Edmunds, in 1862. During this period, given the ongoing Civil War, money for the activities of the office was limited, and land officers competed over resources with other bureaucracies. For Henry, the present system of surveying reservations made little sense given the associated costs. As he argued, “The present system not

only wastes money, but it creates trouble and confusion. The survey of Military and Indian Reservations in advance of the regular surveys if made by the direction of the Land Department, would furnish much valuable topography in making up the Annual Reports, that is now lost".[63] Edmunds responded that such surveys were not possible under present law: "There is no provision of law to warrant the survey of any reservations, by this office".[64] Despite the desire of local bureaucrats to claim the power to conduct surveys, without statutory authority, the Surveyor General and the GLO had little opportunity to claim this power.

However, with weak federal oversight, local bureaucrats exercised considerable autonomy in conducting projects. During this period, in July of 1862, the Washington Superintendent of Indian Affairs, C. H. Hale carried out a survey of the Chehalis reservation without prior authorization from the Commissioner of Indian Affairs. He employed deputy surveyors who had previously been contracted by the GLO, albeit at a much higher rate than usual.[65] The contracts were only discovered upon the assumption of a new Superintendent to the office, B. F. Kendall. In a letter to the Commissioner of Indian Affairs, the Hale expressed the need to survey reservations to prevent conflicts:

> The survey of nearly all in the Territory is greatly needed…there being nothing to define the boundary of the Reservation, either on the land or in the Surveyor Generals or Registers Office. Disputes in regard to these boundaries are now frequently occurring and the only way to stop them, and to prevent their increasing in number is to have the lines surveyed.[66]

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[63] Surveyor General Henry to Commissioner Edmunds, 12 August 1862. Washington State Archive, Record Group 108 Surveyor General, General Correspondence, Box 1, Folder 1863.
[64] Superintendent Hale to Commissioner Dole, July 9th, 1862. R.G. 75: Records of the Bureau of Indian Affairs, Letters Received, File Unit M234 – Letters Received by the Office of Indian Affairs 1824-1881, Washington Superintendency, 1853-1880: 1863-1864, 1318-27.
[65] The standard rate for survey was eight dollars per mile. For this survey, the surveyors received twenty dollars per mile.
[66] Hale to Dole, July 9th, 1862.

Hale did not receive authorization to carry out a survey. He nevertheless commissioned and paid for the survey of the Chehalis nation using OIA funds, extending the lines of the GLO survey through the reservation. Uncertain what to do with the survey, Superintendent Kendall conferred with Surveyor General Henry on the matter. With the lack of regulation regarding such surveys, Henry treated the document mostly as a curiosity, asking the Commissioner Edmunds whether it should be integrated into the GLO plats of the region.[67] Edmunds did not authorize the integration, and a formal GLO survey of the reservation was not conducted until 1874 (see below).

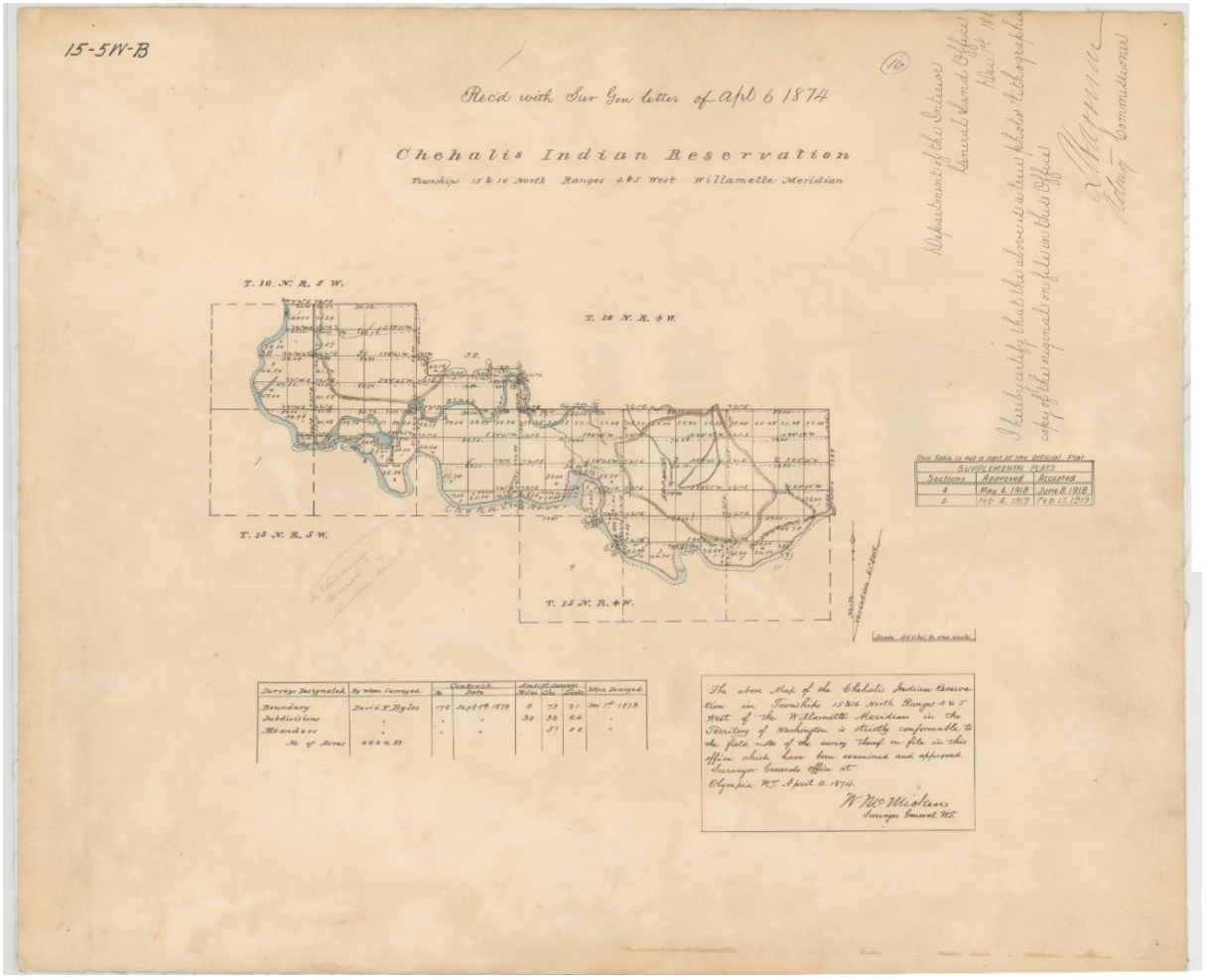

Figure 12: The 1874 survey of the Chehalis Reservation.

[67] *Ibid.*

Local bureaucrats during this period frequently asked for authorization for the survey of Native reservations. However, without statutory authority, the DoI, despite its interest in conducting such surveys, could not provide authorization. When such authorization was intermittently provided by Congress, it usually was provided through Indian Appropriations bills. For example, the 1860 bill provided for the survey of several reservations in Washington Territory.[68] However, such appropriations were directed to the Washington Indian Superintendency, which lacked the expertise to properly carry out such surveys. The Superintendency struggled to spend the money, and three years after the initial funds were appropriated, the Washington Surveyor General complained bitterly that it would be better if such funds were distributed for the use of the GLO instead. With funding such as this, he argued, the GLO could create "Homesteads for Indian Families".[69] He continued, "This is very much desired by the Agents in charge, as well as by the Indians, but it can't be done as it should be, without the aid of this office, nor can the surveys be placed upon the official maps in a regular legal manner".[70]

Infighting and legal ambiguities such as these limited opportunities for collaboration between GLO and OIA officials, with officials from both agencies seeking to claim the power of survey for themselves. At times, local bureaucrats, with the limited oversight of the central bureaucracy, exceeded their remit to claim the power for survey themselves. At others, they were provided with this power but struggled to extend it in ways that conformed to the goals of the DoI due to limited expertise and restrictive formal processes. With disorganized use of funds by local officers and insufficient oversight from the DoI, coordination on the matter was haphazard

[68] 12 Stat. 44.
[69] Surveyor General Henry to Commissioner Edmunds, 12 September 1863. Washington State Archives, Record Group 108 Surveyor General, General Correspondence, Box 1.
[70] *Ibid.*

and limited, leading to petty competition and infighting. The DoI would struggle to achieve its broader goals of survey and allotment without the opportunity to internally restructure the rules governing the survey of reservations. This opportunity would come by way of an obscure section of an act of Congress in 1864.

Claiming Bureaucratic Authority

On April 8th, 1864, Congress passed "An Act to provide for the better Organization of Indian Affairs in California". The act, meant to address several deficiencies in the California Indian Superintendency, reorganized the office and created regulations regarding the distribution of land for reservations in California. The act was relatively unremarkable, meant to consolidate the northern and southern California Indian Superintendencies into one.[71] However, section six of the act would eventually become the basis of a major claim of regulatory authority for the GLO. The section reads as follows: "That hereafter, when it shall become necessary to survey any Indian or other reservations, or any lands, the same shall be surveyed under the direction and control of the general land-office, and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed".[72]

Given the context of the act, it is likely that the intention of the section was to provide for the survey of future reservation sites in California. The bill itself passed the Senate and House without controversy, save for some minor debate on the renumeration for the office of the Superintendent.[73] Congress does not appear to have intended to provide broad statutory authority

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[71] Annual Report of the Secretary of Interior, 1863, 22.
[72] *An Act to provide for the better Organization of Indian Affairs in California.*, Public Law 38, U.S. Statutes at Large 13 (1864): 39-41.
[73] Congress. *The Congressional Globe: Containing the Debates and Proceedings of the First Session of the Thirty-Eighth Congress.* Washington D.C., Congressional Globe Office, 1864.

to Commissioner of the GLO to conduct any survey of reservation land as he saw fit. Indeed, the GLO Commissioner himself does not appear to have recognized the supposed authority that this bill provided him until 1869, well after the bill's passage. However, in his 1869 Annual Report, Commissioner Joseph Wilson highlighted the 1864 law as a key piece of legislation governing the authority of the land office to survey reservations, without reference to California.[74]

With this claimed authority, the DoI would request the funding to conduct surveys of Indian reservations in 1870. Congress would oblige and, in the 1870 Indian Appropriations Act would provide 444,480 dollars for the mass survey of Indian reservations, alongside an additional 20,000 dollars for the survey of reservations in Oregon and Washington, an amount roughly equivalent to yearly appropriations for surveys for the whole of the GLO.[75] This marked the first large scale effort to conduct surveys of reservations and, for the DoI, the achievement of a long-term policy goal. The bill appropriated this money for survey to the OIA, but the DoI instead instructed Surveyor General of Oregon William Odell to coordinate with the Oregon Indian Superintendency on the matter. With this coordination, the plats produced through this survey would be integrated into the broader survey of the national domain, under the jurisdiction of the GLO. With its newfound statutory authority and the instructions of the DoI, the GLO would ask its Surveyors General to collaborate with local officials of the OIA. In Oregon, the new Commissioner of the GLO, Willis Drummond, would order Odell to begin collaboration with the Oregon Superintendent of Indian Affairs on the survey of four reservations: the Umatilla, Warm Springs, Siletz, and Klamath.[76]

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[74] H.R. Exec. Doc. No. 1, 41st Cong., 2nd Sess. (1869), 42.
[75] For reference, the GLO was appropriated 487,000 dollars for the survey of public lands throughout the United States this same year, and 60,000 dollars total for Washington and Oregon. H.R. Exec. Doc. No. 1, 42nd Cong. 1st Sess. (1870), 323. For Indian Appropriations, see 16 Stat. 335.
[76] Commissioner Drummond to Surveyor General Odell, February 2, 1871. National Archives Seattle, Record Group 49, Series 1, Box 4, Volume 3.

Negotiating Survey and Settlement

The effort to survey the Umatilla Reservation was closely documented by federal administrators. Due to Congressional action, the negotiations between the Confederated Umatilla and federal officials were transcribed and presented to Congress.[77] This effort would see substantial collaboration between the GLO and OIA at the command of the Secretary of Interior. Relations with the Confederated Umatilla were governed by the 1855 Treaty of Camp Stevens, negotiated with Governor Stevens at the end of the 1855 war.[78] The treaty was conducted with three nations: the Walla-Walla, the Cayuse, and the Umatilla. In the treaty, the nations ceded large sections of territory, were confederated into a single entity, and agreed to remove to the Umatilla Reservation. The treaty itself was unexceptional and borrowed extensively from the Omaha Treaty of 1854.[79] Much like the Omaha Treaty before it, the treaty stipulated the following: "The President may, from time to time at his discretion cause the whole or such portion as he may think proper, of the tract that may now or hereafter be set apart as a permanent home for those Indians, to be surveyed into lots and assigned to such Indians of the confederated bands as may wish to enjoy the privilege, and locate thereon permanently".[80] This standard language across treaties ensured that the federal government would, in the future, have the power to conduct surveys of reservations and, ultimately, break the reservations into individual allotments. In line with DoI policy at the time, ensuring the future possibility of allotment via treaty would help advance department objectives.

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[77] *[No. 98.] A Resolution instructing the President to negotiate with the Indians upon the Umatilla Reservation, in Oregon.*, U.S. Statutes at Large 16 (1870): 384.
[78] 12 Stat. 945.
[79] 10 Stat. 1043. See also Castile, George P. "Edwin Eells".
[80] 12 Stat. 945.

The 1870 Indian Appropriations Act would provide the DoI with the opportunity to carry out their desired surveys. Odell would instruct his deputy surveyors to collaborate with Indian Agents in the execution of the surveys.[81] Indian Agents, who served as the key intermediaries between Native nations and the federal government, retained detailed knowledge of reservations and could assist with on the ground coordination of surveyors. Agents generally lived on or near to the reservations which they served. The Superintendent of the Indian Office in Oregon provided detailed instructions for the Umatilla agent to explain the surveys to the Confederated Umatilla:

> You will say to the Indians, that this work of survey is being done in compliance with treaty stipulations and for the special purpose of allotting their land in severalty, and without any regard whatever to the proposed negotiations for removal or sale. That all the other Indian reservations in Oregon, are, or will be under contract very soon.
>
> You will say for him, that I have got this survey ordered because it was for the good of his people to have their houses set off, so that they would not always be annoyed by the threat of white men to take their lands, all other Indians are much pleased, and say that a new day has come for them.[82]

The process of negotiation was important for the DoI. While the department had, at this point, claimed formal authority and received funding to carry out the surveys in its desired manner, conducting surveys was still a potentially challenging and even dangerous task.[83] With substantial resistance from a Native nation, it would be difficult for surveyors to conduct their work and achieve the goals of the department. Indeed, the Superintendent understood the

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[81] Surveyor General Odell to Deputy Surveyor, 23 March 1871. National Archives Seattle, Record Group 49, Series 1, Box 4, Volume 3.

[82] Superintendent Meacham to Umatilla Agent Conoyer, 28 April 1871. National Archives Seattle, Record Group 75, Bureau of Indian Affairs Umatilla Indian Agencey, Pendleton, Ore., Letters Received from Other Parties 1868-1915, Box 2.

[83] In 1873, for example, two surveyors were attacked when attempting to carry out a survey of the Colville Reservation. Deputy Surveyor to Surveyor General of Washington, 28 May 1873. Washington State Archives, Record Group 108, Surveyor General, General Correspondence, Box 2.

Confederated Umatilla might not immediately see the "good" of the surveys and offered to travel to the reservation himself if needed.[84]

The land of the Umatilla Reservation was viewed with envy by white settlers. Considered a region with bountiful resources and fertile land, the reservation suffered frequent intrusions and impositions from settlers.[85] As noted in the Superintendent's letter, the effort to survey the land took place alongside a larger effort to convince the Confederated Umatilla to leave or sell their reservation lands. The Confederated Umatilla remained suspicious of the motives of the DoI but ultimately permitted the survey of their land to go forward. However, soon after the surveys began, Congress would authorize a negotiation with the Confederated Umatilla for the division of the reservation into allotments or for their removal to a new reservation on July 7th, 1870.[86] The survey helped lay the groundwork for this move, as such a survey could be used as the basis for white settlement or the division of land into allotments for individual property ownership among members of the Confederated Umatilla.

The negotiations were entered into on August 7th, 1871. There were three parties to the negotiation for the federal government: the Oregon Superintendent, A.B. Meacham, a member of the board of Indian Commissioners (a newly created supervisory committee for the OIA), Felix Brunot, and a Senator from Oregon, Henry Corbett. For the Confederated Umatilla, all three nations were represented by their chiefs: Wanap-Snoot of the Umatilla, Howlish-Wampo of the Cayuse, and Hom-li of the Walla-Walla. The federal negotiators presented the July 7th Congressional resolution to the three chiefs. Both Meacham and Brunot emphasized the duty and role of the federal government in protecting the land of the Umatilla Reservation and the history

[84] Meacham to Conoyer, 28 April 1871.
[85] H.R. Exec. Doc. No. 1, 42nd Cong. 1st Sess. (1870), 514.
[86] 16 Stat. 384.

of the government in providing goods stipulated by the 1855 Treaty, and suggested that, by following the government policy, the Confederated Umatilla might improve their situation through the adoption of settler industry and the mode of white civilization.[87]

Senator Corbett took a different approach. On the third day of the negotiations, he explained why the Confederated Umatilla should accept the government's offer:

> There are a great many white men coming to this country and settling all about you. They are crowding near the lines of the reservation. We fear they may do you some wrong, and you may do them some wrong in return… In thinking of this, we have deemed it best to come and see you and learn if you might not think it best to move to some other reservation… If you do not all desire to move to other reservations, a portion of you might want to live upon a part of the land upon this reservation. If you should choose, each one, to take a piece of this reservation, each one might own it himself, and no one could take it from you. A portion of those who now have farms might have those farms to themselves, and the remainder of the reservation might be sold to the white man for your benefit.[88]

Here, the central goal of the federal efforts comes into focus. Corbett implicitly threatens the Confederated Umatilla with settler violence, should they not concede to the government demands. For Corbett and many other federal officials, the ultimate goal of federal policy was not "civilizing" but the seizure and redistribution of reservation land to white settlers. The westward movement of settlers appears inevitable in Corbett's speech, and only by granting the government its wishes could the Confederated Umatilla prevent the harm that would come to them. Corbett then made his threat more explicit:

> The railroads will bring more white people into the country. They may settle about the reservation, and we may not be able to prevent their committing some wrong. If they should commit wrong on the Indians, we fear you would commit some wrong against them in retaliation. Then the white people and the Indians might have a great war. There are great numbers of white people, and we fear they would exterminate the Indian. This we wish to prevent.[89]

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[87] H.R. Exec. Doc. No. 1, 42nd Cong., 2nd Sess. (1871): 511-52.
[88] *Ibid,* 525.
[89] *Ibid.*

Corbett suggests the depredations which Stevens had previously committed in his 1855 war. In an earlier discussion, Meacham noted that many of the men who negotiated the 1855 treaty with Stevens were present at this negotiation too. The chiefs doubtless understood the implications of the threat which Corbett made.

For the chiefs and the other members of the confederation, however, neither these threats from Corbett nor the earlier promises of Meacham and Brunot proved convincing. The chiefs repeatedly expressed their attachment to the land and emphasized the broken promises of the 1855 treaty. As Wanap-Snoot would say:

> I have travelled all over this Indian country about here, and none of it suits me but this… I see our reservation, how little work has been done on it. The whites did very little of it; all the rest the Indians have done… I have never said anything about selling my reservation. No one ever came to me to talk about buying it… I don't wish any one to count out any money and say "Here is so much for it." I can see for myself what was promised me before half of it was lost.[90]

Despite the clear disdain for the government's proposals, the government committee went on to submit to the assembled the following proposition: "The lands of the Umatilla to be sold to the highest bidder for cash, in lots not exceeding 320 acres, out of the proceeds of which shall [be spent on various improvements]".[91] The chiefs, after a recess, firmly rejected the proposal. The committee then proposed the division of the reservation into lots, set apart for individual use. Hom-Li quickly responded: "I said I did not want my land divided, and if we changed our mind we could say so. I spoke for all the others, and they don't want to say anything more".[92] With Hom-Li's statement the negotiation ended.

The Confederated Umatilla were unlikely to ever take on the division and sale of their reservation voluntarily. While the allotment of the national domain greatly benefited settlers,

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[90] *Ibid,* 526.
[91] *Ibid,* 529.
[92] *Ibid,* 531.

providing them a means of subsistence and the ability to participate in the national land market, for nations such as the Confederated Umatilla, allotment meant a severe diminishment of their wellbeing and sovereign status. The removal of the Confederated Umatilla to a reservation had already borne a severe cost upon them. In the negotiation, the members of the Confederated Umatilla speak of their deaths from disease, their difficulties in adopting a sedentary lifestyle, and the lack of support and broken promises of the federal government. Despite these challenges, they still took pride in what they had accomplished in their time on the reservation and understood the value of their land. Forcing their removal or the sale of their land would have redoubled the challenges which they faced and, despite the threats of Corbett and the promises of Meacham and Brunot, the Confederated Umatilla stood together.

Conclusion

For the DoI, however, the failure of the negotiations significantly impacted their long term plans. While the department was successful in carrying out surveys, this success did not lead to the division and sale of Umatilla Reservation land as they had hoped. As the Commissioner of Indian Affairs would express in 1872:

> The reservations granted heretofore have generally been proportioned, and rightly so, to the needs of the Indians in a roving state… As they change to agriculture…they tend to contract the limits of actual occupation. With proper administrative management the portions thus rendered available for cession or sale can be so thrown together as in no way to impair the integrity of the reservation. Where this change has taken place, there can be no question of the expediency of such sale or cession. The Indian Office has always favored this course.[93]

Despite the resistance of Native nations to this course of action, the DoI would push forward with the initiative. The survey of Native nations in the 1870s brought reservations into

[93] H.R. Exec. Doc. No. 1, 42nd Cong., 3rd Sess. (1872): 13.

conformity with the rest of the national domain. Lines of survey now crossed through reservations, and the land was allotted, even if no allotments were claimed by members of Native nations.

For the Confederated Umatilla, the pressure from the DoI continued into the 1880s. Finally, after extensive negotiations, the Umatilla reservation was subject to the division, allotment, and sale of their land under the Umatilla Allotment Act in 1885.[94] The Umatilla Allotment Act would induce members of the Confederated Umatilla to select allotments for individual settlement and sell the remaining land to white settlers. The sales from the act would reduce the size of the reservation from 245,699 acres to 157,982 acres.[95] This act was a precursor to the General Allotment Act of 1887, forcing the allotment of numerous reservations.[96] The General Allotment Act would require members of Native nations to choose and settle upon 80- or 160-acre sections of land conforming to the grid of the national domain, unless a different quantity was specified by treaty. If members failed to make this selection within four years, a special agent would be appointed to make the selection for them. Once this process had been carried out, settlers were permitted to select land which was unassigned for purchase and settlement.

While the Dawes Act has been noted as an exceptional piece of legislation for both its extent and impact on Native nations, the DoI spent the previous three decades laying the groundwork.[97] While other scholars have tended to point to legislative action as the key pathway

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[94] *An act providing for allotment of lands in severalty to the Indians residing upon the Umatilla Reservation, in the State of Oregon, and granting patents therefor, and for other purposes.*, Public Law 178, U.S. Statutes at Large 23 (1885): 340-343.
[95] Kennedy, James B. 1977. *The Umatilla Indian Reservation, 1855-1975: Factors Contributing to a Diminished Land Resource Base*: Oregon State University.
[96] 24 Stat. 388.
[97] See Otis, Delos Sacket. *The Dawes Act and the allotment of Indian lands*. Vol. 123. University of Oklahoma Press, 2014. See also Frymer, *Building an American Empire.*

for western settlement, this chapter suggests that the bureaucratic autonomy of the DoI was a major factor. The department internally developed procedures which would determine the structure of settlement and spent three decades reorganizing internal processes, developing expertise, and claiming authority. The DoI often did so without explicit Congressional action. The DoI acted independently, seeking to implement policies which it had developed soon after its creation in 1849. The bureaucratic expertise developed within the department was fundamental to the deployment of land policy as a tool of dispossession.

Conclusion

The Decline of the General Land Office

Differentiated Land Use and the Development of a New Land Policy

By the end of the 19th century, the GLO had reached the height of its power. Whereas at the start of the century, what would become the GLO was nothing more than an array of loosely affiliated land offices and surveyors, the consolidation which took place over the intervening decades led to an autonomous office with formalized processes. Early land offices used the technologies of mapping and contract to ensure the loyalty of settlers while also securing the growth of enslavement. Under the Jackson administration the GLO struggled to keep pace with substantially expanded projects of settlement and dispossession. With allotment, the GLO utilized its key technological powers to dispossess Native nations and ensure the rapid settlement of their land. The development of the GLO's capacities over the century points to an organization which had become refined in its implementation of technology and process. Responsible for a wide range of projects, from railroads to national parks, land management under the GLO indelibly altered the American frontier.

Yet, the GLO became increasingly wedded to its major technological features, producing an agency with a narrowly defined set of expertise. The consolidation of the GLO created an office which used land management technologies according to effective and, at times, innovative principles. However, the way the GLO approached problems within its domain remained relatively restricted, bound to path dependent technologies first produced under the Continental Congress in 1785. Land policy remained limited to the 640-acre section. The regulation of land occurred only at the level of the individual settler and his allotment. Therefore, as the 20th century dawned and the American state sought to transform the domain of land management, the form of these GLO technologies increasingly struggled to adapt to new projects.

Furthermore, with the completion of rectangular survey across the continental United States, the role of the GLO transitioned from that of an active participant in practices of colonial governance to that of a curator: preserving its extensive knowledge of the American domain for those interested parties. While the GLO would still manage the sale of the national domain, sale would never again provide the foundation for the autonomy which the GLO had enjoyed in the latter half of the 19th century. The GLO's ability to function as an autonomous agency in this context was most harmed by the emergence of a professionalized bureaucracy. The autonomy of the GLO grew substantially in the 1860s, with the passage of the Homestead Act of 1862 and its collaboration with the OIA. However, this growth existed in the context of a bureaucratic system which lacked norms of professional conduct, with appointments based on party loyalty, not competence. This presented a challenge for those who wished to carry out long-term policy changes at the agency. Department heads changed regularly, and local officers regularly lacked the basic skills to successfully execute the tasks of their office.[1] While the GLO obtained autonomy, it did so while deeply embedded in a system of governance that would soon lose favor.

The move toward professionalization occurred alongside a broader effort to create a differentiated land use regime. Starting in the late 18th century, surveyors were statutorily required to note the quality of land for farming and other uses, alongside other significant features.[2] However, the system of rectangular survey and sale itself did little to differentiate these lands from one another, instead conforming them to the rectangular grid. The federal government

[1] For example, one Oregon Surveyor General, William Odell, so severely lacked the competence to conduct office business that locals organized a sustained letter writing campaign to have him replaced. See Henderson to Secretary of Interior Delano, November 11th, 1872. *Oregon Surveyor General, Letters Received*, National Archives Seattle, Record Group 49, Series 1, Box 4, Volume 3.
[2] Hibbard, Benjamin Horace. *A History of the Public Land Policies*. United States: P. Smith, 1939.

also undertook periodic efforts to regulate land use throughout the 19th century. Major legislation granted land for schools, canals, railroads, and the draining of wetlands.[3] Yet, critically, such legislation did not subject this land to *regulation*. Instead, Congress provided *land grants* for states and private entities such as canal and railroad companies. This would change with the California Gold Rush and the general growth of mining activity in the west in the mid-19th century.[4] As settlers increasingly sought mineral wealth, much of it mined from lands in the public domain, lawmakers would quickly recognize the importance of creating a regulatory regime which differentiated between forms of land use.

The first Congressional action came in 1866, with the passage of a new bill regulating mining.[5] The 1866 Mining Act created the category of "mining land", as distinguished from agricultural lands as defined in the original Homestead Act of 1862.[6] The act further distinguished between surface and subsurface land rights, noting that rightful mining claims might pass underneath agricultural land claims. The 1866 Act also regulated the size of mining claims, limiting lode claims to three thousand feet and permitting further state and territorial regulations on mining.[7] The act was updated in 1872, with further regulations of the lode and the application for patent at the land office.[8] The 1872 Mining Act remains the basis of federal

[3] *Ibid*.
[4] *Ibid*.
[5] *An Act granting the Right of Way to Ditch and Canal Owners over the Public Lands, and for other Purposes.,* Public Law 153, U.S. Statutes at Large 14 (1866): 251-253.
[6] *An Act to secure Homesteads to actual Settlers on the Public Domain.,* Public Law 64, U.S. Statutes at Large 12 (1862): 392-393.
[7] 14 Stat. 251.
[8] *An Act to promote the Development of the mining Resources of the United States.,* Public Law 129, U.S. Statutes at Large 17 (1872): 91-96.

mineral land law to this day.[9] Notably, under both acts, the survey, sale, and regulation of mining lands remained within the remit of the GLO.

The GLO gained further authority to differentiate land use with the passage of the Desert Land Act of 1877.[10] With this new act came the designation of "desert land" and the regulation of water use on purchased desert lands. Settlers were required under the act to "reclaim" desert lands using irrigation and other water management techniques.[11] Fourth and fifth designations, "timber lands" and "stone lands" were defined in the Timber and Stone Act of 1878.[12] These three land designations were also sold to individuals on the same basis as the Homestead Act, with different divisions of the 640-acre section used as the basic unit of sale under the regulations of the GLO.[13] However, the provisions of the Homestead Act mapped poorly onto these diversly regulated land typologies, especially timber lands. While individual settlers made fine proprietors of agricultural land, the industrial scale and capital intensiveness of timber production incentivized producers to commit land fraud, using multiple individual purchasers to obtain large tracts of forest in 160-acre lots.[14] Similarly, with the Desert Land Act lacked clear

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[9] *Mining district regulations by miners: location, recordation, and amount of work; marking of location on ground; records; annual labor or improvements on claims pending issue of patent; co-owner's succession in interest upon delinquency in contributing proportion of expenditures; tunnel as lode expenditure,* U.S. Code 30 (2023), § 28.
[10] *An act to provide for the sale of desert lands in certain States and Territories,* Public Law 223, U.S. Statutes at Large 19 (1877): 377.
[11] *Ibid.*
[12] *An act for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory.*, Public Law 74, U.S. Statutes at Large 20 (1878): 89-91. For more on the long run effects of this act, see Curry-Roper, Janel M. "The Impact of the Timber and Stone Act on Public Land Ownership in Northern Minnesota." *Journal of Forest History*, vol. 33, no. 2, 1989, pp. 70–79; Libecap, Gary D., and Ronald N. Johnson. "Property rights, Nineteenth-Century federal timber policy, and the conservation movement." *The Journal of Economic History* 39, no. 1 (1979): 129-142; Clary, David A. *Timber and the forest service*. University Press of Kansas, 1988; Huffman, James L. "A HISTORY OF FOREST POLICY IN THE UNITED STATES." *Environmental Law* 8, no. 2 (1978): 239–80.
[13] Desert lands were sold as full sections, with 640-acre allotments. Timber and stone lands were sold in quarter sections, as 160-acre allotments. See again, 17 Stat. 91; 20 Stat. 89.
[14] For example, in Minnesota, seven companies came to control 77 percent of timber lands. See Curry-Roper, "The Impact of the Timber and Stone Act", 75. For a more general discussion of timber fraud, see, Libecap and Johnson, "Timber Rights" and Huffman, "Forest Policy History".

guidelines on irrigation, leading further difficulties with fraud.[15] With such large-scale fraud, these various acts mostly failed to properly regulate non-agricultural lands.

The failure of these acts as regulatory frameworks would eventually spur Congressional action. In 1891, Congress passed the Timber Repeal Act, revising the regulations regarding timber lands and other new land types.[16] However, the act would fail to meaningfully reform the Timber and Stone Act, which would remain in power largely unchanged until 1906, when President Theodore Roosevelt suspended the sale of timber lands.[17] Instead, the most significant component of the act, section 24, would create a new form of land holding, the Forest Reserve. Wholly distinct from prior land regulation efforts using the Homestead Act framework, Forest Reserves were public land created through presidential proclamation. These lands were set aside from public purchase and were regulated directly by the GLO.[18] With the delegation of this new authority, it might appear that the GLO was well positioned to grow into the 20th century. However, the GLO lacked the expertise for this new regulatory power. The GLO had no experience in the management of forest lands and no knowledge of forest management techniques. Furthermore, extensive land fraud undermined the public image of the GLO as a reliable land management agency. As such, despite its apparently strong position, the authority of the GLO remained highly vulnerable to potential challenges.

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[15] Krall, Lisi. "US land policy and the commodification of arid land (1862-1920)." *Journal of Economic Issues* 35, no. 3 (2001): 657-674.
[16] *An act to repeal timber-culture laws, and for other purposes.*, Public Law 162, U.S. Statutes at Large 26 (1891): 1095-1103.
[17] Huffman, “Forest Policy History”.
[18] 16 Stat. 26.

Forest Reserve Regulation and the Rise of the USDA

While the GLO had obtained substantial regulatory power by the end of the 19th century, its regulatory authority under the Homestead and other acts remained more well suited to the project of western settlement. However, with this period of westward expansion coming to a close and new forms of regulatory authority emerging, the GLO would struggle to maintain its power as a regulatory agency. While the GLO had substantial expertise in practices of survey and allotment, the agency had far less experience in the regulation of land. As such, with the emergence of new regulatory frameworks, the GLO struggled to maintain its authority.

The most significant challenger to the GLO was the United States Department of Agriculture (USDA). The Department developed substantial internal expertise in the domain of scientific land management. Congress appropriated funds to the USDA for a wide variety of scientific purposes. For example, in 1886, the USDA appropriations bill included provisions for divisions in botany, pomology, microscopy, chemistry, entomology, ornithology, mammalogy, seeds, agricultural statistics, and animal industry. However, most significantly for the GLO, the 1886 appropriations bill would provide funding for a newly created Division of Forestry (DoF).[19]

The impetus for the DoF emerged in the mid-1870s. The American Association for the Advancement of Science would pressure Congress to fund the study of forest preservation after their 1873 national convention.[20] Congress would appropriate 2000 dollars in 1876, spent under the authority of the USDA.[21] With these new Congressional appropriations, the USDA would

[19] *An act making an appropriation for the Department of Agriculture for the fiscal year ending June thirtieth, eighteen hundred and eighty-seven, and for other purposes.,* Public Law 97, U.S. Statutes at Large 24 (1886): 100-104.
[20] Huffman, "Forest Policy History".
[21] The reason for the appropriation of funds to the USDA rather than the GLO was largely incidental and likely due to the focus on tree cultivation as the solution to timber shortages. Indeed, the author of the House Report which responded to the AAAS initially proposed a Commissionership of Forestry located within the DoI. See Huffman, "Forest Policy History", 245.

begin to accumulate expertise in forestry management. The department would study the problem of forest management using the foremost scientific methods of the time and seek to develop practices which would encourage the sustainable harvest of United States forests. With the creation of Forest Reserves under the 1891 Timber Repeal Act, the DoF would become increasingly important to the management of forest lands. By contrast, lacking internal expertise on forest management, the GLO struggled to regulate the new Forest Reserves. The Timber Repeal Act itself lacked any framework to regulate Forest Reserves, nor did it contain any appropriations to study or create such regulations. This regulatory problem persisted, even as Presidents Harrison and Cleveland expanded the forest reserves by millions of acres.[22]

The regulatory vacuum provided an opportunity for the DoF. While an 1897 amendment to an appropriations bill would provide further guidance on the regulation of Forest Reserves, the GLO continued to struggle with the implementation of new policy.[23] Gifford Pinchot, the head of the DoF and a close personal ally of then Vice President Theodore Roosevelt, would use the division to provide close guidance the GLO, which lacked trained foresters. The GLO instead relied on private contractors to regulate the Forest Reserves.[24] The GLO, here, followed the pattern it had used to conduct surveys, where Surveyors General would contract deputy surveyors at a fixed rate, rather than developing departmental expertise. This approach would prove insufficient in this new regulatory environment. As Pinchot himself noted, "Unfortunately the Interior Department with its tradition of political toadeating and executive incompetence, was incapable of employing the powers the [1897] act gave it."[25] Pinchot's personal connections

[22] *Ibid*, 261.
[23] *Ibid*.
[24] Huffman, "Forest Policy History".
[25] Pinchot, Gifford. 1972. *Breaking New Ground.* Seattle: University of Washington Press, as quoted in Huffman, "Forest Policy History".

would soon bear fruit.[26] In his inaugural address, President Roosevelt would highlight the importance of forest management. With the repeated failure of the GLO to manage forest lands, Congress passed the Forest Reserve Transfer Act in 1905, granting authority to the USDA for the regulation of Forest Reserves.[27]

With the loss of this authority, the GLO's position in this new regulatory landscape never again achieved the prominence it had in the 19th century. However, a simultaneous development, the acquisition of Spanish imperial holdings after the Spanish-American War, would give new lease to the 19th century governance strategies of the GLO.[28] In particular, the acquisition of the Philippines would open new frontiers of development for the American state.

The Transition to Colonial Governance

The Treaty of Paris at the end of the Spanish American War would bring American rule to the Philippines in 1899.[29] Rule did not come easily, as many Filipinos resisted American domination, and the United States conducted a brutal campaign of repression.[30] However, this ongoing conflict did not prevent American elites from seeking to establish a new colonial

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[26] For more on Pinchot's background and personal and professional roles in the creation of the Forest Service, see Balogh, Brian. "Scientific forestry and the roots of the modern American state: Gifford Pinchot's path to progressive reform." *Environmental history* 7, no. 2 (2002): 198-225. See also, generally, Carpenter, *Forging Bureaucratic Autonomy*, 179-211.

[27] *An Act Providing for the transfer of forest reserves from the Department of the Interior to the Department of Agriculture.*, Public Law 34, U.S. Statutes at Large 33 (1905): 628.

[28] For more on the extension of the GLO to global affairs see, Black, Megan. 2018. *The Global Interior: Mineral Frontiers and American Power*. Cambridge, Massachusetts: Harvard University Press.

[29] *Treaty of Peace between the United States of America and the Kingdom of Spain. Signed at Paris, December 10, 1898; ratification advised by the Senate, February 6, 1899; ratified by the President, February 6, 1899; ratified by her Majesty the Queen Regent of Spain, March 19, 1899; ratifications exchanged at Washington, April 11, 1899; proclaimed, Washington, April 11, 1899.*, U.S. Statutes at Large 30 (1899): 1754-1762.

[30] See Silbey, David. *A war of frontier and empire: The Philippine-American war, 1899-1902*. Macmillan, 2008; McCann, Michael W, and George I Lovell. 2020. *Union by Law : Filipino American Labor Activists, Rights Radicalism, and Racial Capitalism*. Chicago ; The University of Chicago Press.

government, with its attendant bureaucracies. A report from the Philippine Commission in 1900 highlighted the suitability of Philippine land for economic development:

> There are about 29,694,500 hectares of land in the Philippines, with 2,000,000 hectares in private ownership and 27,694,500 hectares in public lands. The land is mostly exceedingly fertile, much of it covered by the most valuable timber, with extensive deposits of gold, copper, high-grade iron, and excellent coal.[31]

This report made explicit the conformity of Philippine land to a differentiated land use regime.

While, for obvious reasons, the report did not highlight any arid conditions in the archipelago, for American officials, the logic of Philippine land was subject to the same types of regulatory framework which had developed in the United States in the latter half of the 19th century. Yet, this differentiated land regime did not preclude the possibility of settler centered development. The report continued:

> The public lands have never been surveyed. No facilities have been afforded the Filipinos to enable them to acquire good title to lands they occupy and cultivate, and from 200,000 to 400,000 are squatters waiting for some homestead or settlers' law under which they may become owners.[32]

Unlike the United States, however, such laws were not intended for white settlers. Instead, the commission envisioned a Filipino centered settler movement structured through a bureaucracy similar to that of the GLO. In 1901, the Commission, which had been given legislative authority over the colony, would pass legislation to create a land office in the model of the GLO. This act would create an Insular Bureau of Public Lands, "framed as nearly may be after the organization of the Public Land Office in the United States".[33]

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[31] United States Philippine Commission, Jacob Gould Schurman, George Dewey, Elwell S Otis, Charles Denby, and Dean C Worcester. *Report of the Philippine commission to the President-December 20, 1900*. Washington, Govt. Print. off., -01, 1900, from Corpuz, Onofre D. 1997. *An Economic History of the Philippines*. Quezon City: University of the Philippines Press, 220.
[32] *Ibid*.
[33] *An Act Creating a Bureau of Public Lands,* Acts of the Philippine Commission, No. 218. September 2nd, 1901.

The technologies of the GLO would find a second life in the colonial context. Congress would pass legislation creating, in effect, a Homestead Act for Filipinos, with land sold in 40-acre parcels. However, unlike the original Homestead Act, the legislation would also permit American corporations to purchase large tracts of the public domain, in 2,500-acre lots.[34] The legislation would create a two-tiered system for land development, one in which Filipinos could pursue small scale farming activities, while American corporate entities could engage in large scale extractive activities. As such, while the Philippines slowly moved toward political independence, American interests profited extensively.

Conclusion

From the perspective of the 20th century, it is difficult to apprehend the purpose of the GLO. With limited regulatory power, the GLO struggled to navigate the Progressive Era. Instead, as this dissertation has argued, it is necessary to understand the GLO as the result of 19th century political challenges. The consolidation of the agency, its technologies of land management, and the emergence of its autonomous power arose from the distinct political problems which the 19th century American state faced. Certainly, in comparison to the 20th century bureaucratic state, the GLO had limited capacity, authority, and responsibility. However, in its context, the GLO served important functions which structured the development of land and the American state.

With little funding or power, the American state confronted a national domain which it scarcely understood. The journals of early territorial bureaucrats are filled with descriptions of the challenges in apprehending the territory to which their nation lay claim. As I show in the first chapter, the implementation of technologies of measurement, the tools through which state actors

[34] Corpuz, *Economic History of the Philippines*, 222.

began to "see" the world around them, was therefore a critical feature in the development national authority.[35] Mapping and contract both proved critical to the consolidation of the GLO in 19th century America. These technologies created path dependence for the agency. While, at critical junctures, the GLO underwent significant consolidation, with legislation providing improved processes, increased funding, and more personnel, the underlying structure of the GLO's technologies of land management proved durable. The Jacksonian era crisis led to substantial shifts in the management of the agency but failed to change the processes of mapping and contract. Instead, with the consolidation of the GLO and the development of internal autonomy, the agency would deploy these technologies in selective ways to achieve its political goals.

In Mississippi Territory, the bureaucratic technology of land management transformed the relationship between settlers and the federal elites. Early efforts to incorporate settlers ended in failure, as the territorial government lacked the coercive capacity to impose rules without settler cooperation. Uncooperative settlers pressured and petitioned the government to recognize their substantial investments in land and the practice of enslavement. The need to incorporate settlers into the body politic led political elites to create new forms of bureaucratic management which incorporated distinct modes of land ownership into the national grid. This incorporation required the creation of processes and rules which could determine the legitimacy of land claims and the production of new bureaucratic offices to enforce these rules. In this way, the construction of the GLO began from the outside, in distant territorial holdings. The GLO only consolidated as a centralized agency to coordinate these territorial bureaucracies.

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[35] Scott, James C. *Seeing like a state: How certain schemes to improve the human condition have failed*. Yale University Press, 2020.

The management of Oregon and Washington territories presented another set of a challenges for the GLO. Early settlement of the region prior to American rule led to haphazard practices of land use. As such, when Congress passed the Donation Claims Act, it created a system of land holding which produced significant bureaucratic challenges for GLO officers. Land was given freely to settlers and did not conform to the national grid. Mapping these claims required the expenditure of considerable effort and resources. However, as the American state ultimately sought to incorporate these settler populations, it bore these considerable costs. Native nations in the region, by contrast, were treated brutally. Early territorial governments waged violent wars, pressuring Native nations to cede territory and move onto reservations. The GLO sought to map the internal organization of Indian Reservations in conformity with the national grid. This effort to map reservations was coextensive with broader national objectives to reduce Indigenous land holdings further and open them for settlement. As a result, the national government provided funding for this project, which the GLO autonomously claimed for itself. Whereas settlers were given broad latitude in how to configure their land holdings, Native nations were coerced into conformity with GLO technologies of land management.

With these chapters, the dissertation raises broader questions about the development of the 19th century bureaucratic state. As other scholars have shown, other 19th century bureaucratic agencies showed surprising degrees of authority and autonomy despite relatively limited funding and a weak executive branch.[36] Recognizing that authority, however, means approaching questions of state development in a way that is orthogonal to the modern American state. This dissertation demonstrates that bureaucratic power is mediated through technological development. For the GLO, these technologies of mapping and contract, which established basic

[36] See especially, Rockwell, Stephen J. 2010. *Indian Affairs and the Administrative State in the Nineteenth Century*. New York: Cambridge University Press.

forms of measurement and intelligibility had a major impact on the formation of American settlement and bureaucracy. The logic of rectangular survey and mapping became a foundational element of the American frontier. Contracts rendered settler relations legible to the national government and ensured that settlers would recognize government authority as the basis of their property ownership. The GLO manipulated this structure of landholding and settlement to achieve substantial political objectives.

While prior literature in American Politics has emphasized bureaucratic development as a feature of renewed national authority after the Civil War, this dissertation argues that understanding the development of the modern American state requires a deeper engagement with earlier efforts at state building. GLO technologies of land management emerged soon after the creation of the American political order and had significant impacts throughout the 19th century. While the GLO consolidated significantly in the intervening years, the technical foundation of GLO practices largely remained in place. In overlooking the GLO as a significant engine of state development, scholars have understated the importance of early American state technologies of management to the structure of American bureaucracy and governance. Yet, as this dissertation demonstrates, the GLO was a complex and powerful institution, which developed significant autonomy during its peak in the 19th century. The technologies of the GLO structured the development of the frontier, giving the American state the power to carry out large scale technical projects. The land office was critical to the formation of national land and agriculture markets. The policies of the GLO regulated land use and helped ensure the orderly development of the frontier.

The technologies of measurement in the land office rendered certain features of the physical, political, and social geography of the American continent in detail while

simultaneously occluding others from view. Enslaved people were rendered as a numerical count in the census, with their labor in producing the physical space of the plantation reduced to questions of sufficient cultivation. Native nations were made to conform to the requirements of the national grid, which stripped them of independent political power and collective ownership of land. Allotment would shape American Indian policy throughout the 20th century. The GLO played a constitutive role in producing the racial and political order of the 19th and 20th centuries. The production of land as a social category, through mapping and contract, occurred as a feature of a national political and social order which took white supremacy as a given.

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